

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

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

T. G. Kularatne
Pahala Haththiniya,
Marawila.

Petitioner

Court of Appeal Case No:

CA /Writ/ 36/25

Vs.

1. W. S. Senathissa
Divisional Secretary,
Divisional Secretariat Office,
Kurunegala.
2. Commissioner General of Excise
Excise Department of Sri Lanka,
No. 34, W. A. D. Ramanayake Mawatha,
Colombo 02.
3. C. P. A. Premarathna
Malpiyali Mawatha,
Malkaduwwa,
Kurunegala.
4. R. P. P. Rajapaksa

5. T. N. Senarath

6. H. A. N. Pathirathna

*All of Ihala Hattiniya,
Marawila.*

7. Secretary to the Ministry of Finance
Planning and Digital Economy,
The Secretariat'
Colombo 01.

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

Respondents

Before : Dhammika Ganepola, J.
Adithya Patabendige. J.

Counsel : Eraj de Silva, P.C. with Daminda
Wijeratne and Sanjana Mapatune
instructed by Paul Ratnayake Associates
for the Petitioner.
Ronald Perera P. C. with Chandimal
Mendis for the 3rd Respondent instructed
by Coporate Law Chambers.
Sehan zoysa, S.S.C. for the 1st, 2nd, 7th and
8th Respondents.

Argued on : 27.06.2025

Written Submissions : Petitioner : 21.07.2025

tendered on 3rd Respondent : 14.07.2025

1st, 2nd, 7th, 8th Respondents : 15.07.2025

Decided on : 16.10.2025

Dhammika Ganepola, J.

In the instant application the Petitioner seeks inter alia Writs of Certiorari quashing the decisions of the 1st, 2nd, 7th and 8th Respondents to grant the impugned Toddy Privilege to the 3rd Respondent and not to blacklist the 3rd Respondent for violation of tender conditions and Writs of Mandamus directing the 1st, 2nd, 7th and 8th Respondents to blacklist the 3rd Respondent for violation of tender conditions and to issue the impugned Toddy Privilege to the Petitioner. The facts involved in the instant application are as follows. The 1st Respondent Divisional Secretary called for bids for the purchase of the exclusive Privilege of selling Toddy at No. 2, Kurunegala, for the period starting from 1st of January 2025 to 31st of December 2025. Accordingly, the Petitioner also submitted a bid in respect of the above Privilege. On or about the 23rd of August 2024, bids were opened, and the 3rd Respondent became the highest bidder for a sum of Rs. 15,600,000/-. The joint bid placed by the 4th, 5th and 6th Respondents became the second highest bid for a sum of Rs. 12,000,000/-, and the Petitioner was the third highest bidder for a sum of Rs. 8,350,000/-. Consequently, the 3rd Respondent was granted the said Toddy Privilege and is currently operating the same from No. 368, Wingoda Road, Kurunegala.

The Petitioner complains that the 3rd Respondent has violated several tender conditions and, as a result, is not entitled in law to receive and proceed with the Toddy Privilege and is liable to be blacklisted. The bids

placed by the 4th, 5th, and 6th Respondents were disqualified owing to the nonconformity of the tender conditions. Therefore, the Petitioner states that he is the next in line and is entitled to such Privilege. The Petitioner urges that although the Petitioner complained to the 1st Respondent, the 1st, 2nd, 7th, and 8th Respondents failed to fulfil their public duty to blacklist the 3rd Respondent and grant the Privilege to the Petitioner.

The Petitioner contends that the 3rd Respondent has not obtained approval for the premises as stipulated by Gazette No. 207 dated 20th August 1982, marked P3(i), and Gazette dated 20th June 2024, marked P2. Further, the premises where the Toddy Tavern operates is not in compliance with the Law, particularly the Excise Notification No. 2/2024 marked P3(2). Since there is a temple situated within a distance of 200m from the impugned tavern, the Petitioner contends that the applicable excise regulation in respect of the distance requirement of 500m set out in the Excise Notification No.2/2024 [P3(2)] is not complied with. However, the 1st, 2nd, 7th and 8th Respondents argue that the regulations published in the Excise Notification No. 2/2024 [P3(2)] in the Gazette No.2366/39 dated 12.01.2024 have no application for tendering of the impugned Toddy privilege.

It is on the common ground that the tender for the impugned privilege of selling Toddy for the year 2025 at the Kurunegala Divisional Secretariat was called by the notice published in the Gazette Notification marked P2/2R3. As per the Gazette marked P2, the tender had been called subject to the conditions stipulated in Gazette No. 207 dated 20th August 1982, marked P3(i), related to the sale of Toddy. As per the Gazette No. 207 marked P3(i) above, the privilege of selling Toddy is granted, subject to the contemporaneous common conditions related to every liquor permit. Said provisions are reproduced below.

1983 වර්ෂය හා ඊට පසු කාලපරිච්ඡේදයන් සඳහා රා රේන්ද විකිණීමේ කොන්දේසි

1. (1) වැනි විශේෂ කොන්දේසියෙහි නිශ්චිතව සඳහන් කාලපරිච්ඡේදය තුළදී සහ ඊට පසු කාලපරිච්ඡේදය තුළ යම් ප්‍රාදේශීය කොට්ඨාශයක පැසුණු රා සිල්ලරට විකිණීමේ තනි වරප්‍රසාදය නැවත දැනුම් දෙනු ලබන තුරු-

(1) සෑම සුරාබදු බලපත්‍රයකට අදාළ එවකට වලංගු පවත්නා පොදු කොන්දේසිවලට; හා

(2) මෙහි දක්වා ඇති විශේෂ කොන්දේසි වලටද, යටත්ව ප්‍රදානය කරනු ලබන බැව් (52 වැනි අධිකාරය වන) සුරාබදු ආඥාපනතේ 19 වෙනි වගන්තියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාර සුරාබදු කොමසාරිස් ආරියසිරි උපාලි ජයවික්‍රම වන මම, මුදල් අමාත්‍යවරයාගේ අනුමැතිය ඇතිව මෙයින් විධානය කරමි.

The Petitioner submits that operating the impugned Toddy tavern is not in conformity with the Excise Notification No. 02/2024 P3(2), however, it is observed that the Petitioner has failed to specifically identify said non-compliance in reference to the contents of the aforementioned Excise Notification. Further, the 1st, 2nd, 7th, and 8th Respondents submit that P3(2) applies only to the renewable annual license, which is issued upon the payment of fees but not for the tendering of Toddy privilege for a specific area. The said Excise Notification specifies as follows.

(52 අධිකාරය වූ) සුරාබදු ආඥා පනත

අංක 2/2024 දරණ සුරාබදු නිවේදනය

(52 අධිකාරය වූ) සුරාබදු ආඥා පනතේ 25 වන වගන්තිය සමඟ කියවිය යුතු 32 වන වගන්තිය යටතේ මා වෙත පැවරී ඇති බලතල ප්‍රකාරව, මුදල්, ආර්ථික ස්ථායීකරණ සහ ජාතික ප්‍රතිපත්ති අමාත්‍ය රනිල් වික්‍රමසිංහ වන මා විසින් සාදන ලද ප්‍රීති 2024 ජනවාරි 12 දින සිට බලාත්මක බව ප්‍රකාශ කරමි.

2008 අප්‍රේල් මස 10 වන දිනැති අංක 1544/17 දරණ ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රයේ පල කරනු ලැබූ අංක 902 දරණ සුරාබදු නිවේදනය හා 2015 දෙසැම්බර් මස 15 වන දිනැති අංක 1945/17 දරණ ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රයේ පල කරනු ලැබූ අංක 1945/17 දරණ ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට් පත්‍රයේ පල කරනු ලැබූ අංක 983 දරණ සුරාබදු නිවේදනයේ (2) ඡේදයෙහි අන්තර්ගත විධිවිධාන මෙයින් පරිච්ඡින්න කරනු ලැබේ.

- (i) මත්පැන් විකිණීමේ සුරාබදු බලපත්‍රයක් අලුතින් ඉල්ලුම් කිරීම, එවැනි බලපත්‍රයක හිමිකාරිත්ව පැවරීම සහ එවැනි බලපත්‍රය සමබලපත්‍රධාරිත්වය සඳහා අයදුම් කිරීම හෝ බලපත්‍ර ලත් ස්ථානය ස්ථාන මාරු කිරීම සඳහා අදාළ වන අයදුම්පත්‍ර නියමිත ඉල්ලුම්පත්‍ර ගාස්තුව ගෙවීමෙන් අනතුරුව සුරාබදු ප්‍රධාන කාර්යාලයෙන් ලබා ගත හැකිය. කෙසේ වෙතත් එවැනි බලපත්‍රය වලංගු කාල සීමාව දීර්ඝ කිරීම සඳහා අදාළ වන අයදුම් පත්‍ර, සුරාබදු ප්‍රධාන කාර්යාලයෙන් හෝ දිවයින පුරා පිහිටා ඇති සහකාර සුරාබදු කොමසාරිස් කාර්යාලවලින් හෝ ලබා ගත හැකිය.

The Petitioner complains that there is a temple situated within a distance of less than 200m from the impugned Toddy tavern. Regulation No. 12. (ඊ) of the Excise Notification No.05/2023 referred to the 500m distance rule as set out below,

12. (ඊ) ස්ථානීය පරිභෝජනය සඳහා නොවන මත්පැන් සිල්ලරට විකිණීම පිණිස වන බලපත්‍ර ලත් ස්ථාන හෝ ඒ සඳහා යෝජිත ස්ථාන පිහිටුවා ගැනීම කළ යුත්තේ ඒවායේ ආසන්නතම මායිමේ සිට රජයේ ලියාපදිංචි පාසැල් සහ රජයේ ලියාපදිංචි ප්‍රසිද්ධ පූජනීය ස්ථානවල ආසන්නතම මායිමට ඇති කෙළින් දුර මීටර සියය (100) ඉක්මවන පරිදි වේ. තවද, ස්ථානීය පරිභෝජනය සඳහා මත්පැන් සිල්ලරට විකිණීම පිණිස වන බලපත්‍ර ලත් ස්ථාන හෝ ඒ සඳහා යෝජිත ස්ථාන පිහිටුවා ගැනීම කළ යුත්තේ ඒවායේ ආසන්නතම මායිමේ සිට රජයේ ලියාපදිංචි පාසැල් සහ රජයේ ලියාපදිංචි පාසැල් සහ රජයේ ලියාපදිංචි ප්‍රසිද්ධ පූජනීය ස්ථානවල ආසන්නතම මායිමට ඇති කෙළින් දුර මීටර පන්සියය (500) ඉක්මවන පරිදි වේ.

However, the circular bearing No.362 (1) dated 27th November 1996 (2R2C/X1) issued by the Commissioner General of Excise is related to the implementation of regulations and conditions in respect of liquor licenses, which excludes the 500m rule in respect of Toddy Taverns. The circular bearing No.362 marked 2R2C/X1 is produced below,

02. පූජනීය ස්ථාන සහ පාසැල් ආදියේ සිට දුර මීටර් 500 ක අරය තුළින් බැහැරව මත්පැන් බලපත්‍ර ක්‍රියාත්මක වන ස්ථාන පිහිටුවීම පිළිබඳ රීතිය :-

(අ) අනුමත බල ප්‍රදේශයක් තුළ පමණක් ක්‍රියාත්මක වීමට අවසර දියහැකි වාර්ෂිකව ටෙන්ඩර් මගින් විකුණනු ලබන (රබ් 05) විදේශ මත්පැන් තැබෑරුම් රේන්දවලට සහ රා තැබෑරුම් රේන්දවලට හා

(ආ) සංචාරක ප්‍රදේශ තුළ (ඇ) ලංකා සංචාරක මණ්ඩලයේ සහ සංචාරක අමාත්‍යාංශයේ අනුමැතිය ලත් මත්පැන් බලපත්‍ර නිර්දේශිත හෝටල, ආපනාලා (හෝස්නාලා) ආගන්තුක නිවාස වලට

(ඇ) සිනමාශාලා විනෝද පියිකා බලපත්‍රය (රබ් 09) දුම්රිය හෝස්නාගාර බලපත්‍ර (රබ් 10) නානායම් බලපත්‍රය (රබ් 12) , හිමිකාර සමාජශාලා බලපත්‍රය (රබ් 13) , සාමාජිකයින්ගේ සමාජශාලා/සාමාජිකයින්ගේ ක්‍රීඩා සමාජ බලපත්‍රය (රබ් 13 ඒ) සහ විශේෂ බලපත්‍රය (රබ් 22) යනාදියට, එම ගොඩනැගිල්ලේම ව්‍යාපාරය අවුරුදු 20 කට වැඩි කාලපරිච්ඡේදයක් ක්‍රියාත්මක වූයේ නම් එකී දුර සීමා පිළිබඳ රීතිය බල නොපානු ඇත.

එනමුදු, එවැනි ස්ථාන පූජනීය ස්ථාන හෝ පාසැල් ඉදිරිපිට හෝ ඉතා සමීපව බැලූ බැල්මට එකඟත්වයෙන් පෙනෙන ආකාරයෙන් පිහිටා තිබේ නම් (සංචාරක ප්‍රදේශ තුළ හැර),

ඒවා අවුරුදු 20 ට වඩා වැඩි පැරණි ස්ථාන වුවද, එම ස්ථාන අවස්ථානුකූලව අනුමත නොකිරීමට යටත් විය හැකිය.

According to the above circular marked 2R2C, the aforesaid maintenance of 500m rule does not apply to the Privilege of selling Toddy by annual tenders unless places of religious worship and schools are situated in

front of or in extremely close proximity and in the immediate vicinity. In the instant application, the Petitioner failed to satisfy the Court that the premises in issue is situated in such proximity. Further, it is observed that the Petitioner has failed to disclose the above circular marked 2R2C/X1 until the 1st, 2nd, 7th and 8th Respondents revealed the same.

In the Supreme Court case of ***Namunukula Plantations Limited v. Minister of Lands and Others [2012] 1 Sri LR 365*** at 376, Justice Marsoof emphasised that the Court has a duty to deny relief to those who fail to truthfully disclose all material facts.

“It is settled law that a person who approaches the Court for the grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”

The Petitioner submits that the Respondents themselves have acted on the basis that the 500m radius rule was applicable. The Petitioner avers that this conduct is demonstrated by the Respondents’ decision to call for certain surveyor plans and reports in the instant application, and therefore the Respondents are estopped from denying that the said rule applies in the instant circumstances. However, there is a dearth of material produced before this Court to decide whether the Respondents have in fact relied on the 500m rule anywhere during the process of granting the tender. Hence, no question of estoppel arises.

In any event, the perusal of surveyor plans and reports by the Respondents cannot be regarded purely as an admission of the applicability of the 500m rule in the instant circumstances because there is a reasonable necessity to assess such plans and reports prior to making a determination subject to the conditions laid down under circular 362(1)

marked 2R2C. I am of the view that, where the law specifies on to the matter, the principle of estoppel should not overrule the specific law. Accordingly, the Petitioner cannot seek relief by attacking the steps taken by the Respondents as the 1st, 2nd, 7th and 8th Respondents have acted reasonably and within the purview of the law.

Legal position related to this was observed by the Supreme Court, in ***Visuvalingam and others V Liyanage and others [1983] 1 Sri L.R. 203*** at page 250, citing Halsbury's Laws of England (4th Edn.) Vol. 16 at paragraph 1515 as follows;

“1515. Estoppel against Statute. The doctrine of estoppel cannot be invoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted is to be invalid, or to give the court a jurisdiction which is denied to it by statute, or to oust the court's statutory jurisdiction under an enactment which precludes the parties contracting out of its provisions. Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive Kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers.....”

Moreover, even though the Petitioner seeks Writ of Certiorari to quash the decision to grant the impugned decision of the 1st, 2nd, 7th and 8th Respondents, the Petitioner has failed to place such a decision before this Court or disclose the date of such a decision. Therefore, there is no tangible decision produced before this Court by the Petitioner. I am mindful of the fact that this Court cannot quash a decision which is not placed before it.

Further, it is on the common ground that the bids related to the impugned tender were opened by the 1st Respondent in the presence of the Petitioner's representative on 23rd of August 2024. The Petitioner instituted the instant application after 5 months from such date. Nevertheless, the delay remains unjustified by the Petitioner.

In the case of *Mendis v Land Reform Commission and others SC Appeal No 90/2009; (SC Mts 12.02.2006)*, the Supreme Court commented on the discretionary nature of the writ jurisdictions as follows:

“Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, the court has also to consider whether the Petitioners- Petitioners are disentitled to the relief prayed for, even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioners are guilty of/and or disentitled to the remedy, based on (a) Laches / undue delay (b) Willful suppression/ misrepresentation of material facts (c) Acquiescence (d) Grave public/ administrative inconvenience (e) Futility (f) Availability of alternative remedy (g) Locus standi.”

In the above circumstances and the reasons given, I hold that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition. Accordingly, I proceed to dismiss the application of the Petitioner subjected to cost.

Application is dismissed.

Judge of the Court of Appeal

Adithya Patabendige. J.

I agree.

Judge of the Court of Appeal