

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

In the matter of an Application for writs of Certiorari and Mandamus under and in term of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No:

WRT-0160-20

Mohamed Manzil Mohomad Hairaz
No. 549/1, Panapitiya,
Karadeniya.

PETITIONER

Vs.

1. Gamini Amarawansa Munugoda,
Chairman,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
2. S.P.Nimal Bandu,
Deputy Chairman,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
3. Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
4. Thelma Kumari Hemachandra,
Secretary,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
5. Senaka Palliyaguru,
Commissioner General of Local
Government, Southern Provincial Council
6th Floor,
Commissioner General of Local
Government Office, Galle.

6. M.S.Kapila Kumara,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
7. Dushan Prasanna Kariyawasam,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
8. B.H.Shyama Nishanthi Nimalaweera,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
9. P.H.Suresah Sampath Kumara,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
10. Sameera Chathuranga Ariyaratne,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
11. T.H.Kamal Hewage,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.
12. Ramya Sri Wijethunga,
Member,
Karadeniya Pradeshiya Sabha,
Mahaedanda,
Karadeniya.

13. N.P.Subasinghe,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.
14. M.Kiyaz M.Shiraz,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.
15. Chandrika Kanthi Weerasinghe,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.
16. Sriyani Punchihewa,
Member,
Karanderiya Pradeshiya Sabha,
Karanderiya.
Mahaedanda,
17. T.A.Sarath Gunerathne,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.
18. Ajith Kumara Karunathunga,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.
19. P.H.Champika Kushan Gunasinghe,
Member,
Karanderiya Pradeshiya Sabha,
Mahaedanda,
Karanderiya.

20. Gallage Lahiru Sandaruwan Suraweera,
Member,
Karandeniya Pradeshiya Sabha,
Mahaedanda,
Karandeniya.
21. Liyana gamage Manel Priyani Jayasekera,
Member,
Karandeniya Pradeshiya Sabha,
Mahaedanda,
Karandeniya.
22. D.K.Jeewanthi Weerasinghe,
Member,
Karandeniya Pradeshiya Sabha,
Mahaedanda,
Karandeniya.
23. Hon: Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Razik Zarook, PC with Rohana Deshapriya and C. Liyanage for the Petitioner

N. De Zoysa, SC for the 23rd Respondent

N. Jayasinghe for the 1st to 4th Respondents

Written submissions tendered on: 16.09.2022 for the Petitioner

24.08.2022 for the 1st,to 4th Respondents

Argued on: 04.08.2022

Decided on: 06.07.2022

S.U.B. Karalliyadde, J.

The Petitioner to this Writ Application is the owner of the beef stall and cattle slaughtering house carried upon an annual license issued under Section 4 of the Butchers Ordinance No. 9 of 1893 (as amended) (the Ordinance), located at No 96/A, Panapitiya, Karadeniya. The said business is registered as an individual business under the Business Names Ordinance (P1) and situated within the Karadeniya Pradeshiya Sabha area. The Petitioner averred that traditionally his family has been engaged in the meat trade as a family business and he continued the business from 2007 to 2019 under the valid licenses issued by the 3rd Respondent, Karadeniya Pradeshiya Sabha (the respective licenses are marked as P1 to P15). In 2019, for the period from 11.03.2019 to 17.03.2019 a temporary permit has been issued to the Petitioner to slaughter cattle. However, the temporary permit was not extended nor a new permit was issued to the Petitioner for the reason that he has failed to fulfil the environmental protection requirements. Thereafter, the Petitioner duly complied with the directions of the National Environment Authority and obtained the Environmental Protection License

from the National Environmental Authority (P-19) for the period of 11.03.2020 to 10.03.2021. Upon completion of the necessary requirements, the Petitioner applied for the license from the 3rd Respondent for the cattle slaughtering house as well as for the meat stall. However, the 3rd Respondent has not issued him the permit. The Petitioner argues that in terms of section 14 of the Ordinance, once the necessary requirements are fulfilled, it is mandatory to issue the permit for slaughtering of cattle, and therefore the decision of the 3rd Respondent not to issue the license is *ultra vires* and contrary to the law. It is also contended that the Chairman of the Pradeshiya Sabha, the 1st Respondent has no authority to appoint a Committee to examine the possibility of issuing a license to the Petitioner. By this writ Application the Petitioner seeks to issue a writ of Certiorari quashing the decision mentioned in the letter dated 16.06.2020 marked as P 24 issued by the Secretary of the Pradeshiya Sabha, the 4th Respondent. By that letter, the 4th Respondent has informed the Petitioner that the Committee appointed to consider issuing the permit to the Petitioner for the slaughtering house recommended not to issue the permit and after considering that recommendation the 3rd Respondent decided to refer the matter to the Commissioner General of Local Government, the 5th Respondent and until the 5th Respondent's instructions are received not to issue the license. It has been further informed by P 24 that after receiving the instructions of the 5th Respondent is received steps will be taken to issue the permit forthwith. The Report of the Committee appointed to consider issuing the license is tendered to Court by the 1st to 4th Respondents marked as R1. In terms of paragraph

xxvi of sub-section, 1 of Section 19 of the Pradeshiya Sabhas Act, No. 15 of 1987 (the Act) the Chairman of the Pradeshiya Sabha has powers to appoint its Officers to hold inquiries for any of the purposes of the Act. Accordingly, this Court could be satisfied that the Chairman of the Pradeshiya Sabha, the 1st Respondent has appointed Members of the Pradeshiya Sabha, the 8th, 10th, 12th to 14th and 17th Respondents to submit a Report (R1) regarding the slaughtering house according to the provisions of the Act and hence the appointment of those Respondents to hold an inquiry is according to law.

When considering the above-stated facts it is clear that the Petitioner is seeking the writ of Certiorari to quash the decision mentioned in P24 which is not a permanent decision. The decision taken not to issue the permit is a temporary decision valid until the 3rd Respondent receives the directions of the 5th Respondent. It is trite law that a writ of Certiorari can be issued only to quash a final determination of a public body. Since the decision contained in P 24 is not a final decision the Petitioner is not entitled to a writ of Certiorari to quash it.

By Section 102 of the Act the Chairman of a Pradeshiya Sabha is empowered with the discretion to issue, suspend or revoke a license issue to carry on slaughterhouses as to him may seem necessary. Therefore, since the 1st Respondent being the Chairman of the Pradeshiya Sabha has a discretion in issuing the license, even if the 5th Respondent's advice is to issue the permit to the Petitioner, considering the conduct of the Petitioner the 1st Respondent could disregard the advice of the 5th Respondent to issue the permit.

The Petitioner has averred in paragraph 9 of the Petition that traditionally his family is engaged in the meat trade as a family business and the Petitioner is engaged in that business continuously from 2007. It is borne out by R2 that the son of the Petitioner had been prosecuted before the Magistrate's Court of Balapitiya in two cases for slaughtering two cows without having a valid license which are offences punishable under the Ordinance. Apart from that, the Petitioner had been prosecuted before the High Court of Balapitiya under the Cruelty to the Animals Act for transporting cattle and after convicting the Petitioner for the offence Court had imposed a fine of Rs. 50,000/-. In terms of Section 8 of the Ordinance, the proper authority upon just and reasonable grounds could make an order revoking the license granted to any person to carry on the trade of a butcher. In terms of Section 3 of the Ordinance proper authority in respect of this writ application is the 1st Respondent. The position of the Respondents is that the decision of the 1st Respondent not to issue the license to the Petitioner for the slaughterhouse was taken after considering the violations of the terms of the permits issued to the Petitioner previously and the Court proceeding against the Petitioner and his son for violations of the provisions of the Ordinance. Under such circumstances, in terms of section 8 of the Ordinance, the 1st Respondent is entitled to consider the Court proceedings against the Petitioner and his son as well as the violations of the conditions mentioned in the permits issued previously as just and reasonable grounds for not to issue the license to the Petitioner and refuse to issue the license. Since the meat trade is a family business of the Petitioner, in terms of Section 114 of the Evidence Ordinance

the offences committed by the son of the Petitioner also can be considered as offences committed in respect of the meat business and therefore done by the Petitioner. Therefore, the decision of the 1st Respondent not to issue license to the Petitioner is according to law. On the other hand, the Petitioner has not disclosed the Court proceedings which are material to this writ application. It is also trite law that suppression of material fact is a ground to refuse an application for writs.

Considering all the above stated facts and circumstances, I hold that the Petitioner is not entitled to the reliefs sought in the Petition. Writ application is dismissed. The Petitioner should pay Rs. 50,000/- to the 4th Respondent as costs of this application.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL