

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

In the matter of an application for Orders in
the nature of Writs of Certiorari and
Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Elisha Industries (Pvt) Ltd,
No. 196/A1, Sangabo Mawatha,
2nd Galawilawaththa,
Homagama.

PETITIONER

C.A. Case No. WRT/0517/24

Vs.

1. Disna Jayasinghe,
Divisional Secretary,
Divisional Secretariat,
Bandaragama.
2. M.J. Gunasiri,
Commissioner General of Excise,
No. 353, Kotte Road,
Rajagiriya.
3. Kapila Senanayake,
Director General,
Department of Fiscal Policy,
The Secretariat,
Colombo 01.

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Eraj De Silva P.C., with Damindu Wijerathne and Naveed Ahmed, instructed by Dimuthu Kuruppuarachchi, for the Petitioner.

Zuhri Zain, DSG, for the Respondents.

ARGUED ON : 13.06.2025

DECIDED ON : 17.07.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J

1. The petitioner a company incorporated under the Companies Act, is *inter alia* seeking a writ of *mandamus* directing the 1st respondent Divisional Secretary to issue a F.L.4 licence.

Facts

2. The petitioner desirous of engaging in the business of selling liquor, submitted an application in March 2023 under the Excise Ordinance for a F.L.4 licence. The said application was preferred in accordance with Excise Notifications bearing No. 902, No. 983, and No. 20/2024 and the provisions of the Excise Ordinance. It is not in dispute that the petitioner had submitted the necessary documentation and satisfied all requirements and conditions. The, the application has been then referred to the 1st respondent Divisional Secretary who has then reported to the 2nd respondent Commissioner General of Excise,

informing of a public objection and protest and a possible threat to public order. An inquiry into this had been caused to be held by the 2nd respondent on 15.09.2023 and the 2nd respondent has also appointed a Special Committee comprising of three Commissioners and a further inquiry had been held. Upon the said inquiry, the 2nd respondent being satisfied of there being no violation of any condition or other requirement in terms of the Excise Notification No. 902 as well as No. 02/2024, including on the issue of public protest, the Commissioner General of Excise, with the approval of the Minister of Finance, granted the *exclusive privilege* of selling liquor to the petitioner under Section 19 of the Excise Ordinance. Then the 1st respondent was directed by letter dated 22.07.2024 (P-6) to issue the licence as required by Section 18.

3. The petitioner has paid a sum of Rs. 1,000,000/= for the F.L.4 licence, a sum of Rs. 500,000/= as security deposit, a sum of Rs. 250,000/= as access fee and also a sum of Rs. 50,000/= as a further security deposit. In total, the petitioner has paid a sum of 1.8 million rupees on 22.07.2024. According to the petitioner, he had met the 1st respondent on 22.07.2024 and offered to make the payment of the relevant licence fee and requested for the issue of the licence. The 1st respondent has refused and not issued the licence. The petitioner has then written to the 1st respondent through his Attorney-at-Law. It is the position of the petitioner that the 1st respondent has decided not to accept the licence fee, and accordingly refused and did not grant the licence to the petitioner. This refusal is *inter alia* alleged to be *ultra vires*, arbitrary, and unreasonable, and it is also alleged that it is in violation of the rules of natural justice.
4. This application was then instituted and the petitioner is seeking the following substantive relief from this Court: writs of *certiorari* quashing the 1st respondent's decision to not accept the licence fee in relation to the F.L.4 licence and to not grant the petitioner the said licence; and

writs of *mandamus* directing the 1st respondent to accept the licence fee in relation to the F.L.4 licence, and to grant the petitioner the said licence.

5. All the respondents by way of objections have taken up the position that as there had been public protests in the area, an inquiry was conducted in terms of Condition 1 of P-2(1). The relevant Excise Commissioner's Report was produced marked R-3, according to which there is a strong possibility of a breach of peace due to the objection of certain Buddhist organizations and Buddhist clergy of that locality. It is the respondents' position that a liquor licence had not been issued in terms of Section 18 of the Excise Ordinance. It is also stated that the 1st respondent has the power to grant the liquor licence in terms of Section 18. The respondents also take up the position that letters marked P-6 and P-8 have expired and nothing more can be done on the side of the respondents, unless the petitioner is willing to relocate the intended premises. The respondents claim that an inquiry was finally held on 15.09.2023 upon which the 1st respondent has called for a Report from the Police which once again revealed the likelihood of a threat to the maintenance of law and order.

Power to issue the licence

6. The respondents submit that, *subject to specific exceptions, the power to grant the licence lies with the 1st respondent, by virtue of Section 18 of the Excise Ordinance.* Sections 18 and 19 primarily provides for the issue of licences. Sections 18 and 19 reads as follows:

18. *No excisable article shall be sold, or kept or exposed for sale, without a licence from the Government Agent: Provided that –*

- a) *a person having the right to the toddy drawn from any tree may sell the same without a licence to a person licensed to manufacture and sell toddy under this Ordinance or to a person licensed under this Ordinance to manufacture arrack or vinegar from toddy;*

- b) a licence for sale in more than one administrative district shall be granted by the Commissioner-General of Excise;*
- c) nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by him or by auction on his behalf, or on behalf of his representatives in interest upon his quitting a station or after his decease.*

19. *(1) The Commissioner-General of Excise may with the approval of the Minister grant to any person on such conditions and for such period as he may deem fit the exclusive privilege –*

- a. of manufacturing, or of supplying by wholesale, or of both; or*
- b. of selling by wholesale or by retail; or*
- c. of manufacturing, or of supplying by wholesale, or of both, and of selling by retail, any country liquor within any local area; or*
- d. of selling any foreign liquor by retail in a tavern within any local area under a tavern licence prescribed by rule made under section 32 or by direction of the Minister issued under section 25.*

(2) No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from the Government Agent.

7. It is necessary to consider the provisions of Section 18 with Section 19 to ascertain as to who exactly is vested with the power and the discretion to grant a F.L.4 licence. Prior to proceeding further, it is relevant to briefly state the procedure prescribed by the Excise Ordinance and the Regulations and followed in the issuance of licences of this nature. Section 19 clearly confers a discretion on the Commissioner General of Excise to grant the said privilege *inter alia* of selling by wholesale or retail any liquor. The use of the words ‘may

grant’ clearly signifies the conferring of a discretion. In contrast, Section 18, prohibits the sale of any excisable article without a licence obtained from the Government Agent. Similarly, Section 19(2) prohibits a grantee of a privilege under Section 19(1) from exercising the same until he receives a licence from the Government Agent. Section 18 prohibits any person from engaging in the sale of liquor without a licence from the Government Agent. However, Section 18 does not expressly or otherwise confer a discretion on the Government Agent in the issuance of a licence. The scheme of granting a licence under the Excise Ordinance appears to be a combined effect of the operation of Sections 18 and 19. Thus when the Commissioner General conveys to the Government Agent of his decision to grant the privilege, the Government Agent is required to issue the relevant licence in the prescribed form, upon collecting any fee that may be levied

8. The cumulative effect of these provisions is that when the grant of the privilege by the Commissioner General of Excise acting under Section 19 is made, such grantee of the privilege or the applicant of the licence is required to obtain the relevant licence from the Divisional Secretary.
9. Thus, it is the Commissioner General of Excise who is empowered and conferred with the discretion to grant or refuse the privilege of a F.L.4 licence. If the Commissioner General of Excise, grants the privilege, it then will be conveyed to the Divisional Secretary. The Divisional Secretary is then required to make available to the grantee/applicant the licence as provided for by Section 18. There is no discretion vested with the Divisional Secretary by Section 18 but is required to issue the licence in the prescribed form. In ***Samadasa vs. Wijeratne, Commissioner-General of Excise and Others* [1999] 2 Sri LR 85**, the Supreme Court has clearly held that “...*the Commissioner-General of Excise, was the person empowered by law to issue or refuse the licence.*”

10. Sections 18 and 19 makes a distinction and a critical separation of the granting of the privilege and issuing the licence. To my mind, when a decision is made under Section 19 to grant the privilege, such decision *ipso facto* creates a right in favour of the grantee/applicant. Then, with the relevant fees being paid and accepted, it creates a legitimate expectation to receive from the Divisional Secretary the licence under Section 18. This legitimate expectation will create a right to be issued with the licence under Section 18. The said right so accrued to the grantee/applicant will correspondingly create an obligation and impose a duty upon the Divisional Secretary to issue the licence under Section 18.
11. As seen above, there are two concepts referred to in Sections 18 and 19. Section 18 refers to a *licence* and Section 19, in contrast, refers to a *privilege*. In the normal legal sense, the issuing of a licence is the grant of the privilege to engage in what is so permitted by the licence. However, according to the scheme and form of Sections 18 and 19, the granting of the privilege precedes the issuing of the licence. In this context, when the privilege is granted under Section 19, there is nothing to be granted by issuing of the licence under Section 18. To my mind the issuing of the licence is nothing more than the issuing of a document in a prescribed form by which the granting of the privilege under Section 19 is manifested. What is critical and significant is that the Divisional Secretary is neither conferred with the discretion nor the power to issue a licence conferring a privilege in the conventional sense. This is confirmed by the language and form in which Sections 18 and 19 (2) are couched. Therefore, I am of the view that the Divisional Secretary under the Excise Ordinance has been merely entrusted with the duty to issue a document in the prescribed form manifesting the grant of the privilege by the Commissioner General of Excise.
12. As explained above, what is conferred on the Divisional Secretary by Section 18, read with Section 19 (2), is certainly not the power to grant

a licence but a consequential obligation and a resulting duty to issue a licence in the prescribed form. Accordingly, the submission that *the 1st respondent is vested with the **power to grant** the licence* is misconceived.

Rule 21- threat to the maintenance of law and order

13. Rule 21 of the Excise Notification 902 provides as follows:

“Any objection or protest received by the Commissioner General of Excise from a member of organization of the public either before or after the issue of a licence on the ground that there has been a violation or non-compliance with any requirement of the Excise Ordinance or the Guidelines and Conditions herein contained in regard to the issue or continuance of a licence, will be notified by the Commissioner General of Excise to the applicant or the licensee as the case may be and will thereafter be inquired into by the Commissioner General of Excise as to the validity thereof and actions taken after such inquiry on the basis of the findings thereat in such an inquiry, if it is found that the establishment continuing the licence at that place may threat or likely threat to the maintenance of law and order in the area, Commissioner General of Excise can decide to relocate the licence premises to a suitable place. This decision will be final.”

According to the above, the Commissioner General is empowered to inquire into and determine any objection or protest, of any violation or non-compliance with any requirement of the Excise Ordinance or the guidelines and conditions. The rule empowers the Commissioner General inquire into any objection or protest received from a member of organization of the public and after such inquiry if it is found that the establishment continuing the licence at that place may be a threat or likely threat to the maintenance of law and order in the area, decide to relocate the licence premises to a suitable place. Thus if there be a finding of a threat or likely threat to the maintenance of law and order

the sanction provided for is to relocate the licence premises to a suitable place. Refusal or cancellation is not expressly provided for.

14. In view of the reported protests, the Commissioner General of Excise has, in fact, held an inquiry through a Committee appointed by him, and the Committee has communicated the decision by R-6 to the 2nd respondent. Then, the 2nd respondent has, in turn, by letter P-6 and P-8, dated 22.07.2024, requested the 1st respondent to take necessary steps to issue the licence to the petitioner. Thereupon, the petitioner himself has on 24.07.2024 requested for the licence from the 1st respondent who had refused and not issued the same. The 1st respondent had then obtained a Report once again from the Officer-in-Charge of the relevant Police Station (R-8) and by letter dated 30.07.2024 (R-7), communicated the same to the 2nd respondent Commissioner General of Excise and sought advice.

Legitimate Expectation

15. The petitioner alleges a denial of his legitimate expectation by the said non-issue of the licence by the 1st Respondent. The petitioner has complied with all the conditions and requirements under the rules of the relevant Excise Notifications. The Commissioner General of Excise, acting under Section 19 of the Excise Ordinance, has granted the petitioner the privilege to engage in the sale of liquor. The Minister of Finance has granted his approval for the same. That being so, the Commissioner General then transmits the said approval to the 1st respondent Divisional Secretary to issue a licence as required by Section 18 of the Excise Ordinance, by letter P-6 dated 22.07.2024. The 1st respondent does not issue the licence on the apparent basis of public protests and threat to public order.

16. In the case of ***Daffodils Hotels (Private) Limited and Another vs. L.K.G. Gunawardana, Commissioner General of Excise and Others***

(**CA Writ 364/2016**, decided on 16th November 2020), it was held as follows:

“As per Rule 21 of the Extraordinary Gazette No. 1544/17 dated 10.04.2008 (cited as Excise Notification No. 902) marked P22, upon conducting an inquiry...if it is found that the establishment continuing the licence at the place may threat or likely threat to the maintenance of law and order in the area, the Commissioner General of Excise can decide to relocate the licence premises to a suitable place and this decision will be final.”

17. Thus, the decision in respect of the public protests or the threats to maintenances of law and order is once again vested with the Commissioner General of Excise, the 2nd respondent. However, in the exercise of the functions, the 1st respondent Divisional Secretary may report and notify the 2nd respondent of any such circumstance. The 2nd respondent is thus empowered under Rule 21 to consider the same and make a determination. In the present application, the 2nd respondent has considered and determined the same, and upon so determining has informed the 1st respondent to issue the F.L.4 licence (P-06). Further, the Minister as empowered by Section 28A (1) has also directed and approved the issue of the F.L.4 licence as applied for by the petitioner (P-05). When an intimation is made to the 1st respondent under Section 28A of the Excise Ordinance, it is incumbent upon the Divisional Secretary to issue the licence as required by Section 18. Section 28A, in no uncertain terms, provides that the Minister is so empowered to direct the authority granting a licence and when a direction is made under this Section to grant the licence, such authority is required in mandatory terms to give effect to such a direction.

18. The 1st respondent Divisional Secretary upon being informed of both these directives, once again, withholds the issuing of the licence on 24.07.2024 and refers to the 2nd respondent the alleged possible threat to the maintenance of law and order. To my mind, in these

circumstances, the 1st respondent Divisional Secretary could not have refused to issue the licence and did not have any discretion to do so either. However, the 1st respondent, by letter dated 29.07.2024 (P-9A) has admitted that she did so act and referred the matter to the 2nd respondent based on the Report R 8 of the local Police. Letter P-9A is written to the petitioner. The 1st respondent informs the petitioner on 29.07.2024 that she had, by then, written to the 2nd respondent and has sought instructions. However, according to the objections, the letter seeking advice annexed marked R-7, is dated 30.07.2024 and the Police Report claimed to have been annexed to the said letter is marked R-8 is dated 31.07.2024.

19. Paragraphs 12 (e) and (f) of the objections aver that the 1st respondent has so written to the 2nd respondent by letter dated 30.07.2024 along with a Police Report, seeking advice on how to proceed with this matter. Thereafter, copies of the letter dated 30.07.2024 and the Police Report are annexed marked R-7 and R-8 respectively. I observe with astonishment that the 1st respondent has annexed to a letter written on 30.07.2024, a Police Report dated 31.07.2024. It is obvious and apparent that as at 30.07.2024, the Police Report R-8 could not have been in existence. If so, I wonder how in paragraph 3 of R-7, the 1st respondent specifically refers to the said Report and it is annexed as Annexure 01. This is further confounded by the fact that the sending of this letter is referred to in the 1st respondent's letter dated 29.07.2024, marked P-1A. The sum total of the above stated is that, for reasons best known to the respondent, she has refused and deliberately not issued the licence notwithstanding the directive of the Minister as well as that of the 2nd respondent.

20. As afore said, when the 1st respondent was called upon by the petitioner to issue the licence, she makes out P-9A, claiming to have sought advice from the 2nd respondent. It is in the past tense. She states that, “යෝජිත නව මත්පැන් බලපත්‍රය නිකුත් කිරීම සම්බන්ධව උපදෙස් ලබාදෙන ලෙස සුරාබදු කොමසාරිස්

පෙනුණේ, ශ්‍රී ලංකා සුරාබදු දෙපාර්තමේන්තුව විසින් විමසා ඇති බැවින්...” but the letter 1R-7 which had been so sent is dated 30.07.2024. What is stated in P-9A cannot be true and is impossible. To cap it all, the 1st respondent annexes a Police Report R-8 dated 31.07.2024 to the letter 1R-7 dated 30.07.2024. I am at a loss to understand how the 1st respondent annexed a letter which was not in existence when she wrote 1R-7. The contents of these three documents, 1R-7, R-8, and P-9A, when considered in conjunction with their relevant dates, it is apparent that they cannot be true and correct. This is a clear indication that the 1st respondent for some reason has been of one mind to avoid the issuance of the licence to the petitioner. In the similar matter of ***Warnakulasuriya Joseph Nishantha Peiris vs. The Commissioner General of Excise*** (CA/WRT/34/2020, decided on 15.02.2021), Justice Arjuna Obeyesekere expressed the view that, *“one should exercise caution when considering objections of the public given the possibility that a public protest can be instigated by an interested party, which I have observed is something that seems to be increasingly happening with regard to the issuance of liquor licenses.”*

21. Thus, one should be cautious and consider with care if they are genuine objections, and endeavour to exclude the possibility of public protests being instigated by interested parties. It is with great sadness that I observe the conduct of the 1st respondent from the very inception has been to prevent the issuing of the F.L.4 licence to the petitioner at all cost. This is confirmed and put beyond doubt by the totally inconsistent letters which are on the face of it so improbable that it must in all probabilities be false. What is more serious and significant is that the respondents, including the 1st respondent have sworn and tendered an affidavit testifying to the above facts which may amount to tendering of a false affidavit.
22. Getting back to the main issue, the petitioner has made payments up to 1.8 million rupees as being the relevant levies and fees for the

issuance of the said licence. Mr, Eraj de Silva P.C submitted that, the approval of the 2nd respondent and the Minister along with the paying and accepting the due payments create a legitimate expectation on the part of the petitioner. Legitimate expectation may be procedural or substantive. I will now endeavour to consider the legal position and the principle of legitimate expectation as is relevant to this application. Prof. Craig in Administrative Law 7th ed. at p.677, defines procedural and substantive legitimate expectation as follows:

*“The phrase ‘**procedural legitimate expectation**’ denotes the existence of some process right the applicant claims to possess as the result of a promise or behaviour by the public body that generates the expectation The phrase ‘**substantive legitimate expectation**’ captures the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit or a license, as the result of some promise, behaviour or representation made by the public body.”*

23. The ideology of ‘substantive legitimate expectation’ originated in the landmark case of **R vs. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd.** [1995] 2 All ER 714 where Sedley, J., held as follows:

*“Legitimacy in this sense is not an absolute. It is a function of expectations induced by government and of policy considerations which militate against their fulfilment. The balance must in the first instance be for the policy maker to strike; but if the outcome is challenged by way of judicial review, I do not consider that the Court's criterion is the bare rationality of the policy maker's conclusion. While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern (as of course the lawfulness of the policy). **To postulate this is not to place the judge in the seat of the Minister...but it is equally the court's duty to protect the interests of those individuals***

whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it. [emphasis added].

24. The abovementioned dictum has been cited with approval in ***Dayaratne v. Minister of Health and Indigenous Medicine*** (1999) 1 SLR 393, ***Nimalsiri vs. Fernando*** (SC/FR/256/2010, decided on 17th September 2015), and in ***M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others*** (SC/FR/444/2012, decided on 30th July 2019). In ***M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others*** (supra), Prasanna Jayawardena, PC, J., after an extensive and all-encompassing analysis on the doctrine of legitimate expectation, cited with approval the following dicta of Dehideniya, J.,’s decision in ***Zamrath vs. Sri Lanka Medical Council*** (SC/FR/119/2019, decided on 23.07.2019), as the rationale underlying the doctrine of legitimate expectation:

“The legitimate expectation of a person further ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of the rule of law which this court attempts to uphold as the apex court of the country. The public perception of legal certainty becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so generated expectations.”

25. Further, in ***Siriwardane vs. Seneviratne*** and four others [2011] 2 SLR 1, Dr. Shirani Bandaranayake, J. (as she was then) held that,

“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also

taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.”

26. On an analysis of the abovementioned authorities, it is clear that the petitioner had a legitimate expectation to be issued with the F.L.4 license in terms of Section 18 of the Excise Ordinance. This so as the 2nd respondent Commissioner General of Excise granted the petitioner the exclusive privilege of engaging in the sale of liquor under Section 19 of the Excise Ordinance. This expectation was further reinforced when the petitioner did make payments totaling Rs. 1.8 million being the relevant licence fees and charges.

27. In the scheme established by Sections 18 and 19 of the Excise Ordinance, once the Commissioner General of Excise has exercised his discretion and granted the privilege, the duty of the Divisional Secretary under Section 18 is obligatory and purely administrative and not discretionary. Then, with the relevant fees being made and accepted, it creates a legitimate expectation on the part of the petitioner receive the license under Section 18 from the Divisional Secretary.

28. This expectation is both reasonable and legitimate, having arisen from an express decision of the 2nd respondent. The subsequent conduct of the 1st respondent in refusing to issue the license, despite the directive from the 2nd respondent and the Minister of Finance, constitutes a breach of the petitioner's legitimate expectation as it has been found to be arbitrary, unreasonable, and *ultra vires*.

Futility

29. It was submitted on behalf of the respondent that since this application is in respect of a licence for the calendar year 2024, with the lapse of time, this application has now become futile. In support of this argument, the learned DSG has relied on the decision of Justice Arjuna Obeyesekere in ***Warnakulasuriya Joseph Nishantha Peiris vs. The***

Commissioner General of Excise (CA/WRT/34/2020, decided on 15.02.2021):

“The learned State Counsel submitted that this application is futile as the period for which the licence has been sought has expired. He submitted further that as the Writ of Mandamus is a discretionary remedy, this Court would not exercise its discretion where it would be futile to do so or where it would be an exercise in vain.”

“During the course of the argument, it was submitted that fresh bids have been called to issue licences for 2021. Hence, quashing the notice ‘P11’ by which fresh bids were called, for the year 2020, is futile. Similarly, a Writ of Mandamus directing that the licence for 2020 be issued is also futile. Hence, I agree with the submission of the learned State Counsel that granting of any relief would be an exercise in vain. On this ground too, the Petitioner’s application must fail.”

30. A court exercising discretionary jurisdiction has the discretion to refuse relief where the order sought is likely to be futile. This is so when the order sought is likely to lack practical effect, have no real consequences or cannot be enforced. Courts may refuse to make such orders. The rationale as I see is *judicial economy* so to say and doing so may have the propensity of undermining the respect for the legal system and the administration of justice. Thus, when a court is called to exercise the discretionary writ jurisdiction it will deny and refuse such an application which evidently has no practical utility and is futile. This principle is settled law and in the case of **Samastha Lanka Nidahas Grama Niladhari Sangamaya vs. Dissanayake (2013) BLR 68**, it was held that,

“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”

Then Marsoof PC., J., in the case of ***Ratnasiri and others vs. Ellawala (2004) SLR 180***, and others held that;

*“This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. The court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that ‘A writ... will not issue where it would be vexatious or futile.’ See, P.S. **Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board.** (61 NLR 491, 496).”*

31. No doubt, the present application is for a licence for the year 2024.

However this is not an application for a renewal but for a new licence in the first instance. It is in the scheme of the Excise Ordinance and Regulations, that once a new licence is obtained, it will be renewable annually. Accordingly, since this is an application for a new licence, the mere effluxion of time will not render this application futile. Accordingly this submission is misconceived.

32. In the above circumstance, I find that the petitioner has complied with all requirements and conditions to obtain an F.L.4 licence and the 2nd respondent and the Minister have granted the necessary approval and direction. The relevant fees have been paid and accepted. The issue of public protests and the threat to the maintenance of law and order, has been inquired into and considered by the 2nd respondent, and has decided to issue the licence. In these circumstances, the 1st respondent is not lawfully entitled to withhold or refuse the issuance of the licence to the petitioner.

33. It is the submission of the learned DSG that the 1st respondent did not issue the licence to the petitioner primarily due to the objections substantiated by Police Reports. I have herein above held that the

Divisional Secretary is left with no discretion but to issue the licence. That being the effect and import of the statutory provision, I would now consider the veracity of reasons given by the 1st respondent Divisional Secretary for not issuing the licence to the petitioner when the petitioner requested for the same on 24.07.2024. That being so, the most critical issue is that when the 1st respondent refused to issue the licence on 24.07.2024, there was no fresh protest or information of any threat to the maintenance of public order. According to the Police Report annexed to letter dated 30.07.2024, a protest is alleged to have been held on 28.07.2024. The Police Report is dated 31.07.2024. In these circumstances, the 1st respondent does not appear to have had any tangible material or reasonable information of any public protests or other threat as at 24.07.2024. The 1st respondent ought to have necessarily issued the licence under Section 18. The previous alleged protests and the Police Reports cannot be relevant as the Commissioner General of Excise had inquired into the same and directed the issuance of the licence by letters P-6 and P-8 dated 22.07.2024. The 1st respondent could not lawfully have relied on the previous events and incidents to refuse and not issue the licence. In the above premises, it is apparent and the only inference is that the 1st respondent Divisional Secretary, for reasons best known to her, has been of one mind to refuse the issuance of the licence to the petitioner. The 1st respondent has clearly unreasonably and unlawfully refused and not issued the licence on 24.07.2024 when requested. Having so refused, it appears that a public protest was instigated or orchestrated on 28.07.2024 and an adverse Police Report was then obtained on 31.07.2024. Be that as it may, these events on which the 1st respondent relies on to justify the refusal to issue the licence on 24.07.2024 were non-existent as at that date. Therefore the refusal to issue or the non-issuance of the licence on the said day is arbitrary, capricious, and clearly unreasonable. It does not end there. It is undoubtedly apparent that the refusal was due to some extraneous consideration which remains undisclosed, and a

mystery. The petitioner correspondingly had a legitimate expectation to receive the licence and a right to obtain the same.

34. The learned DSG by way of a motion brought to the Notice of Court a policy decision to stop the issue of F.L.4 licences and an interim order made in SC/FR/131/2023, which is as follows:

“This Court prohibits the Respondents in SC/FR Nos. 116/2023, 131/2023, and 138/2023 from deciding or acting in any manner contrary to the provisions of the Excise Ordinance, Rules made thereunder and other applicable law, insofar as the acceptance and processing of applications for liquor licences and granting of corresponding licence under the two regimes provided for in the Excise Ordinance are concerned.

This Interim Order shall prevail and remain in force till this Court decides on the grant or otherwise of Leave to Proceed as well as make other interim orders as prayed for by the Petitioners and deemed appropriate by Court.”

In this application, the privilege under Section 19 has been granted and the fees and levies have already been charged and accepted. The only outstanding issue is the administrative act of the issuance of the document of the licence under Section 18. Therefore, the policy decision and the interim order, as I see, is no bar, and does not prevent this Court from determining this application.

Conclusion

35. Accordingly, I hold that the petitioner is entitled to the relief as prayed for by paragraph (c) of the prayer, and accordingly, writs of *mandamus* are issued;
- a. directing the 1st respondent to accept the licence fee (if any) and issue the F.L.4 licence as set out by letters marked P-5 and P-6;

- b. directing the 1st, 2nd, and 3rd respondents singularly or collectively, to issue the F.L.4 licence to the petitioner, as set out in letters P-5 and P-6.

The petitioner is also entitled to seek a renewal of the licence for the year 2025.

36. I have found and concluded that the 1st respondent has acted maliciously, and her conduct is mala fide, especially in refusing to issue the licence on 24.07.2024. It was also found that the several letters by the 1st respondent between 22.07.2024 and 31.07.2024 and annexures thereto, cannot co-exist and be truthful, and to that extent are false. These facts which are false and incorrect on the face of it, are so deposed to in the affidavit tendered to this Court by the 1st respondent. This amounts to civil contempt. In these circumstances, the 1st respondent is ordered to pay exemplary costs in a sum of Rs. 50,000/= and the same be paid to the petitioner. Application is allowed with costs.

JUDGE OF THE COURT OF APPEAL