

**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 Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Ceylon Beverage Mart (Private)
Limited,
No 215/9, Raththota Road,
Kaludewala, Matale.

CA (Writ) App. No. 667/2024

PETITIONER

Vs.

1. S. Sivaganga,
Divisional Secretary,
Divisional Secretariat,
Tellippalai.
2. Commissioner General of Excise,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.
3. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

AND NOW

**IN THE MATTER OF AN
APPLICATION FOR
INTERVENTION**

1. The Sri Lanka Liquor Licensees Association,
No. 194/1, Colombo Road, Peradeniya.
2. Don Gregory Ajith Udugama,
President,
The Sri Lanka Liquor Licensees Association,
No. 194, Colombo Road, Peradeniya.
3. Chaminda Kurupparachchi,
Secretary,
The Sri Lanka Liquor Licensees Association,
No. 194, Colombo Road, Peradeniya.

Vs.

Ceylon Beverage Mart (Private)
Limited,
No 215/9, Raththota Road,
Kaludewala, Matale.

PETITIONER-RESPONDENT

4. S. Sivaganga,
Divisional Secretary,
Divisional Secretariat,
Tellippalai.
5. Commissioner General of Excise,
Department of Excise,

No. 353, Kotte Road,
Rajagiriya.

6. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS- RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Eraj De Silva, P.C. with Daminda Wijeratne, Nisith Abeysooriya and Naveed Ahamed instructed by Dimuthu Kurupparachchi for the Petitioner.

Nilshantha Sirimanna with Deshara Goonathilake instructed by Amila Kumara for the Intervenant-Petitioner.

Manohara Jayasinghe, D.S.G. with Medhaka Fernando, S.C. for the Respondents.

Supported on: 23.01.2026

Order delivered on: 11.02.2026

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

The counsel on all sides agreed that all the matters can be disposed in one order; therefore, the order given in the application for the intervenient Petitioner in the connected matters in cases in (Writ) Application Nos. 668/24, 669/24, and 670/24.

The Petitioner is a duly incorporated company in terms of the Companies Act, No. 7 of 2007, and it is capable of suing and being sued in its corporate name. The 1st Respondent is the Divisional Secretary, who is empowered to issue the license under the Excise Ordinance, No. 8 of 1912 (as amended) (hereinafter referred to as “the Ordinance”), and the 2nd Respondent is the Commissioner General, who is the apex functionary under the Excise Ordinance. The 3rd Respondent is the Attorney General, who has been named without naming the Finance Minister who represents him as well.

There had been an advertisement published in relation to the grant of license under the Ordinance, which is borne out by the documents marked as **P2(1)** to **P2(3)** annexed to the Petition. The Petitioner has submitted an application to the Department of Excise for a FL-4 liquor license, to operate in the area of Thaiyyadi, Valikaman North, Kankesanthurai.. In addition to the completed application, the Petitioner has submitted the relevant documents of the incorporation of the Petitioner company and the survey plan to establish the proposed premises in which the business is to be operated and to establish that there are no places of worship or schools situated within 100 meters of its premises, the building approval plan from the Pradeshiya Sabha, the lease agreement

of the proposed building operation, and the Petitioner's director's police clearance report, and also the Excise clearance report of the Petitioner's director.

Thereafter, the 2nd Respondent has called for public objections to the applications, and after consulting the relevant Grama Sevaka of the relevant area, the 2nd Respondent was satisfied with the requirements and eligibility of the Petitioner; thus, the Petitioner has been asked to deposit the following sums for the purpose of the issuance of the said annual license;

- (i) Rs. 10,000,000/- (Ten Million Rupees) for the FL-4 license;
- (ii) Rs. 500,000/- (Five Hundred Thousand Rupees) for the security deposit in relation to the FL-4 license;
- (iii) Rs. 250,000/- (Two Hundred and Fifty Thousand Rupees) as access fee;
- (iv) Rs. 50,000/- (Fifty Thousand Rupees) as a security deposit in relation to the AFL03 supplementary license, which was recommended to be issued to the Petitioner.

However, though the said money was paid, as borne out by documents marked as **P6(1)** to **P6(4)** annexed to the Petition, the Petitioner's complaint is that the 1st Respondent has failed to issue the said license thereupon, due to the letter written by the 2nd Respondent to the 1st Respondent on 25.09.2024, which is marked and annexed to the Petition as **P7**. The Petitioner's complaint is that the said non-issuance of the said license is unlawful, wrongful, arbitrary, bad in law, *ultra vires*, unreasonable, capricious, and irrational. Accordingly, the Petitioner moves for *inter alia* the following relief in this Application;

“(b) Issue an Order in the nature of a Writ of Certiorari quashing the decision of the 1st and/or 2nd and/or 3rd Respondent and/or any one or more of them to not grant the Petitioner the aforesaid R.B.4/F.L.4 license;

(c) Issue an Order in the nature of a Writ of Mandamus directing the 1st and/or 2nd and/or 3rd Respondent and/or any one or more of them to grant the Petitioner the aforesaid R.B.4/F.L.4 license;”

Application to intervene

In the meantime, the Intervenient-Petitioner has made an application to intervene in this Application as a necessary party on the following grounds;

1. The Intervenient Petitioners are the President and the Secretary of the Sri Lanka Liquor Licensees Association; as representatives of the said Association, they are moving to be added as necessary parties to this Application.
2. They are looking after the interests of all liquor licensees; therefore, they have a legitimate right to safeguard the interests of the industry and the public.

There is an objection by the Intervenient-Petitioner to the issuance of the license to the Petitioner; the said Objection is marked as **IP6** annexed to the Petition for Intervention.

They have relied upon another Fundamental Rights Application pending in the Supreme Court, where certain intermediary relief have been granted in their favour, which is marked as **IP7(a)** and **IP7(b)**.

Further, it is their position that the 1st and 2nd Respondents have taken steps to issue liquor licenses during the pendency of a presidential election, which is therefore, in violation of election laws. As such, no applications should have been called for the issuance of liquor licenses during the pendency of the presidential election. This has been given as an election bribe, and the said matter has also been brought to the notice of the Election Commission.

It is also their position that the Petitioner has submitted its application in contravention of the provisions of the Excise Ordinance to obtain the license.

Further, they have also objected to the issuance of the Petitioner's liquor license on the basis that His Excellency the Head of the State has issued a letter cancelling or suspending the issuance of liquor licenses. Therefore, they are seeking to intervene in this Application.

However, the said intervention was vehemently opposed and objected to, by the Petitioner, on the basis that no intervention can be made in a writ application where only the parties that are the affected by a decision taken, or not taking a decision according to a statutory authority, can be parties to such an application.

In the submissions advanced before this Court for and on behalf of the Interventient Petitioner, Mr. Sirimanna's first point of contention is that in view of the pending presidential election, the Government should not have issued the liquor license to its supporters.

The next contention of Mr. Sirimanna is that **P7** was written by the 2nd Respondent to the 1st Respondent on the basis that the Minister had approved; in that case, it is in violation of Section 28A of the Ordinance because the Minister's approval need not be notified to the 1st Respondent, as the Minister himself can issue a license in terms of Section 28A without relying on Section 19. Further, his argument is that the Minister's approval is not to be seen there, and therefore, it is illegal.

Finally, he argued that the license's valid time period has expired; therefore, this is futile.

On the other hand, Learned President Counsel, Mr. De Silva's, argument is that the Interventient Petitioner's objection to issuance of liquor license they need to file separate applications as this is an application between the Petitioner and the Respondents for the non-issuance of the said license;

therefore, third party applications cannot be considered in this Application. If at all, the Interventient Petitioner should file a separate petition; however, as no such separate writ application has been instituted, the Interventient Petitioner cannot be allowed to be a party in this Application. In addition to that, the Attorney General could have taken up all the objections that is raised by Mr. Sirimanna on behalf of the Interventient Petitioner; therefore, the participation of the said Interventient Petitioner has to be rejected.

In any case he argued that whether it is Section 28A or 19A, finally the issuance is done by the 1st Respondent, who is the competent authority empowered to do so.

Whether intervention is provided for

The power and jurisdiction to issue writs are conferred on this Court by Article 140 of the Constitution. However, procedure is not provided for in the Constitution.

The Supreme Court is empowered to lay down the procedure by way of rules, in the manner as stipulated by Article 136 of the Constitution;

“136. (1) Subject to the provisions of the Constitution and of any law the Chief Justice with any three Judges of the Supreme Court nominated by him, may, from time to time, make rules regulating generally the practice and procedure of the Court including -

(a) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the terms under which appeals to the Supreme Court and the Court of Appeal are to be entertained and provision for the dismissal of such appeals for noncompliance with such rules;

(b) rules as to the proceedings in the Supreme Court and Court of Appeal in the exercise of the several jurisdictions conferred on such Courts by the Constitution or by any law, including the time within which such matters may be instituted or brought before such Courts and the dismissal of;

(c) such matters for non-compliance with such rules; rules as to the granting of bail;

(d) rules as to the stay of proceedings; ...”

Accordingly, the Supreme Court has promulgated Rules that are applicable to the application, hearing, and disposing of writ applications. The Supreme Court Rule 1990 provides thus;

“(4) Where upon such application being supported, the Court orders the issue of notice - (a) the Court shall fix the date for the tendering by the petitioner of the requisite notices, together with such number of copies of his application as there are respondents, and stamped addressed envelopes for dispatch of such notices by registered post to the respondents, it being the duty of the petitioner to ensure the accuracy of such notices, copies and addresses; if no date is fixed by the Court, the petitioner shall tender such notices, copies and envelopes within two weeks;

(b) the Court shall fix the dates for the filing of statements of objections by the respondents, for the filing of counter affidavits by the petitioner, and for the hearing of the application; if any of such dates is not fixed by the Court, the following provisions shall apply:

(i) a statement of objections shall be filed by each respondent within four weeks of the date of service of notice;

(ii) counter-affidavits if any, shall be filed by the petitioner within four weeks of the date of receipt of the statement of objections; and

(iii) the date of hearing shall be fixed by the Registrar;

(c) the dates fixed by the Court, or specified in the preceding paragraph, shall not be varied by the Registrar except upon a consent motion signed by all the parties or their Attorneys-at-law. Any party may by motion apply for variation without such consent after giving notice thereof (including notice of date on which such motion will be supported) to all other parties; such application shall be dealt with by a single judge in Chambers, who may, however direct that the matter be dealt with in open court.

(5) Every respondent who lodges a statement of objections, and every petitioner who lodges a counter affidavit shall forthwith serve a copy thereof, together with any supporting affidavit and exhibits on every other party (other than a party who waives the right to receive the same).”¹

Accordingly, nowhere in the Rules, other than for the applications and objections by the Respondents and the counter affidavits, if necessary, no provision in the Rules or any other by-law has provided for intervention. This has been clearly enunciated by His Lordship Justice Marsoof in the case of *R.H.P. Fernando and Another v. The Divisional Secretary, Haguruanketha and Others* [2005]² to the following effect;

“In this context, it is pertinent to note that the Court of Appeal (Appellate Procedure) rules, 1990 made under Article 136 of the Constitution of the Democratic Socialist Republic of

¹ The Court of Appeal (Appellate Procedure) Rules 1990, Part II “Applications”

² (CA 456/2003) BLR 120 (CA Minutes 03.04.2004).

Sri Lanka setting out the procedure to be followed by this Court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in these proceedings. Learned Counsel for the Petitioner submits that these rules stipulate clearly the manner in which writ applications filed under Article 140 of the Constitution should be determined, and strongly contends that these rules have been formulated so as to preclude third party interventions. He submits that the mere fact that an intervenient has sufficient interest in the subject matter of a pending writ application would not by itself warrant the addition of the intervenient as a party to the pending litigation.... but to permit the Intervenient Petitioner to be added as a party and to file objections with respect to the substantive relief sought by the Petitioner against the Respondents would, in the opinion of this Court, open the floodgates to a large number of similar applications which will add further to laws delays....

This observation is relevant to the present case despite the fact that there is no corresponding provision in the Constitution or any other law seeking to confer on a third party a right of audience in the Court of Appeal in the lines of Article 134(3) of the Constitution, as it illustrates the restraint that is exercised by even the apex court of the country in dealing with applications for third party intervention in the context of the supervisory jurisdiction of court which is exercised with a view of keeping administrative authorities within their lawful bounds.”

Therefore, in writ applications, no intervention or the application thereof is provided for by the Supreme Court Rules.

However, there have been extreme cases where such interventions have been allowed. Therefore, the judgement enunciated by this Court, as well as the Supreme Court, can be categorised into two

schools of thought: One is where the application for intervention has not been allowed³, and the other is where the application for intervention has been allowed⁴.

As mentioned above, Justice Marsoof's judgement is one such case where the application for intervention was not allowed, and in addition to that, it must always be remembered that intervention can be allowed only it by the final order of this Court, when some party is affected.

However, such basis is not established by the Interventient-Petitioner in this Application; their only interest is to look after the interests of the other members of their Association and the general public. It may be true that the Interventient-Petitioner is attempting to block the Petitioner's application to obtain such a license through their Objections. However, such objections can be made when the 1st and 2nd Respondents call for objections; but such objections have already been called for, and an inquiry has been conducted, and a report has also been forwarded, and on that report, it was recommended that since the objections are baseless, the Petitioner should be issued with the license.

However, this is at the application stage. Now, we have not decided whether the Writ Application of the Petitioner should be allowed or dismissed; it has not been even fixed for Arguments as it is still at the Objections stage.

Grounds of intervention urged

³ This can be seen in cases such as *M.D. Chandrasena and Two Others v. S.F. de Silva* 63 NLR 143; *Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and two others* [2005] BLR 120; *Tyre House (Pvt) Ltd. vs. Director General Customs* [1996] (CA Application No. 730/95); C.A. Writ Application No.586/2007 (2012 BLR 310. 4.)

⁴ This can be seen in cases such as *Mahanayake Thero, Malwatte Vihare vs. Registrar General et al* (1937) 39 NLR 186; *Jetwing Hotel Management Service (Pvt) Ltd. vs. Securities and Exchange Commission and others* (CA Writ 293/2009); *Jayawardane vs. Minister of Health and others* (CA Writ 978/2008).

In addition to that, the Interventient-Petitioners, having referred to several grounds, have urged that there are legal grounds for them to intervene; however, none of those grounds are relevant to them personally, or relevant to the general public at large. Their only grievance is that if the Petitioner is issued with a license to carry on its business, they, as liquor licensees, will be affected as their business can be divided among the Petitioner and the other liquor licensees.

If that is the case, if the license is restricted only to intervenient Petitioners and other members of the association that the two intervenient Petitioners represent, this itself is a creation of monopoly which undermines the very rationale of Article 12 of the Constitution. Therefore, under an open economy, level playing fields must always be created for the businessmen to create opportunities for themselves and for the others to compete in the open market, and the license is given only for the purpose of selling, and nothing else (such as manufacturing). Thus, when it comes to sale, the same goods are sold by the competing licensees, but the important thing is the service that they provide; therefore, those who give better service will attract more customers. As such, in an open economy, levelled playfields must be created and therefore, if the intervention is allowed on that basis, it might affect everybody's rights. Therefore, intervention on that basis should not be allowed unless such an Interventient-Petitioner shows extreme circumstance where rights would be affected after the decision as Justice Kulatunga observed in the case *Weerasinghe Arachchige Ranith Privantha Weerasinghe and Others v. Kalubandana Rushith Thamodya Sarath Kumara and Others*⁵.

In addition to that, at the inquiry, the grounds urged in Support of the claim of the Interventient-Petitioners were based on political reasons as well. The Counsel argued that as an election bribe,

⁵ *Weerasinghe Arachchige Ranith Privantha Weerasinghe and others vs. Kalubandana Rushith Thamodya Sarath Kumara and others* (Order on Intervention) C.A. Minutes: 18.06.2025

the supporters were issued with a license. However, there is no proof placed before court to establish that it was given as a bribe to the people who supported them; thus, they have to prove that the virtual Petitioner is a supporter of a particular political party and/or they had received a bribe as consideration for their support.

Furthermore, the Government has decided to collect its revenue by issuing some licenses, and for that purpose it had advertised to issue such licenses. However, the Interventient-Petitioners cannot deny that they are also sellers of liquor, and if the liquor consumption has gone up by reason of the new liquor shops and if there is an adverse effect on the society as it is a question of fact that needs to be decided on evidence, and therefore, that cannot be done in this case.

However, the other grounds including the legal arguments based on Sections 28A and 19, still can be addressed by the Attorney General, who is the chief legal officer who advises the Minister as well as the officers, and in this Application, is defending the action of the Respondents who have not issued the license and withheld the same.

Accordingly, if the intervention is granted, it creates opportunities for the opening of floodgates, where unnecessary torrent of cases will flood into court and inundate the courts with such applications. Therefore, since there are no relevant provisions provided for, this Application cannot be allowed.

I will paraphrase my argument in a different manner. In a hypothetical case, if the intervention is allowed to a party (Interventient-Petitioner) who supports the Petitioner's Application, such an intervention permitted will cause the Respondents to be attacked not only from the front, but from the behind as well.

Hence, it should not be allowed in an adversarial system; however, particularly now, the Interventient-Petitioners are trying to play a game of snooker rather than a gentleman's game of cricket. Therefore, this intervention cannot be allowed.

Conclusion

Accordingly, this Application is refused, subject to the cost of Rs. 52,500/- (Fifty-Two Thousand Five Hundred Rupees) only in the Application bearing No. (WRT) 667/2024, and the other people should also contribute to that.

This order applies to the above-mentioned connected matters as well.

JUDGE OF THE COURT OF APPEAL