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

In the matter of an Application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/304/2021

1. Rado Lanka (Private) Limited
   No 160/A,
   Buwelikada,
   Limagahakotuwa,
   Handessa.

2. Rahuthulla Ashad Mohamed
   Director
   Rado Lanka (Private) Limited
   No 160/A,
   Buwelikada,
   Limagahakotuwa,
   Handessa.

3. Mohomed Hussain Fathima Chanas
   Director/ Secretary
   Rado Lanka (Private) Limited
   No 160/A,
   Buwelikada,
   Limagahakotuwa,
   Handessa.

   All of

   Rado Lanka (Private) Limited
   No 160/A,
   Buwelikada,
   Limagahakotuwa,
   Handessa.

PETITIONERS

Vs.

1. Sri Lanka Tea Board
   574, Galle Road, Colombo 3.

2. Jayantha Edirisinghe
   Tea Commissioner
   Sri Lanka Tea Board
   574, Galle Road, Colombo 3.

3. Maturata Plantation Limited
   Browns Capital Building
   No.19,
   Dudley Senanayake Mawatha,
   Colombo 08.

4. Keerthi B. Kotagama
   Executive Chairman
   Maturata Plantation Limited
   Browns Capital Building
   No.19,
   Dudley Senanayake Mawatha,
   Colombo 08.

5. Kamal Punchihewa
   Group CEO
   Maturata Plantation Limited
   Browns Capital Building
   No.19,
   Dudley Senanayake Mawatha,
   Colombo 08.

6. Kithsiri Gunawardena
   Director
   Maturata Plantation Limited
   Browns Capital Building
   No.19,
   Dudley Senanayake Mawatha,
   Colombo 08.

7. Janseni Kahanesan
   Director
   Maturata Plantation Limited
   Browns Capital Building
   No.19,
   Dudley Senanayake Mawatha,
   Colombo 08.

8. Sanjaya Prasad
   Director

Project Coordination and
Administration
Maturata Plantation Limited
Browns Capital Building
No.19,
Dudley Senanayake Mawatha,
Colombo 08.

RESPONDENTS

Before: Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel: Manohara De Silva PC with Nadeeshani Lankatilleka for the Petitioners.

Manohara Jayasinghe DSG with Rajin Gooneratne SC for the 1st and 2nd Respondents.

Priyantha Alagiyawanna with Sauri Senanayake for the 3rd, 4th, 6th and 7th Respondents.

Argued on: 10.08.2023,11.10.2023, 28.11.2023

Written Submissions- Petitioners - 08.01.2024

1st and 2nd Respondents - 26.02.2024

3rd, 4th, 6th and 7th Respondents - 08.01.2024

Decided on: 29.02.2024

Sobhitha Rajakaruna J.

The Petitioners plead that the 1st Petitioner and the 3rd Respondent under a joint venture agreement were manufacturing 'Black Tea' after processing refuse tea using refuse tea of the 3rd Respondent and other tea factories not owned by the 3rd Respondent. The Sri Lanka Tea Board - 1st Respondent ('SLTB') on 21.01.2021 issued a Circular marked 'P24' prohibiting plantation companies from purchasing refuse tea from tea factories not owned by such plantation companies for the processing of refuse tea. The Petitioners state that before issuing 'P24', the SLTB on 21.05.2018 has taken a board decision ('P25')

1. to request from all Regional Plantation Companies ('RPC');

i) to have re-processing centers for their own refuse tea,

ii) that all refuse tea processing factories of RPC's should be managed by RPC management itself.

2. if there are any difficulties with regard to the capacity utilization, RPCs are in a position to purchase refuse tea from other RPCs for reprocessing,

Based on a mutual agreement between the Petitioners and the 3rd Respondent, the 1st Petitioner Company has commenced renovating the factory and burner at the Mathurata Tea Factory belonging to the 3rd Respondent, who has authorized the 1st Petitioner Company to commence operations after completion of such renovations. The 1st Petitioner has mortgaged the said property and secured a bank loan amounting to rupees 12 million from the Bank of Ceylon to renovate the above factory. The joint venture agreement No.79 signed between the 1st Petitioner and the 3rd Respondent on 06.06.2018 is marked as 'P15'.

While such renovations were in progress the 3rd Respondent served a notice of termination dated 12.03.2021 ('P31') on the 2nd Petitioner informing the decision of the 3rd Respondent to terminate the said joint venture agreement under its Clause 2.5.3. The issuance of the aforesaid Circular marked 'P24' by the SLTB is cited as one of the grounds for such termination. The 3rd Respondent states in the said letter that the Petitioner Company in terms of the said Circular marked 'P24' will no longer be able to process refuse tea purchased from tea factories other than the refuse tea produced by factories belonging to the 3rd Respondent. As a result, the Petitioners claim that they had to face a severe crisis since the 1st Respondent Company had been compelled to incur a huge production cost together with bank interests, wages of the employees, factory rentals, electricity bills, etc. while producing only a meager quantity of Black Tea by reprocessing refuse tea. The 3rd Respondent relies on the below-mentioned Clause 2.5.4 of the said joint venture agreement ('P15') and claims that in the event that the joint venture agreement is terminated, the Petitioner Company will not be entitled to compensation or damages for improvements made to the relevant premises.

"On these presents being terminated for whatever reason or on its expiry the Party of the Second Part shall:

(i) deliver quiet, peaceful and vacant possession of the said subject premises to the MPL inclusive of all the buildings, improvements, machinery fixtures and fittings thereon.

(ii) pay all the outstanding dues up to the date of expiry or the termination of the Joint Venture and all taxes, duties and charges referred hereto.

(iii) Not claim any compensation or damages from the MPL for the improvement done in the said subject premises by Party of the Second Part."

In the circumstances, the Petitioners seek relief in the form of orders to quash the said Circular marked 'P24' issued by the SLTB and also to prohibit the 3rd Respondent from dispossessing the Petitioner's and or handing over the relevant premises to any other person.

Firstly, I must consider whether this Court can interfere with the decision of the 3rd Respondent to terminate the said joint venture agreement or to dispossess the 1st Petitioner from the factory premises belonging to the 3rd Respondent. The pivotal argument of the 3rd Respondent is that the said joint venture agreement or the notice of termination is not amenable to the writ jurisdiction of this Court. Referring to paragraph '(i)' of the prayer of the Petition, the 3rd Respondent submits that the Petitioners have already conceded the placing of the contractual rights on the joint venture agreement with the 1st Petitioner Company itself. The 3rd Respondent relied on the judgement of ***Waligama Multi-purpose Cooperative Society Ltd vs. Chandradasa Daluwatte (1984) 1 Sri L.R. 195***. Sharvananda J. (as he was then), in the said judgement giving reference to the case of ***Perera v. Municipal Council Of Colombo, (1947) 48 N. L. R. 66***, has held as follows:

"The Writ will not issue for private purposes, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by Mandamus which is confined to public duties and is not granted where there are other adequate remedies."

During recent times this Court has repeatedly enhanced the jurisprudence in respect of invoking writ jurisdiction of the Court of Appeal concerning matters of contractual nature. In ***Dr. D. Wijewardena and Others v. E. M. A. J. Ekanayake, President, Nilanthattuwa Farmers' Organisation and Others CA/Writ/ 63/2021*** **(decided on 10.01.2024)** it was held that this

court should be able to exercise its writ jurisdiction even in respect of an organization which can be considered as a Club or an Association, to the extent necessary to ensure giving due effect to certain provisions of a statute. Further, this Court has constantly decided[1] that the Court of Appeal has the discretionary power to exercise writ jurisdiction even on a question arising out of a contract of employment, inter alia if the disciplinary order of a public authority was in breach of statutory restrictions/ provisions.

In ***Ajith Siyambalapitiya and another v. Hon. Minister of Sports and Others CA/WRIT/139/2021 decided on 17.01.2024,*** I have decided that:

> *"I take the view that the question of whether one could invoke the writ jurisdiction against a body corporate such as the SLC should be determined based on facts and circumstances of each case. One cannot consider only the statutory flavour in the decision-making process of such an entity to be the exclusive need for invoking writ jurisdiction. In addition to the element of statutory flavour it is important to consider whether this court should be able to exercise its writ jurisdiction in respect of such corporate body to the extent necessary to ensure giving due effect to the relevant provisions of any statute passed by Parliament."* (Emphasis added)

I am unable to capture any constructive or substantive link between the conditions in the said joint venture agreement and the statutory foundation of the impugned Circular marked 'P24' issued by the SLTB. It cannot be assumed that a quashing order could be issued by this court against the decisions ('P40' & 'P41') of the 3rd Respondent to terminate the joint venture agreement even in the event this Court decides to quash the said Circular 'P24'. In light of the above judicial precedent and based on the facts and circumstances of this case I take the view that the Petitioner is not entitled to invoke the writ jurisdiction of this Court in reference to the alleged grievance or the matters emanating from the termination of the said joint venture agreement by the 3rd Respondent.

Now I must consider whether the SLTB or the Tea Commissioner (the 2nd Respondent) have exceeded their powers when issuing the impugned Circular 'P24'. The Petitioners argue that

[1] See: W G Chamila v Urban Development Authority and others CA/WRIT/215/2022 decided on 26.10.2022; Devendra Budalge Sudesh Lalitha Perera v Janatha Estates Development Board and others CA/WRIT/004/2022 decided on 06.10.2022; Vithanage Vajira Kelum Perera v Sudath Rohana Chairman, Independent Television Network and Others CA/WRIT/508/2021 decided on 29.08.2023

the said 'P24' purports to distinguish, differentiate and/or discriminate against plantation companies that do not possess refuse tea processing factories and accordingly it violates Articles 12(1) and 14(1)(g) of the Constitution. The Petitioner further asserts that the 1st and 2nd Respondents have no power or jurisdiction to compel plantation companies to build tea processing factories in addition to tea manufacturing factories. Similarly, the Petitioners submits that the 1st Respondent has no power or authority to dictate terms and/or give any direction to plantation companies prohibiting 3rd parties from managing tea processing factories of such plantation companies as it is not within their purview.

Contrary to the above, the Tea Commissioner - 2nd Respondent, affirming an Affidavit on 04.11.2022, justifies the issuance of the said impugned Circular marked 'P24' as follows:

"Answering to the Petition I further state as follows;

(a) In order to regulate the malpractices reported in the refuse tea industry the board of the 1st Respondent decided to request Regional Plantation Companies to process tea under their own management without subleasing the same to a 3rd party

(b) Due to continued practice of refuse tea processed by 3rd parties the board decision was implemented by the issuance of the impugned circular marked as P24 to the Petition to regulate the processing of refuse tea.

(c) the impugned circular annexed as P24 to the Petition has been issued in order to ensure that Refuse Tea manufactured by a particular company is made utilizing only the tea leaves from the plantation of that company. Thus, a company that brands its products as **X**, cannot purchase tea leaves from plantation **Y** and manufacture Refuse Tea market the same under the brand **X.** The tea marketed under the brand **X** must be manufactured from the tea leaves from the plantations belonging to **X.**

(d) each Plantation manufactures a unique brand of tea with a distinct flavour. Purchasing from other plantations can lead to mixing of tea from different plantations. This will undermine the distinctiveness of a particular plantation and compromise the perception of quality of Ceylon Tea in the foreign market.

(e) the circular annexed as P24 to the Petition has been issued as a quality control measure with a view to protecting the high standards of the tea industry.

(f) the Petitioner Company does not have the necessary approvals to engage in the tea manufacturing/processing industry. Thus, the enterprise of the Petitioner Company is an illegal operation.

(g) the Maturata Tea Company has not obtained the necessary approvals required for the leasing of the factories to the Petitioner Company. Thus, the enterprise of the Petitioner cannot be lawfully carried on at the said factories.

(h) Therefore, the motivation to issue P24 and P25 was the need to protect the unique taste flavour, name and recognition of tea produced in specific estates. As such it was necessary to ensure that the processing of refuse tea by a particular factory was limited to the refuse tea cultivated in that particular estate."

The preamble of the Tea Control Act, No.51 of 1957 declares that it is 'an Act to provide for the registration of tea plantations and the proprietors thereof; for the registration of tea manufacturers and the factories operated by them; for the development and maintenance of tea plantations and tea factories and the consequences for non-compliance with orders issued by the Commissioner; for the control of the planting and replanting of tea, the possession, sale, transport and purchase of tea, and the exportation of tea, tea seed and such parts of the tea plant as are capable of being used for propagation; for the imposition of an export duty on tea; for the establishment of a Tea Advisory Board; and for matters connected therewith or incidental thereto.'

I am aware that maintaining the high standards of 'Ceylon Tea' in global markets is crucial due to its vital role in the Sri Lankan economy. As one of the main exports, the success of the tea industry has a direct impact on employment, foreign currency earnings, and overall economic stability in the Country. With its renowned taste and scent, Ceylon tea represents Sri Lanka's rich cultural heritage and dedication to quality. Guaranteeing its consistent quality overseas not only strengthens Sri Lanka's position as a top global tea producer but supports the livelihoods of numerous smaller tea farmers and workers also. Therefore, I take the view that the scheme of the said Act essentially provides to preserve the reputation of Ceylon tea

in international markets which is essential for the Nation's economic prosperity and global reputation. Thus, a strong and accountable obligation is cast upon the Tea Commissioner and the SLTB to uphold the expected true aims and goals of the said Act passed by Parliament. Thus, the role of the SLTB or the 2nd Respondent should be assayed or interpreted in line with such goals and aims of the said Act.

In this backdrop, I must examine the assertions of the Petitioners that their rights, particularly under the said Articles 12(1) and 14(1)(g), have been affected due to the said Circular 'P24'. In ***R.A. Piyaratna and Others v. Buddhist and Pali University of Sri Lanka and Others CA/Writ/133/2022 decided on 10.06.2022*** I have observed as follows:

> *"The Public Trust Doctrine and/or violation of fundamental rights or any other ground established through judicial creativity should be adopted in judicial review applications only as a conduit to make a determination by Court 'subject to the provisions of the Constitution' and 'according to law'. I find that the grounds for review in writ applications are inextricably interwoven with the fundamental rights recognized by law and however the adoption of such grounds should be carefully done by Review Courts subject to above limitations based on the respective jurisdiction of the Court. Therefore, I am compelled to focus my mind with the issues of the instant application in those lines and not make any determination just on a mere assertion of an infringement of fundamental rights of a person."*

It is important to note that most of the correspondence annexed to the Petition are letters exchanged between the 1st Petitioner Company and the 3rd Respondent Company. I cannot find any letter addressed to the SLTB by the Petitioners, except the letter marked 'P27', by which the 2nd Petitioner has sought information under the RTI Act[2]. The Managing Director of the 1st Petitioner Company, within a period of almost one and half months from the date of issuance of 'P24' has informed the 3rd Respondent by its letter dated 09.03.2021 marked 'P38' that justice had been served to the Petitioners as a result of the frequent discussions with the Tea Commissioner regarding the issues that arose in relation to the impugned Circular 'P24'. The Petitioners further clarify in the said letter that the license to get tea from other

[2] Right to Information Act No. 12 of 2016

estates to carry out the work of the respective factory has been granted by the SLTB on 04/09/2021 under license number GM/MF/612/2021/271.

In consideration of the above statement made by the Petitioners in the said 'P38', I cannot seem to find a justification as to why they would now choose to challenge the said Circular 'P24' in the instant Review Application. The Petitioners further plead that they had carried out the renovations with the legitimate expectation that they may purchase refuse tea from any tea factory Island-wide for processing refuse tea as was customarily done. The Petitioners contend that if 'P24' is complied with, the 1st Petitioner will be limited to purchasing refuse tea only from companies owned by the 3rd Respondent and would suffer considerable loss while repaying their bank loan. Similarly, the Petitioners claim cheating and unjust enrichment on the part of the 3rd Respondent as reasons to seek relief from this Court. However, I take the view that none of the above reasons can be considered as substantive material to establish ultra vires of the decision made by the Tea Commissioner in 'P24'.

Section 24 of the said Tea Control Act deals with the permits for purchase of refuse tea. The Tea Commissioner may, on application made in that behalf, issue a permit to any person to purchase or take delivery of refuse tea. In general, when a permit is issued the operational limits, restrictions or other guidelines will be set down by the authority who is empowered to grant permission for execution of specific operations under such permit. In terms of section 24(2) every permit issued under subsection (1) shall-

> *"(a) specify the maximum quantity of refuse tea which may be purchased under the authority thereof;*
>
> *(b) specify the manufacturer from whom such a quantity may be purchased;*
>
> *(c) specify the date on which the permit shall cease to be valid; and*
>
> *(d) contain such conditions as the Commissioner may consider necessary, including conditions specifying or restricting the purposes for which the refuse tea may be used by the holder."*

The said section 24(2) confers a considerable amount of discretion upon the Tea Commissioner to specify the manufacturer from whom such a quantity may be purchased and also to specify the maximum quantity of refuse tea which may be purchased. This reflects

that the 1st or 2nd Respondents have the authority within their purview to regularize the operations of plantation companies concerning refuse tea. However, the Petitioners have failed to establish that the impugned decision marked 'P24' is eminently irrational or unreasonable or is guilty of an illegality. Likewise, during the course of hearing into the instant application it did not appear to this Court that there is prima facie evidence of an infringement or imminent infringement of the provisions of Articles 12(1) and 14(1)(g) by any of the Petitioners.

At the same time, I cannot possibly overlook the contents of the letters ['P39(b)' and 'P39(c)'] issued by the 3rd Respondent to the 1st Petitioner, whereby the 3rd Respondent has made strong allegations on the purported undue intentions of the 1st Petitioner Company revolving around the said impugned Circular. I can summarize the relevant paragraph in 'P39(c)' as follows;

> *"Likewise, the Mathurata Tea Factory was given to Rado Lanka Private Limited for a period of 10 years and agreements were signed. So far, a period of 03 years from the contracted period has been completed. It appears that efforts are being made to cancel this agreement by including these Circulars and creating some problems. There are 07 more years to the end of the contractual period. By linking this Circular there is an attempt to deceive our institution in hopes of selling this factory to another company for more money."*

Similarly, it is vital to take into consideration the fact that the 3rd Respondent has instituted action bearing case No.DSP/158/2021 in the District Court of Colombo seeking, inter alia, the eviction of the 1st Petitioner from the aforesaid factory premises. Hence, it is noted that the District Court of Colombo has assumed jurisdiction over the disputes between the 1st Petitioner and the 3rd Respondent upon the said joint venture agreement.

In the above circumstances, I am compelled to hold that the impugned Circular marked 'P24' is not unlawful and ultra vires of the said Tea Control Act. I am convinced with the justification elaborated in the Affidavit of the 1st Respondent in issuing 'P24'. The reasons given therein outweigh the assertions of the Petitioners who claim that their rights have been affected as a result of the said 'P24'. Furthermore, based on the circumstances of this case, I am of the opinion that the termination of the joint venture agreement by the 3rd Respondent cannot be subjected to Judicial Review.

In view of the foregoing, I hold that the Petitioners are not entitled to any of the reliefs as prayed for in the prayer of the Petition. Hence, I proceed to dismiss the instant Application.

Application is dismissed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal