

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

In the matter of an application for Writs of  
*Certiorari* and *Prohibition* under Article 140  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka

**Court of Appeal Case No.**

**CA/WRT/185/2020**

1. Wikiliya Plantations (Pvt) Ltd.,  
Depelamulla,  
Balangoda.
2. Sesame Senhora Tea Company (Pvt) Ltd.,  
New Hopewell Tea Factory,  
Kirimatetanne,  
Balangoda.
3. Sanrose Teas (Pvt) Ltd., Dartry Valley Tea  
Factory,  
Nuwara Eliya Road,  
Angammana,  
Gampola.
4. Yara Valley (Pvt) Ltd., New Mount Carmel  
Tea Factory,  
Ambalakanda,  
Aranayake.
5. Harangalla Plantation (Pvt.) Ltd.  
Harangalla Tea Factory,  
Kataboola,  
Nawalapitiya.

**Petitioner**

**Vs.**

1. Sri Lanka Tea Board,  
No.574, Galle Road,

Colombo 3.

2. Jayampathy Molligoda, Chairman,  
Sri Lanka Tea Board,  
No.574, Galle Road,  
Colombo 3.
3. Anura Siriwardena,  
Director General,  
Sri Lanka Tea Board,  
No.574, Galle Road,  
Colombo 3.
4. E. A. J. K Edirisinghe,  
Tea Commissioner  
Sri Lanka Tea Board,  
No.574, Galle Road,  
Colombo 3.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Romesh De Silva P.C. with Laxman Perera P.C.  
Hiran Anketell for the Petitioner.

Milinda Gunathilake ASG for the Respondents.

Argued on: 01-02-2022

Decided on: 01-08-2022

**MOHAMMED LAFFAR, J.**

This matter has connected with the factual circumstances enumerated in CA/Writ/184/20 and accordingly both matters were taken up for argument together.

The Petitioner in this application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, for the following reliefs:

- a. Grant and issue a mandate in the nature of a Writ of Prohibition restrain the 1 to 4 Respondents their servants, agents, Officers and those hold through or under them from taking any action whatsoever to cancel and suspend the registration of any one and/or more of the five tea factor namely Wikiliya Tea Factory, New Hopewell Tea Factory, Dartry Valley Tea Factory, New Mount Carmel Tea Factory and/or Harangalla Tea Factor owned and/or controlled by the Petitioner companies without conducting due and proper inquiry in which the Petitioner is properly heard;
- b. Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1 to 4 Respondents their servants, agents, Officers and those holding through or under them from taking any action whatsoever to cancel and/or suspend the registration of any one and/or more of the five tea factories namely Wikiliya Tea Factory, New Hopewell Tea Factory, Dartry Valley Tea Factory, New Mount Carmel Tea Factory and/or Harangalla Tea Factory owned and/or controlled by the Petitioner companies on the basis of the samples already taken and/or caused to be taken by the 1 to 4" Respondents as pleaded hereinabove;
- c. Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1 to 4" Respondents their servants, agents, Officers and those holding. through or under them from taking any action whatsoever to cancel and/or suspend the registration of any one and/or more of the five tea factories Tamely Wikitiya Tea Factory, New Hopewell Tea Factory, Dartry Valley Tea Factory, New Mount Carmel Tea Factory and/or Harangalla Tea Factory owned and/or controlled by the Petitioner companies until the security and/or

integrity and/or chain of custody of any samples if any taken from the aforesaid factories could be safeguarded and assured in accordance with best practices and standards

- d. Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1 to 4 Respondents their servants, agents, Officers and those holding through or under them from taking any action whatsoever to cancel and/or suspend the registration any one and/or more of the five tea factories namely Wikiliya Tea Factory New Hopewell Tea Factory, Dartry Valley Tea Factory, New Mount Carmel Tea Factory and/or Harangalla Tea Factory owned and/or controlled by the Petitioner companies on the purported basis that any one and/or more of the sand factories have failed to obtain and/or submit HACCP certification,

The Petitioners state that on or around 02.06.2020 a lorry hired by the Petitioners to carry finished goods (tea) from the Petitioners' factories to Colombo for auction with Lanka Commodity Brokers Limited was taken into custody by the Officers of the Yatiyantota Police Station on the suspicion that the said consignment contained refuse tea. Subsequently, the Police informed this incident to the Tea Commissioner (4<sup>th</sup> Respondent) and summoned Mr. Ashok Lal, a Director of the 5<sup>th</sup> Petitioner Company (Petitioner in case No. CA/Writ/184/20) to the Police Station on the following day. Both the said Mr. Ashok Lal and the Officers of the 1<sup>st</sup> Respondent presented as required by the Police on 03.06.2020. After the visual examination the Officers of the 1<sup>st</sup> Respondent, Sri Lanka Tea Board (SLTB) determined that the teas found in the lorry was not refuse tea but made tea, and therefore on that basis they released the consignment of tea to Mr. Ashok Lal. The Officers of the 1<sup>st</sup> Respondent, however, decided to take three samples of the tea in the presence of the Police Officers and Mr. Ashok Lal for further testing. Mr. Ashok Lal and the Officers of the Police was requested to sign on the sealed sample. These samples were sent to

the 1<sup>st</sup> Respondent's head office for two types of testing i.e., tasting test (to be examined and tested by the Tea Tasting Unit of the SLTB) and laboratory test (to be examined and tested by the Analytical Laboratory of the SLTB).

Both tasting and laboratory test results indicated that the samples were found to be suspected of sugar and other contaminations (the maximum possible levels of sugar in the mid elevation 25mg/g. However, according to the test results the Petitioners' tea samples exceed the mid elevation level). In the interim, on the advice of the Petitioners, another tea sample that had been catalogued by the Petitioners' Broker – Lanka Commodity Brokers was also tested. This result too indicated that the tea was contaminated with sugar. In this matrix, the 4<sup>th</sup> Respondent took necessary steps to suspend the registration of the Petitioner. Accordingly, the 4<sup>th</sup> Respondent issued a letter marked P6 dated 10.07.2020 informs the 5<sup>th</sup> Petitioner that as the 5<sup>th</sup> Petitioner company exceeded the maximum possible levels of sugar for black tea in the mid elevation and accordingly the factory is in violation of the Circular No. TC/CIR(204)-01 dated 20.05.202 the registration of the 5<sup>th</sup> Petitioner company is suspended. The 4<sup>th</sup> Respondent has further written to the licensed commodity Brokers indicating that the 5<sup>th</sup> Petitioner's registration has been suspended with immediate effect and therefore to refrain from the sale of teas made by the 5<sup>th</sup> Petitioner until further notice.

The Petitioners sought a Writ of *Prohibition* to restraint the Respondents to cancel and/or suspend the registration of the Petitioners' companies, *inter alia*, on the following grounds:

- (a) The Petitioners are unaware as to how the Chain of custody of the samples taken were maintained. Therefore, the Petitioner stances that the samples tested were not of the Petitioner.
- (b) Although the purported cancellation or suspension of the registration is on the ground that the Petitioner's tea had exceeded the maximum possible levels of sugar for black tea in mid elevation, this is not a ground to cancel/suspend the registration in terms of law. Therefore, the Respondents conducts were *ultra vires*.

- (c) The Respondents have failed to afford a proper hearing (i.e., inquiry) before the alleged suspension (the total absence of natural justice)

It is not disputed that the reference samples obtained on 03.06.2020 at the Yatiyantota Police Station were given to all parties including the 5<sup>th</sup> Petitioner and the Police. These samples were taken into SLTB custody for testing under seal. The sealed packages were signed by the SLTB Officers and Mr. Ashok Lal and the same were sent to the relevant testing units under secret codes to preserve confidentiality with regard to the identity and ownership of the same. In addition to these, the SLTB Officers have re-drawn samples from the catalogued tea in the presence of the Brokers at their warehouse. At the end, all three samples tested positive for sugar contamination. However, the Petitioner while impeaching the testing results filed by the Respondents submits, inter alia that,

- (a) The samples were not opened in the presence of the Petitioner.
- (b) The laboratory does not state that it opened a sealed envelope which contained the seals of some persons.
- (c) The samples tested in were not the samples collected by the Police, and the Respondents have perpetrated a serious fraud on the Court.
- (d) With regard to the test results from samples supposedly taken from the Brokers, there has been no process followed. There is no seal. There is no envelop. There is no secret code.
- (e) There are serious discrepancies in the secret codes that were given to the sample collected at the Police station.

The Respondents, in contrast to the above contentions of the Petitioner, submitted that the sample drawn at the Police Station was carefully drawn in the presence of Mr. Ashok Lal, Director of the Petitioner Company and the second sample was drawn in the presence of the Petitioner's accredited Broker who officially responsible for selling the Petitioner's tea. They further submitted that the 4<sup>th</sup> Respondent by P4 informed the Petitioner of the sequence of events related to sampling of the Petitioner's catalogued tea

and requested the Petitioner to be present for an inquiry on 24.07.2020 to state their case with respect to the allegations of contamination. The Respondents further contended that since a representative of the Petitioner had given a sample, if at all they had any suspicion on the chain of custody, the Petitioner could have made a request to the 4th Respondent to re-test the sample handed over to the Petitioner, and if such request was made, the test could have been done in the presence of the SLTB Officers. However, the Petitioner has never made such a request. Hence, the Respondents took the position that the Petitioner not making for such request itself clearly establishes the fact that the Petitioner did not have any issues with regard to the chain of custody, and that it was merely fabricated or afterthought for the purpose of this instant application.

The learned President's Counsel for the Petitioner sought to argue that the suspension of registration of any tea factory under section 8(2) of the Tea Control Act, No. 39 of 1974 must be on the basis that the building, equipment or manner of operation of the factory is not of a standard conducive to the manufacture of good tea. Thus, he took the position that there is no question or allegation about the *building or equipment* of the Petitioners factories. The only allegation is that sugar has been added at some point to the tea. Therefore, the addition of sugar is not a matter that comes within section 8(2) of the Act.

The learned Additional Solicitor General for Respondents, per contra, submitted that the maximum possible levels sugar in tea is a very serious issue and such default is not trivial by any means. It directly impacts the quality and the brand name of Ceylon tea. Accordingly, the learned Additional Solicitor General for the Respondents sought to argue that the suspension of the Petitioners' tea factories had been made in terms of section 8(2)(a) as the Commissioner was satisfied that the manner of operation of any tea factory is not of a standard conducive to the manufacture of made tea of good quality. They further argued that according to section 8(2)(a) there could be several acts '*not of a standard conducive to the manufacture of the made tea of good quality*' and all such

acts could not be listed in the section. Therefore, when a wide phrase as such is included in law, it is understood by a reasonable man that, manufacturing contaminated tea would certainly be captured in the frame of ‘*not of a standard conducive to the manufacture of tea of good quality*’.

Section 8(2) of the said Act (as amended by Act No. 3 of 1993) reads thus:

*Where the Controller is satisfied, after such inquiry as he may deem necessary:*

***(a) that the building, or equipment, or manner of operation, of any tea factory is not of a standard conducive to the manufacture of made tea of good quality; or***

*(b) that the owner of a tea factory has paid for green tea leaf bought by him for manufacture at such factory a price lower than the reasonable price payable as determined by the Controller having regard to the price fetched for made tea manufactured at that factory; or*

*(c) that the owner of a tea factory has delayed payment of the reasonable price, referred to in paragraph (b) for green tea leaf bought by him for manufacture at that factory,*

***the Controller may suspend or cancel where necessary, the registration of such tea factory....***

To my mind, there is no ambiguity in this section. Where the Controller is fairly satisfied that the building, or equipment, or manner of operation of any tea factory is not of a standard conducive to the manufacture of made tea of good quality may suspend or cancel the registration of such tea factory if necessary. This section provides every factory manufacturing of made tea needs to maintain their building, equipment and modes of operation in a standard conducive to the manufacture of tea of good quality. The phrase “manner of operation”, in my view, includes methods of manufacturing tea.



Furthermore, section 8(2) cannot be interpreted in isolation. There are several regulations have been created by the competent authorities i.e., SLTB. As submitted by the learned Additional Solicitor General for the Respondents Directive No: RTM/01/2005/11/01 (R2 – Directions given under section 8(2) of the Tea Control, Act No. 51 of 1957 as amended to preserve the manufactures of made tea made by the Tea Commissioner of the SLTB) is crucial in this regard. Clause 2, 3, and 4 of the R2 stipulates as to how the naturalness of the made tea would be harmed and specifically states that if any act to harm the naturalness of made tea is revealed, the Tea Commissioner shall take steps to suspend or cancel the license. Clause 1 and 4 of the R2 read thus:

*1. Section 8(2) of the Tea Control Act No. 51 of 1957 as amended requires that the manner of operation (the tea manufacturing process) of a tea factory should be conducive to the manufacture of made tea of good quality. Tea is a natural drink derived from the tea plant (Camellia sinensis). Accordingly, the manner of operation of a tea factory should guarantee the preservation of the naturalness of made tea.*

.....

*4. Accordingly, in order to preserve naturalness of made tea, by virtue of the powers vested in me by Section 8(2) of the Tea Control Act No. 51 of 1957 as amended, you are hereby directed to;*

- (i) Refrain from making any attempts to artificially blacken tea.*
- (ii) Refrain from storing any substance that could be used to artificially blacken tea within the tea factory or its premises. These substances include inter alia substances that are purported to be natural, such as commercially available enzymes.*

*(Emphasizes added)*

Furthermore, in recent times, it is evident that further to satisfy the customer's sensory needs and earn unreasonable profits, (high elevation of

prescribed level of) sugar has been allegedly added to tea in the manufacturing process to improve the lustrousness and taste of tea and simultaneously achieve the purpose of weight gains.<sup>1</sup> In Sri Lanka too, it is reported that some enterprises make illegal profits by adding sugar and glucose syrup to improve the taste, tighten the leaf strip and reduce costs in roasted green tea<sup>2</sup>.

The Petitioners also sought to question the suspension of their certificate on the footing that the Respondents have failed to afford a proper inquiry before the alleged suspension. The learned Additional Solicitor General for the Respondents, per contra, sought to argue that ‘any tea factory whose tea had been found to be contaminated be suspended with immediate effect, pending investigation.’ The learned Additional Solicitor General further contended that ‘immediate suspension of the registration of the tea factory is the only mechanism to prevent contaminated tea being sold under the brand of “Ceylon Tea”.’ The reason for such is that ‘if such contaminated tea is sold in the international market, it will have an impact on the quality of “Ceylon Tea” and that well reputed brand name which prevailed over decades would be tarnished and thereby the demand for Ceylon Tea will drastically reduce.’

I do agree with the contention of the learned Additional Solicitor General for the Respondents that an immediate suspension of the registration of the tea factory is the only mechanism to prevent contaminated tea being sold under the brand of “Ceylon Tea”.

Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as ‘is satisfied’ or ‘is of the opinion’ or ‘if it has reason to believe’ or ‘if it considered necessary’, in my view, the opinion of the authority is

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<sup>1</sup> Hui Wang et al., ‘Simultaneous determination of fructose, glucose and sucrose by solid phase extraction-liquid chromatography-tandem mass spectrometry and its application to source and adulteration analysis of sucrose in tea’ (2021), Journal of Food Composition and Analysis, Volume 96, March 2021, 103730.

<sup>2</sup> <https://www.ft.lk/Business/Stop-adding-sugar-to-tea-during-production-or-face-consequences-Navin-warns-industry/34-675933>

conclusive, where (a) if the authority acted bona fide and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed. However, the action based on the subjective opinion or satisfaction, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. As it was held in **Amarendra Kumar Pandey v. Union of India and Others** [Civil Appeal Nos. 11473-11474 of 2018, Supreme Court of India, SC Minutes of 14.07.2022] ‘ordinarily the Court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist.’

The Courts will not readily defer to the conclusiveness of the authority’s opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated. However, as Lord Denning correctly pointed out in **Director of Public Prosecutions v. Head** (1959) AC 83, where there are no reasonable grounds for the formation of the authority’s opinion, judicial review in such a case is permissible. Thus, the doctrine of reasonableness may be invoked.

In the case in hand, the Tea Commissioner (4<sup>th</sup> Respondent) has informed the Petitioner (vide P6) that the registration of the 5<sup>th</sup> Petitioner Company has been suspended with immediate effect. The reasons for such suspension are given in P6 that at the investigation carried out by the SLTB it was revealed that made tea manufactured at their factory had exceeded the maximum possible levels of sugar for black tea in the mid elevation and accordingly the factory is in violation of the direction issued by the Tea Commissioner under section 8(2) of the Tea Control Act. The 4<sup>th</sup> Respondent also informed the 5<sup>th</sup> Petitioner the sequence of events related to the sampling of theirs catalogued tea and requested the Petitioners to be present for an inquiry on 24.07.2020 to state his case with respect to the

alleged contamination. However, the 5<sup>th</sup> Petitioner by its letter dated 23.07.2020 had responded requesting the Respondent to lift the suspension and cancel the inquiry. Moreover, section 8(2) of Act specifically provides that *where the Controller is satisfied, after such inquiry as he may deem necessary*, he may issue the direction specified in the section. The section never states *after such inquiry as he shall deem necessary*.<sup>3</sup>

Hence, as submitted by the learned Additional Solicitor General for the Respondents that in order to maintain the quality of “Ceylon Tea” and its brand value, it is vital to stop contaminated tea from reaching the global market and therefore, rigorous measures should be adapted with to ensure that it is only the highest quality of tea that would reach the global market. In my view, the 4<sup>th</sup> Respondent authority acted *bona fide*, and the Petitioners failed to show that the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the alleged decision had to be formed. According to me, the Commissioner has adopted a fair procedure although there may not be hearing of the kind normally required by natural justice.

The learned Additional Solicitor General for the Respondents also invited this Court to consider the fact that the Petitioners have a clear alternative remedy against the suspension of the registration envisaged in P6 under section 37(1)(e) of the Tea Control Act.

Section 37(1)(e) of the Tea Control Act provides thus:

*Any person aggrieved –*

*by the decision of the Controller under subsection (2) of section 8 of the cancellation of the registration of any registered tea factory, may, within twenty-eight days after the communication of such decision or cancellation to such person, appeal in writing from such decision or cancellation to the Minister.*

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<sup>3</sup> For example, see section 26 of the Vaccination Act (Act No. V of 1880) of Bangladesh

Hence, as submitted by the Respondents, as like in CA/Writ/184/20, the Petitioners in this case too, without exhausting the statutory right of appeal had sought this Court's permission by way of Writ application under Article 140 of the Constitution.

It is trite law that Writ remedy is a discretionary remedy and will not be granted unless the plaintiff has exhausted the other remedies reasonably available and equally appropriate. Vide **Linus Silva v. The University Council of the Vidyodaya University** (per T.S. Fernando, J.) (1961) 64 NLR 104 and **Chandraseana v. Abeyseriya** [CA/Writ/457/19, Court Appeal Minutes of 16.06.2022].

For the foregoing reasons, this Court is of the view that the application of the Petitioners is liable to be dismissed. Accordingly, I dismiss the application without costs.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**