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

Sri Lanka Tea Factory Owners Association,
475 1/1, Nawala Road, Rajagiriya.

PETITIONER

C.A. Case No. WRT/0415/21

Vs.

1. Sri Lanka Tea Board,
   No. 574, Galle Road, Colombo 03.

2. E.A.J.K. Edirisinghe,
   Tea Commissioner,
   Sri Lanka Tea Board,
   No. 574, Galle Road, Colombo 03.

2A.K.A.M.K. Jayawardena,
Acting Tea Commissioner,
Sri Lanka Tea Board,
No. 574, Galle Road, Colombo 03.

2B.K.A.M.K. Jayawardena,
Tea Commissioner,
Sri Lanka Tea Board,
No. 574, Galle Road, Colombo 03.

3. K.L. Gunarathna,
President,
Samastha Lanka Kuda Thewathu
Sanwardana Samithi Sanwidanaya
(Also Known as 'Sri Lanka Federation Tea
Small Holding Development Societies),
No. 70, Parliament Road,
Pellawatta, Battaramulla.

3A. Jagath Senerath Pathirana,
President,
Samastha Lanka Kuda Thewathu
Sanwardana Samithi Sanwidanaya
(Also Known as 'Sri Lanka Federation Tea
Small Holding Development Societies),
No. 70, Parliament Road,
Pellawatta, Battaramulla.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Dr. Romesh De Silva, PC, with Ruwantha Cooray instructed by Sanath Wijewardane for the Petitioner.

Manohara Jayasinghe, DSG, with Rajika Aluwihare, SC for the 1st and 2nd Respondents.

Anuja Premaratna, PC, with Imasha Senadeera for the 3rd Respondent.

ARGUED ON : 18.09.2025

DECIDED ON : 16.10.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner, the Sri Lanka Tea Factory Owners Association, is an incorporated body, which consists of approximately 250 members who operate tea factories throughout Sri Lanka. The petitioners also claim to be manufacturers of tea and they purchase green tea leaves. The 1st and 2nd respondents are the regulators of the tea industry and the 3rd respondent is the President of the Federation of Tea Small Holding Development Societies, members of which consist of the suppliers of green tea leaves to the factories.

2. The complaint of the petitioner association is that the Tea Board Circular bearing No. TC/CIR(204)–06(6)2021, dated 29.06.2021 (P-3), is *ultra vires* the provisions of Section 8(2)(b) of the Tea Control Act. The complaint is twofold: firstly, that the formula prescribed by the said circular is not factory specific; and secondly, that the specifying of the Price Sharing Ratio of 68:32, determined as far back as in 1980, is unreasonable and/or irrational. Accordingly, the petitioner is primarily seeking a writ of *certiorari* to quash the said circular.

3. Now it is opportune and necessary to advert to Section 8(2)(b) of the Tea Control Act which reads as follows:

> *"(2) Where the Commissioner is satisfied, after such inquiry as he may deem necessary:*
>
> (a) *that the building, or equipment, or manner of operation, of any tea factory is not of a standard conducive to the manufacture of made tea of good quality; or*
>
> (b) *that the owner of a tea factory has paid for green tea leaf bought by him for manufacture at such factory a price lower than the reasonable price payable as determined by the Commissioner having regard to the price fetched for made tea manufactured at that factory; or*
>
> (c) *that the owner of a tea factory has delayed payment of the reasonable price, referred to in paragraph (b) for green tea leaf bought by him for manufacture at that factory, the*

Commissioner may suspend or cancel where necessary, the registration of such tea factory or

i. *in any case referred to in paragraph (b), direct any broker to whom the owner of such tea factory has sold any made tea manufactured at that factory, to deduct from the proceeds of such sale, an amount equivalent to the difference between the reasonable price for green tea leaf as determined by the Commissioner and the actual price paid by such owner for the green tea leaf bought by him;*

ii. *in any case referred in paragraph (c), direct any broker to whom the owner of such tea factory has sold any made tea manufactured at that factory, to deduct from the proceeds of such sale, an amount equivalent to the reasonable price determined by the Commissioner for such green tea leaf, and to remit the sum so deducted to him, for payment by him, to the person supplying such green leaf to such factory."*

4. The argument of the petitioner is that Section 8(2)(b), read with the findings of the Supreme Court in ***Paudgalika The Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association vs. H. D. Hemaratna, Tea Commissioner and Others*** (S.C. Appeal No. 47/2011, decided on 09.03.2015), empowers the Tea Commissioner specifically to determine a factory-specific reasonable price, and the formula specified by P-3 provides for a uniform pricing formula. This is the core argument and basis of this application. The impugned circular is marked and produced as P-3, according to which the reasonable price for green tea leaves purchased by tea factories is determined as follows (*vide* P-3):

"As per the Tea Control Act No. 51 of 1957 as amended, the reasonable price payable for green tea leaf bought by the registered tea manufacturer of a tea factory is determined having regard to the price fetched for made tea, manufactured at that factory and the Tea Commissioner has decided to amend the Circular general elevational average of 8th August, 1988 in the following manner;

1) ***Sale Average*** *– Sale Average is determined by dividing the total sale proceeds earned by a specific tea factory within a particular month immediately preceding to the month of calculation by the quantity of made tea sold by that factory through approved channels within the said period.*

Ex: Sale Average for January, 2021 = $\frac{\text{Total Sale Proceeds earned in January, 2021}}{\text{Quantity of made tea sold in January, 2021}}$

2) ***Price Sharing Ratio (68:32)*** *– As per the circular number MF/BL 74 dated 10th April, 1987*

3) ***Out Turn Ratio*** *– Referring to circular number MF/BL 66 dated 2nd September, 1985, MF/BL 93 dated 30th January 1990 and MF/BL 146 dated 23rd March 1999."*

5. Prior to the formulation of P-3, this issue had been considered by the Supreme Court in the said decision of **S.C. Appeal No. 47/2011**. In the present application, the position of the respondents is that P-3 was so formulated, taking into consideration the provisions of Section 8(2)(b) of the Tea Control Act as well as the Supreme Court decision in **S.C. Appeal No. 47/2011** (supra). It is submitted on behalf of the respondents that the formula provided for in P-3 is in fact a factory-specific formula and is in accordance with the abovementioned Supreme Court decision, and the said decision cannot be assailed or reagitated in the present proceeding.

6. The case of **S.C. Appeal No. 47/2011** (supra) considered a decision of the Court of Appeal where the then prevalent pricing criterion was upheld. However, the Supreme Court, acting in appeal, held that,

"The Tea Commissioner cannot have a common 'Reasonable Price Formula' applicable to all tea factories based on non-factory related elevational average. It is well settled that the expression 'having regard to' indicates that in exercising the power, regard must be had to the factor relevant for the exercise of that power."

Further, it was also observed by their Lordships that,

"The said section empowers the Tea Commissioner to determine the reasonable price payable, having regard to the price fetched for made tea at that factory. The use of the words 'at that factory'

signifies that the reasonable price varies from one factory to another."

Having so observed, their Lordships of the Supreme Court held,

"Thus, the Reasonable Price envisaged in Section 8(2)(b) has to be necessarily factory specific and not a formula of equal of application to all factories. Accordingly, I hold that the letters marked P12 and P13 sent by the Tea Commissioner based on the 'Reasonable Price Formula' were ultra vires the powers of the Tea Commissioner and are set aside."

The finding and the determination of the Supreme Court is that the reasonable price should be factory-specific, having regard to the price fetched for made tea at such factory.

7. Accordingly, their Lordships of the Supreme Court held that the *general elevational average-based formula* is not *factory-specific*. What was considered by the Supreme Court was the pricing formula based on the general elevational average, which, in simple terms, is the price determined by the elevation of the geographical situation of the respective factory. This is not a formula on a variable, so to say, but a classification based on elevation. It is for this reason that the general elevational average was held to be not factory-specific and was considered as being a uniform formula.

8. However, P-3, as stated above, contained three sub-paragraphs upon which the reasonable price is to be determined for green tea leaf. As to items (2) and (3), they are of common application, being the Price Sharing Ratio between the factory and the leaf producer and the Out Turn Ratio, a formula based on a scientific basis taking into account the moisture content, which varies in relation to monsoonal and non-monsoonal seasons. The relevant consideration which makes this formula factory-specific is item (1), the Sale Average, which is determined by the formula given therein. The basis of calculation of the amount to be paid to the manufacturer or the supplier is based on and pegged to the average price fetched by the sale proceeds of the specific tea factory within a particular month

immediately preceding the month of calculation. Thus, the specific sale price of the finished product of the particular factory during the specified period divided by the quantity of made tea sold during such month will finally determine the reasonable price.

9. Thus, the formula provided for in P-3 may be applied uniformly to all tea factories. However, the data that would be applied would vary according to each individual factory. Hence, the reasonable price will be determined in relation to such specific price of such factory. As the sale price and average is unique, peculiar, and specific to such factory, the end result necessarily is factory-specific. This was what the Supreme Court laid down and that which is also required by Section 8(2)(b). Their Lordships of the Supreme Court apart from considering the *vires* of the then prevalent Circular in determining **S.C. Appeal No. 47/2011**, also held that the general elevational average was *ultra vires* Section 8(2)(b).

10. The formula prescribed by P-3 proceeds on the premise and initial determination of the Sale Average (item 1). The Price Sharing Ratio (item 2) and the Out Turn Ratio (item 3) are applied and come into operation and consideration, subject to and upon the determination of the Sale Average of such factory. Therefore, the total outcome of the application of all three sub-paragraphs in determining the reasonable price, as provided for by P-3, is a factory-specific determination. One cannot consider the 2nd and 3rd limbs of this formula in isolation. If I may further elaborate, when the base figure, the Sale Average is factory-specific, determination of the reasonable price upon the application of the Price Sharing Ratio and the Out Turn Ratio will continue to be and have the initial attribute of being factory-specific. Accordingly, I hold that the three components pricing formula prescribed by P-3 is in accordance with and *intra vires* the provisions of Section 8(2)(b) and also is in accordance with the Supreme Court decision in **S.C. Appeal No. 47/2011**.

11. It is submitted on behalf of the petitioner that circular P-3 is unreasonable and is arbitrary within the meaning of the *Wednesbury*-type irrationality as adopted in Sri Lanka. In support of which the petitioner relies on the decision in ***Premachandra vs. Jayawickrema and Bakeer Markar and Others*** 1993 2 SLR 294, where it was opined as follows:

> *"The exercise of the powers vested in the Governor of a Province under Article 154F (4), excluding the proviso, is not solely a matter for his subjective assessment and judgment; it is subject to judicial review by the Court of Appeal. In applications for Quo Warranto, Certiorari and Mandamus, the Court of Appeal has power to review the appointment, inter alia, for unreasonableness, or if made in bad faith, or in disregard of the relevant evidence, or on irrelevant considerations, or without evidence."*

12. Based on this test, the pricing formula pegged to and based on the average sale price cannot, by any stretch of the imagination, be considered as being irrational or unreasonable; on the contrary, it is the most relevant factor in fairly determining a reasonable price, which therefore results in a reasonable price which is factory-specific as afore considered. In the above circumstances, it is apparent that the petitioner's argument is misconceived, as an attempt is made to consider the three components separately and in isolation.

13. The second complaint is that the Price Sharing Ratio of 68:32 is unreasonable and/or irrational and not relevant in the current context. Apart from the petitioner making a bare allegation, there is no material that has been placed before the Tea Commissioner or this Court to support this contention. In the first instance, the petitioner ought to have negotiated with the Tea Commissioner on the Price Sharing Ratio if there was any change of circumstances that warranted a change of the same. As no such specific material is placed before this Court and in the absence of any material, I see no basis to consider this ground any further, as it is baseless and misconceived.

14. In the above premises, I see no merit in the arguments advanced, and I find that the petitioner has failed to establish any lawful basis that entitles the petitioner to the relief as prayed for.

15. I observe that the petitioner or its members, having been parties in the Supreme Court or privy to the said decision, is now making an attempt to reagitate the issue finally settled by the Supreme Court. This appears to be a subtle attempt to abuse the judicial process. The petitioner, not being pleased with the determination of the reasonable price calculated on the formula as provided for by P-3, is making an attempt to disjoin the components of the formula and advance and develop an argument which, to my mind, is an attempt to mislead. Since the determination by the Supreme Court, the matter being well-settled, and then with the formulation of the criteria in P-3 in 2021, the petitioner, once again, is reagitating what was settled by the Supreme Court. This application, therefore, appears to be unfounded and ill-conceived. Therefore I see no merit in this application.

16. Accordingly, this application is dismissed, subject to costs in a sum of Rs.100,000.00 to be paid to the 1st respondent Tea Board, and the 3A respondent, the Sri Lanka Federation of Tea Small Holdings Development Association, and each of the said respondents is to be paid a sum of Rs.50,000.00, respectively, by the petitioner. The total sum the petitioner is required to pay as costs is thus Rs.100,000.00.

    Application dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL