

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

**In the matter of an Application for a mandate  
in the nature of *Writ of Certiorari and  
Prohibition* under article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka**

**CA/WRIT/62/2014**

Rajagopal Rajendran,  
84, Main Street,  
Norwood.

As the Power of Attorney holder  
Of the license of Udaya Wine Stores,  
Namely Liyanage Charitha,  
No. 14, Gouravila Colony,  
Upcot.

**PETITIONER**

**Vs,**

1. D.G.M.V. Hapuarachchi,  
Commissioner General of Excise,  
Department of Excise,  
34, W.A.D. Ramanayake Mawatha,  
Colombo 02.
2. Wasantha Dissanayake,  
Deputy Commissioner of Excise,  
Department of Excise,  
34, W.A.D. Ramanayake Mawatha,  
Colombo 02.

**RESPONDENTS**

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

**Counsel:** Dulinda Weerasuriya PC with S.P.P. Samaranayake for the Petitioner  
Vikum de. Abrew DSG for the State

Argued on: 24.06.2016, 08.09.2016

Written Submissions on: 21.10.2016, 10.11.2016

**Judgment on: 31.03.2017**

## **Order**

**Vijith K. Malalgoda PC**

The Petitioner who has come before this court seeking mandate in the nature of writ of *Certiorari* and *Prohibition* had prayed inter alia,

- b) Issue a writ of *Certiorari*, quashing the decision stated in the document marked X2 and thereby nullifying the said document X2
- c) Issue a writ of *Prohibition*, preventing the 2<sup>nd</sup> Respondent from acting on document marked X2

As revealed before this court Liyanage Udenis Silva and Liyange Charitha were the license holders for three licenses issued under Excise Ordinance for, sale of Arrack by bottle only (FL-3), sale of Foreign Liquor including locally made Malt Liquor (FL-4) and Bottled Toddy (B-3) to operate at Udaya Wine Stores No. 14 Gouravila Colony Upcot.

The said two license holders by Power of Attorney dated 7<sup>th</sup> November 2006( P-2) appointed the Petitioner to the present application Rajagopal Rajendran as the power of Attorney holder for the purpose of,

1. To appear before the Commissioner of Excise on all matters connected to the said business and the said license and make necessary representation on our behalf
2. To appear before the Commissioner of Labour, Labour tribunal or any other forum in respect of all industrial disputes with the employees of the said business and in matters connected with the payment of EPF, ETF and payments statutory or otherwise
3. To appear before the Commissioner of Inland revenue and represent all matters connected to the said business, make payment of business turnover tax, income tax and other payments, apply for income tax clearance and attend to all necessary formalities with regard to renewal of the said license annually
4. To make representations on my behalf to all statutory provincial and local authorities in respect of the said business and the said license
5. To enter into any compromise of disputes differences concerning the said business and the said license before any of the aforementioned functionaries and authorities and to execute all necessary writings in our name and on our behalf to give effect to same
6. To appear sue or answer and to receive all process in any action appeal or other judicial proceedings what so ever in any court concerning the said business and the said license and generally to act in all such proceedings in any way in which we might if present be permitted or called on to act

When going through the said Power of Attorney P-2 it appear that the entire management of Udaya Wine Stores based on the said FL-3, Fl-4 and B-3 licenses had been entrusted to the said Rajagopal Rajendran by the two license holders. However as revealed before this court the said 1<sup>st</sup> license holder Liyanage Udenis Silva is not among the living at the time this application was filed before this

court in the year 2014 and the licenses issued to operate Fl-3, Fl-4 and B-3 for the year 2014 was issued only in the name of Liyanage Charitha.

As further observed by us, the only Power of Attorney before this court is the Power of Attorney signed in the year 2006 by the two license holders and the Petitioner had failed to satisfy this court that he is the Power of Attorney holder of Liyanage Charitha who is the sole license holder as at 2014. The fact that the Petitioner was appointed the Power of Attorney holder for both Liyanage Udenis Silva and Liyanage Charitha will have no bearing in the case in hand since the Power of Attorney issued by both will come to an end with the death of one grantor. As revealed before us, with the death of Liyanage Udenis Silva fresh licenses under Fl-3, Fl-4 and B-3 had been issued in the name of Liyanage Charitha and no Power of Attorney had been granted on the Petitioner by the said Liyanage Charitha who is the license holder as at 2014.

On 10<sup>th</sup> February 2014 officers of the Excise Department including the 2<sup>nd</sup> Respondent had carried out detection at Udaya Wine Stores No 4 Gouravila Colony Upcot. During the said detection, the staffs working in the said premises namely Iyakannu Reegan and Subramaniam Mohanraj were found to be acting in violation of the provisions of the Excise Ordinance and the Regulations made under the Excise Ordinance. As further revealed before us, Iyakannu Reegan who was physically present at Udaya Wine Stores was detected when he sold a bottle of Extra Special Arrack 40 Rupees excess of the marked price and a bottle of beer 50 Rupees excess of the marked price. In addition to the above the officers have detected a 180-ml opened bottle inside the shop in violation of the regulation.

During the said detection, the officers observed a locked room just behind the licensed premises. Since the said room was locked, the officer requested the sales person at the license premises to open the door. The sales person after informing that the key to the room is with his manager, had got down the manager on the request of the investigation officer. When the said room was opened by the

manager Mohanraj, who arrived on the request of the sales person, the officers detected 120 opened Arrack bottles packed in 10 crates.

After the said detection, a statement was recorded from the sales person, Iyakannu Reegan at the same time and another statement was recorded from the manager S. Mohanraj at the Head Office after getting him down to Colombo on 18.02.2014. After the said statement was recorded the impugned order X2 was issued to the license holder and it was handed over to the said Mohanraj who acted as the manager of Udaya Wine Stores at the said inquiry.

However, when the papers were filed before this court by the Petitioner and during the arguments before us, the Petitioner took up the position that the said Mohanraj was not the manager at Udaya Wine Stores and he is only a tenant of a room just behind the liquor shop. In support of this position the Petitioner has submitted before this court a copy of a lease agreement said to have signed between Liyanage Charitha and Subramaniam Mohanraj with regard to No 11 Gouravila Colony Upcot for a period of 3 years commencing from 22.01.2012 but there is no proof that No 11 Gouravila Colony referred to in the said lease agreement refers to the same room found just behind the licensed premises No 14 Gouravila Colony.

In addition to the above, the Petitioner had produced an affidavit said to have signed by the said Mohanraj, and according to him, he is referred to by people as "Manager" since he was a manager of a farm called Green Farm but was never the manager at Udaya Wine Stores. He had further submitted that the said 120 bottles of Arrack found in his room were collected by him to be given to two of friends for their weddings.

But in this regard this court is mindful of the fact that none of the said bottles were carrying seals at the time of the said detection and Mohanraj who collected the bottles had failed to explain as to why he broke the seals of all 120 bottles found in his room.

In their objections filed by the Respondents before this court, the Respondents have produced marked R-2 to R-14, thirteen receipts for the period of 2012 and 2013, where the person who received goods including bottled toddy, arrack and beer to Udaya Wine Stores, has placed a signature almost similar to the signature of Mohanraj which is found in the affidavit tendered by him along with the petition. When considering the matters referred to above, it is clear that one Liyanage Charitha was the license holder at all times relevant to this application with regard to FI-3, FI-4 and B-3 licenses issued to Udaya Wine Stores No 14, Gouravila Colony Upcot and the violations of the provisions of the Excise Ordinance and the Regulations made thereunder were taken place at the premises belonging to the said Liyanage Charitha by the employees employed by the said license holder.

The Petitioner who is before this court namely Rajagopal Rajendran cannot be considered as the Power of Attorney holder of the said Liyanage Charitha who is the sole licensee for the year 2014 and in the said circumstances, I hold that the said Petitioner does not have the *locus standi* to claim any relief as prayed in the present application.

In the said circumstances, I dismiss the application with cost fixed at Rs. 10,000/-

Application dismissed with cost.

**President of the Court of Appeal**