

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

*In the matter of an Application for mandates
in the nature of Writs of Certiorari,
Mandamus and Prohibition, under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

CA Writ Application No.312/2019

- 1. Ven. Kithalagama Hemasara Thero**
Registrar of Pradeshiya Shasanarakshaka
Bala Mandalaya, Maharagama. and
Chief Incumbent, Vivekaramaya,
Maharagama.

- 2. Ven. Kalachegama Saddhathilaka Thero**
Chief Incumbent of Saranath Buddhist
Center, Rubberwatta Road, Gangodawila,
Nugegoda.

- 3. Ven. Rathmalane Pragnajeewa Thero**
Chief Incumbent of International
Buddhist Center, No.34, Sri Soratha
Mawatha, Gangodawila, Nugegoda.

- 4. Ven. Kothmale Dinnaga Thero**
Secretary, Maharagama Viharadhipathi
Sangamaya, Darma Sri Mahabodi
Viharaya, Daham Mawatha,
Maharagama.

- 5. Ven.Paradande Indrarathana Thero**

Chief Incumbent of Rajamaha Viharaya,
Nawinna, Maharagama.

6. Ven. Kekunawela Wanarathana Thero

Duputy Registrar of Vidyalankara
Piriwena, Pannipitiya.

7. Ven.Kottawe Pamarathana Thero

President of Provincial Shasanarakshaka
Mandalaya.

8. Ven.Udahamulle Dhammaloka Thero

Chief Incumbent of Sri Bodirukkaramaya,
Thalapathpitiya, Nugegoda.

9. Ven.Habarakada Janananda Thero

Chief Incumbent of Sri Mangalaramaya,
Pamunuwa, Maharagama.

**10.Ven.Mahakumbukwewa Chandrananda
Thero**

Chief Incumbent of Sri Vipassaramaya,
Maharagama.

11.Ven.Punnilama Rathanapala Thero

Chief Incumbent, Wapikaramaya,
Wewapara, Nawinna, Maharagama.

12.Ven.Molamure Nandarama Thero

Chief Incumbent, Chandrasekaramaya,
Maharagama.

13.Ven.Weragamwela Seelananda Thero

Chief Incumbent, Seelawanaramaya,
Madiwela.

14.Ven. Kotte Ghanarama Thero

Chief Incumbent, Sri
Darmasriwardhanaramaya, Pamunuwa,
Maharagama.

15.Ven.Watagedara Wimala Buddi Thero

Anunayake Thero, Sri Praghananda Maha
Pirivena, Maharagama.

16.Ven.Gamunupura Somawansa Thero

Registrar of Pannipitiya Pradeshiya
Shasanarakshaka Mandalaya,
Sirinandarama Rajamaha Viharaya,
Ganelanda, Thalawathugoda.

17.Ven.Rathanajothi Thero

Chief Incumbent of Rajamaha Viharaya,
Nawinna, Maharagama.

18.Hikkaduwa Vithanage Ranjith

Pushpakumara
of No. 191, Katuwawala,
Boralesgamuwa.

19.Prema Kumara Rajapaksha

No. 247/2, Dambahena Road,
Maharagama.

20.N.Abayasiri Dias

No. 32, Madiwela Road, Ambuldeniya,
Nugegoda.

21.J.G.A.Wijedasa

No. 22/6, 2nd Lane, Galwala Road,

Mirihana, Nugegoda.

22.G.Rathna Upananda

No.20/A, Kottawa, 1st Lane,
Ambuldeniya, Nugegoda.

23.P.A.Nihal Ranjith

No.211/38, Vivekarama Road,
Mirihana, Nugegoda.

24.F.G.Gileeshiya

No. 211/52A, Old Kottawa Road,
Mirihana, Nugegoda.

25.U.D.Iyantha Maduranga

No. 211/33A, Vivekarama Road,
Mirihana, Nugegoda.

26.W.Dhammika

No. 211/69, Old Kottawa Road,
Mirihana, Nugegoda.

27.A.G.Charlet

No.256, Old Kottawa Road,
Udahamulla, Nugegoda.

28.Weragoda Ma Sachchige Jayawathi

No.9/2, Galwala Road, Mirihana,
Nugegoda.

**29.Arachchige Darshana Maduranga De
Seram**

No.245/10A, Old Kottawa Road,
Mirihana, Nugegoda.

30.P.A.Sujatha Perera

No.72/4, Piliyandala Road, Maharagama.

31.D.M.Lalith Gunathilake

No.134/A, Pragathi Mawatha,
Pannipitiya.

32.Ishan Bamunuaarachchi

No.68, Neelam Mahara Road,
Godigamuwa, Maharagama.

33.Gunadasa Aluthge

Vipaksharama Road, Maharagama.

34.Denagama Siriwardhana

No.8/48, Neelam Mahara Road,
Maharagama.

PETITIONERS

Vs.

1. H.G.Sumanasinghe

1A.M.J. Gunasiri

The Commissioner General of Excise,
Department of Excise,
No.353, Kotte Road, Rajagiriya.

2. M.M.K.Dilrukshi Walpola

Divisional Secretary,
Divisional Secretariat-Maharagama,
Maharagama.

3. B.M.S.Bandara

Additional Commissioner General of
Excise,
Department of Excise,
No.353, Kotte Road,
Rajagiriya.

4. Dr. R.H.S. Samaratunga

Secretary,
Ministry of Finance,
Lotus Road,
Colombo 1.

S.R.Atygalle

Secretary,
Ministry of Finance,
Lotus Road,
Colombo.

4A.K.M. Mahinda Siriwardene

Secretary,
Ministry of Finance/ Treasury
Colombo 1.

[SUBSTITUTED 4ATH RESPONDENT]

5. V.H.Gunawardena

No. 195/6 Finance Guarantee Homes,
Madiwela Road,
Embaldeniya, Nugegoda.

6. M.B.Wansooriya

Commissioner of Excise (Revenue and License),
Department of Excise,
No.353, Kotte Road,
Rajagiriya.

7. D.M.W.K.Dissanayaka

Commissioner of Excise (Law Enforcement),
Department of Excise,
No.353, Kotte Road,
Rajagiriya.

8. A.M.G.Adikari

Deputy Commissioner (Legal)
Department of Excise,
No.353, Kotte Road,
Rajagiriya.

9. K.M.G.Bandara

Assistant Commissioner of Excise -
Western Province,
Office of the Assistant Commissioner of
Excise,
D.R.Wijewardana Mawatha,
Colombo 10.

10.H.W.Kulatunga

Superintendent of Excise – Colombo City
II,
Office of Superintendent of Excise,
D.R.Wijewardana Mawatha,
Colombo 10.

Shamen Rathnayaka,

Superintendent of Excise – Colombo City
II,
Office of Superintendent of Excise,
D.R.Wijewardana Mawatha,
Colombo 10.

[SUBSTITUTED 10TH RESPONDENT]

11.T.H.T.Desaa

Officer-in-Charge,
Excise Station,
Sri Jayawardanapura

12.V.M.Thushari

Grama seva Niladari,
No.532/A, Godigamuwa South.

13.P.W.Ranjith Dharmakeerthi

No.195/6,
Finance and Guarantee Homes,
Madiwela Road,
Embuldeniya, Nugegoda.
And also,
No.08,
Hemapala Munidasa Mawatha,
Welimada.

RESPONDENTS

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Sanjeewa Jayawardena, PC with Rukshan

Senadheera for the Petitioners instructed by Athula De Silva.

Ronald Perera, PC with D. Johnthasan for the 5th and 13th Respondents.

Suranga Wimalasena, DSG for the State.

Argued On : 24.02.2021, 27.04.2021.

Written Submission : on behalf of Petitioners: 20.09.2022

Tendered

Decided on : 13.10.2022

Dhammika Ganepola, J.

The Petitioners in this Application are seeking inter alia mandates in the nature of,

Writs of Certiorari quashing the decision of the 1st and 2nd Respondents to approve and permit the relocation of the FL-4 liquor licence of the 5th Respondent, from the Divisional Secretariat Division of Ganegoda, Galle to Divisional Secretariat Division of Maharagama to the premises bearing No. 199, Piliyandala Road, Maharagama, and the decision to grant and renew the said FL-4 liquor license of the 5th Respondent for the premises bearing No. 199, Piliyandala Road, Maharagama,

Writs of Prohibition restraining the 1st and 2nd Respondents from permitting the 5th Respondent from operating a liquor outlet at No. 199 Piliyandala Road Maharagama, restraining 1st and 2nd Respondents from extending said FL-4 liquor license and restraining 5th Respondent from operating a liquor outlet at the said premises,

Writ of Mandamus directing the 1st, 2nd, 6th to 11th Respondents to investigate whether the 5th and the 13th Respondents are acting in a manner contrary to the regulations contained in Excise Notification No.666.

The factual matrix of the case is as follows. The 5th Respondent is the license holder of the impugned liquor license in this application. The said FL-4 liquor license was in operation in Hikkaduwa from the year 1985 to 1994. In the year 1994, the said liquor license had not been renewed. Nevertheless, subsequent to filing a Writ Application in the Court of Appeal, said licence holder has been issued an FL-4 liquor license for the year 2006 to be carried on at Mapalagama, Ethumale in Galle District and was in operation until 2009. The Petitioners state that under circumstances which are not known to them, the transfer of said FL-4 liquor license issued for the outlet situated in the Galle District (Mapalagama, Ethumale) to the location of No. 109, Dehiwala Road, Maharagama in the Colombo District within the bounds of the Maharagama Divisional Secretariat has been approved by the then Commissioner of Excise by his letter dated 20.06.2008 marked P2. Further, the Commissioner of Excise (Revenue) by his letter dated 20.06.2008 marked P3, has directed the Divisional Secretary of Maharagama to issue an FL-4 liquor license to the said premises bearing No.109 at Dehiwala Road, Maharagama.

Upon receipt of complaints against the said decision to the relocation of the premises, the predecessor of the 2nd Respondent has refused to issue the liquor license to the said premises No.109 at Dehiwala Road, Maharagama. However, the Petitioners state that the direction given by the 1st Respondent to transfer the premises of the liquor license from Galle District to Maharagama Divisional Secretariat Division is contrary to the Regulations contained in the said Excise Notification No. 902 published in Gazette Extraordinary Notification No. 1544/17 dated 10.04.2008 marked P1, as the said re-located premises (No. 109, Dehiwala Road, Maharagama) is situated in an entirely different Divisional Secretariat Division than the initial Divisional Secretariat Division. As per Rule 27 of the said Excise Notification No.902 (P1), a change of location of a licensed premise can be considered if the relocation takes place within the same Divisional Secretariat Division. Therefore, the Petitioners state that the decision to relocate the said liquor licence was illegal, unlawful, ultra vires and has no force in law.

Thereafter, the Commissioner of Excise (Revenue), by a letter dated 29.07.2008 marked P4, informed the 5th Respondent to find a location which complies with the regulations enshrined in the said Excise Notification No.902 to relocate the said license as there was a multitude of objections being raised by the Buddhist priests and teachers of Sunday Schools against the relocation of the said FL-4 liquor license.

Accordingly, the 5th Respondent has made another request to the 1st Respondent, requesting to transfer the said FL-4 liquor license to the premises of No. 119, Dehiwala Road, Maharagama. In response to the said request, Deputy Excise Commissioner (Revenue), by a letter dated 06.08.2011 marked P5, informed the 5th Respondent that the relocation of the 5th Respondent's liquor license to the location bearing No. 119 Dehiwala Road, Maharagama is also not possible.

Subsequently, by letter dated 31.07.2013, marked P6, the Attorney at Law of the 5th Respondent has requested the predecessor of the 1st Respondent to extend and/or reissue the FL-4 liquor license to be operated at another location bearing No. 199, Piliyandala Road, Maharagama. Accordingly, by a letter dated 19.09.2013 marked P8, the Deputy Commissioner of Excise (Revenue) has directed the Divisional Secretary of Maharagama to conduct an inquiry to see whether there are public objections to the transfer of the said liquor license to the impugned location No. 199, Piliyandala Road, Maharagama.

Consequently, the 1st Respondent, by his letter dated 07.01.2014 marked P12, has informed the inability to allow the request of the 5th Respondent as the Divisional Secretary of Maharagama has refused to endorse the request due to public complaints received by him. Thereafter Assistant Commissioner of Excise also directed the 2nd Respondent to conduct an inquiry into the complaints received against the said liquor license. The inquiry has been held in the office of the 2nd Respondent on 02.04.2014 and the 5th Respondent has been represented by his Power of Attorney holder, the 13th Respondent. Consequent to the said inquiry Deputy Commissioner of Excise (Revenue), by a letter dated 16.05.2014 marked P14, informed the 5th Respondent, that it had been decided that the relocation of FL-4 liquor license to the premises bearing No. 199, Piliyandala Road, Maharagama cannot be permitted.

Thereafter, the 5th Respondent by his Power of Attorney holder, the 13th Respondent has filed a Writ Application bearing No. 355/2014 in the Court of Appeal challenging

the said decision as reflected in the letter P14, to refuse to grant /approve permission to relocate the FL-4 liquor license of the 5th Respondent at the premises bearing No. 199, Piliyandala Road, Maharagama.

In the said Writ Application, judgement has been delivered by granting reliefs sought in the prayer c, d, e and g of the Petition of the Petitioner, inter alia quashing the decision of the 1st Respondent and the 2nd Respondent of the instant application to refuse the approval for relocation of the 5th Respondent's liquor license to the premises bearing No. 199, Piliyandala Road, Maharagama and the decision of the 2nd Respondent that there are public protests to the 5th Respondent's proposed liquor shop. Further to that, a direction has been given to issue the necessary application form to the 5th Respondent to apply for the FL-4 liquor license for the years 2017/2018 onward to carry out business.

Subsequently, in December 2018 Petitioners came to know that the FL-4 liquor licence had been granted to the 5th Respondent for the location bearing No. 199, Piliyandala Road, Maharagama. The Petitioners as well as some other social service associations have objected to the establishment of the FL-4 liquor licence at the said premises and urged the 1st and 2nd Respondents to stop the operation of the said liquor licence. By the letter dated 14.12.2018 marked P16, sent by the 2nd Respondent to the 1st Respondent, it had been informed that the 1st Respondent has approved the said transfer of the 5th Respondent's liquor licence to the said premises purportedly in terms of the judgement of the above CA Writ Application No.355/2014. Furthermore, the 1st Petitioner has received a copy of a letter dated 26.03.2019 marked P17, addressed to the Secretary to the H.E. the President by the 1st Respondent stating that said relocation had been done in accordance with the judgement of the above Writ Application.

However, the Petitioners contend that the Court of Appeal has not given directions to approve the relocation proposed by the 5th Respondent by its judgement in the said Writ Application Bearing No. 355/2014. it appears that the only direction issued by the Court of Appeal is to issue the necessary application form to obtain the 5th Respondent's FL-4 liquor license to carry out the business. Even upon submission of such an application 1st and the 2nd Respondents are duty bound to process the same as prescribed by law. Nevertheless, Petitioners state that the 1st and the 2nd

Respondents have not taken any meaningful steps under Rule 21 of the Excise Notification No.902 in respect of the objections taken up.

The Petitioners submitted that:

- a) the purported irregular grant of the FL-4 liquor license to the 5th Respondent in respect of said premises;
- b) approval of the request to relocate the said liquor license from one Divisional Secretariat to another violating Rule 27 of the Excise Notification No.902 (P1);
- c) failure and/or inaction to process the application submitted by the 5th Respondent as prescribed by law;
- d) failure to take steps to hold an inquiry regarding complaints received under Rule 21 of the Excise Notification No 666 (P22); and
- e) failure to take necessary legal action by the 1st and 2nd Respondents in processing the purported FL-4 liquor license,

has to be scrutinized by judicial review.

All the parties were given opportunities to submit their written submissions on several occasions, however, only the Petitioners have complied with such directions. The 1st to 4th and 6th to 11th Respondents neither filed objections nor submitted written submissions. However, the learned D.S.G. has informed that the 1st to 4th and 6th to 11th Respondents would not file statements of objection nor submit written submissions. The 5th and 13th Respondents have submitted several documents marked 5R15, 5R16 and 5R16(a) to 5R16(t) with an affidavit of the 13th Respondent which were challenged by the Petitioners as such documents were submitted after the conclusion of the arguments.

The 5th and the 13th Respondents have taken up preliminary objection with regard to the locus standi of the Petitioners to maintain the action. It was submitted that as all residing temples of the Petitioners are situated well over 300 meters away from the 5th Respondent's liquor outlet, the Petitioners have no locus standi to file this application. However, it is observed as per the pleadings of the Petitioners that they have filed this application both, in the capacity of religious leaders as well as in the public interest.

The Petitioners seek a mandate in the nature of Writ of Certiorari quashing the decision of 1st and 2nd Respondents to approve and permit the relocation of FL-4

Liquor licence of the 5th Respondent from the Divisional Secretariat Division of Ganegoda, Galle to No.199, Piliyandala Road, Maharagama which is situated in a completely different Divisional Secretariat Division as demonstrated in the letter marked P17. It is common ground that the process of relocation of the impugned liquor license originated from Mapalagama, Ethumale within the District of Galle. An application form for the relocation of the FL-4 liquor license from Mapalagama, Ethumale to No.109, Dehiwala Road, Maharagama was issued to the 5th Respondent on 09.02.2008 in terms of the Excise Notification No. 892 published in the Gazette Extraordinary No. 1477/25 dated 29.12.2006 marked 5R1. It is also common ground that the original location of the impugned liquor license (Mapalagama, Ethumale) and the subsequent intended locations are located within two different Divisional Secretariats.

The 5th and the 13th Respondents' contention is that the applications made under the provisions of Excise Notification No.892 (5R1) are solely governed by the guidelines and the regulations prescribed within the same Excise Notification (5R1) and that such regulations allow for the relocation of liquor licenses from one Divisional Secretariat Division to another Divisional Secretariat Division. Rules 27 and 28 of the aforementioned Excise Notification (5R1) provide for the conditions applicable for the relocation of premises of a liquor license. Rule 28 of 5R1 specifically states that "no relocation of a liquor license will be allowed after 31.12.2007 for any reason." Said Rules are as follows.

27. බලපත්‍ර ලත් පරිශ්‍රයක පිහිටීම වෙනස් කිරීමට කරනු ලබන ඉල්ලීමක් සලකා බැලීම සඳහා බලපත්‍ර දරන්නා විසින් රු. 7,500 ක් ගෙවා ඉල්ලුම් පත්‍රයක් ලබා ගත යුතුය. එම වෙනස් කිරීම සඳහා අවසර ලබා දෙනුයේ බලපත්‍ර සංඛ්‍යා සීමා කිරීම් සම්බන්ධ II අනුව අදාළ පළාතේ ඉඩ ඇත්නම් හා අදාළ පරිශ්‍රය මෙම මාර්ගෝපදේශ හා කොන්දේසිවලට අනුකූල වන්නේ නම් පමණි. එම වෙනස් කිරීමේ ගාස්තුව වශයෙන් රුපියල් 100,000 ක් ගෙවිය යුතුය.

28. එසේ වුවද, 2007.12.31 දිනෙන් පසු කිසිම ආකාරයේ බලපත්‍ර ස්ථානයක් වෙනස් කිරීමට යම් හේතුවක් මත ඉඩ නොලැබේ. දැනට කුලී පදනම හෝ බදු ගිවිසුම් මත පවත්වාගෙන යනු ලබන බලපත්‍ර ස්ථීර ස්ථානවලට ගෙන යා යුතු ය. එසේ නොමැතිව, තවදුරටත් කුලී හෝ බදු පදනම මත පවත්වාගෙන යනු ලබන්නේ නම්, එකී කුලී හෝ බදු පදනම අවසන් වුවහොත්, එකී පදනම මත ස්ථානය වෙනස් කිරීමකට ඉඩ දෙනු නොලැබේ.

However, the application for relocation on behalf of the 5th Respondent has been made on 09.02.2008. Hence even if the 5th and the 13th Respondents' stance is to be accepted, it is evident that the application of the 5th Respondent for relocation

of the liquor license could not be entertained in law in terms of the said Rule 28 contained in the 5R1.

The 5th and the 13th Respondents further contend that the regulations in Excise Notification No.902 (P1) which came into operation on 10.04.2008 do not apply to applications made under the regulations of Excise Notification No.892 (5R1) but only to applications made after 10.04.2008. (*Rule 1 of the P1 provides that such regulations in Excise Notification No.902 (P1) shall come into operation from the date of its publication. i.e.,10.04.2008*)

Application for relocation of the 5th Respondent's FL-4 liquor license to No.109, Dehiwala Road, Maharagama has been approved by the letter dated 20.06.2008 (P2) while said regulations of Excise Notification No.902 (P1) are in operation. The fundamental principle of law is that any Administrative or Executive Authority exercising its powers must exercise such powers in accordance with law, rules, regulations or guidelines, applicable or in force at the time of taking such decision. Therefore, the rules applicable to the approval of the application for relocation granted by P2 are the regulations prevalent at the time provided under Excise Notification No.902 (P1). Hence, the 1st and the 2nd Respondents are legally bound to adhere to the guidelines and conditions applicable for the issuance of Exercise Licenses as set out in Exercise Notification No.902 (P1) published in the Gazette (Extraordinary) Notification No.1544/17, dated 10.04.2008 made by the Minister exercising power vested in him under Section 32 read with Section 25 of Excise Ordinance in processing the application forwarded on behalf of the 5th Respondent. The 5th Respondent is obliged to follow the contemporary rules and regulations applicable for the application for relocation of premises but is not afforded the opportunity of selecting which law to adhere to.

Said Rule 27 of the P1 stipulates,

27. No approval will be granted to relocate any liquor selling license. However, in the case of a natural disaster or, due to a government development activity or due to any other reason which Excise Commissioner General considers as reasonable, change of location of a licensed premises can be considered, if the relocation takes place within the same Divisional Secretariat Division.

Generally, no relocation of liquor licenses is permissible. However, exceptionally relocation will be permitted within the same Divisional Secretariat Division under

the grounds set out in Rule 27. The relocation between two different Divisional Secretariat Divisions cannot be allowed. Therefore, entertaining the 5th Respondent's application for relocation and granting of approval to relocate the liquor license at No.109, Dehiwala Road, Maharagama, which is located within an entirely different Divisional Secretariat Division to the original location as mentioned in P2 and P3, is not permissible in law. Hence, the decisions (set out in P2 and P3) of the predecessors of the 1st Respondent and the 6th Respondent are outside the authority vested in them and are in violation of the relevant regulations as they are inconsistent with the provisions of Excise Notification 902 (P1).

The court will intervene where the authority has failed to take proper account of something that the statute expressly or impliedly required it to consider (*See CREEDNZ v. Governor-General [1981]1NZLR 172*) even though it may not have been known at the time. (*See: - R V. Immigration Appeal Tribunal ex p Hassanin [1987] 1WLR1448*).

"The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law... Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e., deprived of legal effect. If it is not within the powers given by the Act, it has no legal leg to stand on. The situation is then as if nothing happened, and the unlawful act or decision may be replaced by a lawful one." Vide: -Wade and Forsyth -Administrative Law 11th ed, p27,28.

Accordingly, the direction given to the Divisional Secretary of Maharagama to amend the operating premises of the FL-4 liquor license from Mapalagama, Ethumale to No.109, Dehiwala Road, Maharagama by the Commissioner of Excise (Revenue) via P2 and P3 are also ab initio void and has no avail in law. Therefore, it has to be considered that the impugned liquor license of the 5th Respondent was never relocated/transferred to a location within the Maharagama Divisional Secretariat Division. Consequently, all the subsequent applications made under the presumption of a transfer of the liquor license from Mapalagama Divisional Secretariat Division to Maharagama Divisional Secretariat Division by the 5th Respondent to relocate the said liquor license within the Maharagama Divisional Secretariat Division are also deemed to be null and void as the applications incompatible with conditions and guidelines in the Excise Notification No.902(P1).

The 5th and the 13th Respondents have taken up a preliminary objection that the application of the Petitioners is delayed and futile as the Petitioners have failed to

challenge the decision of the transfer of the said liquor license from Mapalagama, Ethumale to No.109, Dehiwala Road, Maharagama which was approved on 20.06.2008. However, my view is that there was no legally valid decision to transfer the said liquor license as established above.

As per the document marked P4, the Assistant Commissioner of Excise, Western Province has informed the 1st Respondent that the liquor license should not be transferred, and the 5th Respondent has been informed to ascertain another location according to Excise Notification 902 (P1). However, since it has been established that there was no initial transfer or relocation out of Mapalagama Divisional Secretariat Division in the Galle District perceptible to the law, the 1st Respondent's directive to seek another viable location (as set out in P4) must be understood in light of such nullity.

Additionally, the 5th and 13th Respondents' contention is that the relocation of the impugned Liquor licence from No.109, Dehiwala Road, Maharagama to No.199, Piliyandala Road, Maharagama was allowed, and the liquor license was issued to the 5th Respondent in compliance with the order of the Writ Application No.355/2014. This stance of the 5th and 13th Respondents is evident in the contents of the documents marked P16 and P17.

The following reliefs have been granted in favour of the 5th Respondent of this application by the Court of Appeal in its judgement dated 31.07.2018 in the Writ Application No.355/2014.

- 1. An order in the nature of Writ of Certiorari quashing the decision of the 1st and 2nd Respondents which are contained in the letter P12.*
- 2. An order in the nature of Writ of Certiorari quashing the decision/order of the 4th Respondent that there are public protests to the Petitioner's proposed liquor shop as contained in paragraph 5 of the 4th Respondent's affidavit dated 2nd September 2015.*
- 3. An order in the nature of a writ of Certiorari quashing the decision/order of the 4th Respondent that there are public protests to the Petitioner's proposed liquor shop as contained in the Communications made to the Excise Department; and*

4. *An order directing the Respondents to issue the necessary Application Form to the Petitioner to apply for the FL-4 liquor license for the years 2017 / 2018 onwards to carry out the business.*

According to the said terms and on perusal of the said case record, it is clear that neither the 5th Respondent has sought the approval of the proposed relocation/transfer of the impugned liquor license nor has the court granted such relief. However, the direction has been given to issue an application form to the 5th Respondent of this application to apply for a liquor license.

It is common ground that in terms of Rule 2 of Schedule III of Excise Notification No. 902 (P1), the issuance of an application form to the applicant would not guarantee the grant of a license to such person. The process of granting of a license must be done according to the guidelines and conditions applicable as set out in Excise Notification No. 902(P1) and said determination in the Writ Application bearing No.355/2014 is not a bar to act accordingly. This position has been reaffirmed in the **M.D.de Lal and another Vs. A. Bodaragama, the Commissioner General of Excise CA Writ Application No.365/2019** decided on 29.07.2021 by this same bench as follows,

“According to said Condition No.3, incomplete applications or applications tendered without necessary documents or applications incompatible to the conditions and guidelines could be rejected. Therefore, unless the 1st Petitioner submits an application which is in accordance with the rules and regulations referred to above, 1st Respondent is under no duty to process such application.”

The Commissioner General of Excise is under an indispensable statutory duty to follow the guidelines and regulations in Excise Notification no.902(P1) when processing applications for relocation or transfer of a liquor license.

Nevertheless, it is evident from the letters marked P16 and P17 submitted by the Petitioners, that the decision to relocate the said FL-4 liquor license of the 5th Respondent to the location of No.199, Piliyandala Road, Maharagama has been purportedly justified by the Commissioner General of Excise by stating that it was granted in compliance with the said determination in the Writ Application No.355/2014. I am of the view that it's a blatant misinterpretation/ misconception of the said judgement. The misconception of the Commissioner General of Excise led him to base his decision on an absolutely irrelevant consideration in law. The 1st

Respondent has failed to follow the guidelines and conditions applicable as set out in Excise Notification No. 902(P1) which he is bound to follow in law.

Where an authority fails to take account of relevant considerations or takes into account irrelevant considerations which materially affect the decision reached, in such a situation, it may be held that the authority has acted ultra vires and that therefore such decision is void.

In the *Perilly V. Tower Hamlets Borough Council (1973) QB 9*, where the local authority believed erroneously that it was obliged to consider applications for stall licenses in a market in the order in which they were received. The effect of this was to deny a license to Perilly even though his mother, by then deceased, had held a license for some thirty years. The license granted to an incoming applicant in preference to Perilly was set aside by the court.

Therefore, it is abundantly clear that the decision of the Commissioner General of Excise to approve the transfer of the 5th Respondent's liquor license to location No.199, Piliyandela Road, Maharagama is illegal and null and void. *Dr Ranaraja J. in Surveyors' Institute of Sri Lanka v. Acting Surveyor General (1998) 1 SLR 266,272 observed,*

"An administrative act or order which is ultra-virus or outside the jurisdiction is void in law, i.e. deprived of legal effect. This is because an order to be valid it needs statutory authorization, and it is not within the powers given by the Act, it has no leg to stand on..."

All the proceedings and the steps flowing from the said decision are also bad and cannot be prevailed in law since the said decision to transfer the 5th Respondent's liquor license to No.199, Piliyandala Road, Maharagama is illegal and null and void.

Lord Denning in the Privy Council, McFoy v. United Africa Company Ltd., (1961)3AER1169, 1172. Cited by Sharvananda J. Sirisena v. Kobbekaduwa (1974) 80 NLR1,182. Also cited by Sripavan J., Leelawathie v. Commissioner of National Housing (2005) 1ALR14,18.

"If an act in law is void, then it is in law a nullity...There is no need for an order of the court to set it aside it is automatically null and void without much ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there.it will collapse."

For the reasons stated above, I am inclined to issue a Writ of Certiorari quashing the decision of the 1st and the 2nd Respondents to approve and permit the relocation of the FL-4 liquor license of the 5th Respondent to the premises No.199, Piliyandala Road, Maharagama and a Writ of Prohibition restraining the 1st and the 2nd Respondents from permitting the 5th Respondent from operating a liquor outlet at No.199, Piliyandala Road, Maharagama. I order no costs.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal