

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

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

Southern Salt Company (Pvt)  
Ltd 23, Walukarama Road,  
Colombo 3.

**Petitioner**

**C.A. Writ No. 320/2023**

**Vs**

1. K. L. Ranjith Surasena  
Commissioner of Provincial  
Revenue  
Southern Province,  
Department of Provincial  
Revenue  
Southern Provincial Council  
No. 30,  
Wackwella Road,  
Galle.
2. Geological Survey and Mines  
Bureau  
No. 569,  
Epitamulla Road,  
Pitakotte.

**Respondents**

Before : **Hon. N. Bandula Karunaratna, J. (P/CA)**

**Hon. M. Ashan R. Marikar, J.**

Counsel : Dilrukshi D. Wickramasinghe P.C. with D. De Alwis and  
Sithari Perera instructed by Amila Kumara for the  
Petitioner

Yuresha Fernando DSG for the Respondents

Written Submission: Filed by the Petitioner on 18.07.2023

Argued on : 04.07.2023

Decided on : 27.07.2023

**M. Ahsan R. Marikar, J.**

### **Introduction**

- 1) The Petitioner had instituted this action and sought interim reliefs by the petition dated 12<sup>th</sup> June 2023. The instant application pertinent to the aforesaid petition is to consider issuance of notice and interim reliefs prayed for in prayers **r)** and **s)**.
- 2) The said interim reliefs prayed for are as follows;
  - r)** Issue an interim order, staying and suspending the order of the learned Magistrate's Court of Tangalle in Case No. 39700 dated 09.12.2022 issuing the summons marked "P2" to the Petitioner, until the final determination of this application;
  - s)** Issue an interim order, staying and suspending all proceedings in the Magistrate's Court of Tangalle bearing Case No. 39700, until the final hearing and determination of this application.

### **Facts of the case**

- 3) The Petitioner is a Private Limited Company incorporated under the laws of Sri Lanka and is a wholly owned subsidiary company of Raigam Wayamaba Salterns PLC which was established in 2003 to develop the 204 acres of Kunukalliya Lewaya in Gurupokuna, Bata-atha, Hungama.
- 4) The sole business is to manufacture sea salt at its refinery plant using a structured man-made "sola evaporation methodology" of sea water.
- 5) The 1<sup>st</sup> Respondent is the Provincial Revenue Commissioner of the Southern Province and is statutorily empowered to impose Mineral Tax under Section 9 of the Finance Statute No. 7 of 1990 read

together with Finance (Supplementary Provisions) Statute No. 2 of 1994. The said statutory provision empowers the Provincial Councils to impose Mineral Tax which is enumerated in Section 67 of the Mines and Minerals Act No. 33 of 1982 amended by the Act No. 66 of 2009.<sup>1</sup>

- 6) In the instant application the position taken by the Petitioner is that salt manufactured by the Petitioner does not come under the said Mines and Minerals Act defined as a mineral.
- 7) There had been letters transpired between the Petitioner and the 1<sup>st</sup> Respondent that the 1<sup>st</sup> Respondent cannot impose Mineral Tax for the salt manufactured by the Petitioner.
- 8) However, the 1<sup>st</sup> Respondent had denied the aforesaid position and imposed Mineral Tax on the Petitioner. As the Petitioner had not paid the Mineral Tax, the 1<sup>st</sup> Respondent had sought to prosecute the Petitioner at the Magistrate's Court of Tangalle.
- 9) The Petitioner had sought relief that imposing Mineral Tax on salt is illegal. Thus, the proceedings before the Magistrate's Court should be suspended until the final determination of this case.
- 10) The Deputy Solicitor General Yuresha Fernando appeared for the Respondents and objected for issuing notice and interim order stating that the Petitioner has not submitted any document or facts to prove his position that the product manufactured by the Petitioner which is salt does not come under the Mines and Minerals Act.

**Disputes between the Petitioner and the Respondents to be considered on issuance of notice and interim order**

- 11) Considering the facts pertinent to the application made by the Petitioner and on perusal of the documents and written submission of the Petitioner, to decide the issuance of notice and interim reliefs, the following disputed facts can be considered.

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<sup>1</sup>Hereinafter referred to as the Mines and Minerals Act.

- I. Is salt a mineral? Can this Court decide this, before the main argument?
- II. If so, is the Petitioner entitled for notice and interim relief prayed for in the petition?

**I. Is salt a mineral? Can this Court decide this, before the main argument?**

- 12) The Petitioner had raised this argument in the instant application that salt is not a mineral as defined under the Mines and Minerals Act. Further, the Petitioner has contended that they have never carried out mining activities and salt is not excavated as minerals. The definition of minerals is referred to as follows in the Mines and Minerals Act.

"Mineral" means 'a naturally occurring substance that can be mined, whether in solid, liquid or gaseous form, in or below the surface of the soil; any ores containing such minerals and any product of such minerals derived by Processing and include peat and salt but does not include hydro-carbons'.

- 13) Further, by the Act No. 66 of 2009 of the Mines and Minerals Act, Mines are defined as follows;

"Mine" means 'an opening upon, or an excavation in, or a working of the ground, for the purpose of exploring or mining for, and processing of, minerals and includes all works, machinery, plant, buildings, and premises below or above ground used in connection with such exploration, mining or processing activities'.

- 14) Furthermore, the 'process' had been defined under Section 70 of the Mines and Minerals Act as follows;

"Process", mean 'to crush, beneficiate, concentrate or otherwise treat minerals in a preliminary manner by a physical, chemical or other process, but does not include smelting and refining'.

- 15) The position taken by the Petitioner is that a refinery operation of salt does not fall within the ambit of the Mines and Minerals Act. Therefore, the definition of 'process' excludes refining. On that, the Mines and Minerals Act precludes the product manufactured by the Petitioner which is subject to Mineral Tax.
- 16) It is to be noted that the 2<sup>nd</sup> Respondent is the regulatory and licensing authority for Mines and Minerals in this country. They have issued document P12(b) on the request made by the Petitioner by letter P12(a). In the said letter P12(b), it is specified that salt is an excluded item from the list of Minerals. Further, it has specified that it is not necessary to obtain a license for the processing of salt.
- 17) In the said circumstances, at this stage there is a point of argument whether salt comes under the category of Minerals or not. The said fact should be decided in the main argument considering the objections and documents submitted by both parties.
- 18) Beside these facts the Deputy Solicitor General argued this matter objecting for the issuing of notice and interim order and drew the attention to letter marked as P12(b) and contended that there is no supporting material submitted by the Petitioner to consider the letter P12(b).
- 19) The DSG appeared for both Respondents. Letter P12(b) is a document issued by the 2<sup>nd</sup> Respondent. Therefore, at this stage my considered view is that after issuing the document P12(b), taking the stand of the Respondents, salt is not excluded from the definition of Minerals cannot be considered at this stage. Further, the argument of the Respondents to obtain license and make payment under Mineral Tax cannot be considered without clearing the doubt, whether salt is a mineral or not.
- 20) On the said circumstances, I am of the view that there is a series of matters to be considered in the instant application made by the Petitioner. In the said event if salt does not come under minerals the Tax imposed by the 1<sup>st</sup> Respondent will be illegal.
- 21) Therefore, there is a *prima facie* case established by the Petitioner.

**II. If so, is the Petitioner entitled for notice and interim relief prayed for in the petition?**

22) In considering the aforesaid facts, under the Mines and Minerals Act, the tax imposed by the 1<sup>st</sup> Respondent against the Petitioner is a matter to be considered as to whether the 1<sup>st</sup> Respondent is legally entitled to impose such tax.

23) In the decision of **Mendis v. Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and Others**<sup>2</sup> Justice Sarath N. Silva, J. expressed that;

*“It is clear these Writs come within the purview of administrative law which is a branch of law that has been developed by courts for the control of the exercise of governmental or statutory powers by mainly public authorities.... Writs of Certiorari and Prohibition are instruments of Public Law to quash and restrain illegal governmental and administrative action.”*

*“The essential ingredient is that a member of the public who is affected by such a decision has to submit to the jurisdiction of the authority whose action is subject to review. In other words, there is an unequal relationship between the authority wielding power and the individual who has to submit to the jurisdiction of that authority.”*

24) In the said judgement it is decided that Administrative Law is a branch of the Law that has been developed by the Court for the control of the exercise of Governmental and Statutory powers by mainly Public Authorities and to restrain illegal Governmental and Administrative actions.

25) In the instant action on perusal of the documents, the Petitioner had vehemently objected for imposing tax on the production of salt

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<sup>2</sup>[1995] 2 Sri LR 284.

referring that the said production of salt does not come under minerals for the 1<sup>st</sup> Respondent to impose tax.

- 26) Further, the statutory body to issue license for minerals is the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent had specified by the letter P12(b) that salt does not come under minerals. The 1<sup>st</sup> Respondent cannot overlook the letter P12(b) issued by the 2<sup>nd</sup> Respondent who is the statutory body to decide items termed as Minerals.
- 27) In view of the aforesaid facts and documents there is a series of arguable points and matters to be considered in this case.

### **CONCLUSION**

- 28) In view of the aforesaid analysis and in considering the documents and the arguments raised by both parties, in the instant application we issue notice and interim orders prayed for in the prayers **r)** and **s)** of the petition dated 12<sup>th</sup> June 2023.

**Judge of the Court of Appeal**

**N. Bandula Karunarithna, J. (P/CA)**

I agree

**President of the Court of Appeal**