

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

Sevanagala Sugar Industries Ltd
No.362, Colombo Road,
Pepiliyana, Boralessgamuwa

Petitioner

C.A. [WRIT] APPLICATION
NO.412/2011

VS

1. D.J.M.V.Hapuarachchi
Commissioner General of Excise
Excise Department of Sri Lanka
No.28, Staple Street, Colombo 02
2. Sugarcane Research Institute
Uda Walawe
3. Dr.N.C.Kumarasinghe
Director/Chief Executive Officer
Sugarcane Research Institute
Uda Walawe
4. Director General of Customs
Sri Lanka Customs
Times Building
Colombo 01
5. Sri Lanka Ports Authority
Colombo 01

Respondents

BEFORE : **K.T.CHITRASIRI, J**

L.T.B.DEHIDENIYA, J

COUNSEL : Faisz Musthapha P.C. with Saliya Devendra, instructed by
Paul Ratnayake Associates for the Petitioner

Arjuna Obeysekera, D.S.G. for the Respondents

ARGUED ON : 30.06.2015
WRITTEN SUBMISSIONS FILED ON : 15.06.2015 by the Petitioner
29.06.2015 by the Respondents
DECIDED ON : **04. 08.2015**

CHITRASIRI, J.

Petitioner is a company engaged in the business of producing sugar from sugar cane purchased from farmers. The petitioner while producing sugar also did produce molasses as a bi-product. In the petition, it is alleged that the petitioner company suffered serious financial losses as a result of the drop in the production of sugar as well as its bi-products including molasses. Accordingly, the petitioner company has averred that it had decided to import molasses basically with the idea of honouring the agreements that they have entered into with other companies to supply sugar and its bi-products. Having stated so, the petitioner company alleged that it requested the Governmental authorities namely, the Controller of Imports & Exports and the Commissioner General of Excise to obtain necessary permission to import molasses. Accordingly, the petitioner, for the first time, had obtained licenses marked P5A and P5B to import 26.1 MT of molasses and indeed the company has imported that consignment of molasses. However, learned DSG has submitted that the said approval to import 26.1 MT of molasses was granted to the petitioner solely for the experimental purposes and not for commercial activities.

Thereafter, another request had been made by the petitioner company to the Commissioner General of Excise seeking to import a larger stock of 250 MT of molasses. It was made by the letter dated 28.12.2010 marked P6. Upon receiving the said letter sent by the petitioner company, Commissioner General of Excise has requested the Director, Sugar Cane Research Institute to advise him as to the consequences, if the request of the petitioner company is allowed. By the letter dated 28.01.2011 marked P8, the Chief Executive of the Sugar Cane Research Institute has informed the Commissioner General of Excise that he does not recommend or authorize importation of molasses into Sri Lanka for the reasons set out therein. Relying upon the contents of the aforesaid letter marked P8, the Commissioner General of Excise has informed the Chairman of the petitioner company that he cannot consent to import molasses and accordingly the request by the petitioner company made in the letter marked P6 was turned down.

The petitioner company not being satisfied with the decision of the Commissioner General of Excise has sought *inter alia* to quash the opinion/recommendation of the 3rd respondent [Chief Executive Officer, Sugar Cane Research Institute] that is mentioned in the letter marked P8. Petitioner also has moved to quash the decision of the 1st respondent namely; Commissioner General of Excise, embodied in the letter marked P9 which decision was based on the opinion in P8, expressed by the CEO of the Sugar Cane Research Institute. The petitioner company has also sought to have a mandate in the nature of a Writ of Mandamus to obtain approval/permit/pass/recommendation that was sought by its letter dated 28.12.2010 marked P6 to have 250 MT of molasses imported.

However, when this matter was taken up for argument on 15.05.2015, learned President's Counsel for the petitioner informed Court that he has decided to restrict the claim of the petitioner to the reliefs referred to in paragraphs (c) and (d) in the prayer to the petition dated 16.06.2011. Therefore, this Court will not be considering the request to issue a mandate in the nature of a Writ of Mandamus that had been prayed for in paragraph (e) to the prayer to the petition.

I will first venture into consider the claim referred to in paragraph (c) in the prayer to the petition. In that relief, the petitioner company has sought to have a mandate in the nature of Writ of Certiorari quashing the opinion expressed by the 3rd respondent which is embodied in the letter marked P8. The aforesaid letter P8 written by the Director, Sugar Cane Research Institute, was a reply to the letter marked P7 which was written by the Commissioner General of Excise seeking for an opinion as to the future of the other distilleries in the event the request of the petitioner company to import 250 MT of molasses is allowed. Accordingly, by the letter marked P8, opinion and/or recommendation of the Chief Executive Officer of the Sugar Cane Research Institute had been communicated to the Commissioner General of Excise.

Upon a plain reading of the said letter marked P8, no clear determination or ruling that affects the rights of the petitioner company is found. Generally, such an opinion or recommendation is not amenable to writ jurisdiction since it does not directly relate to a violation of a right of an individual. However, in the case of **G.P.A.Silva and others v. Saidique and others 1978 - 1980 (1) SLR at 166, a**

wider meaning had been given to the phrase “to determine questions affecting the rights of subjects” to mean that “to determine questions affecting subjects.” Therefore, it is clear that the courts are now much inclined to interpret the word “rights” giving it a broader meaning. When looking at the letter marked P9, in which the request of the petitioner company had been rejected by the Commissioner General of Excise, it is seen that the contents in the letter marked P8 had greatly influenced in determining the rights of the petitioner company. Therefore, it is necessary to consider whether the opinion expressed in the letter marked P8 as well as the decision referred to in the letter marked P9 are liable to be quashed for the reasons adduced by the petitioner company.

Admittedly, request by the petitioner to the 1st respondent for permission to import 250 MT of molasses had been made by the letter dated 28.12.2010 (P6). The said letter is addressed to the Commissioner General of Excise. However, it must be noted that unless an import permit from the controller of Imports & Exports is obtained, no molasses can be imported as it is an import item prohibited by law. It is evident by the Gazette [Extra Ordinary] bearing No.175/12 dated 06.11.2008. Therefore, importation of molasses without a valid import license from the Controller of Imports & Exports becomes illegal.

Petitioner Company had already shipped on board a total of 250 MT of molasses (P13) without a permit being obtained from the Controller of Imports and Exports. Neither have they obtained prior approval from the Commissioner General

of Excise to do so. Therefore, it is obvious that the petitioner company has illegally imported 250 MT of molasses without having proper clearance from the authorities concerned. Therefore, it will become an illegal act committed by the Petitioner Company.

When the acts of the person who is seeking to have a mandate in the nature of a writ are tainted with illegality, courts will not exercise its discretion to issue writs. Furthermore, Writ of Mandamus will not lie even when there exists a bad motive on the part of the applicant. This position of the law has been discussed in the cases of **Madanayake v Schrader 29 NLR at 389**, **James v. Fernando 48 NLR at 40** and **Rasamma and another v. A.P.B. Manamperi 77 NLR at 313**.

Moreover, it is to be noted that the goods in relation to which the writ of certiorari is sought has already been sold by the Customs. As a result, no goods are available as at present, to grant permission for its importation. It is for those goods that have already been imported that the petitioner is seeking to obtain permission from the authorities concerned. Admittedly, the act of importation of the goods have now been completed and concluded. Petitioner has also failed to indicate any other valid purpose for it to have the respective opinion and decision referred to in the letters P8 and P9 quashed. Therefore, even if the decision of the Commissioner General of Excise, refusing to consent for the importation of molasses is quashed, it will have no effect or serve any purpose. Therefore, it will become a futile exercise to issue a mandate in the nature of a writ as sought by the petitioner at this belated stage.

It is trite law that certiorari will not be issued to quash a particular decision if it is futile to do so. The Courts have addressed this point in the cases including that of **Sundarkaran v. Bharathi and others (1989) 1 SLR at 46, Nimalasiri v. Divisional Secretary Galewala (2003) 3 SLR at 85, Centre for Policy Alternatives (Guaranteed) Ltd. and another v. Dayananda Dissanayake Commissioner of Elections and others (2003) 1 SLR 277 and Ratnasiri and others v. Ellawala and others (2004) 2 SLR at 180.**

In the circumstances, I am not inclined to issue a writ of certiorari since it would become a futile exercise as it will serve no valid purpose. For the aforesaid reasons, I am of the view that the petitioner company is not entitled to have a mandate in the nature of a writ of certiorari to quash the decisions contained in the letters marked P8 and P9. A writ of Mandamus also will not be issued since the petitioner has decided not to pursue the relief (c) referred to in the prayer to its petition.

Accordingly, this application is dismissed with costs fixed at Rupees Twenty Five Thousand. (Rs.25,000/-).

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B.DEHIDENIYA, J

I agree

JUDGE OF THE COURT OF APPEAL