

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

K.V.D. Holdings (Pvt) Ltd.,  
No. 435,  
Katugasthota Road,  
Kandy.  
Petitioner

**CASE NO: CA/WRIT/378/2016**

Vs.

Commissioner General of Excise,  
Excise Department of Sri Lanka,  
No. 34,  
W.A.D. Ramanayake Mawatha,  
Colombo 2.  
and 10 Others.  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Upul Ranjan Hewage for the Petitioner.  
Kanishka De Silva Balapatabendi, S.S.C., for the  
Respondents.

Decided on: 26.02.2019

Samayawardhena, J.

The petitioner filed this application seeking a writ of certiorari to quash the decision X23/X27 whereby the 1<sup>st</sup> respondent-Commissioner General of Excise refused to issue liquor licences under the categories of F/L 7 and 8 for the Talawakele Rest House in the name of the petitioner; and to compel the Commissioner General of Excise by a writ of mandamus to issue the said licences for the year 2016.

It is common ground that the old Talawakele Rest House was demolished in 2007 as it was situated in the catchment area<sup>1</sup> relevant to the Upper Kotmale Hydropower Project, and until such time a liquor licence had been issued to the said Rest House.

After 7 years, in the year 2014, the new Talawakele Rest House had been built, quite obviously, not in the same place, but, as the petitioner himself has admitted in X24, in a different place although it seems to be closer to the old place. No evidence has been placed by either party regarding the actual distance between the two places.

By the Agreement to Lease marked X6 dated 18.11.2014 (which is not an Agreement of Lease), the Talawakele-Lindula Urban Council has agreed to lease out the Rest House for a period of 7 years to the petitioner.

By clause 2(d) of the said Agreement to Lease, the Urban Council has allowed the petitioner to take steps to obtain the

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<sup>1</sup> Vide X14, X15

liquor licence to the new Rest House. It is relevant to note that the old liquor licence was never in the name of the petitioner, and the old licence had been issued in the category of F/L 12 (not 7 or 8).

There is no dispute that the Rules published in the Gazette No. 1544/17 dated 10.04.2008 marked X8 and cited as “*Excise Notification No.902*” are applicable in issuing liquor licences by the Commissioner General of Excise.

Guidelines and Conditions No.1 thereof says that there is no automatic renewal of licences; and the licensee, fifteen days prior to the expiry of the existing licence, shall make an application to the Commissioner General of Excise; and the Commissioner General of Excise shall consider the issuance of licences in terms of the Guidelines and Conditions contained in the said Gazette and any other directions as stipulated in the Excise Ordinance.

Condition No. 20(c) of the said Gazette is that: “*The location of premises for operation of licences in respect of sale of liquor off the premises should be 100 meters away from schools and places of public religious worship and in respect of licences for selling liquor for consumption within the premises should be 500 meters away from schools and places of public religious worship.*”

However condition 20(c) further says that in respect of the “*existing licences*” a relaxation of distance can be considered provided there are no objections by the public.

The petitioner has tendered only a copy of the application for liquor licence sent for the year 2015 marked X9. That application is for liquor licence in the category of F/L 12. But the petitioner's reliefs are in respect of liquor licences in the categories of F/L 7 and F/L 8 for the year 2016. The petitioner has not tendered copies of those two applications, but only tendered two receipts issued to obtain the applications for F/L 7 and F/L 8. It appears to me that, the petitioner purposely did not produce those two applications because the contents of them are unfavourable to him. Why I say so is that the contents of X9 for the category of F/L 12 are unfavourable to him. In X9, the petitioner has clearly admitted that the last year which the licence had been issued was 2007, and within 500 radius there are a Kovil, Church, School and Hindu Temple. That means, Condition 20(c) is not satisfied and also no relaxation can be made as there is no existing licence as the last licence had been issued to the old Rest House in 2007.

This is supported by X16 dated 16.03.2016 whereby the Sri Lanka Tourism Development Authority has written to the Commissioner General of Excise recommending the issuance of liquor licences in the name of the petitioner only up to 31.12.2016 subject to the *“rules/regulations/terms and conditions of the Department of Excise.”* It further says: *“Please note the distances from the establishment: (1) Kathireson Kovil 161m (2) Church 246m, Primary (Sinhala) School 315m, Hindu Temple 358m.”*

Then it is abundantly clear that in terms of condition 20(c), the Commissioner General of Excise could not have issued the

licences applied for, and also that, no relaxation of the distance could have been considered as there was no “*existing licences*” in operation when the two applications (which are not before Court) for F/L 7 and F/L 8 were tendered by the petitioner. I might also add that the old licence expired last in the year 2007 was for F/L 12 and not for F/L 7 and/or F/L 8.

From the above it is abundantly clear that the refusal by the Commissioner General of Excise to issue two new licences in the categories of F/L 7 and F/L 8 was not at all *ultra vires* or unreasonable.

No legitimate expectation can be based on X12 whereby the Commissioner General of Excise whilst rejecting the application of the petitioner merely stating that he could “consider” issuance of the licence provided the petitioner obtains the approval of the Sri Lanka Tourism Development Authority. I have already discussed the alleged approval of the said Authority contained in X16, which, in my view, is not favourable to the petitioner. The decided authorities cited by the learned counsel for the petitioner on legitimate expectation and issuance of liquor licences<sup>2</sup> are distinguishable in many a respect including the fact that the petitioners in those cases were existing licence holders whereas it is not so in the case at hand.

In view of the above clear facts, I think there is no necessity to consider the other objections taken up by the learned senior state counsel appearing for the respondents.

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<sup>2</sup> Sundarkaran v. Bharathi [1987] 2 Sri LR 243, Ratnayake v. Commissioner General of Excise [2004] 1 Sri LR 115, Nimalasiri v. Divisional Secretary, Galewela [2003] 3 Sri LR 85

I refuse the application of the petitioner with costs.

Judge of the Court of Appeal