

**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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

M.D. Themiadasa,  
No. 21, Ganewatta Road,  
Mampe, Piliyandala.

**PETITIONER**

**C.A. Case No. WRT/0052/24**

**Vs.**

1. Saman Jayasinghe,  
Commissioner General of Excise,  
Excise Department,  
No. 353, Kotte Road,  
Rajagiriya.
2. K.P. Pemadasa,  
Divisional Secretary - Kesbewa,  
Divisional Secretariat,  
Kesbewa.
3. K.M. Mahinda Siriwardana,  
Secretary to the Ministry of Finance,  
Economic Stabilization & National  
Policies/Treasury,  
The Secretariat,  
Colombo 01.

4. M.K.C. Senanayake,  
Director General,  
Department of Fiscal Policy,  
Ministry of Finance, Economic Stabilization  
& National Policies/Treasury,  
The Secretariat,  
Colombo 01.

**RESPONDENTS**

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

**COUNSEL :** Sanjeewa Jayawardena, PC, with Rukshan Senadheera,  
instructed by Paul Rathnayake Associates for the Petitioner.

Mihiri De Alwis, SSC, for the Respondent.

**ARGUED ON : 25.09.2025**

**WRITTEN SUBMISSIONS ON : 16.10.2025**

**DECIDED ON : 22.10.2025**

**JUDGEMENT**

**K. M. G. H. KULATUNGA, J.**

1. The petitioner has made an application under the provisions of the Excise Ordinance in accordance with the form prescribed by the Second Schedule to the Gazette Notification published in the Extraordinary Gazette bearing No. 1544/17 dated 10.04.2008. A copy of the said application is marked and produced as P-6. The same had been submitted on or about 19.09.2023, according to the Third Part of which the relevant recommendation for the issue of the F.L.4 licence had been granted on 17.10.2023. Thereafter, as there was no progress. The

petitioner, having made several inquiries, had not received any positive information has, by P-11, written to the Commissioner General of Excise demanding the issue of the licence as applied. As the licence was not issued, this application was preferred by the petitioner.

2. This application was filed on 23.01.2024 and was supported on 06.02.2024, on which date notices had been issued on the respondents. On 28.03.2024, State Counsel had appeared for of all the respondents, and time had been granted to file objections. Subsequently this has been mentioned again on 10.06.2024, on which day further time has been granted for objections, and when mentioned on 27.06.2024, further time has once again been granted for objections. The matter was then scheduled for argument on 30.09.2024, on which day too the objections had not been filed and the argument was refixed, granting further time to file the objections, and the matter was refixed for argument on 16.01.2025. Up until such date, no objections have been filed, and the matter was to be mentioned again on 26.03.2025 purportedly for settlement, on which day, further time was sought to settle the matter, and when mentioned on 07.05.2025, similarly, time was granted until 23.06.2025. On 23.06.2025, the Senior State Counsel had informed that no settlement is possible, and as such, the matter was fixed for argument on 25.09.2025, and time was granted once again for the respondents to file their objections in the interim. However, when this matter was taken up for argument on 25.09.2025, the respondents had not filed any objections up until then. The matter was taken up on that day, and the arguments were concluded. The parties were permitted to file their post-argument written submissions on or before 14.10.2025 in the Registry, and the judgement was reserved for 22.10.2025.
3. Senior State Counsel Ms. Mihiri de Alwis, appearing for all the respondents, submitted to Court that the only issue that prevents the grant of the licence is the directive made by document R-1, which had

been tendered to Court with a motion dated 08.09.2025. Said R-1 was so tendered along with an affidavit of the incumbent Commissioner General of Excise. According to the said affidavit, the Commissioner General of Excise concedes that the petitioner has applied for a new F.L.4 licence and the same is pending before the Ministry of Finance pending approval under Section 28(a)(1) of the Excise Ordinance. It is also averred that the process of issuance of liquor licences had been suspended from 21.10.2024 in view of R-1, a directive by the Presidential Secretariat imposing a total suspension on the issuance of all new licences of all categories. It is also averred that subsequent thereto, by letter dated 12.12.2024, a variation was effected to the earlier directive, and the suspension now operates only in respect of new F.L.4 category licenses, and that the application of the petitioner falls within this category. The said two letters are tendered as R-1 and R-2, respectively.

4. That being so, the learned Senior State Counsel, Ms. Mihiri de Alwis, stated that the said directives had been conveyed to the Ministry of Finance, Economic Stabilisation and National Policies, in view of which the respondents are unable to issue the licence. The learned Senior State Counsel also concedes that all other requirements have been satisfied for the issue of the said licence; the necessary approvals were granted, and compliance had taken place before 01.10.2024, and also the necessary payments have been made. The only submission made, and the position taken by and on behalf of the respondents, is that the petitioner has complied with all requirements and obtained the necessary approvals; however, the approval of the 3<sup>rd</sup> respondent is yet pending, and they are unable to process and issue the licence on account of the directive made by R-1 and R-2.
5. Mr. Sanjeewa Jayawardene, President's Counsel, for the petitioner, at this juncture submitted that on the face of it the purported directive R-1 and R-2, the said directive/advice given, appears to have been made

by the President in his capacity *qua* President. It is thus argued that the President is not statutorily empowered to make such a directive or give such advice *qua* President. He has not acted as the Minister of Finance either. Accordingly, this directive is not binding, and it is submitted that now it is settled law and it is recognised by the Supreme Court that “*the dictation by any functionary who is not recognised by the governing law is not binding.*”

6. The application P-6 submitted by the petitioner is in respect of a new F.L.4 licence. However, the said application includes certain recommendations and observations by certain Excise Officers who have recommended the issuance of the same. This F.L.4 licence is sought for the premises bearing No. 468/2/1/C, Arawwala, Pannipitiya. However, the petitioner had been a holder of a previous F.L.4 licence from 1995 to the end of 2001. Since December 2021 this licence had not been renewed, and it was in respect of the premises bearing No. 87, School Mawatha, Piliyandala; it had been issued to the petitioner under the business name “New Piliyandala Wine Stores”. The present application is also made under the same business name registration; however, it is in respect of a different address within the same locality.
7. The relief sought are for writs of *mandamus* for the issuance of a new licence as well as for the transfer of the location of the F.L.4 licence from No. 87, School Mawatha, Piliyandala, to 468/2/1/C, Arawwala, Pannipitiya. However, application P-6 appears to be for a new licence. It is in that circumstance the respondents claim that they are prevented from issuing the same in view of R-1 directive of the President. I will now consider if the position taken up by the respondents is tenable in law and lawful to that extent.
8. The starting point is that, as conceded by the Senior State Counsel, the necessary applications and approvals, except the 3<sup>rd</sup> respondent’s approval, had been obtained and granted and the required payments

had been made before 01.10.2024, well before the issuance of the directive in R-1 and R-2. That being so, this application submitted at the end of 2023 would have been submitted and placed before the relevant authorities for approval, at least by January 2024. This should be so, as all recommendations and steps have been taken before January 2024. As observed and narrated hereinabove, this writ application was filed on 23.01.2024, and the respondents were represented in this Court since 28.03.2024. The respondents have not placed any material by way of objections as to why the licence could not be issued. Therefore, up until the issuance of the said directive R-1, on 21.10.2024, there have not been any issues that prevented the respondents from granting the final approval and issuing the licence. In these circumstances, the subsequent advice or directive made by R-1 cannot and could not have been the basis or the reason for the non-issuance of the F.L.4 licence. There is no denial that all requirements have been satisfied, and the learned Senior State Counsel conceded that some payment has been received. That being so, there is no reason in law or fact why the said licence ought not to have been issued in respect of application P-6.

9. The petitioner alleges certain extraneous reasons, *inter alia* other interested parties influencing, as a reason for not issuing the licence to the petitioner. As submitted and conceded by the Senior State Counsel, and evident by the affidavit of the incumbent 1<sup>st</sup> respondent there is no other impediment except the directive R-1. Hence, the only inference is that the non-issuance of the F.L.4 licence until October 2024 was for some extraneous or irrelevant reason.
10. On a consideration of the narration of facts by the petitioner I observe that he had once been engaged in the sale of a foreign liquor under a similar licence issued to him which had not been renewed since 2021. According to the petitioner, he had made several attempts, requests, and applications for the renewal of the same but had been

unsuccessful. The reason, as evident from the petition, is that it was due to political and other extraneous reasons the renewal was not granted.

11. Considering the totality of the material placed before this Court, being the petition and the material tendered along with the motion and affidavit dated 08.09.2025, it is apparent and common ground that the petitioner has preferred an application for an F.L.4 licence and has satisfied all requirements for the issue of the same; at least there is no reason to refuse. This appears to have been so by January 2024. For reasons unexplained, the respondents have not issued the licence until 21.10.2024, on which day R-1 appears to have been issued. Thereafter, in or around September 2025, the incumbent Commissioner General of Excise tenders the directive R-1. This appears to be a policy decision generally not to issue F.L.4 licences. It is this change of policy, either temporary or permanent, that is now placed before this Court as being the reason for the inability to issue the licence to the Petitioner.
12. This application for the F.L.4 licence tendered by the petitioner was processed and was in the pipeline, so to say. Thus a change of policy long thereafter cannot defeat or be a reason for the non-issuance of the present licence. These circumstances, in law, create an expectation in the petitioner that, to my mind, is legitimate. When the petitioner has made an application which has obtained all the basic approvals and satisfied all other conditions, then it creates in such an applicant an expectation that the same would be so granted. This is what has matured into a 'legitimate expectation' of the petitioner. Hilaire Barnett's Constitutional and Administrative Law (10<sup>th</sup> Ed., at page 631) describes a "legitimate expectation" as follows:

*"A legitimate expectation will arise in the mind of the complainant wherever he or she has been led to understand – by the words or actions of the decision maker – that certain procedures will be followed in reaching a decision. The complainant may have been led to believe, for example, that there would be an oral hearing or*

*that he would be able to make formal representations. Where such expectations have been created, the decision maker is not free simply to ignore the procedures which have been indicated."*

13. The exercise of licensing functions often involves what Professor Wade has called "*powers of commercial life or death over a person's trade or livelihood*" (Wade & Forsyth's Administrative Law, 11<sup>th</sup> Ed., at page 463: *Licensing and Commercial Regulation*). Modern English administrative law has demonstrated a marked inclination towards insisting that licensing powers be exercised fairly; the older technical approach treated the renewal of a licence as nothing more than a fresh grant of an expired licence. The modern judicial thought on this is encapsulated by Prof. de Smith (de Smith, *Judicial Review of Administrative Action* (4<sup>th</sup> Ed., at page 223)) as follows:

*"Non-renewal of an existing licence is usually a more serious matter than refusal to grant a licence in the first place. Unless the licensee has already been given to understand when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans; cause him economic loss and perhaps cast a slur on his reputation."*

14. The crucial factor distinguishing these categories is the doctrine of legitimate expectation. Sir Robert Megarry, V.C., formally established this distinction in ***Mclnnes vs. Onslow-Fane*** (1978) 1 WLR 1520 (Ch), identifying three categories of decisions, including the intermediate category known as the "*expectation cases*", which explicitly includes cases where "*an existing licence-holder applies for a renewal of his licence*". The doctrine of legitimate expectation provides that the possession of an expectation can found a right to a hearing. This concept is appropriate for licence renewal cases, for reasons articulated in by Lord Denning MR in ***R vs. Liverpool Corporation; Ex parte Liverpool Taxi Fleet Operators' Association*** [1972] 2 QB 299,

*"A person who has a licence has a settled expectation of having it renewed, and that it is a thing of value."* (at page 304).



15. Engaging in the sale of foreign liquor is a means of living. That is the business in which the petitioner engages, and he has a right to engage in such economic or business activity and has a legitimate expectation to receive a licence to so engage if he satisfies the requirements and preconditions stipulated for the issuance of such a licence. This is especially so when the necessary approval by excise officers has been granted, and as admitted by the Senior State Counsel, some payments have also been levied. Petitioner's historical narration shows that for reasons not assigned, his previous F.L.4 licence has not been renewed. Notwithstanding that after a lapse of time the petitioner, whilst disclosing the non-extended licence, had made a fresh application for an F.L.4 licence to a new location from December, 2023, up until October, 2024. For no reason, the issuance of this licence has been wrongfully withheld and refused. This conduct is further compounded and amounts to *mala fides*, as the respondents have in the least not placed before this Court any reasons as to why it was not so issued until October 2024. Public officers vested with the discretion and duty to consider the issuance of such a licence are required to act diligently and promptly, because the power so vested and entrusted is of a public nature and should be exercised in the public interest. This issuance or otherwise of a licence directly affects the livelihood and engagement in a profession of such an applicant. In these circumstances, to my mind, the conduct of the respondents in maintaining absolute silence and being non-responsive notwithstanding several requests for a response is most unsatisfactory and appalling. Such conduct clearly savours of an unacceptable lackadaisical attitude which is not in keeping with the minimum standards expected of public officers.
16. Having so conducted themselves, and not filing objections to this application stating or placing their position or any reason or impediment to the grant of the licence, the respondents, on 08.09.2025, take cover and submit the directive R-1 issued in October 2024 by the President as a reason for the inability to issue this licence now. According to the

affidavit of the incumbent office-holder of the 1<sup>st</sup> respondent Commissioner General of Excise, it is averred at paragraph 3 that “*the application made by the petitioner, applying for a new liquor license, is before the Ministry of Finance, pending approval under S.28 (a)(1).*” The relevant provision should read as Section 28A (1). According to the scheme of the Excise Ordinance, the approval of the Minister is required under Section 19(1). Section 28A, which had been brought in by a subsequent amendment, confers a general and very wide power in respect of the issuance of licences. Accordingly, the approval required for an F.L.4 licence by the Minister is thus provided for by Section 19(1), which provides as follows:

*(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.*

17. That being so, notwithstanding the legal effect and import of the directive purported to have been made by R-1, what is immediately relevant is the failure to issue the licence preceding the said directive. To my mind, the right and entitlement to the F.L.4 licence by P-6 has accrued, and the duty to issue the same was endowed and imposed on the respondents well before the said directive. In the circumstances of the present application and the failure of the respondents to place before this court any ground whatsoever and the Senior State Counsel’s submission that there is no other impediment other than R-1, I hold that the petitioner is entitled to the writs of *mandamus* prayed for.

18. As for the directive made by R-1, I hold that as the petitioner the applicant was entitled to and did accrue an entitlement and right to be issued with a licence well before the said directive was made, and for reasons unexplained and for no reason assigned, it remained unissued. As the application was in the pipeline and pending a subsequent policy decision or directive on that matter, it will not and cannot defeat the right of the petitioner to receive such a licence, as the petitioner will have a legitimate expectation that can be enforced by the writ of this Court.
19. Mr. Sanjeewa Jayawardena, President's Counsel, also vehemently argued that the President does not have lawful authority or any legitimate basis to issue a binding directive as issued by R-1. It was submitted that the statutory functionary cannot abdicate its authority and act under the dictation of another person. It was the argument of the learned President's Counsel that the President, having no specific statutory authority, was not lawfully entitled to issue R-1. In support of which, he cited and relied on the decision of **Kandiah vs. Land Reform Commission** [1988] 2 SLR 119 at page 128, where his Lordship Justice Sarath Silva held as follows:

*“In dealing with the facts, it was found that the 1st Respondent did not implement the decision in document P8 and later purported to vary the decision acting under dictation by the Member of Parliament. The 1st Respondent is a statutory functionary, and it cannot abdicate its duty or exercise its discretionary power under dictation by the Member of Parliament or any other person.”*

Further, he also relied on the decision in **J. G. Mangala vs. H.J.M.C. Amith Jayasundara, Commissioner General of Examinations** (SC/FR/286/2024, with SC/FR/287/2024, S.C. Minutes 31.12.2024), where his Lordship Justice Yasantha Kodagoda held that not even the Minister of Education or the Secretary can usurp the powers of the Commissioner of Examinations.

20. I am mindful and conscious of the aforesaid findings and the principles.

If a public authority does some act which affects the rights of another or denies or deprives such a right, be it to engage in a profession or business, or which infringes upon a man's liberty, such public authority is required to justify its action as being authorised by law. This means such power should be and shown to be authorised directly or indirectly by statute, which is referable to an enabling and empowering statutory provision. Sir William Wade and Christopher Forsyth in 'Administrative Law' (Oxford University Press, 11<sup>th</sup> Ed., at page 15), propounded this with the exposition that *"every act of governmental power ... must be shown to have a strictly legal pedigree."*

21. However, in the present context, the President also happens to be the Minister in charge of the portfolio of Finance. The Minister of Finance, by virtue of Section 28A of the Excise Ordinance, is vested with a wide discretion and power in the following form.

**"28A.** (1) *Notwithstanding anything in this Ordinance, if, upon representation made or otherwise, the Minister considers it necessary to do so, he may, without assigning any reason therefore direct the authority granting a licence, to grant a licence, or to renew or cancel a licence, and such authority shall give effect to such direction.*

(2) *No action for compensation or damages shall lie in respect of the cancellation, on a direction given by the Minister under subsection (1), of any licence by the authority granting such licence."*

22. Therefore, though R-1 is issued apparently *qua* the President of Sri Lanka, it is a fact that the President also happens to be the Minister of Finance. As it appears to me, if an officer holding two portfolios or positions exercises a certain power without specific reference to the particular statutory provision or office, it by itself will not vitiate nor render such an act nugatory, provided such officer did hold an office which was conferred with the power to do what such officer so did. Sansoni, J., in ***L. C. H. Peiris vs. The Commissioner of Inland Revenue***

65 NLR 457, considered the validity of a certificate issued to a Magistrate of an additional assessment where a wrong Section was quoted by Commissioner in support of the proceedings for recovery. The Commissioner, having accepted an assessee's return and made an assessment in terms of *Section 64(2)(a)* of the Income Tax Ordinance (Cap. 188), subsequently purported to make additional assessments under *Section 64(2)(b)*, when the correct procedure was to make it under Section 65. Whilst holding that a certificate issued to the Magistrate in recovery proceedings under Section 80(1) is not invalidated by the Commissioner's mistake, it was opined that,

*“It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power.”*

23. In light of the above dicta, the directive R-1 may be referable to the powers conferred by Section 28A. However, at this juncture, it is not necessary to determine and pronounce upon the validity or legitimacy of the directive made by R-1 for the purposes of determining the present issue. Be it valid or otherwise, it amounts to a change of policy or a policy decision. Even if it be valid, I hold that the petitioner had a legitimate expectation to receive and to have a licence issued as applied for, which in this instance, cannot be denied or defeated by a subsequent change of policy when his application was pending and in the pipeline, so to say. This is especially so as there is no basis or impediment placed before this Court by the respondents up until now that prevented or disintitiled the petitioner to the F.L.4 licence. The only reason, as averred by the subsequent affidavit, is the directive R-1. Accordingly, I hold that the petitioner is entitled to the writs of *mandamus* as prayed for.
24. In the above circumstances, the writs of *mandamus* as prayed for by prayer (b) are hereby issued and thereby;

- i. the 1<sup>st</sup> and the 2<sup>nd</sup> respondents, and their representatives, nominees, agents and successors in office also named in the affidavit dated 8<sup>th</sup> September 2025, are hereby directed to grant and issue the F.L.4 licence to the petitioner for the premises titled “New Piliyandala Wine Stores” located at 468/2/1/C, Arawwala, Pannipitiya, as per the application made by P-6. For clarity and avoidance of doubt, by the said writ of *mandamus*, the 1<sup>st</sup> respondent Commissioner General of Excise, is hereby directed to grant to the petitioner the F.L.4 licence as aforesaid in accordance with the provisions of Section 19(1) of the Excise Ordinance with the approval of the Minister; and
- ii. the 2<sup>nd</sup> respondent is hereby directed to provide the petitioner the said licence in accordance with the provisions of Section 19(2) of the Excise Ordinance.
- iii. It is further directed that the said licence be issued for the current period for the year 2025 and the relevant changes be levied on a pro-rated basis for the remainder of 2025.

Application is allowed to that extent. However no order is made as to costs.

**JUDGE OF THE COURT OF APPEAL**