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.

Samrin Holdings (Pvt) Ltd,

Samrin tea Factory,

Akulahena, Nankiyandeniya,

Galle.

C.A.(Writ) WRT - 0364/20 **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. SAMPATH K. B. WIJERATNE, J**

WICKUM A. KALUARACHCHI, J

COUNSEL : Lakshman Perera PC with Thishya Weragoda and Lakmali Fernando for the Petitioner.
Milinda Gunathilake ASG with Navodi De Soyza SC for the Respondents.

ARGUED ON : 10.03.2023

DECIDED ON : 10.05.2023

WICKUM A. KALUARACHCHI, J.

The petitioner has instituted these proceedings seeking,

- a mandate in the nature of a writ of certiorari quashing the decision of the 1st to 4th respondents to suspend the registration of Samrin Tea factory as reflected in documents P-7 and P-8,
- a mandate in the nature of a writ of certiorari quashing document marked P-7,
- a mandate in the nature of a writ of certiorari quashing document marked P-8,
- a mandate in the nature of a writ of prohibition, prohibiting the respondents, their servants, agents, officers, and those holding through or under them from placing any restrictions on licensed tea brokers pertaining to the purchase and/or sale and/or auction of made tea from the petitioner's Samrin tea factory.

At the hearing, the learned President's Counsel for the petitioner and the learned Additional Solicitor General for the respondents made oral submissions.

Facts relating to the application

The petitioner is a limited liability company that manufactures tea. The 1st respondent Tea Board carries out random inspections of cataloged tea for sale to ensure the quality of made tea. On 1st of July 2020, the respondents obtained a tea sample (in triplicate) from the dryer mouth teas at the petitioner's factory in the presence of the factory manager. One sample from each triplicate was given to the factory manager and the remaining samples were taken into the Sri Lanka Tea Board custody and were sent to the Sri Lanka Tea Board laboratory to test for sugar content. Upon examination, one sample was found to be contaminated with 35 mg/g of glucose. According to the circular marked R2(a) dated 11th March 2019 which was issued further to the circular RTM/01/2005/11/01, the maximum permissible level of glucose in black tea in the low country should be 20 mg/g. The 4th respondent communicated the results of the laboratory test to the petitioner company by the letter dated 12th August 2020 and informed that the petitioner company has violated the circular RTM/01/2005/11/01 and Section 8(2) of the Tea Control Act (hereinafter sometimes referred to as the "Act"). In the same letter, the petitioner was requested to be present for an inquiry on 18th August 2020. As there was no representative from the petitioner company for the inquiry on the said date (the learned counsel said that the petitioner received the letter late), the 4th respondent rescheduled the inquiry to be held on 25th August 2020 and communicated the same to the petitioner by another letter. One of its directors and the factory manager of the petitioner participated in the inquiry held before the Assistant Tea Commissioner on 25th August 2020. Following that, letters were exchanged between the petitioner and the Tea Board, and by the letter dated 9th September 2020 marked P-7, the 4th respondent suspended the petitioner company from manufacturing and/or selling tea for a period of four months based on the laboratory test report. In addition, by the letter dated 9th September 2020 marked P-8, the 4th respondent had informed the tea brokers not

to accept teas for cataloging and selling from the petitioner tea company until further notice. The petitioner instituted the instant application for writs to quash the decisions contained in the said letters P-7, P-8 among the other relieves prayed for in the petition.

The matters challenged by the petitioner

The learned President's Counsel for the petitioner advanced arguments on the following grounds.

i. The circular on the amount of glucose that should contain in tea has no legal effect and circulars could only be used for internal management. Therefore, the respondents have no power to suspend the operation of the petitioner's factory based on that circular.

ii. In terms of Section 49 of the Tea Control Act, regulations have to be specified and gazetted, and the suspension of the petitioner's tea factory was done on a circular and not on a gazetted regulation, which is illegal.

iii. Even if the respondents relied on report R-5 and made a decision, they could only have suspended the particular line where the alleged contaminated tea was manufactured.

iv. The petitioner was not duly notified when the tea samples were tested.

v. The tea samples obtained for testing were not opened in the presence of the petitioner, and thus the testing was unfair.

vi. The SGS test report provided by the petitioner marked P6 was not considered at the inquiry.

vii. The 4th respondent acted *mala fide* towards the petitioner by failing to provide a copy of the test report before or during the inquiry held by the 4th respondent, which violated the petitioner's right to know the evidence against them.

viii. The petitioner was not given a fair hearing as the report R5 was not shown to the petitioner and the petitioner was not given an opportunity to defend himself.

ix. Not testing the tea samples obtained from the petitioner's factory in an accredited laboratory raises concerns about the validity of the test results.

x. The petitioner's factory was suspended from operation based on the order marked R-5, which lacked a proper scientific conclusion as to whether the tea samples were contaminated with sugar as it only indicated that the samples "may be contaminated with sugar."

xi. The report marked R-5 shows two samples taken at the same place and date from the same dryer mouth indicate two different readings regarding the glucose levels, which raises suspicion about the accuracy of the readings contained in the report.

The 4th respondent has suspended the petitioner's factory from manufacturing and selling tea based on the result of the test report R-5. According to the said report, the glucose level of the tea sample taken from the petitioner is 35 mg/g which exceeds the required maximum level of 20 mg/g specified in the circular issued by the Tea Commissioner dated 11th March 2019 marked R-2(a).

Whether the suspension was lawful

To determine the lawfulness of the suspension of the petitioner company, I will first address, the arguments put forth by the learned President's Counsel, specifically points (i) and (ii), which rely on Section 49 of the Tea Control Act. According to Section 49(2)(b) of the Act, the Minister may make regulations in respect of all matters for which regulations are authorized by this Act to be made. According to Section 49(3), "No regulation made by the Minister shall have effect until it has been approved by the Senate and the House of Representatives. Every regulation so approved shall be published in the Gazette and shall come into operation upon such publication." As the circular marked R-2(a) is only a circular and not regulations gazetted, the learned President's Counsel contended that suspending the petitioner's factory on the said circular is unlawful.

The learned Additional Solicitor General appeared for the respondents contended that the suspension was done not under Section 49 of the Act but under the powers of the Tea Commissioner for violating the conditions of the registration [P-1(b)] of the petitioner's tea factory.

It is to be noted at the outset that as the office of the "Tea Controller" does not exist at present, the "Tea Commissioner" can exercise and discharge the powers, functions and duties previously vested in the Tea Controller as decided in ***Paudgalika Tha Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association V. Jayantha Edirisinghe, Tea Commissioner (Acting) and Five others***. - S.C. Appeal No. 47/2011, S.C. Spl. L.A. No. 13/2011, Decided on 09.03.2015. It was held in this case that *"Thus, it could well be seen that the intention of the legislature was to create the office of the "Tea Commissioner" prior to the abolition of the office of the "Tea Controller". It further provides that the "Tea Commissioner" is by law empowered to exercise, discharge and perform the powers, functions*

and duties vested in the "Tea Controller" under any other written law. The necessary implication is that whatever the powers, functions and duties entrusted to the "Tea Controller" under the Tea Control Act No. 51 of 1957 can now be validly exercised by the "Tea Commissioner". … Thus, there can be no doubt that the "Tea Controller" has no power to issue directions or orders after 17-3-1975 affecting the rights of the owners of the Tea Factory, as the said office of the "Tea Controller" does not exist. However, the "Tea Commissioner" may exercise and discharge the powers, functions and duties already vested in the Tea Controller."

According to Section 9 of the Tea Control Act, "No person shall manufacture made tea except in a registered factory". According to the Section 8(1) of the Act; The Controller shall decide-

(a) whether any person is entitled to be registered as a manufacturer for the purposes of this Act, and

(b) whether any tea factory should be registered for the purposes of this Act.

The Acting Tea Commissioner, using the authority conferred by the relevant statute, has granted the petitioner's tea factory registration marked P-1(b) authorizing it to engage in tea manufacturing. While it is legally mandated that regulations enacted by the Minister must be published in the gazette to have an effect, directives issued by the Commissioner are not subject to such publication requirements. According to paragraph 5(iii) of the aforementioned registration, the 4th respondent possesses the authority to cancel or suspend the registration of the tea factory in the event of the factory contravening the provisions of the Tea Control Act or non-adhering to the directives of the Tea Commissioner.

In addition, according to Section 8(2) of the Act, 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 standard conducive to the manufacture of made tea of good quality; … the Controller may suspend or cancel where necessary the registration of such tea factory, …

Circular R-2(a) was undisputedly distributed to the petitioner and all other registered low-country tea manufacturing factories. As such, the circular serves as a directive issued by the Tea Commissioner. Hence, if the petitioner violated the terms of the directive, suspending the petitioner's license for four months by the Tea Commissioner, the 4th respondent, is legal.

I now turn to address the aforementioned argument (iii). Learned Additional Solicitor General has submitted that samples were obtained from the dryer mouth for testing prior to grading of the teas. Hence, the reason behind the inability to suspend only a specific line is evident.

Reports marked R-5 and P-6

It was an allegation made on behalf of the petitioner that the test pertaining to report R-5 was not done in the presence of the petitioner. It is correct that the test was not done in the presence of the petitioner. However, when the respondents requested to retest the samples in the presence of the petitioner by the letter P-11, the said request was straightaway refused by the petitioner by the letter P-12. As such, the petitioner has to face the consequences of the refusal. In addition, although the petitioner stated that the petitioner's test report marked P-6 has not been considered by the respondents, the said test was also done not in the presence of the respondents or their representatives. Since the petitioner declined the opportunity to conduct a retest in the presence of both parties, as stated in the letter P-11, the Commissioner had no other alternative but to rely on the test results obtained from the tea board laboratory. The legal requirement to suspend the license

is that the Commissioner must satisfy himself that the tea manufacturer is not adhering to the directives given by the Commissioner. According to the report R-5, the petitioner has not adhered to the directive given by the Commissioner in respect of the glucose level, and no reason has been disclosed for the Commissioner to be dissatisfied with the said test report of the tea board laboratory. The answer to the argument that the respondents have not done the test in an accredited laboratory would also be the same as above. If the respondent's laboratory was not accredited, the petitioner was given the opportunity to retest in an accredited laboratory in the presence of both parties, but the petitioner declined.

Whether there are two different readings in the two samples taken from the same dryer mouth?

The argument (xi) presented by the learned President's Counsel was that there could not be two different readings in testing the samples taken from the same dryer mouth at the same time, as transpired from documents R-4 and R-5. The learned President's Counsel specifically referred to sample numbers 494 and 495 in R-4 and claimed that they were taken from the petitioner's factory; however, sample 494 in R-5 showed a glucose level of 35 mg/g, while sample 495 had only 4 mg/g. In response, the learned Additional Solicitor General contended that sample 494 was indeed taken from the petitioner's factory (Samrin), but sample 495 was not. Upon examination of document R-4, it is evident that only sample 494 had been specifically attributed to the Samrin factory, while sample 495's origin was not mentioned. The court could not arrive at such a conclusion on the assumption of facts, which is unsafe and unwarranted. Thus, there is insufficient evidence to suggest that both samples were obtained from the petitioner's factory. As a result, the argument presented by the learned President's Counsel fails on this point.

Had a fair inquiry been held?

The above arguments (iv), (v), (vi), (vii) and (viii) may be considered together. In response to the arguments raised regarding fair inquiry and non-compliance with principles of natural justice, the learned Additional Solicitor General contended that it is not necessary to conduct a hearing of this nature in accordance with the principles of natural justice required for other normal hearings. In substantiating the said contention, the learned DSG submitted the decision of SC Appeal 47/2011, decided on 09.03.2015. The learned Additional Solicitor General further contended that, although the tea factory could have been suspended immediately after it was found that the maximum permissible level of glucose was not being maintained in the manufacturing of tea, the respondents did not do so, and a fair inquiry was held, giving the petitioner the opportunity to prove their innocence.

In the aforesaid Supreme Court decision of ***Paudgalika Tha Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association V. Jayantha Edirisinghe, Tea Commissioner (Acting) and Five others***, it was held as follows:

"*The Act does not envisage the procedure to be followed by the Tea Commissioner in determining the reasonable price. The following extract from the speech of Lord Pearson in* ***Pearlberg v. Varty*** *[1972] 1 W.L.R. 534 at 537 is worth reproducing. "A tribunal to whom judicial or quasi-judicial functions are entrusted is held to be required to apply those principles [i.e. the rules of natural justice] in performing those functions unless there is a provision to the contrary. But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required, although, as 'Parliament is not to be presumed to act unfairly,' the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness." It is therefore necessary that the Tea Commissioner adopts a fair procedure although there may not be a hearing of the kind normally required by natural justice."*

I will now proceed to consider whether a fair hearing was conducted in this matter. As highlighted in the aforementioned Supreme Court decision, the Act does not specify any particular procedure to be followed by the Commissioner in conducting an inquiry of this nature. It is evident from the letter marked R-6 that the petitioner was informed of the laboratory test results and the alleged violation of Circular RTM/01/2005/11/01 and Section 8(2) of the Tea Control Act. The petitioner was also invited to attend an inquiry. As there was no representation for the petitioner on the day fixed for the inquiry, the 4th respondent rescheduled the inquiry for 25th August 2020, and the petitioner was duly informed of the new date. So, it is evident that the petitioner has been afforded opportunity to attend the inquiry and present the necessary facts to substantiate their position.

It is to be noted that considering the situation, an order of suspension could be made even pending inquiry. It was held in ***De Saram V. Panditharatne & others*** – (1984) 2 Sri L.R. 106 that "*Suspension pending inquiry is not necessarly punishment. In some instances suspension pending inquiry may be necessary, and in some instances it may not be necessary. The necessity of suspension pending inquiry will depend on the facts of the particular case.*" In the case at hand, disregarding the urgency of stopping the production of contaminated tea, suspension of operations was implemented only after an inquiry. Therefore, the issue of a fair hearing cannot be raised in this matter.

At the inquiry held on 25th August 2020, it appears that the petitioner was represented by one of its directors and the factory manager, as documented in R-8, which contained the proceedings of the oral hearing before the Assistant Tea Commissioner. In response to the petitioner's request to cancel the suspension, as conveyed in the letter marked P-10 dated 14th September 2020, the 4th respondent asked the petitioner to provide fresh tea samples for further testing, as stated in the letter marked P-11 dated 15.09.2020.

Having considered the aforementioned circumstances, it does not appear that the principles of natural justice were violated, and the petitioner had been afforded a fair hearing and opportunities to be heard. Upon perusal of the oral hearing proceedings documented in R-8, it does not appear that the sampling method was challenged by the petitioner. Furthermore, the petitioner disclosed the difficulty in presenting the test report during the inquiry in the letter marked P-10, where it was stated that the results of other tests related to different tea companies were included in the report, and the 1st respondent was unable to provide a copy of the report for this reason. I find no fault of the respondents for not showing the test report at the inquiry because the test results were conveyed to the petitioner through the letter marked R-6 before the inquiry and disclosing the test results of other tea factories could hinder investigations related to those factories. In addition, the petitioner was also given the opportunity to produce another sample for further testing. In light of the aforesaid circumstances, it appears that a fair hearing was conducted.

It is vital to consider the response of the petitioner at this juncture. In response to the 1st respondent's request for the petitioner to submit a sample and appear at the respondent's office on 16.09.2020, the petitioner unequivocally declined the suggestion as stated in the letter marked P-12, dated 16.09.2020. Furthermore, the petitioner informed the 4th respondent that the proposal for a retest after the suspension was a frivolous matter. Despite this, the petitioner did not provide any reasons for their inability to produce a sample for retesting, which would have served to demonstrate that their tea was not contaminated.

It should be noted that if the Tea Commissioner determines that the tea does not meet the required standards and quality, it is imperative to cease its manufacture and sale. As stated in the statement of objections, the sale of adulterated tea is a grave issue with systemic implications for the entire industry. It is further asserted that if such

teas are sold to the global market, it will have a detrimental impact on the quality of "Ceylon Tea" as a brand and on Sri Lanka's competitiveness in the international market. Furthermore, statement of objections states that any attempt to enhance the blackness of tea through artificial means would compromise the naturalness of the made tea. It is therefore imperative to prevent adulterated teas from reaching the global market in order to preserve the quality and brand value of “Ceylon Tea”. I find no reason to deviate from the aforesaid facts set out in the statement of objections. Under these circumstances, it is my opinion that the petitioner had no valid reason for refusing the retest and for stating that they do not want any retesting after the suspension.

If the adulterated teas reach the international market, they will have a negative impact on "Ceylon Tea," as previously stated. Hence, it is clear that the sale of adulterated tea would have significant detrimental consequences. Furthermore, consumption of such contaminated tea would pose a health risk to human beings. Therefore, immediate cessation of manufacturing and distribution is necessary when contaminated tea is found. It would be unsafe to allow for continued production and distribution until a comprehensive investigation has been conducted. That is why the Commissioner is empowered under the relevant statute to suspend the registration of the factories that engage in such activities without waiting for a final determination to be made through the lengthy process of inquiries and appeals. However, the Commissioner has not arbitrarily supended the petitioner’s registration. It is important to note that prior to the suspension, the petitioner was afforded an opportunity to demonstrate their innocence in an inquiry. The order of suspension did not preclude the petitioner from conducting retesting to prove their innocence. Had the petitioner availed themselves of this opportunity, they could have potentially demonstrated their innocence and had the suspension order lifted. Now, the petitioner cannot complain of unfair testing because the

petitioner declined retesting, which could have been done transparently.

Following the petitioner's refusal to conduct retesting, the Tea Commissioner had no other alternative but to take further necessary steps based on the test report marked R-5. As the tea produced by the petitioner violated the Tea Commissioner's directives concerning glucose levels, the suspension of the petitioner's registration as detailed in letter P-7 was correct. Additionally, the Tea Commissioner's directive to refrain from accepting teas from the petitioner's factory, as set forth in letter P-8, was a necessary step to safeguard public health, safety and to prevent the detrimental impact on the quality of "Ceylon Tea".

Following is quoted in ***Lewis V. Heffer*** - [1978] EWCA Civ J0125-2 – [1978] 3 All ER 354: *"Those words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquires. Very often irregularities are disclosed in a government department or in a business house and a man may be suspended on full pay pending inquiries. Suspicion may rest on him and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forh. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department of the office is being affected by rumours and suspicions. The others will not trust the man, in order to get back to proper work, the man is suspended."*

As determined in the aforementioned case, the suspension of the petitioner's factory for a period of four months, pending the clearance of tea manufacturing standards, is correct and lawful.

On the other hand, upon the petitioner's refusal to comply with the request for retesting, the Tea Commissioner was left with no other recourse than to take further action based on the test report R-5. Since the tea manufactured by the petitioner contravenes the Tea Commissioner's directives regarding glucose levels in tea, it was justifiable to suspend the petitioner's registration, as communicated through the letter marked P-7, and to inform via the letter P-8, to refrain from accepting teas from the petitioner's factory.

The learned President's Counsel for the petitioner argues (The aforementioned argument "x") that while report R-5 suggests that sample 494 may be contaminated with sugar, the conclusion drawn by the respondents in R-6 is that the petitioner has contaminated the tea. However, the suspension of registration is warranted when the directives given by the Commissioner are violated. The circular marked R-2(a) states that the maximum permissible level of glucose in tea should be 20mg/g. As per the report marked R-5, the sample taken from the petitioner's factory contains 35mg/g of glucose. Hence, the Commissioner's determination is correct.

Based on the reasons outlined above, the applications for writs prayed for in the prayer to the petition are dismissed with costs fixed at Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL