

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

**In the matter of an Application for mandates in  
the nature of Writ of *Certiorari* under article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

**Liquor Products Lanka (Pvt) Ltd,  
87/5, Dammodaya Mw,  
Jayanthipura,  
Battaramulla.**

**CA /WRIT APPLICATION**

**PETITIONER**

**NO: 98/2013**

**Vs,**

1. Commissioner General of Excise,  
Department of Excise,  
34, W.A.D. Ramanayake Mw,  
Colombo 02.
2. Secretary, Ministry of Finance & Planning,  
The secretariat,  
Colombo 02.

**RESPONDENTS**

**Counsel : Chula Bandara with S. Bandara and R. Kuruppu for the Petitioner  
M. Jayasinghe, SC for the Respondents**

**Argued On** : 25.02.2015  
**Written Submissions On** : 01.04.2015  
**Ordered On** : 24.07.2015

## **Order**

### **Vijith K. Malalgoda PC J (P/CA)**

Petitioner is a limited liability company registered under the provisions of the Companies Act No.7 of 2007. In June 1993 One Mr. S.P.U.S. Wickramasinghe was granted a manufacturing license for Country made Foreign Liquor (FL 1A) by the 1<sup>st</sup> Respondent. The said license was transferred to the Petitioner Company with effect from 22.10.1993. Accordingly the Petitioner Company was issued with a license to manufacture Country made foreign Liquor and for the sale of the same by the 1<sup>st</sup> Respondent.

Having obtained the said license the Petitioner commenced its operation and continued till year 2000. Petitioner submitted that due to financial constrains faced by the company in the year 2000, for several reasons including reduction of sales in certain parts of the country, the Petitioner decided to inform the 1<sup>st</sup> Respondent that it was unable to continue with its operations in the year 2001. This decision was conveyed to the 1<sup>st</sup> Respondent by letter dated 20.11.2000 (P 11).

Petitioner further submits that in the year 2004 the Managing Director of the Company, said Mr. S.P.U.S Wickremasinghe wrote to the Hon. Minister in charge with a copy to the 1<sup>st</sup> Respondent, that the Petitioner has found finances to commence its operation and seeking that the license be renewed. (P12). The 1<sup>st</sup> Respondent had informed the Managing Director of the Petitioner Company, that steps would be taken to issue a FL 1A license to the petitioner but since issuance of licenses had been suspended during the election period, steps would be taken to issue the same once the elections are over. (P-14)

Petitioner's allegation before this court was that the said 1<sup>st</sup> Respondent had failed to issue the said license contrary to his own decision which was conveyed to him by letter dated 10.08.2005. (P-14) Petitioner further submitted that instead of issuing the license the 1<sup>st</sup> Respondent time to time gave

different reasons, as evident in document produced marked P-19, P-22, and P-24 and therefore the Petitioner has come before this court seeking inter alia;

b). issue a mandate in the nature of Writ of *Certiorari* to quash the decision of the 1<sup>st</sup> Respondent not to renew the manufacturing license of the Petitioner as stated in P-19,P-22 and P-24.

c). issue a mandate in the nature of Writ of *Mandamus* directing the 1<sup>st</sup> Respondent to act according to law and to renew the said manufacturing license as undertaken by the 1<sup>st</sup> respondent in his letters P-14 and P-17.

However the position taken up by the 1<sup>st</sup> Respondent before this court was that he was unable to issue FL 1A license to the Petitioner due to the directive he has received from His Excellency the President and the Finance Minister which was produced marked 1R1.

According to document 1R1 dated 5<sup>th</sup> December 2005, a decision was taken by His Excellency the President and the Finance Minister not to issue permits with effect from 28.11.2005 for

1. Sale of liquor licenses
2. Manufacture of liquor licenses
3. Distilleries licenses
4. Manufacture of sprit licenses

And it was conveyed to the Secretary – Finance and the 1<sup>st</sup>Respondent by the Secretary to His Excellency the President by 1R1.

The Petitioner has responded to the above argument, mainly on two grounds. Firstly he had taken up the position that the request of the Petitioner was to renew the license already issued to him and not for a new license and therefore as admitted by the 1<sup>st</sup> Respondent in P-26, question of issuing a new license won't arise and therefore 1R1 has no application to his request.

Secondly he argued that the 1<sup>st</sup> respondent had treated him differently by granting manufacturing licenses to Globe Blenders and Wayamba Distilleries (Pvt) Ltd.

I would now consider the first ground raised by the Petitioner before this court.

As admitted by the Petitioner from his own document P-11, the Petitioner has only made use of the license issued to him up to April 1996, even though he was issued with a Manufacturing license up to

December 2000. In other words, the Petitioner was involved in commercial production only between January 1993 to April 1996 even though he possessed a manufacturing license up to December 2000.

Since January 2001 the Petitioner was not issued a manufacturing license by the 1<sup>st</sup> Respondent. The Petitioner by sending P-11 reserved his rights to review his request once he found necessary funding, but accepting a part of the said request by not issuing a manufacturing license, is not proof of the fact that the 1<sup>st</sup> Respondent agreed to the request of the Petitioner to grant him a license once Petitioner found finances.

The term Renewal of license is explained in Black's Law Dictionary Sixth Edition , ....A change of something old to something new.....“ in P. Ramanathan Aiyar's “**the Law Lexicon**” (Reprint Edition 1987) the word “renewal” is defined at P 1107 to mean “ a change of something old for something new.....”. The renewal of “License “means a new license granted by way of a renewal.

Therefore it is understood that a new license is required to be issued to the applicant and it is different to the term extension which was discussed in the case of **Provash Chandra Dalui V. Biswanath Benerjee 1989 Supp (1) SCC 487** as follows;

“A distinction between ‘extension’ and ‘renewal’ is chiefly that in the case of renewal a new lease is required while the case of extension the same lease continues .....”

In the present case the Petitioner has come before the 1<sup>st</sup> Respondent in year 2005 to renew the FL 1A license issued to him for the year 2000 for the year 2006.

If the Petitioner has come before the 1<sup>st</sup> Respondent in 2001 and asked for renewal or, if he had a valid FL 1A license for the year 2004 and asked for renewal in 2005 the things would have been different to the circumstances of this case, since the application is to continue with its operation and once he comes before the Authority, he has a legitimate expectation that the license will be renewed for another year.

Petitioner, other than by referring to certain letters sent by the 1<sup>st</sup> Respondent, on different occasions giving different explanations, failed to establish before this court, that he has a legal right or at least a legitimate expectation to renew his license issued to the year 2000 for the year 2006.

In the above circumstances this court cannot agree with the contention of the counsel for the Petitioner that he is entitled to obtain a license for the year 2006 since he had a valid license issued to him for the year 2000.

According to the 1<sup>st</sup> Respondent, he was unable to issue FL 1A license to the Petitioner for the year 2006 due to the directive he has received from His Excellency the President.

It was argued on behalf of the 1<sup>st</sup> Respondent that the 1<sup>st</sup> Respondent was bound to implement the above directive since that was issued based on the state policy prevailed at that time.

In the case of **M.R. Leelawathie V. The Minister of Defence and External Affairs 68 NLR 487 at 489** Sansoni C.J discussed the questions of the Policy of the state as follows;

“The policy of the Government would presumably always be in accordance with the public interest; the welfare of the State would be presumed to be the main object of Government of, the Minister of Defence and External Affairs, and when she came to make a decision as to what was in the public interest she would not be uninfluenced by the policy of the Government. Such policy would be a proper and relevant factor to be taken into account.”

Lord Diplock in the case of **Council of Civil Service Union V. Minister of Civil Service [1985] AC 374** observed the function of court, when considering the implementation of Government Policy as follows;

“Such decisions will generally involve the application of government policy. The reasons for the decision- maker taking one course rather than another do not normally involve questions to which, if disputed, the judicial process is adapted to provide the right answer, by which I mean that the kind of evidence that is admissible under judicial procedures and the court competing policy considerations which, if the executive discretion is to be wisely exercised, need to be weighed against one another- a balancing exercise which judges by their upbringing and experience are ill- qualified to perform.”

As we observe, the government policies will change time to time, to ensure that the broader public interest is served. When the 1<sup>st</sup> Respondent replied P-12, he informed the Petitioner that “issuance of licenses had been suspended during the election period and steps would be taken to issue the same once the elections are over.”

Once the elections are over and with a forming of a new government, the Government policies can change in order to ensure that broader public interests are served. In such a situation this court is reluctant to annul a decision unless it is established before us, that the policy is manifestly unreasonable.

Petitioner has further argued that the 1<sup>st</sup> Respondent has granted licenses to certain other companies in violation of the said decision by His Excellency the President, and therefore the Petitioner too is entitled to renew his license. If the Petitioner is complaining of an equal treatment by the 1<sup>st</sup> Respondent, in such a situation the best cause of action available to the Petitioner was to sought redress for the violation of the Petitioner's Fundamental Rights. In a writ application Petitioner cannot rely on the grant of the license to another company in order to claim a right for obtain a license to his company.

Petitioner has failed to establish that the 1<sup>st</sup> Respondent's decision to refuse of FL 1A license to him was illegal, wrongful or ultra virus.

For the reasons adduced above, I am of the view that this is not a fit case for the granting of relief by way of a Writ of *Certiorari* and *Mandamus*, and therefore I am not inclined to grant the relief prayed by the petitioner. Application is accordingly dismissed with cost fixed at Rs. 10 000/=.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. MADAWALA,**

I agree,

**JUDGE OF THE CUORT OF APPEAL**

Application is dismissed with cost.