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.

1. Mallawa Thanthrige Siripala Perera,
   Horagasmulla,
   Divulapitiya.
2. P.V. Shirani Dilrukshi Pieris,
   No. 373/3,
   Negombo Road, Nittambuwa.

CA (Writ) App. No. 326/2024

PETITIONERS

Vs.

1. M.J. Gunasiri,
   Commissioner General of Excise,
   Excise Department,
   Rajagiriya.

1(a) U.L. Udaya Kumara,
Commissioner General of Excise,
Department of Excise,
No.353, Kotte Road, Rajagiriya.

2. W.P. Prasad Indika,
   Divisional Secretary- Meerigama,
   Divisional Secretariat, Meerigama.
3. K.M. Mahinda Siriwardana,

Secretary to the
Ministry of Finance,
Economic Stabilization
& National Policies/Treasury,
The Secretariat, Colombo 01.

4. M.K.C. Senanayake.
Director General,
Department of Fiscal Policy,
Ministry of Finance, Economic
Stabilization & National
Policies/Treasury,
The Secretariat, Colombo 01.

RESPONDENTS

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

Counsel:

Sanjeeva Jayawardena, P.C., with Rukshan Senadheera for the Petitioner.

Prabhashanee Jayasekara, S.C., for the Respondents.

Argued on: 27.03.2026

Delivered on: 03.07.2026

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

Judgement

Introduction

The 1st Petitioner had been carrying on a liquor shop in the Meerigama area from 1971 until 31.12.1995 under a FL-04 license. However, after the new government came into power in 1994, due to political influence, the FL-04 liquor license issued to him had not been renewed. He asserts that, from time-to-time, he made attempts to submit an application to obtain an FL-04 liquor license without success. Nevertheless, recently, the 1st Petitioner's rights have been bequeathed to the 2nd Petitioner, who is the adopted daughter of the 1st Petitioner, and the 2nd Petitioner has made an application to obtain an FL-04 license together with the necessary supporting documents. Although the 1st Respondent had accepted the application and recommended that the license be issued, there was no further action taken. The Petitioners challenge the same and seek a *Writ of Mandamus* compelling the Respondents to take steps to issue the license.

After the issuance of formal notice, the Respondents filed their respective Objections. Thereafter, this matter was argued before me on 27.03.2026; hence, this judgement.

The Petitioners' complaint

The 1st Petitioner had been carrying on the business of a wine store under the name and style of "*Jayantha Wine Stores*" in the Meerigama Halpe area from the year 1971 until 31.12.1995 under a FL-04 license.

The Petitioners further allege that after the Government of Chandrika Bandaranaike Kumaratunga came into power in 1994, her electorate was adjacent to the electorate in which the 1st Petitioner carried on the business of the liquor shop.

Thereafter, from 1995 onwards, the 1st Petitioner's license was never renewed, allegedly on the basis that he was branded as a supporter of the United National Party (UNP). Therefore, the Petitioners allege that happened due to the political influence of supporters of the then-governing party, who conspired and acted against the 1st Petitioner.

The 1st Petitioner alleges that from 1995 to 2015, though he made attempts for 20 long years to renew the said license which lapsed on 31.12.1995, he was not even issued with an application to apply for license.

In 2015, when the new Government came into power, the Petitioners made another application to obtain their license, which was also not issued.

Thereafter, there had been certain objections by certain environmental enthusiasts; and after inquiring into the said objections, the Petitioners' application was cleared by the Excise Superintendent of the area. Thereafter, since the Respondents did not issue the application form, the Petitioners came before this Court by way of a writ application bearing No. 103/2023, where the Counsel who represented the Respondents agreed to consider the issuance of the license.

By that time, the 1st Petitioner had bequeathed his rights to his adopted daughter (2nd Petitioner) by a last will, which is reflected in the document marked as **X** annexed to the Petition.

After obtaining the relevant application forms by paying Rs. 10,000/- (Ten Thousand Rupees) and having obtained the relevant clearances from the relevant agencies, the Petitioners submitted the said application to the 1st Respondent, who having recommended its suitability, had sent it to the 3rd Respondent.

Further, having written to the 3rd Respondent by **P12**, the 1st Respondent requested his recommendations. Since the application has not been processed thereafter and no intimation has been made regarding the issuance of the licence, the Petitioner sought the intervention of this Court by way of the present application.

The following documents were submitted with the relevant application;

a) a duly filled application;
b) a plan of the building establishing that there is no school or place of religious worship within a radius of 100 metres;
c) a report from the Officer-in-Charge of the Police establishing that none of the Petitioners had been convicted of any offence under the Penal Code or the Excise Ordinance;
d) a clearance certificate from the Officer-in-Charge of the Excise Department of the area, a clearance certificate from the Assistant Superintendent of the Excise Department of the area, and a clearance certificate from the Divisional Secretary of the area.

Now, the application has not gone beyond the 3rd Respondent for the purpose of issuing the license. Therefore, the Petitioners seek to obtain relief from this Court.

The Respondents' Objections

However, in the Objections what the Respondents have stated is that Petitioners have not placed before Court the true picture of the Application, and now since the Respondents have decided to issue licenses under the newly published rules and regulations marked as **1R2** approved by the Parliament, the Petitioners should not have made the application under the regulations of 2009, but under the 2024 rules.

For the purpose of clarity, **1R2** is reproduced below;

> *"සුරා බදු නිවේදනය*

සංශෝධිත සුරාබදු ආඥාපනතේ (52 වන අධිකාරය) 32 වන වගන්තිය සමඟ කියවිය යුතු 25 වැනි වගන්තියෙන් මුදල් විෂය භාර අමාත්‍යවරයා වෙත පැවරී ඇති බලතල ප්‍රකාරව, ඔහු විසින් සුරාබදු නිවේදන ලෙස ප්‍රකාශයට පත් කර නිකුත් කරන ලද පහතනියෝගයන්, පාර්ලිමේන්තුවේ සම්මත වූ බවට මෙයින් නිවේදනය කරනු ලැබේ.

(i) 2024 ජනවාරි 12 දිනැති අංක 2366/38 දරන අති විශේෂ ගැසට් පත්‍රයේ පළ කරන ලද අංක 01/2024 දරන සුරා බදු නිවේදනය 2024 ජූලි 10 වැනි දින පාර්ලිමේන්තුවේ සම්මත විය.

(ii) 2024 ජනවාරි 12 දිනැති අංක 2366/39 දරන අති විශේෂ ගැසට් පත්‍රයේ පළ කරන ලද අංක 02/2024 දරන සුරා බදු නිවේදනය 2024 අගෝස්තු 21 වැනි දින පාර්ලිමේන්තුවේ සම්මත විය.

(iii) 2024 පෙබරවාරි 01 දිනැති අංක 2369/32 දරන අති විශේෂ ගැසට් පත්‍රයේ පළ කරන ලද අංක 03/2024 දරන සුරා බදු නිවේදනය 2024 ජූලි 10 වැනි දින පාර්ලිමේන්තුවේ සම්මත විය.”

As such, the Respondents have moved for the dismissal of this Application.

Further, Counter Affidavits were submitted with the documents marked **CA–1** to **CA–3**, including the inter-departmental correspondence and certain Cabinet minutes.

Arguments

Mr. Sanjeewa Jayawardena, the Counsel for the Petitioners contended that the Petitioners have complied with all the necessary requirements by submitting the application along with the plan of the place proposed to be the site for the operation of the business, where there had already been an existing liquor shop under the name and style of “Jayantha Wine Stores” up until 1995. According to the said plan, there is no school or place of religious worship within the span of 100 metres.

Furthermore, the Petitioners have submitted the police report from Officer-in-charge of the area to establish that neither the 1st nor 2nd Petitioner have been convicted of any offence under the Penal Code or Excise Ordinance, and in addition to that, the clearance from the Excise

Inspector of the area, the Assistant Excise Superintendent of the area, and the Excise Superintendent of the area, as well as the clearance from the Divisional Secretariat.

After submitting the application along with the necessary documents, the 1st Respondent, having accepted it, had referred the matter to the 3rd Respondent, seeking his permission to issue the license by **P12**. Therefore, the Petitioners challenge the same and seek a *Writ of Certiorari* to quash the same on the basis that there is no necessity for the Petitioners to obtain any permission from the 3rd Respondent to issue the license since he has no role to play under the Excise Ordinance or the relevant regulations made under the Excise Ordinance.

Further, it is argued on behalf of the Petitioners that the Petitioners entertained legitimate expectation since they had complied with all the necessary requirements when submitting their application; therefore, the 1st Respondent has no impediment to issue the FL-04 license to the Petitioners.

On the other hand, it is the argument of the Respondents that some of the documents that the Petitioners have annexed along with their Counter Affidavits, namely **CA1** to **CA3**, are privileged documents where inter-departmental circulars are also annexed to the Counter Affidavits. Since they are privileged documents, as the Petitioners do not have access to them, the Petitioners cannot rely upon them, and therefore, the Petitioners have not come before the Court with clean hands.

Further it is argued that the Petitioners cannot establish that they have a legal right to obtain the license as there is no correlate legal duty cast upon the Respondents to issue the license.

It was further argued on behalf of the Respondents that the document marked as **P12**, by which the 1st Respondent had asked for the permission of the 3rd Respondent, is not as the Secretary to the Ministry of Planning, but as the Secretary to the Minister of Finance, who is in-charge of the line ministry and since the finance minister had told to pay in terms of Section 19 of the Excise Ordinance; therefore, **P12** cannot be quashed in that sense.

Issues to be considered

According to the matters asserted in the Petition, the Objections submitted by the Respondents, and the arguments advanced by way of Written Submissions, it is my view that the following matters arise for my consideration;

(i) Whether the Petitioners have submitted duly filled application along with the necessary documents

(ii) Whether the Petitioners entertain legitimate expectation to obtain their license

(iii) If the answer to the above is affirmative, have the Respondents not taken steps with due diligence to process the same

(iv) If so, whether writs lie, compelling the Respondents to take steps to issue the license

Now I will consider them one by one.

The Petitioners' duly filled application

It is my considered view that the Petitioners, having obtained an application form by paying Rs. 10,000/- pursuant to a settlement entered into between the parties in the Writ Application bearing No. 103/2023 of this Court, have submitted a duly filled application along with the necessary documents for obtaining the license from the 1st Respondent; the necessary documents are referred to above.

Therefore, the 1st Respondent had accepted the application so submitted and then referred the matter to the 3rd Respondent for his approval. However, the matter has not gone beyond that point since the 1st Respondent is still awaiting the approval of the Minister, who plays a role under Section 19 of the Excise Ordinance.

Since the Petitioners have submitted a duly filled application along with the necessary documents, including the clearance given by the police, the Excise Department, and Divisional Secretary, it is my view that the Petitioners have submitted the duly filled application, which has been accepted by the 1st Respondent.

However, the 1st Respondent, after perusing the application, has made his recommendations and submitted the application to the 3rd Respondent for the approval of the same; accordingly, the 3rd Respondent should take actions to process the application in terms of Section 19 of the Ordinance, where the Minister has to play a role.

Nevertheless, in this case, the 3rd Respondent has not taken steps to obtain approval of the Minister to take further relevant steps under the Ordinance. Thus, there is a clear dereliction of duty by the 3rd Respondent.

Further, it is my view that since the Petitioners have submitted a duly filled application and the 1st Respondent has accepted the same, the Petitioners entertain legitimate expectation to obtain a FL-04 liquor license to run a liquor shop, which is a source of income that the Petitioners had been enjoying for about 25 years, but due to certain political reasons was not renewed.

Therefore, it is my view that a writ in the nature of *Mandamus* lies in this case against the Respondents to take the necessary actions to issue the license to the Petitioners.

After submitting the Application, the same was accepted without any rejection of any of the papers submitted by the Petitioner or the necessary supporting documents. However, the 1st Respondents, without taking any decision on issuing the licence, referred the matter to the 3rd Respondent for his recommendation. Thereafter, the 3rd Respondent has not taken any decision in furtherance of the said Application.

Legitimate expectation

Therefore, it is my view that once the Petitioner successfully submitted the Application, the Petitioner entertained a legitimate expectation that a decision would be made within a reasonable time. Legitimate expectation connotes an expectation derived legitimately, and thereby such expectation should be entertained by the Petitioner legitimately.

However, when there is inaction on the part of the corresponding authority, which is expected to take steps to grant relief to a Petitioner, such authority should act diligently and without any delay. Hence, the delay itself causes the scuttling of such legitimate expectation.

In support of this, I rely on the following passage in the classic book, "Administrative Law" of Wade and Forsyth;

> *"Whether an expectation exists is, self-evidently, a question of fact. If a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect. So, a person unaware of an undertaking made by a public authority, cannot expect compliance with that undertaking. A decision not to honour such an undertaking may, however, be flawed for some other reason. It may, for instance, amount to unfair discrimination where it has been honoured in many other cases.*
>
> *Although a person who seeks to rely upon an expectation must be aware of it, the better view is that he need not have relied to his detriment upon it for that would be to assimilate legitimate expectations to estoppel. But a taxpayer, it seems, must rely upon a representation from the Revenue before his expectation will be protected. Moreover, taxpayers seeking revenue clearance for their proposals must make full disclosure*

before the revenue's assurances will be binding. The assurance must itself be clear and unambiguous." [1]

Further to buttress my view, I wish to rely on the following passage from the case of *Wickremratne v. Jayaratne and Others* [2];

> *"...being public functionaries could at any time resile from any promise or undertaking when, as in this case (according to her submission) there is an overriding public interest that they should do so. Of course, the court has to be alive to the possibility that any policy or undertaking given by a public body or official might have to be revised from time to time as the public interest required."*

Therefore, in this case, the Respondents have not acted diligently, and they are sitting on their decision without taking any decision either to reject the Petitioner's application or to proceed with the application and issue the license. In this case, there is no impediment to the Respondents issuing the license. As such, it is my view that the Petitioner entertained a legitimate expectation, and such expectation was legitimate. Therefore, the Petitioner is entitled to the FL-04 license.

The Petitioners have sought to quash **P12;** I will now consider whether the 3rd Respondent has any role to play in the matter. The 3rd Respondent, being the Secretary to the Ministry of Finance, is required to take steps playing a role in issuance of the license.

For greater clarity, I shall reproduce the relevant section of the Excise Ordinance.

Accordingly, the relevant section is Section 19 which reads thus;

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[1] Wade, W., & Forsyth, C. (8th Edition, Oxford University Press 2000). *Administrative Law*, Part VI Chapter 15, p. 496-497.

[2] [2001] 3 Sri L.R. 161.

"19. (1) The Commissioner-General of Excise may with the approval of the Minister grant to any person on such conditions and for such period as he may deem fit the exclusive privilege -

(a) of manufacturing, or of supplying by wholesale, or of both; or

(b) of selling by wholesale or by retail; or

(c) of manufacturing, or of supplying by wholesale, or of both, and of selling by retail, any country liquor within any local area; or

(d) of selling any foreign liquor by retail in a tavern within any local area under a tavern licence prescribed by rule made under section 32 or by direction of the Minister issued under section 25.

(2) No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from the Government Agent."

Section 19 clearly states that the Minister has a role to play. Thus, the 1st Respondent has quite correctly sought the approval of the Minister, which is marked as **P12**.

Further, the 3rd Respondent cannot refrain from taking a prompt action because the Petitioners have entertained a legitimate expectation once the application is accepted by the 1st Respondent on the basis that the said application is in order. Therefore, all the Respondents are duty bound to process the application.

Therefore, communicating **P12** by the 1st Respondent to the 3rd Respondent is within the law, and thus, there is no need to quash the same.

Therefore, although the Petitioners have sought a *Writ of Certiorari* by way of the relief prayed for in prayer *(c),* such relief cannot be granted.

For further clarity the relief prayed for in prayer *(c)*, is reproduced below;

"*c) Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision and/or the actions of the 1^{st} Respondent and/or his respective servants, agents, representatives, or nominees to wrongfully and illegal send/refer the Application submitted by the Petitioner to obtain a FL-4 liquor license for the location bearing the title 'Jayantha Wine Stores' and bearing no. 59/B/3, Rendapolawatta, Giriullagama, Divuldeniya, to the 3^{rd} Respondent and/or the 4^{th} Respondent for purported approval or concurrence or a recommendations, as manifested in the letter of the 1^{st} Respondent, addressed to the 3^{rd} Respondent, dated 29-04-2024, produced marked P-12;*"

Although the 1^{st} Respondent has referred the matter to the 3^{rd} Respondent, the 3^{rd} Respondent's inaction is erroneous. Therefore, a writ lies against the Respondents.

It is my view that once the 3^{rd} Respondent makes the necessary recommendation and takes steps to process the application in terms of the law, the other Respondents should perform their respective statutory duties in issuing the FL-04 Licence. Therefore, the writ of *mandamus* sought in prayer *(b)*, in the following terms, is issued;

"b) Grant and issue a mandate in the nature of a Writ of Mandamus, directing the 1^{st} Respondent and/or the 2^{nd} Respondent and/or any one or more of them and their respective servants, agents, representatives, nominees, and successors in office thereof, to grant and/or issue an FL-4 liquor license to the 2^{nd} Petitioner, for the premises titled 'Jayantha Wine Stores' and bearing no. 59/B/3, Rendapolawatta, Giriullagama, Divuldeniya;"

Conclusion

Accordingly, *Writ of Mandamus* is issued as sought for in prayer *(b)* of the Petition, without costs.

JUDGE OF THE COURT OF APPEAL