

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an Application for orders in the
nature of writ of Certiorari and Mandamus in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Kulasekera Mudiyansele Nimal Kulasekera
of No.112, Madapola,
Teldeniya.

Petitioner

C.A/WRIT/App/No.1774/2006

VS

1. Parakrama Bandara Ekanayake
Commissioner General of Excise,
Excise Commissioner's Department
28, Staples Street
Colombo 2.
And four (04) others.

Respondents

BEFORE : S.SRISKANDARAJAH, J.(P/CA)
COUNSEL : Ronald Perera
for the Petitioner.

Deepthi Tilakawardana SC
for Respondents

Decided on : 10.10.2005

10.10.2011 S.L.

S.Sriskandarajah.J

The Petitioner was first issued with a FL22B Liquor Licence on the 6th of May 1999 for the selling of Beer for consumption within the premises at Vijitha Welendasala Teldeniya. The said FL 22B Liquor License was transferred to Arjuna Karaliyadda Building , Kandy Road, Teldeniya on the 10th of April 2000. Thereafter the Petitioner was issued with a FL 22A Liquor License to carry on the said business at No 12, New Shopping complex, Teldeniya on 19.02.2004 under the name “Chaminda Beer Shop”.

On the orders of the Commissioner General of Excise an Excise, Inspector with the sergeant of the Special Investigation Unit of the Excise Station, Kandy entered the said business premises of the Petitioner on the 29th of June 2006 in order to conduct a raid and detected the sale of a bottle of beer above the fixed price. The sale of liquor was temporarily suspended. The Petitioner was served with a charge sheet and the Petitioner was afforded an opportunity to give explanation.

The Respondents submitted that having considered the explanations tendered and having regard to the repeated violation of the conditions subjected to which the license was issued the 1st Respondent the Commissioner General had cancel the said license. As the Petitioner’s license was cancel in 2006 for the breach of the conditions of the license the Petitioner was not entitled for an application form for the year 2007.

The Petitioner in this application has sought a writ of certiorari to quash the said order of the 1st Respondent to cancel the Petitioner’s Liquor License and has sought a writ of Mandamus to issue the Petitioner an application form for the FL22A Liquor License for the year 2007 and to issue a license for 2007.

The issue of a mandamus will be futile as the license sought is for the year 2007 and it cannot be issued in the year 2011. The Petitioners license for the year 2006 was cancelled for a valid reason. The Petitioner was served with charge sheet and after giving a hearing to the Petitioner the 1st Respondent decided to cancel the license of the Petitioner in terms of Section 27 (1)(b) of the Excise Ordinance. In these

circumstance the Petitioner's claim that the said decision of the 1st Respondent is contrary to law and it was ultra vires is untenable.

For these reasons this court dismisses this application without costs.

President of the Court of Appeal