

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 writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Manjula Rajapakse,
"Isuru Trade Center",
Gonagolla, Ampara.

PETITIONER

CA/Writ/No.619/2011

Vs.

1. D.G.M.V. Hapuarachchi,
Commissioner General of Excise, Excise
Department of No.28, Staple Street,
Colombo 02.
2. A. Boderagama,
Commissioner of Excise (Revenue),
Excise Department of No.28, Staple
Street, Colombo 02.
3. Sumedha Wasanthasiri,
Assistant Commissioner of Excise

(Eastern Province), Excise Office,
Trincomalee.

4. R.M. Ratnayake,
Assistant Commissioner of Excise (North-
Western Province), Excise Office,
Kurunegala.
5. U.P.I. Anuruddha Piyadasa,
Divisional Secretary, Divisional
Secretariat, Wewagampaththuwa North,
Uhana.
6. Ajantha Kumari,
Divisional Secretary, Divisional
Secretariat, Wewagampaththuwa.
7. Mrs. K.H.A. Meegasmulla,
Commissioner General of Excise, Excise
Department, No.353, Kotte Road,
Rajagiriya.
8. M.D.M.W.K. Dissanayake,
Deputy Commissioner of Excise, Excise
Department, No.353, Kotte Road,
Rajagiriya.
9. Rev. Giritale Gunananda Thero,
Sri Sumangalaramaya, Himidurawa.

10. Rev. Ananda Therao,
Sri Pushparamaya, Kumarigama, Uhana.

RESPONDENTS

BEFORE: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

COUNSEL: Ronal Perera (P.C.)
(for the Petitioner)

Anusha Samaranayaka (D.S.G)
(for the 1st – 8th Respondent)

Argument: 26.03.2021

Decided on: 06.12.2021

K. K. A. V. SWARNADHIPATHI, J.

JUDGMENT

The Petitioner seeks orders Writ of Certiorari against the 1st and the 2nd Respondents regarding orders or decisions taken by the 1st Respondent. As the 2nd Respondent is functioning under the 1st Respondent, the Writ of Certiorari applied for by the Petitioner should bind him. His plea was to quash the orders made by the 1st Respondent in requesting to find another place to run the liquor shop by document marked as [P11]. To quash the order of temporally suspending the liquor license described by the document marked as [P7a].

A Writ of Mandamus against the 5th Respondent to extend the validity of the license issued to him in terms of Gazette No.1544/17 dated 10th April 2008. Subject to these two main Writs, he had sought interim reliefs from this Court. Spelling out his grievance, the Petitioner had stated that in 2006, he the Petitioner was issued with a license to run a liquor shop as a retail liquor business at Main Street, Anguruwella, Kegalle.

By document marked [P3a], Petitioner had forwarded an application to transfer the Liquor license issued to him to No. 83/07, Wawulgas Handiya, Kandy Road, Uhana. After the formalities, the 1st Respondent, being satisfied, issued an FL 4 license to the Petitioner for one month. The document giving permission was marked as [P4]. When perusing the document marked [P4] at the letter's conclusion, a paragraph had been added depicting that the license had not been in operation after 31st December 2006. On payment, the Petitioner received the permits marked as [P6a] and [P6b]. Even though the Petitioner had a permit to run the shop till 2nd March 2011, on 21st February 2011, he received an order to suspend the license subject to an inquiry.

After inquiry the 4th Respondent on 05.04.2011, the Petitioner was informed by letter dated 24.05.2011 as there were protests against the liquor shop by members of the clergy and the general public to find alternative premises to carry on the business. It is the contention of the Petitioner at the outset; he had satisfied all requirements specified in the Excise Ordinance and the Gazette notification marked as [P1]. When he was issued an FL 4 liquor license, an inquiry was held to satisfy the authorities of the compliance of statutory requirements.

Therefore, cancelling the permit issued to the Petitioner becomes unlawful and an arbitrary decision of the Respondents. On these grounds, the Petitioner seeks the intervention of this Court. The 1st to 5th Respondents filed their objections. Later the Petitioners amended the Petition and introduced the 6th to 8th Respondents. On this ground, the objections were also amended. The matter was argued on the amended Petition and the amended objections.

Two places were rejected when the Petitioner sought the license to be transferred from Kegalle to Ampara due to public protest. That was the reason on the third occasion 2nd Respondent had recommended a trial period of one month. Considering that the Petitioner's application on two previous occasions had to be turned down due to public protest and on the recommendation of the 2nd Respondent, the 1st Respondent informed the 5th Respondent that the re-location was allowed for one month. That was why the 5th Respondent had issued an excise license-produced as [P6a] and [P6b]. Due to the public demonstrations and unrest, the 1st Respondent had to inform the 5th Respondent to suspend the license issued temporarily. The 1st Respondent appointed the 4th Respondent to inquire into the public unrest. After inquiry, the 4th Respondent communicated to the 1st Respondent that a license should not be issued to the premises and the Petitioner should relocate his business due to public unrest.

The power is given by document marked [P1], which is the government Gazette to inquire into the public unrest and if it is found objections of the general public may threaten law and order in the area to advice to relocate the business. Under the power given to the 1st Respondent, he had ordered the Petitioner to relocate to maintain peace and public harmony.

The Respondents contended that the Petition should fail since the Respondents have acted according to law. The Petitioner argued regarding paragraph 21 of the document marked [P1]. The Respondents contended that the order to relocate was done, considering the public protest and according to powers given by this paragraph. Even though the Petitioner believes that paragraph 21 speaks of a situation where the requirements are violated, the Court can not accept it.

In perusing the paragraph, it is true at the beginning it speaks of grounds of violation or non-compliance it also speaks "..... In such an inquiry, if it is found that the establishment containing the license at that place may threat or likely threat to the maintenance of law and order in the area, Commissioner General of Excise can decide to relocate the licensed premises to a suitable place. The decision will be final." On the strength of this averment, the Respondents had acted according to the law. I consider that this is the third place, and on two

other occasions, the Petitioner had to relocate due to public protest. Since every place has to be treated as new premises and the formalities should be followed, one cannot argue harassment or difficulties. Even it is the hundredth time; every place should be considered afresh.

As for the expenses incurred by the Petitioner in applying for a liquor license, the Applicant agrees to satisfy all aspects stipulated by document marked [P1], which speaks of public unrest as one of the aspects. Petitioner's argument in this respect will have to be set aside as the gazette had spoken of public unrest and protest. It is well within the powers that the 1st Respondent had considered public harmony as a supreme ingredient that the Petitioner should fulfil.

Another point which the Petitioner argued was regarding the expenditure borne by him. Renting premises is his duty. Without a place to run the business, he cannot in any way make the application for a liquor license. It has nothing to do with the Respondent. The only part that will show any involvement of the Respondent is collecting license fees for previous years.

Paragraph 22 of [P1] speaks thus;

"Application for license in respect of premises wherein a license has already been in operation, will be considered only on condition that all dues in respect of the license in operation or operated previously in such premises or in the applicant's name have been fully paid and settled."

Considering this provision, the Petitioner holds no right to argue regarding expenses incurred or monies paid by him in respect of license fees. Considering prayer [c] of the amended Petition to issue a Writ of Mandamus to extend the validity of FL 4 liquor license first, this Court should be satisfied that the Petitioner had fulfilled all ingredients for such a Writ to be granted.

The Petitioner must bring to the notice of this Court an express or implied refusal to exercise power vested on the Respondents by law. The Respondent had acted under the powers provided in [P1] to keep public harmony. Therefore, the main ingredient of Mandamus fails. When the authorities had acted within their power to safeguard public harmony, can the Petitioner complain. Arguments of the Petitioner failed to provide of a refusal to grant the license. Therefore, the prayer in respect of a Writ of Mandamus fails.

Another prayer of the Petitioner was for a Writ of Certiorari to quash the decision of the 1st, 2nd and the 5th Respondents cancelling with immediate effect the FL 4 license issued to the Petitioner's place of business at No. 83/07, Wawulgas Handiya, Kandy Road, Uhana.

To exercise power given to this Court to issue a Writ of Certiorari, the Petitioner will have to prove that the Respondents have acted with an error of law. The Petitioner must satisfy this Court the ultra vires act of the Respondent. Petitioner fails to establish any reason for the Respondents to act other than to safeguard the public against protests. In reality, the Respondents have acted to maintain peace and harmony within the community. That too under the powers vested.

This Court sees no reason to issue an order as prayed for by the Petitioner. Since the Petitioner is not entitled to the prayers, his interim prayers too cannot be considered. For reasons set out above, I dismiss the application of the Petitioner.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal