

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 and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

The Hotels Association of Sri Lanka
No. 50, Nawam Mawatha,
Colombo 02.

PETITIONER

C. A. (Writ) Application
No. CA/ Writ/ 75/ 2017

Vs.

1. Colombo Municipal Council
Town Hall,
Colombo 07.
- 1A. Jayawardena Mudiyanseelage Badrani
Jayawardena
Additional Municipal Commissioner and
Officer Implementing the Powers and
Functions of the Colombo Municipal
Council,
Colombo Municipal Council,
Town Hall,
Colombo 07.
2. V. K. Anura
Municipal Commissioner and Officer
Implementing the Powers and Functions
of the Colombo Municipal Council,

Colombo Municipal Council,
Town Hall,
Colombo 07.

2A. Nanayakkara Siriwetti Mohottige
Lakshman Palitha Nanayakkara
Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 07.

2B. Miss. Roshani Dissanayake
Municipal Commissioner,
Colombo Municipal Council,
Colombo 07.

RESPONDENTS

Before : Dhammika Ganepola, J.

Counsel : Dr. Romesh De Silva, P.C. with Niran
Anketel for the Petitioner.
Ranil Samarasooriya with Shashiranga
Sooriyapatabendi for the 2nd Respondent.

Argued On : 27.06.2024, 21.10.2024

Written Submissions : Petitioner : 28.11.2024
tendered On

Decided On : 16.01.2025

Dhammika Ganepola, J.

In the instant application, the Petitioner challenges the decision of the Respondents contained in the purported Gazette notification marked P3, on imposition of a license duty on the total takings of the year 2017 on hotels within Colombo Municipality in terms of Section 247A (2) of the Municipal Councils Ordinance. It was submitted that the Petitioner Association consists of approximately 200 member hotels, including a large number of members whose premises are located within the limits of the Colombo Municipality.

The 2nd Respondent published the Gazette Notification No. 2001 dated 06th January 2017 [P3] stipulating license duties in terms of Section 247A, 247B, 247C and 247E of the Municipal Councils Ordinance. According to Schedule No. 01(a) of the Gazette Notification P3, the licence duties payable are based on the Annual Value of the premises. Schedule No. 01(b) contains a list of purposes for which licences must be obtained for the use of the premises. Schedule No. 01 (c)(i) of the above Gazette Notification P3 provides that, *a licence duty in respect of hotels, restaurants, or lodging houses registered with or approved by the Ceylon Tourist Board of point one per cent (1%) out of the total takings of the relevant hotels, restaurants, or lodging houses of the previous year should be imposed and levied with effect from 01st January 2017.*

Section 247A of the Municipal Councils Ordinance is as follows,

- 247A. (1) *A Municipal Council may impose and levy a duty in respect of licences issued by the Council.*
- (2) *The duty levied under subsection (1) in respect of any licence issued by the Council authorizing the use of any premises for any of the purposes described in this Ordinance or in any by-law made thereunder shall be determined by the Council according to the annual value of the premises so licensed, and, where such licence authorizes the use of such premises for the purpose of any trade, having regard to:*
- (a) the annual value of such premises;*
 - (b) the turnover of business of such premises;*
 - (c) the profit that is likely to be earned in such trade;*
and

- (d) *the essential nature of the goods or services supplied in the course of such trade:*

Provided that where the annual value of such premises falls within the limits of any item in Column 1 set out below, the maximum duty shall not exceed the sum set out in the corresponding entry in Column 11-

<i>Column I</i>	<i>Column II Rs.</i>
<i>Where the annual value: does not exceed Rs. 1,500</i>	<i>2,000</i>
<i>exceeds Rs. 1,500 but does not exceed Rs. 2,500</i>	<i>3,000</i>
<i>exceeds Rs. 2,500</i>	<i>5,000;</i>

Provided further, that where any such premises are used for the purposes of a hotel, restaurant or lodging house, and such hotel, restaurant or lodging house is registered with the Ceylon Tourist Board for the purposes of the Tourist Development Act, the duty so levied shall be according to the takings of the hotel, restaurant or lodging house for the year preceding the year in which the licence duty is levied, and shall not exceed one per centum of such takings. Where such hotel, restaurant or lodging house is in its first year of operation, the licence duty shall be determined and levied according to the annual value of such premises.

For the purposes of this section, " takings " in relation to a hotel, restaurant or lodging house means the total amount received or receivable from transactions entered into in respect of that hotel, restaurant or lodging house or for services performed in carrying on that hotel, restaurant or lodging house.

The Petitioner states that the Respondents are not empowered by law to charge its members who are running hotels in Colombo Municipality a licence duty of one per cent or any part thereof from the total takings of such hotels. The Respondents may only charge a licence duty if the Council is first empowered to issue licences that authorize the use of any premises for the purposes described in the Ordinance or any by-law. Nevertheless, it is claimed that the Municipal Council Ordinance or enacted by-laws does not empower the Council to licence/ register hotels.

Further, the Petitioner states that the law does not provide for any registration of hotels by the Ceylon Tourist Board for the purpose of the Tourist Development Act, No.14 of 1968 as the relevant provisions have been repealed by the Tourism Act No. 38 of 2005. Therefore, it was submitted that the Respondents are not empowered by law to charge the Petitioner's members licence duties in terms of the second proviso to Section 247A(2) of the Ordinance. Accordingly, the Petitioner states that the alleged decision of the Respondents to charge the above levy is illegally, arbitrarily, unlawfully, unreasonably and ultra vires.

In view of such, the Petitioner seeks inter alia a mandate in the nature of Writs of Certiorari quashing the decision contained in Schedule No.01 (c)(i) of Gazette Notification P3 to levy one per cent of total takings of hotels, decision contained in item 103 of Schedule No.01(b) of Gazette Notification P3 requiring licences to be obtained and to levy licence duties in respect of keeping a hotel, Writs of Prohibition prohibiting Respondents from levying one per cent of total takings of hotels, prohibiting Respondents from requiring licences to be obtained and levying licence duties in respect of keeping a hotel for the year 2017.

Power of the Municipal Council to issue licences under the Ordinance

As per Section 247A (1) of the Ordinance, a Municipal Council may impose and levy a duty in respect of licences issued by the Council. The Petitioner argued that the Municipal Council Ordinance or enacted by-laws does not empower the Municipal Council to issue licence to hotels. Therefore, the Petitioner advanced the position that the Municipal Councils are not empowered to impose and levy a duty in respect of hotels owing to the fact that the Municipal Councils are not empowered to issue license to hotels.

Although the Petitioner states that the Ordinance does not empower the Municipal Council to issue licence to hotels, Section 40 of the Municipal Council Ordinance under its general powers, stipulates that a Municipal Council shall have the power to grant licences for any purpose subject to the prior approval of the Minister. Section 40 of the above Ordinance is as follows:

40.(1) For the purpose of the discharge of its duties under this Ordinance, a Municipal Council (without prejudice to any other

powers specially conferred upon it) shall have the following powers:-

...

- (h) to grant, with the prior approval of the Minister, to any person, firm, company or corporation for any purpose, a licence or concession, whether exclusive or otherwise, for any period or for any consideration, subject to such terms and conditions as to the Council may seem fit;*

Accordingly, I do not agree with the contention of the Petitioner that the Municipal Council Ordinance does not empower the Council to issue licence to hotels.

A duty levied under subsection 247A (1) of the Ordinance shall be determined according to Section 247A(2) of the Ordinance. The table of licence duty stipulated in Schedule No.1(a) of the Gazette Notification P3 has been allegedly imposed under Section 247A of the Ordinance but not under any by-laws. It is noted that the Gazette Notification P3 provides that *“This license duties and Taxes levied by the Colombo Municipal Council for the year 2017 under the provisions of Sections 247A,247B,247C and 247E of the Municipal Councils Ordinance (Chapter 252) as amended by the Municipal Councils (Amendment) Act, Nos. 42 of 1979 and 20 of 1985.”*

However, the powers conferred to make by-laws under Section 272 of the Ordinance are without prejudice to the general powers conferred to the Council. Therefore, as per the powers conferred to the Council to grant licences under Section 40 of the Ordinance and to impose a duty levy in respect of licences by Section 247A (1) of the Ordinance, there is no barrier for the Municipal Council to publish a list of purposes for which the premises including hotels may be used subject to obtaining a licence as specified under Section (b) of Schedule No. 01 of the Gazette Notification P3.

Powers of the Municipal Council to issue licences under the by-laws

However, the Petitioner further contended that the by-laws made by the Council do not empower the Council to issue licence or to register hotels. Section 267 of the Ordinance specifies the power to make by-laws for the purpose of carrying out the principles and provisions of the Ordinance. Section 267 of the Ordinance is as follows.

267 (1) *Every Municipal Council may, from time to time, make and when made may revoke or amend, such by-laws as may appear necessary for the purpose of carrying out the principles and provisions of this Ordinance.*

The Petitioner relies on Section 272 of the Ordinance which refers to the matters upon which by-laws may be made. Said Section 272 is as follows:

272. *In particular and without prejudice to the generality of the powers conferred by the preceding sections, by-laws may be made by a Municipal Council for and with respect to all or any of the following matters, namely: -*

...

(22) *The licensing, registration, and regulation of lodging houses, restaurants, eating houses and tea and coffee boutiques.*

The Petitioner submits that the above section does not empower the Council to make by-laws on the issuance of licences for hotels, and accordingly, hotels are not required to obtain a licence under by-laws. It is important to observe that Section (c)(i) of Schedule No. 01 of the Gazette Notification P3 also differentiates the hotel from restaurants and lodging houses. Nevertheless, as mentioned above the Gazette Notification P3 has been issued in terms of the provisions of Sections 247A, 247B, 247C and 247E of the Municipal Council Ordinance but not in terms of the by-laws made by the Council. Consequently, I am of the view that a necessity does not arise for this Court to consider whether the Municipal Council is empowered to make by-laws in respect of the hotels.

Applicability of Provisos to Section 247A(2) of the Ordinance

The Petitioner contends that the Respondents are not empowered by law to charge licence duties in terms of the second proviso to Section 247A(2) of the Ordinance. It is submitted that the second proviso to Section 247A(2) is subjected to the limits prescribed under the first proviso and accordingly, the first proviso cannot be exceeded. The Petitioner states that as per Section 247A(2), the duties levied have to be consistent with the annual value and in the instant case, the duty levied has no relation to the annual value as the duty to be levied is in terms of total takings. It was submitted that on that ground alone, the reliefs prayed for must be granted.

Section 247A(2), in general, provides that the duty levied in respect of any licence authorizing the use of any premises for any of the purposes described in this Ordinance or in any by-law made thereunder shall be determined by the Council according to the annual value of the premises so licensed. However, where such licence authorizes the use of such premises for the purposes of any trade, the duty levied has to be determined having regard to the annual value of such premises, the turnover of business of such trade, the profit that is likely to be earned in such trade and the essential nature of the goods or services supplied in the course of such trade. As such, as per Section 247A (2), where the licence authorizes the use of respective premises for the purpose of any trade, the determination of the duty to be levied should not be restricted only to the annual value of such premises. However, Counsel for the Petitioner argues that as per the first proviso to Section 247A of the Ordinance, where the annual value of such premises exceeds Rs. 2500, the maximum duty to be imposed shall not exceed Rs. 5000.

This Court observes that the provisions relating to imposing duties where a licenced premises is used for the purposes of any trade had been introduced by the amendment to the Act by Act, No.20 of 1985. Prior to such an amendment in 1985, Section 247A(2) of the enactment had appeared as follows:

“(2) The duty levied under subsection (1) in respect of any licence issued by the Council authorizing the use of any premises for any of the purposes described in this Ordinance or in any by-law made thereunder shall be determined by the Council according to the annual value of the premises so licensed :

Provided that where the annual value of such premises falls within the limits of any item in Column I set out below, the maximum duty shall not exceed the sum set out in the corresponding entry in Column II—

<i>Column I</i>	<i>Column II</i>
<i>Where the annual value—</i>	<i>Rs.</i>
<i>does not exceed Rs. 1,500</i>	<i>..2,000</i>
<i>exceeds Rs, 1,500 but does not exceed Rs. 2.500</i>	<i>..3,000</i>
<i>exceeds Rs. 2,500</i>	<i>..5,000</i>

From the original enactment (prior to amendment in 1985) cited above, it appears that the Legislature had intended to specify such limitations on

the imposition of a duty in respect of licensed premises in general without taking into account the fact as to whether such licensed premises shall be used for trade purposes or not. In other words, at the time of the introduction of original Section 247A, the intention of legislation had been that the duty imposed under Section 247A should be solely based on a single consideration i.e., the annual value of the premises. However, with the introduction of the amendment in 1985, the legislature had intended to deviate from such position and to take into account matters such as the turnover of business of such trade, the profit that is likely to be earned in such trade and the essential nature of the goods or services supplied in the course of such trade in addition to the annual value, where such licence authorizes the use of such premises for the purposes of any trade.

In the said background, this Court is of the view that the above first proviso should be interpreted giving effect to the purposive rule. The section must be construed as a whole and the proviso may throw light upon the construction of the operative part. The term "*maximum duty*" mentioned in the first proviso shall only apply in instances where the duty is entirely determined based on the annual value. Hence, I view that the first proviso shall only apply in the instances where the "*annual value of the premises*" is the sole consideration for the imposition of levy and where such licensed premises are not used for trade purposes. In the said backdrop, I am unable to agree with the position advanced by the Petitioner that as per the first proviso to Section 247A(2), the maximum duty imposed on the Petitioner should not exceed beyond Rs.5000.

The non-existence of the Ceylon Tourist Board referred to in the second proviso

The second proviso stipulates, that *where any premises are used for the purposes of a hotel, restaurant or lodging house, and such hotel, restaurant or lodging house is registered with or approved or recognised by the Ceylon Tourist Board for the purposes of the Tourist Development Act No.14 of 1968, the duty so levied shall be according to the takings of the hotel, restaurant or lodging house for the year preceding the year in which the licence duty is levied, and shall not exceed one per centum of such takings*. It is apparent that the second proviso specifically provides the manner in which the duties should be levied in case of hotels, restaurants and lodging houses. However, the Petitioner argues that in view of the repealing of certain provisions under the Ceylon Tourist Board Act No.10 of 1966 by Section 67(1) of the Tourism Act, No.38 of 2005, the Ceylon Tourist Board

is no longer in existence. Hence, the Petitioner states that none of its members running hotels are not registered with the Ceylon Tourist Board for the purpose of the Tourist Development Act No.14 of 1968 as there is no Ceylon Tourist Board in existence at the moment. Accordingly, it was submitted that second proviso to Section 247A has no application in respect of the Petitioner.

However, the Respondents argued that the said position advanced by the Petitioner would be baseless in view of Section 16 of the Interpretation Ordinance and the legal principles of statute interpretation. Section 16 of the Interpretation Ordinance provides that, where any written law or document reference is made to any written law that is subsequently repealed, such reference shall be deemed to be made to the written law by which the repeal is effected or to the corresponding portion thereof. This principle has been given effect to by the Supreme Court in the case of **Sepala Francis Perera vs. W. Norman Appuhamy (CA(PHC) 168/2013 decided on 30.11.2018)**.

The Tourist Development Act, No. 14 of 1968 has been amended by Section 68 of the Tourism Act substituting "Tourism Act, No. 38 of 2005" and "Sri Lanka Tourism Development Authority" for the expressions "principal Act" and "Board", respectively. Said Section 68 is as follows.

68. *The Tourist Development Act, No. 14 of 1968 is hereby amended as follows: -*

(1) *by the insertion immediately after section 1 of that Act of the following new section which shall have effect as section 1A of that Act:-*

1A. Wherever the expressions "principal Act" and "Board" appear in this Act, such expressions shall be read and construed as being a reference to the "Tourism Act, No. 38 of 2005" and the "Sri Lanka Tourism Development Authority" established by section 2 of the "Tourism Act, No. 38 of 2005", respectively."

Further, section 67(3) of the Tourism Act, No.38 of 2005, provides all permits and licences issued in terms of the provisions of the Ceylon Tourist Board Act shall continue to be valid until permits and licences are issued in terms of the Tourism Act No. 38 of 2005. Section 48(3) of the Tourism Act provides that, every Tourist Enterprise and Tourist Service falling within the classification made in terms of subsection (1) shall be registered with the

Authority. The provisions indicate the legislature's intention to continue registration and issuing permits and licenses under the new legislation too.

The second proviso specifies that the relevant hotels liable to be levied should be registered with or approved or recognised by the Ceylon Tourist Board for the purposes of the Tourist Development Act No.14 of 1968. Therefore, as per Section 16 of the Interpretation Ordinance, the expression “Ceylon Tourist Board” in the second proviso should be interpreted and understood as “Sri Lanka Tourism Development Authority”. Accordingly, the non-existence of the “Ceylon Tourist Board” would not make proviso nugatory.

Tourist Hotel Code

The Petitioner further states that when it was in existence, the Ceylon Tourist Board promulgated a “Tourist Hotel Code” in terms of Section 77 of the Tourist Development Act for registration of hotels to carry out the business of a tourist hotel. The said Section 77 of the Tourist Development Act has been repealed by Section 68 (2) of the Tourism Act and consequently without such registration no premises could be used for the purpose of carrying on business of a tourist hotel. However, Section 48(3) of the Tourism Act provides necessary provisions to register every Tourist Enterprise and Tourist Service with the Authority and a license issued in the name of such Enterprise or Service by the Authority. The Petitioner conceded that its all members are registered by the Tourism Development Authority established in terms of the Tourism Act. Therefore, the repeal of Section 77 of the Tourist Development Act does not have any effect on the provisions in the second proviso.

The Petitioner claims that there is no reason and that it is unreasonable to categorise hotels separately from the other institutions set out in Schedule 1(B) of Gazette Notification P3. However, it is important to observe that as per Schedule 1 (c)(i) of Gazette Notification P3, not only the hotels but also in respect of Hotels, Restaurants or Lodging Houses were levied.

Conclusion

In the circumstances and owing to the reasons given above, I am of the view that the Petitioner has failed to satisfy the Court that there is any illegality in the decision contained in the Gazette Notification P3 as prayed.

Accordingly, I am not inclined to grant any of the reliefs prayed for in the Petition of the Petitioner. I proceed to dismiss the application.

Application is dismissed.

Judge of the Court of Appeal