

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

In the matter of an application for Writs of
Mandamus and Certiorari under and in terms
of Article 140 of the Constitution.

CA (Writ) Application No: 157/ 2019

Manodaratne Vijitha Prassana de Silva,
2/7, Namal Mawatha, Kolongahawatte,
Kengalle, Kandy.

PETITIONER

Vs

1. H. G. Sumanasinghe,
Commissioner General of Excise.

2. 2. W.M.M.B. Wansuriya,
Deputy Commissioner General of
Excise (Revenue),
Both of
Excise Department of Sri Lanka,
No. 353, Kotte Road, Rajagiriya.

3. A.M. Wickremarachchi,
Divisional Secretary,
Meda-Dumbara, Teldeniya.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Shantha Jayawardane with Pulasthi Hewamanna instructed by Lilanthi De

Silva for the Petitioner.

Ms. A. Gajadeera, SC for the Respondents.

Written submissions tendered on:

01.08.2022 and 18.03.2021 by the Petitioner.

Argued on: 07.04.2022.

Decided on: 31.08.2022.

S.U.B. Karalliyadde, J.

The Petitioner to this writ application is a holder of a liquor license in the type of FL/11 (marked as P3) issued by the Commissioner General of Excise, the 1st Respondent. The Petitioner bought another two liquor licenses marked as P4 and P5 from one Rajamanthri Gedara Premaratne and carried out his business of selling liquor at the "Excellent Restaurant" situated at No. 128 Bobabila, Makuldeniya (hereinafter referred to as the Premises) since 2007 until 2015. Due to financial difficulties of the Petitioner and the person from whom the Petitioner leased the Premises had a dispute over the Premises and had a case pending in the District Court, the Petitioner could not carry-out his business till 2018. Therefore, he neither ran the business, nor renewed the license up till 2018. In 2018 after a lapse of 3 years, the Petitioner applied to renew his liquor license and by the letter dated 15.10.2018 marked P8C, the 1st Respondent directed the

Divisional Secretary, Meda-Dumbara, the 3rd Respondent to issue licenses to the Petitioner for the year 2018 after recovering the license fee and default fee for the period of 2016 -2018. Nevertheless, the 3rd Respondent informed the Petitioner by letter dated 14.11.2018 marked as P9b that he received written objections from the public against the reopening of the liquor shop and sought further instructions from the 1st Respondent about the issuance of a license. By the letter dated 12.11.2018 marked as P10, the 3rd Respondent informed the 1st Respondent about the public protest of the clergy, Civil Societies and the general public for reopening the liquor shop and sought advice of the 1st Respondent regarding the matter. Thereafter, the Deputy Commissioner General of Excise (Revenue), the 2nd Respondent informed the Assistant Commissioner of Excise, Central Province by letter dated 20.11.2018 marked as P11-a to conduct an inquiry through a committee consisting the 3rd Respondent and Superintendent of Excise (Kandy) regarding the public protest. Accordingly, as per letter dated 07.12.2018 of the 3rd Respondent, an inquiry was held on 18.12.2018 by a committee consisted of Assistant Commissioner of Excise (Central Province), the 3rd Respondent and the Commissioner of Excise (Kandy). By letter dated 23.01.2019 marked as 1R5 the committee recommended the 2nd Respondent not to issue the liquor license due to the public protest. In this application, the Petitioner seek reliefs, *inter alia*, a writ of Certiorari to quash the letter marked as P10 issued by the 3rd Respondent, writs of Mandamus directing the 1st to 3rd Respondents to renew the liquor license of the Petitioner for the years 2018 and 2019 and a writ of Mandamus directing the 3rd Respondent to take administrative steps to comply with the decisions contained in letters marked as P8-c and P8d.

The document marked as P10 is a letter issued by the 3rd Respondent seeking instructions from the 1st Respondent about issuance of license to the Petitioner. P10 does not contain a decision. It is trite law that a writ of Certiorari could be issued only to quash a decision of a public authority. Therefore, since the document marked as P10

does not contain a decision, the Petitioner is not entitled to a writ of Certiorari to quash that letter as prayed for in prayer “d” to the Petition.

In order to be entitled to a writ of Mandamus, the Petitioner must have a legal right for it and the public authority must owe a public duty towards the Petitioner to perform that duty. In the instant application, it is conceded that until 2015 the Petitioner continued selling liquor on a license issued by the 1st Respondent. Thereafter, for 3 years until 2018 he did not carry-on the business and his license was suspended for the reason that he has not applied for renewal. The learned Sate Counsel appearing for the Respondents submitted to Court that a party who has a license is not entitled to automatic renewal of it and if he does not observe the conditions stipulated in the license, the 1st Respondent could refuse to extend the license. Schedule III of the Extraordinary Gazette No: 1544/17 dated 10th April 2008 marked as P1 states as follows;

*“1. (a) The present holders of license **will not be entitled to automatic renewal** thereof, on termination of the validity of a license, if the licensee, so desires to renew his license, an application should be forwarded at least fifteen (15) days prior to the expiry of such license.”*

In view of the aforementioned rule, the Petitioner in the instant application does not have an absolute right for automatic renewal of his license after its validity expired in 2015. Ultimately, he is not entitled to a writ of Mandamus as he does not have a legal right for automatic renewal of the license and the 3rd Respondent does not owe a public duty towards the Petitioner to renew the liquor license automatically.

Nonetheless, in terms of Rule 13 (b) in P1, the applicant for a liquor license must prove that he is able to conduct the business within the specified premises.

*“13. (b) Proof of right to carry on business at the identified premises by submitting either the original deeds as proof of ownership along with a certified copy of the same which shall be retained in the file maintained for the purpose, or **if the premises are not owned by the applicant, a document expressing the consent of the owner of the***

premises that the proposed business can be carried out undisturbed in the identified premises. Such document should be appropriately certified by a Notary Public. If the proposed premises is mortgaged a letter should be submitted by the relevant financial institution confirming that the property is under mortgage.”

Accordingly, the Petitioner to the instant application should submit a document expressing the consent of the owner of the premises for running the business. In the instant application, there had been a dispute over the property between the owner and another person and the owner had issued an affidavit dated 04.10.2016 marked as 1R3 objecting for issuance of license to the Petitioner to run the business of selling liquor in the premises. The learned Counsel appearing for the Petitioner has argued that, that objection was not there when the inquiry was held on 18.08.2018 regarding the application of the Petitioner for renewal of the license. Nevertheless, there is no proof into that effect and as per the proceedings of the District Court action marked as P14, the Court can draw the attention to the fact that the District Court case had been withdrawn on 13.08.2019 i.e. after the inquiry was held on 18.08.2018. Under the above stated circumstances, the Petitioner has failed to fulfill the requirement of the Rule 13(b) to be entitled to renewal of the liquor license.

According to Rule 13 (f) in P1, the Director General of Excise has powers to call reports from the Divisional Secretary to ascertain the facts, whether the person who applied for a license is a fit person to hold a license issued under Exercise Ordinance and there is any objection of the public to issuance of license. Similarly, as provided by the Rule 21, at an inquiry, if it is revealed that the continuation of a disputed liquor license is a threat or likely threat to the maintenance of law and order in the area, Commissioner General of Excise can decide to relocate the license premises to a suitable place. Rule 21 provides thus;

“21. Any objection or protest received by the Commissioner General of Excise from a member of organization of the public either before or after the issue of a license, on the

*ground that there has been a violation or noncompliance with any requirement of the Excise Ordinance or the Guidelines and Conditions herein contained in regard to the issue or continuance of a license, will be notified by the Commissioner General of Excise to the applicant or the licensee as the case may be and will thereafter be inquired into by the Commissioner General of Excise as to the validity thereof and action taken after such inquiry on the basis of the findings thereat. In such an inquiry, if it is found that the establishment **continuing 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 license premises to a suitable place. This decision will be final.”*

The learned Counsel for the Petitioner submitted that the public protest towards the Restaurant occurred due to political influence and that the letters and the affidavits said to have been issued by the public were issued prior to the application for renewal of license in 2018 and to the date of the application for renewal of license, there had been no objection. However, when perusing the letters and the affidavits of the public tendered to the Court along with 1R5 on behalf of the Respondents, it is clear that there had been several protests against the reopening of the liquor shop. In the document marked as 1R2 dated 05.07.2016 it is stated by the 3rd Respondent that the Assistant Superintendent of Police of the area had informed that the clergy and the public had staged a protest on 24.06.2016 against the issuance of liquor license to the premises which the Petitioner sold liquor. The inquiry regarding the application of the Petitioner for the renewal of license has been conducted on 18.12.2018 and it transpires from the letters annexed to 1R5 received by the 3rd Respondent that there had been a public protest even in 2018 for license being issued to the Petitioner. Some of those letters were issued by the Officer-In-Charge of the area dated 12.02.2018, by Civil Societies dated 07.10.2018 and 09.11.2018, by the Chief Priest of Sri Wardhanarama Maha Viharaya dated 08.11.2018, 17.12.2018 and from villagers dated 24.11.2018. A letter

dated 12.02.2018 issued by the Officer-In-Charge of Teldeniya Police Station states as follows;

“ඉහත තත්වයන් සමාජයට අයහපත් වන වාතාවරණයක නව සුරා සැලක් විවෘත වුවහොත් එමගින් සමාජයට වන හානිය ඉතා දැඩි වන බැවින් ද මේ වන විට ගෞරවනීය මහා සංසරත්නය හා ප්‍රදේශවාසීන් මේ පිළිබඳව දැඩි විරෝධතාවයක් දක්වන බැවින් ද යම් අවස්ථාවක මේ සඳහා අවසර ලබා දුන හොත් එමගින් ප්‍රදේශවාසීන් දැඩි කැලඹීමකට පත්ව ප්‍රදේශයේ සාමයට ද දැඩි බලපෑමක් ඇතිවන බව අවධාරණයෙන් දන්වා සිටිමි”

Under the above stated circumstances, it is evident that there had been a public protest against the reopening of the liquor shop even in the year 2018. Therefore, the Court cannot accept the submission of the learned Counsel for the Petitioner that there was no public protest in 2018.

Rule 20 (c) of P1 states as follows;

*“20. (c) The location of premises for operation of licenses in respect of sale of liquor off the premises should be **100 meters away (as the crow flies from boundary to boundary) from Schools and places of public religious worship** and in respect of licenses for selling liquor for consumption within the premises should be 500 meters away (as the crow flies from boundary to boundary) from schools and places of public religious worship.”*

According to the site inspection report prepared by the 3rd Respondent marked as 1R2, a registered private Montessori School at the Pradeshiya Sabha is situated within 15 meters from the place where the Petitioner is intending to carry-on the liquor shop.

To invoke the judicial review, the Petitioner should establish that the decision of the Respondents not to renew the license is tainted with unreasonableness, illegality, irrationality or any procedural impropriety. Under the above stated circumstances, the Petitioner has failed to satisfy Court any of those facts. Admittedly, the Petitioner has taken part in the inquiry regarding his application for renewal of license and there is no

allegation that the rules of natural justice have not been observed. The Petitioner has failed to comply with the rules issued under the Excise Ordinance. Under the above stated circumstances, the Petitioner is not entitled to the writs as sought in the Petition dated 05.04.2019. The application for writs is dismissed. The Petitioner should pay Rs. 25,000/= to each Respondent as costs of this application.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL