

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

*In the matter of an application for
Writs of Certiorari and Prohibition
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

1. Wasantha Tea Factory (Pvt.) Ltd.
No.103, Wewawatta,
Helamba, Agalawatta.
2. Uvini Kaushani Ekanayaka
No.103, Wewawaththa,
Helamba,
Agalawatte.

Case No: CA/Writ/592/2024

Petitioners

Vs.

1. Sri Lanka Tea Board
No.574, Galle Road,
Colombo 3.
2. Niraj de Mel
Chairman,
Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 3.

3. M. S. Anuruddha
Director General,
Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 3.

4. Mahesh Jayawardena
Acting Tea Commissioner,
Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 3.

Respondents

Before : Dhammika Ganepola, J.
: Damith Thotawatta, J.

Counsel : Lakshman Perera, P.C. with Thishya Weeragoda for
the Petitioner.
N. Kahawita, SSC for the Respondents.

Supported On : 11.10.2024 and 16.10.2024

Decided On : 25.10.2024

Order

Dhammika Ganepola, J.

The Petitioners in the instant application have *inter alia* prayed for Writs of Certiorari quashing the decisions of the 1st to 4th Respondents to suspend the

registration of the 1st Respondent factory reflected in the document marked P24 and to conduct an inquiry in respect of 1st Respondent factory as reflected in the document marked P25 and Writ of Prohibition prohibiting said Respondents from placing any restrictions on licensed Tea Brokers pertaining to the purchase and/or auction of made tea produced by 1st Petitioner Factory.

Further, the Petitioners prayed interim orders suspending the operation of said documents marked P24 and P25 and the decisions contained therein, suspending the operation of the suspension of the registration of 1st Petitioner Factory and preventing the Respondents from issuing directions to any licensed Tea Broker to withdraw tea produced by the 1st Respondent from tea auctions without holding an appropriate inquiry until the final determination of the instant application.

When this matter was taken up for support on 11.10.2024 and 16.10.2024 the learned President Counsel for the Petitioners submitted that the 4th Respondent has issued a circular dated 06.03.2019 marked as P4 in view of preserving the new naturalness of Made Tea by which the 4th Respondent has purportedly imposed the following maximum permissible levels of Sucrose, Glucose and Fructose in low country tea;

Sucrose	16mg/g
Glucose	14mg/g
Fructose	19mg/g

The Petitioners claim that they have been in continuous manufacturing of quality tea in compliance with the lawful requirements of the Respondents and that was consistently listed in the “Fair Prices for Green Leaf” Report issued by the Tea Board. The Petitioners state that no complaints have arisen against them in respect of their tea products in the two years it has been in operation.

However, in the month of March 2024, the Petitioner dispatched 18665.5 kg of made tea to the brokers for sale under invoices no.280 to 342. It is noted that for every 10kg bags dispatched, a package weighing approximately 3.5kg has been delivered for sampling. On or about 28.03.2024, the Broker had been informed that stocks of tea under invoices bearing no.303, 320, 310, 316 and

319 should be withdrawn from the auctions pending investigations. Further, on 03.04.2024 the Broker had been informed that the stocks of tea in invoice no. 323 and 335 should also be withdrawn from the auctions pending investigations. Thereafter, by letters marked P9a, P9b and P10 consignments of tea under invoices no.310, 316, 319, 323 and 335 had been permitted to be sold through the auction. The Petitioners had received a letter from the 4th Respondent, dated April 8, 2024 [P11], informing them that the testing reports for the tea stocks associated with invoices nos. 303 and 320 indicated a violation of established standards in their tea production. It was noted that the quality of the tea had been compromised. Further, the Petitioners had been informed to participate in an investigation conducted by the 1st and 4th Respondents. As per said letter provided details of the quantities are as follows;

Invoice No.	Sucrose	Glucose	Fructose
303	7	16	7
320	7	19	9

However, the Petitioners state that they were not informed when the purported tea samples were drawn for investigation by the 4th Respondent from batches of invoices Nos. 303 and 320. Hence the Petitioners claim that they are unaware of the genuineness of the test and the chain of custody maintained by the Respondents. While the inquiry is going on, pursuant to a request by the Petitioners, another set of sample collections had taken place on 30.05.2024 with the participation of the Petitioners and such samples had been sent for testing. However, the Petitioners had not been served with copies of the purported test results issued by the Tea Research Institution in respect of said sample testing.

Nevertheless, the Glucose level of the samples obtained from the stocks of tea in invoice nos. 303 and 320 by the Petitioners with the permission of the Respondents and sent to SGS Labs had been found meeting the required standard level established by the 1st Respondent [P16a and P16b].

On 01.07.2024, by letter marked P18 the 4th Respondent had informed the Brokers to withdraw stocks of tea in invoices nos.92, 100, 97, 98 and 95 from

the auction. Thereafter, by the letter dated 29.07.2024 [P19] permission had been granted to sell the above stocks of tea, except the stock of tea under invoice no.100 through the auction. No reasons had been provided as to why the said stocks of tea were retained or released. While the said stock of tea in invoice no. 98 was listed for sale, the 4th Respondent had informed the Broker by letter dated 23.08.2024 [P21] that the said stock of tea in invoice no. 98 was to be withdrawn from the auction for further investigation. However, as per the examination conducted by Forbes Tea Brokers (Pvt) Ltd through the SGS Labs, it had been revealed that the Glucose levels of the stocks of tea in invoices nos.92, 100, 97, 98 and 95 were below the standard level established by 1st Respondent[P23(a) and P23(b)].

In spite of such, the Petitioners had received a letter dated 13.08.2024 [P24] from the 4th Respondent notifying them of suspending their registration for four months with effect from 13.08.2024. Said letter indicates that the test results of the tea samples re-drawn on 30.05.2024 from invoice no. 303 and 320 confirmed the above invoices exceeded the maximum permissible levels of Glucose and thereby violated Circular No. TC/CIR (204)-04-2021 dated 28.04.2024 and the provisions of the Tea Control Act.

The test results issued on 27.03.2024 indicate the Glucose contents of invoice no. 303 is 16mg/g [R6b] and of invoice no. 320 is 19mg/g [R7b]. Said results issued on 27.03.2024 had been communicated to the Petitioners by letter marked P11. The test result of 16mg/g of Glucose content in the sample under invoice no. 303 as indicated in the R6b/P11 cannot be considered as exceeding of permitted standards of the Glucose level as it is within the prescribed limits. Despite such, the 4th Respondent alleged that the Petitioners were in violation of established standards in their tea production and the quality of the tea had been compromised[P11].

The Respondents have submitted the test report of the tea samples re-drawn on 30.05.2024 from invoices 303 and 320 marked as R8(l) which indicate the Glucose contents of invoices no. 303 is 20mg/g and no. 320 is 17mg/g. It is observed that the quantities of glucose in tea samples have varied from each other in the reports which were obtained by the Sri Lanka Tea Board from the tea research institute laboratory.

The 4th Respondent by his letter P24 had come to a finding that the tea contained in samples of above invoices no. 303 and 320 have exceeded the maximum possible level of Glucose based on the test results of the tea samples re-drawn on 30.05.2024.

The Petitioners had been informed that the tea contained in invoice no.98 had exceeded the permissible Glucose level which is 24 mg/g, thereby violating the established standards. Further by said letter, the Petitioners had been asked to attend an investigation conducted by the 4th Respondent on 05.09.2024.

In the circumstances, this Court needs to take into consideration whether the Petitioners have made out a case which is suitable for a full investigation and a hearing after issuing notice on the Respondents. In other words, at the stage of notice, this Court considers whether the matter brought before it is arguable. In ***A.M.Kapila Adhikari, Chief Inspector of Police and others CA(Writ) 216/2020 decided on 25.08.2020*** Court observed the adoption of the arguability principle upon issuance of notice on its contents;

*“in other words, at the notice stage, the Court considers whether the matter before it is arguable. That entails the conclusion that notice should not be granted if the application for judicial review is unarguable-see **R v. Legal Aid Board ex p Hughes (1993) 3Admin LR 623 at 623D in which Lord Donaldson MR held that Notice /Permission should be granted if an application is prima facie arguable. The Permission judge needs to be satisfied that there is a proper basis for claiming judicial review, and it is wrong to grant notice without identifying an appropriate issue on which the case can properly proceed R v. Social Security Commissioner ex p Pattni (1993) 5 Admin LR 219 at 223G. However voluminous the papers, or complex the putative issues, the task remains the same- R v.Local Government Commission ex p North Yorks Country Council (unreported) 11 March 1994, per Laws J.***

However, I am mindful that in this application the Court has to examine only the decision-making process of the Respondents while taking a decision to suspend the registration of the Petitioners.

The Petitioners seek an order from this Court to quash the decision of the Respondents to suspend the registration of the Petitioners. As per the reasons given in the document marked P24, such suspension was based on the matters revealed through the investigation carried out by the Respondents.

Such investigations had revealed that the tea samples drawn from invoices no. 303 and 320 had exceeded the maximum possible levels of Glucose. The Petitioners also rely on the test results[P16(a) and (b)] of the tea samples favorable to them which were drawn from the stocks of tea in invoices no.303 and 320 by the Petitioners. The laboratory testing results are an outcome of a technical evaluation process of which this Court has no expertise. Correctness of such a technical evaluation process cannot be determined by this Court and it does not come under the purview of judicial review. This Court is not able to evaluate and determine the correctness of such a technical report or decide as to what test report should be accepted, i.e. whether the test report relied upon by the Petitioners or the Respondent should be accepted. Accordingly, I see no blatant error of law in the decision making process adopted by the Respondent.

It was held in ***Amarendra Kumar Pandey v. Union of India and Others [Civil Appeal Nos. 11473-11474 of 2018, Supreme Court of India, SC Minutes of 14.07.2022]***

'ordinarily, the Court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist.'

The Petitioners argue that the purported testing process of the 1st Respondent at the Tea Research Institute itself is not transparent and leaves room for abuse of process. It is said that the integrity and sanctity of the purported samples was not ensured. The Court observed that the Petitioners have advanced such allegations on mere assumptions. However, this Court is unable to look into such aspects without sufficient materials or without inquiring into any evidence. I am not satisfied that the Petitioner has provided adequate evidence and sufficient materials to support their position.

It is apparent that the Respondents have acted in terms of Section 8 of the Tea Control Act while issuing letters marked P24 and P25. Section 37(1)(e) of the Tea Control Act provides thus:

Any person aggrieved -

by the decision of the Controller under subsection (2) of section 8 of the cancellation of the registration of any registered tea factory, may, within twenty-eight days after the communication of such decision or cancellation to such person, appeal in writing from such decision or cancellation to the Minister.

Accordingly, said provision provides an adequate alternative remedy for the Petitioners against suspending the registration. It appears that the Petitioners have not adhered to such a remedy. It is trite law that writ remedy is a discretionary remedy and will not be granted unless the party seeking relief has exhausted the other remedies reasonably available and equally appropriate. *vide Linus Silva v. The University Council of the Vidyodaya University (per T.S. Fernando, J.) (1961) 64 NLR 104 and Chandraseana v. Abeysuriya [CA/Writ/457/19, Court Appeal Minutes of 16.06.2022].*

In the case of *Finest Tea Exports (Private) Limited and others Vs. Chulananda Perera, Director General of Customs and Others C.A. (Writ) 209/2017 Decided on 04.10.2019* it was held that *the*

“The general principle is that an individual should normally use alternative remedies where available rather than judicial review [R. (Davies) v. Financial Services Authority (2004) 1 W.L.R. 185; R. (G) Immigration Appeal Tribunal (2005) 1 W.L.R. 1445]. Our Courts have held that where a party fails to invoke alternative remedies judicial review can be refused. [Rodrigo v. Municipal Council Galle (49 N.L.R. 89); Gunasekera v. weerakoon (73 N.L.R. 262); Obeysekera v. Albert & others (1978-79) 2 Sri. L.R. 220); Rev. Maussagolle Dharmarakkitha Thero and another v. Registrar of Lands and others (2005) 3 Sri. L.R. 113].

The general principle is applicable even where the alternative remedy is an administrative procedure, such as in this case and Courts will require the party seeking judicial review first to exhaust such administrative procedure before invoking the discretionary power of judicial review [R (Cowl) v. Plymouth City Council (2002) 1 W.L.R. 803; R. v. Barking and Dagenham LBC Ex. P. Lloyd (2001) L.G.R. 421; R. (Carnell) v. Regents Park College and Conference of Colleges Appeal Tribunal (2008) E.L.R. 739].”

It is submitted that the maximum possible level of Glucose in tea is a very serious issue, and such a default is not trivial by any means. It directly impacts the quality and the international brand name of Ceylon tea. Accordingly, the

suspension of the registration of tea factories is being made in terms of Section 8(2)(a) where the Commissioner is satisfied that the manner of operation of any tea factory is not of a standard conducive to the manufacture of made tea of good quality. It is a well-established principle that public interest must be paramount and private interests must give way, when there is any conflict between public and private parties. -See *Lady Dinbai Petit vs. Dominion of India AIR (1951) Bom 72 (AIR 1951 Bom72, (1951)53 BOMLR 229)*- See *Pollock, C.B in Beartson vs. Skene (1860) 29 L.J.Ex 430*. [*'Salus populi est suprema lex esto'* (safety of the public or public welfare is the supreme law)].

In the circumstances, I am not satisfied that there is an arguable ground for judicial review which has a realistic prospect of success. Accordingly, I refuse the application for issuance of notice on the Respondents.

Application is dismissed

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal