

**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.*

Spirit World (Pvt) Ltd.,
No. 196/A/1, Sangabo Mawatha,
Galawilawatta, Homagama.

CA (Writ) App. No. 60/2025

PETITIONER

Vs.

1. Commissioner General of Excise,
Excise Department of Sri Lanka,
No. 353, Kotte Road, Rajagiriya.
2. Secretary to the Ministry of Finance,
Planning and Digital Economy,
The Secretariat,
Colombo 01.
3. Director General,
Department of Fiscal Policy,

Ministry of Finance, Planning and
Digital Economy,
The Secretariat,
Colombo 01.

4. Hon. Attorney General,

Attorney General's Department,

Colombo 12.
5. The Divisional Secretary,

Divisional Secretariat,

Thawalama.

RESPONDENTS

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

Counsel:

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

Manohara Jayasinghe, D.S.G. with Dilan Sampath, S.C. for the Respondents.

Argued on: 29.01.2026

Delivered on: 04.03.2026

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

Judgement

Introduction

The counsel on all sides agreed that all the matters can be disposed by one judgement; therefore, the judgement given in this Application applies to the connected Writ Applications bearing Nos. 61/2025, 62/2025, 63/2025, 64/2025, 65/2025, 66/2025, 67/2025, 68/2025, 70/2025, 71/2025, 72/2025 and 73/2025.

The entire nation of Sri Lanka faced an economic debacle in the year 2022, and to resurrect from the said economic debacle, the Government had to resort to various ways and means of earning revenue, including taxations of all the citizens of Sri Lanka; later, just before the elections, even to meet the election expenses, the Government had decided to earn more money by issuing more liquor licenses to the prospective applicants. For that purpose, the line minister had obtained the approval of the Parliament as the law requires.

Thereafter, published advertisements inviting the prospective licensees to submit their applications; the said advertisements appeared in the Gazettes marked as **P2(1)–P2(3)** annexed to the Petition issued by the Ministry of Finance. Then, the Petitioner, having obtained an application form, had submitted his duly filled application to the Department of Excise, along with all the relevant documents as well, which I will advert to in the following part of my judgement.

Although the 1st Respondent has by a letter to the 2nd Respondent seeking his recommendations for approval to take further steps in issuing the license applied for by the Petitioner, the 2nd Respondent had not responded to the said recommendations. In the meantime, the Petitioner made all endeavours to obtain an interview which was also unsuccessful. Thereafter, the Petitioner sought the intervention of this Court by way of this Application, to compel the Respondents to issue the said license on the basis that he has a legitimate expectation.

After issuing direct notice on the Respondents, they have filed their respective Limited Objections along with three documents marked as **R1**, **R2**, and **R3**, and vehemently objected to the issuance of formal notice.

However, after issuing formal notice, the Respondents further derelicted to file their formal Objections, and in the meantime, the matter was fixed for Arguments as the law requires. At the Argument stage however, the Respondents came and made their submissions. Following arguments were advanced by Counsel;

Arguments

The first contention of Mr. Silva, President's Counsel, is that the Petitioner made an application responding to the three Gazettes marked **P2(1)–P2(3)** issued by the Ministry of Finance calling for applications for liquor licenses, and having satisfied all the criteria set out therein, the Petitioner was awaiting the issuance of the license, since he had already fulfilled the requirements to be a licensee. The 1st Respondent had written to the relevant authority requesting the 2nd Respondent for recommendation or approval to issue the license. Therefore, the Petitioner entertained a

reasonable expectation that the license would be issued in his favour to carry on the business of a liquor shop.

However, in the meantime, with the Limited Objections filed by the Respondents, two documents have transpired, which are annexed to the Petition and marked as **R1** and **R2**, being a directive given by His Excellency the President of the Republic to the effect that all new licenses be suspended. The Petitioner's contention is that the said directive is illegal, *ultra vires*, and irrational; therefore, the Petitioner seeks a *Writ of Mandamus* compelling the Respondents, who are the relevant authorities empowered by law to issue licenses, to issue the license where the Petitioner or any applicant has satisfied the criteria and is therefore eligible to be issued with a license. He further relies upon two cases decided by Kulatunga J.¹

On the other hand, as Mr. Dilan Sampath argued, the documents marked **R1** and **R2** annexed to the Petition are directives issued by the President's Secretary, not in the capacity of Secretary to the Minister of Finance, but in the capacity of Secretary to the President.

Further, he argued that the acts of the President can only be challenged by way of a Fundamental Rights application and that he is not amenable to writ jurisdiction. Furthermore, he argued that the decisions reflected in the documents marked **R1** and **R2** are temporary in nature and not permanent; therefore, there is no necessity for this Court to issue a writ.

¹ CA (Writ) Application 0052/24 (CA Minutes 22.10.2025); CA (Writ) Application 0517/24 (CA Minutes 17.07.2025)

In response, Mr. Silva, President Counsel, contended that although the directive appears to be temporary, it has, in effect, become permanent, as no license has been issued to the Petitioner to date, despite having satisfied all the criteria required by law to obtain a license and still awaiting the opportunity to pay the license fee. In response to a question posed by Court, Mr. Silva submitted that the President is not above the law to issue directives as reflected in **R1** and **R2**, as he himself is a creation of the Constitution, and his activities are governed and controlled by the Constitution and statutory law, and therefore are amenable to writ jurisdiction.

Further, he contended that in a constitutional democracy, unlike in England, writs are available not as prerogative remedies but as a matter of right, where there is a breach of duty arising from statute or law.

Factual matrix

According to the Petitioner, the Petitioner is a body corporate duly incorporated under the Companies Act, No. 7 of 2007, and its registered address is given at the caption; to establish these facts, the Petitioner has annexed the Certificate of Incorporation as **P1** and the registered address as **P1(B)**. The Petitioner further states that three gazettes were published by the Government in 2024, in the backdrop of recovering from harsh economic conditions, calling for applications for liquor licenses to collect government revenue; the said gazettes are marked and annexed to the Petition as **P2(1)** to **P2(3)**.

The Petitioner asserts that having obtained an application form from the Department of Excise as advertised, responding to the said advertisements appearing in the gazette, the Petitioner has

submitted duly filled application for the purpose of obtaining an R.B.4 liquor license. Along with the duly filled application, the Petitioner has submitted the following documents;

- (i) Certificate of Incorporation issued by the Registrar of Companies and the registered address.
- (ii) Survey Plan depicting the premises to establish that no school or place of worship is situated within the radius of hundred metres (100m) of its premises.
- (iii) Building plan approved by the Pradeshiya Sabha to establish that there is a place to operate the wine stores once the license is issued.
- (iv) Lease agreement in respect of the said premises to establish that there is a permanent place to operate the business of wine stores within the area concerned.
- (v) Affidavit from the Director of the company to establish that no conviction under the Penal Code or Excise Ordinance is against such director; including the Police Clearance Certificate and the Clearance Certificate from the Divisional Secretary.

Petitioner's grievance

It is the Petitioner's position, that after submitting the said application, the 1st Respondent has informed the 2nd Respondent by letter marked as **P3** that the Petitioner has submitted a duly completed application along with the relevant documents to obtain an R.B.4 liquor license, and has sought the recommendation or approval of the 2nd Respondent to take further steps to grant the said license. Since so far, no such steps or recommendations have been given, the Petitioner has instituted the above-styled application to obtain the following writs, compelling the Respondents to issue the said liquor license. The said relief *inter alia* are formulated in the following manner;

“b. Issue an Order in the nature of a Writ of Mandamus directing the 1st and/or the 2nd and/or 3rd and/or 4th and/or 5th Respondent and/or any one or more of them to grant the aforesaid R.B.4/F.L.4 license to the Petitioner;

c. To call for and inspect the records including the Petitioner’s application form submitted for the obtaining of an R.B.4/F.L.4 license and those in relation to the R.B.4/F.L.4 licenses that have been thus far issued in the Galle district;”

Objections

However, the Respondents have not filed their respective Objections. Nevertheless, they had filed their Limited Objections along with the affidavits just before the issuance of formal notice and resisted the issuance of formal notice. After issuance of formal notice, no formal Objections was filed by the Respondents; however, at the hearing, the counsel for the Respondents heavily relied upon the three documents filed along with their Limited Objections. Now I will advert to those documents.

The first document relied upon by the Respondents is the document dated 21.10.2024 and marked as **R1**, issued by the Secretary to the President addressed to the Secretary to Ministry of Finance to withhold all liquor license issued after 01.01.2024. Thereafter, a similar letter is followed addressed to the Secretary to the Ministry of Finance, dated 12.12.2024 and marked as **R2**, advising to grant certain liquor license in limited circumstances, particularly aiming at tourism. Subsequently, the Director General of the Ministry of Finance has issued another letter dated 19.12.2024, to the Commissioner General of Excise, referring to the said letters **R1** and **R2**, to

issue liquor license to certain categories except for the category of liquor license sought by the Petitioner.

Questions to be decided

On consideration of what is placed before this Court by way of pleadings and arguments of counsel on both sides, as referred to above, it is my view that the following questions arise for the consideration of this Court;

- (1) Whether the Petitioner can entertain legitimate expectation to receive his license from the Respondents
- (2) Whether the Petitioner's expectation is legitimate
- (3) Whether the Respondents have denied the Petitioner's right to receive a license by derelicting their duties
- (4) Whether **R1** and **R2** amount to legal impediments.
- (5) If so, whether a *Writ of Mandamus* lies, compelling the Respondents to issue the said license

The first question that I have raised is based on the much reliance placed upon by the Petitioner on his legitimate expectation, since he has submitted duly filled applications with the necessary documents, and since the 1st Respondent has informed the 2nd Respondent, seeking his recommendation or approval for the purpose of taking the next steps under the law in issuing the said license to the Petitioner, as reflected in the document marked as **P3**.

Since the 2nd Respondent has not responded to the said letter **P3**, thereafter, the Petitioner has taken further steps to make all endeavours to obtain an interview to convince the Respondents to issue his license in which the opportunity was not granted, have the Respondents denied his right or legitimate expectation by derelicting their duty.

As asserted by the Petitioner and as admitted by the Respondents in their Limited Objections, the Petitioner has duly submitted his application and received by the Respondents, and on that, the 1st Respondent has made the recommendation to the 2nd Respondent informing him to give his recommendation or approval to take further steps to issue the said license. However, in view of the documents marked as **R1** to **R3** filed along with the Respondents' Limited Objections before the issuance of formal notice in this case, the 1st to 3rd Respondents, particularly the 2nd Respondent, have failed in their duty to take further steps in recommending or approving the application to issue the license if the application had been correctly submitted. Therefore, it is my view that the 2nd Respondent has derelicted his duty.

Then the minister having decided to collect revenue for the Government, obtained permission from the Parliament as the law requires, to issue liquor licenses; accordingly, the Respondents have advertised inviting applications from the prospective licensees, as appeared in the Gazettes marked as **P2(1)** to **P2(3)**. The Petitioner having obtained a license from the Department of Excise, having duly filled the said application and submitted the same with the relevant documents to the Department of Excise and after perusing and considering the said application along with the documents, the 1st Respondent has recommended and approved the same, and forwarded it to the 2nd Respondent with the letter marked as **P3** for his recommendations for approval.

Since the said application had been accepted and forwarded for the recommendation by the 1st Respondent and the 2nd Respondent, there is a legitimate expectation entertained by the Petitioner and if the 2nd Respondent does not take steps in furtherance of the application submitted by the Petitioner and the recommendations by the 1st Respondent, there is a dereliction of duty by the 2nd Respondent. Thus, he has to obtain approval, and thereafter, allow the application to be proceeded thereof. The application is in the pipeline, and it is now clogged due to the dereliction; therefore, it is my view that the Petitioner's legitimate expectation was undermined and scuttled by the 2nd Respondent.

I rely upon Wade and Forsyth in the authoritative textbook "Administrative Law" to further buttress my view;

"As the preceding section has illustrate, licensing cases often contain a large element of policy, since the licensing authority will commonly be free to grant or withhold licences as it thinks best in the public interest. Very extensive licensing powers are possessed by the central government, local authorities, the police, magistrates, tribunals and other authorities, and in many cases they give what might be called powers of commercial life or death over a person's trade or livelihood. Local authorities license such things as cinemas, nursing homes, road vehicles, animal boarding establishments, knackers' yards, fireworks factories, pawnbrokers and slaughterhouses. Police licensing powers cover, inter alia, firearms, pedlars, taxicabs and taxi-drivers. Many of these arrangements might be thought to cry out for administrative rationalisation and procedural regularity, but before Ridge v. Baldwin only the licensing of public-houses and places of entertainment,

which has been in the hands of magistrates since the sixteenth century, had made much contribution to the case law. Although it was firmly established that this form of licensing was a judicial function, and therefore subject to natural justice, this was so far from being recognised as a general principle that the Privy Council was able to hold in 1950 that a trader's licence could be cancelled without fair procedure of any kind.

Ridge v. Baldwin transformed the situation; and in particular the courts have shown a strong disposition to bring licensing functions generally within their doctrine that administrative powers must be exercised fairly. Nor is the duty excluded because the licence is in the form of a contract with a local authority, since all authorities' powers are statutory. Nor is the principle confined to cases of cancellation or suspension on grounds of misconduct, where the claims of natural justice are obviously strongest. It is recognised that licensing is a drastic power, greatly affecting the rights and liberties of citizens, and in particular their livelihoods, and that this alone demands fair administrative procedure. Thus, where a street trader, allowed to sell food under an informal arrangement with the local authority, was summarily given notice to quit, the decision was quashed because she had not first been given a hearing, even though she was a mere temporary licensee; and the court stressed the duty of fairness where livelihood is at stake.”²

² Wade, W., & Forsyth, C. (12th Edition, Oxford University Press 2023). *Administrative Law*, Part 14 Chapter 6, pp. 433-434.

Then, the question arises whether **R1** to **R3** has created any legal impediment for the 1st to 3rd Respondents to take steps to issue the license as the Respondents have heavily rely on.

The Secretary to the President of the Republic has written **R1** and **R2** on the advice of the President, not as a Secretary to the Finance Minister, because the President himself holds the portfolio of the Ministry of Finance, but only as the Secretary to the President, who has given a political opinion rather than a legal opinion as none of the said letters have quoted any legal or constitutional provision under which the President's Secretary has written the said documents. Neither have the Respondents cited such a legal provision to act according to the said letters.

In addition to that, the Director General of the Finance Ministry has written a similar letter to the 1st Respondent; however, he also has not given any direction under a statute or law. Therefore, I must hold that **R1** and **R2** does not have any legally binding or legal impediments for the Respondents to proceed with the application in the issuance of the said license to the Petitioner.

Secondly, the document marked as **R3**, the letter issued by the Director General of the Finance Ministry, is not a legal document; therefore, there is no duty or authority to issue such a document.

As such, it is my view that there is no legal impediment or bar for the 1st to 3rd Respondents to take steps to issue the said license to the Petitioner. Thus, it is my view that since the Petitioner has duly submitted the application for the purpose of obtaining its license, particularly when there is a recommendation by the 1st Respondent to the 2nd Respondent seeking his approval in taking further steps in issuing the said license, it is the duty of the 2nd Respondent to give further instructions on the next course of action. Therefore, it is my view that the 2nd Respondent has derelicted his duty,

and thus, has violated the law which requires him to send his recommendation to the Minister; the Minister may be the President, but the President is acting there by wearing two hats; one as the line minister, and the other as the head of the Executive. However, as a minister, he has to decide on whether to give his approval or not; but such approval has not been sought in this case, and he has no reason to do so because nowhere in **R1** and **R2** has it cited any legal provisions nor has it been sent by the Secretary to the Ministry of Finance, but by the Secretary to the President, who has written the said documents as an agent to the President in a political capacity. Therefore, the said documents do not have any legal binding on the Respondents.

The letters marked **R1** and **R2** have been written by the Secretary to the President. As I have mentioned above, the letters appear to be written in the capacity of the President's agent or servant who is serving the president as a secretary. Therefore, it appears that the said two documents have been written addressed to the Secretary of the Ministry of Finance not to issue licenses, as a political decision of the President not taken under any provision of law. The Petitioner has not directly or indirectly attacked those two documents; therefore, it is my view that I need not make any direction or determination thereon, since it has no value as far as statutory or constitutional provisions are concerned in the context of this Application.

The President, being an elected member of a political party, may have written so as a political document through his secretary, which has nothing to do with the provisions, statutory or legal, realm that governs the Excise Ordinance and the issuance of liquor licenses to the prospective licensees. Therefore, I need not make any determination on that.

Secondly, the Director General of the Finance Ministry has also written to the Commissioner General of Excise and has not quoted any legal or constitutional provision under which he has written such a letter. Therefore, it is my view that the letter marked **R3** does not have any legal bearing; however, I need not make any legal determination on this too because it is also not attacked by the Petitioner, except the Respondents have merely relied upon these three documents.

President is not above the law

In fact, when this matter was initially supported for formal notice, Mr. Jayasinghe, D.S.G. was heard to address the Bench on the basis that **R1** and **R2** have been written by the President's Secretary on the advice of the President, which no minister, administrative officer, or any other officer of this country would have ignored. On questioning whether the president is above the law, Mr. Jayasinghe did not give a proper answer.

An answer of course lies in the judgement of *Visuvalingam v. Liyanage*³, where His Lordships Sharvananda J. and Samarakoon C.J. rejected the argument advanced on behalf of the Attorney General by no less of a personality than Mr. Shibly Aziz, D.S.G. (as he then was) that the President is wearing a mantle equivalent to that of a monarch under the British Constitution. This is illustrated in the following dictum of Sharvananda J. in the said case;

“Before concluding my judgment I must refer to a preliminary objection raised by the Deputy Solicitor General. It was contended by the Deputy Solicitor General that this Court

³ *Visuvalingam and Others v. Liyanage and Others* [1983] 1 Sri L.R. 203

is precluded from directly or indirectly calling in question or making a determination on any matter relating to the performance of the official acts of the President. He supported this objection by reference to Article 35 of the Constitution. I cannot subscribe to this wide proposition. Actions of the executive are not above the law and can certainly be questioned in a court of Law.

Rule of Law will be found wanting in its completeness if the Deputy Solicitor General's contention in its wide dimension is to be accepted. Such an argument cuts across the ideals of the Constitution as reflected in its preamble. An intention to make acts of the President non-justiciable cannot be attributed to the makers of the Constitution. Article 35 of the Constitution provides only for the personal immunity of the President during his tenure of office from proceedings in any Court. The President cannot be summoned to Court to justify his action. But that is a far cry from saying that the President's acts cannot be examined by a Court of Law. Though the President is immune from proceedings in Court a party who invokes the acts of the President in his support will have to bear the burden of demonstrating that such acts of the President are warranted by law; the seal of the President by itself will not be sufficient to discharge that burden.”

Later, in the case of *Hirunika Eranjali Premachandra v. Hon. Attorney General and Others* [2024]⁴, this argument was rejected again, and the Supreme Court has held in many a cases that

⁴ SC Minutes 17.01.2024.

the President is also a creation by and under the Constitution and cannot act above the provisions of the Constitution and other relevant laws.⁵

The present Executive President is created with enormous powers when compared to the President appointed under the 1972 First Republican Constitution, before the Second Amendment to the same.

However, the President is only a creation of the Constitution of 1978. Nevertheless, the President cannot be treated equally to that of the English Monarch because the English Monarch is the repository of sovereign power. However, when it comes to the Sri Lankan Constitution, sovereignty is with the people, and that sovereignty is delegated to three institutions.

The President is the Head of the Executive branch, who exercises the executive power of the people; therefore, it is a trust held for and on behalf of the public. The office of the President is merely that of a trustee, and the person who holds office cannot do things according to his whims and fancies. He can do everything only subject to the Constitution and other relevant statutes and laws.

Therefore, he is not above the law at all. Thus, both Republican Constitutions derive their powers from the people who possess sovereignty, and the President only exercises delegated powers under both Constitutions.

⁵ SC (FR) Application 351/2018 (SC Minutes 13.12.2018).

It is the Supreme Court and other courts of the judiciary who are supposed to protect the Constitution when there is a violation. Therefore, the president cannot act in breach of the Constitution or any law by which his powers are derived from.

Whether *Writ of Mandamus* lies

In this case, it is my view that the actors are under the Excise Ordinance not the President nor his secretary, but the other Respondents who have not acted with due diligence when they were supposed to act, as for their inactions, the Petitioner has a complaint. As such, the President may have acted behind-the-curtains, but that does not affect the actors on the stage in this scenario. Here, the stage is set up only based on the statutory provisions that governs their actions; therefore, the President is not supposed to act on this stage, other than for when he has to act under certain circumstances while wearing the mantle of the finance minister.

Conclusion

Based on the reasons adumbrated above, I grant relief as prayed for in prayer (b) of the Petition, and further order Rs. 21,000/- (Twenty-One Thousand Rupees) as cost of litigation payable by the Respondents jointly and severally to the each and every Petitioner in all the above-mentioned connected matters.

JUDGE OF THE COURT OF APPEAL