

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA

In the matter of an Application under and in terms
of Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka for Writs of
Certiorari and Mandamus.

CA WRIT 80/2026

1. Dikwella Widanage Pramathilaka
No. 2/3, Main Street,
Ranna.
carrying on business as a partner under the
name, style and partnership of "Ranmuthu
Enterprises" having its principal place of
business at 129th Mile Post, Thissa Road,
Ranna.

2. Thal pawila Vidana Kankanamge
Wimalawathee
Track 17, School Road,
Gotayimbaragama,
Ranna.
carrying on business as a partner under the
name, style and partnership of "Ranmuthu
Enterprises" having its principal place of

business at 129th Mile Post, Thissa Road,
Ranna.

Petitioners

Vs.

1. Divisional Secretary
Divisional Secretariat
Tangalle
2. Commissioner General of Excise
Department of Excise
No. 353 Kotte Road
Sri Jayawardenapura Kotte
3. Secretary
Ministry of Finance
The Secretariat,
Colombo 01
4. Hon. Attorney General
Attorney General's department
Colombo 12

Respondents

Before: B. Sasi Mahendran, J.
Amal Ranaraja, J

Counsel: Rikaz Riffard for the Petitioner
Jemiah Sourjah, SC for the 2nd and 4th Respondents Respondent

Order On: 31.03.2026

ORDER

B. Sasi Mahendran, J.

The Petitioners, who are the partners of 'Ranmuthu Enterprises', are *inter alia* seeking a Writ of *Certiorari* and a Writ of *Mandamus* directing the 1st and 2nd Respondents to issue F.L.4 license.

The facts of this case are as follows,

The Petitioners, desiring to engage in the business of selling liquor, submitted an application on 28th March 2023 under the Excise Ordinance to the 2nd Respondent seeking the issuance of an F.L.4 license.

By letter dated 06th November 2023, the 2nd Respondent informed the Assistant Commissioner of Excise, Southern Province, that he had received a public objection in relation to the Petitioners' application and requested the Assistant Commissioner to hold an inquiry. Thereafter, a letter dated 20th November 2023, the 2nd Respondent directed the 1st Respondent to hold an inquiry with regard to the public objection. According to the petition, on 06th December 2023, an inquiry was conducted with the participation of the Petitioners along with the other party regarding the objections that had been raised.

According to paragraph 21 of the petition, the 2nd Respondent forwarded a letter to the 3rd Respondent, who is the Secretary to the Ministry of Finance, dated 20th May 2024, recommending the license to be issued to the Petitioners. Thereafter, on the directions of the

3rd Respondent, additional documents were forwarded to the 3rd Respondent by the 2nd Respondent.

The Petitioners' principal grievance is that they had a legitimate expectation that the licensing process would be conducted fairly and that the license would be issued to them without undue delay. As stated in the Petition, the F.L.4 license has not yet been granted to the Petitioners, despite their having complied with all the necessary requirements for obtaining such a license.

It is true that the power to issue the license lies with the 2nd Respondent by virtue of Section 18 of the Excise Ordinance. Sections 18 and 19 primarily provide for the issue of licenses. Sections 18 and 19 read as follows:

18. No excisable article shall be sold, or kept or exposed for sale, without a licence from the Government Agent: Provided that -

a) a person having the right to the toddy drawn from any tree may sell the same without a licence to a person licensed to manufacture and sell toddy under this Ordinance or to a person licensed under this Ordinance to manufacture arrack or vinegar from toddy;

b) a licence for sale in more than one administrative district shall be granted by the Commissioner-General of Excise;

c) nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by him or by auction on his behalf, or on behalf of his representatives in interest upon his quitting a station or after his decease.

19. (1) The Excise Commissioner 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 expressly grants the Commissioner discretionary authority to issue a license. The phrase “may grant” underscores that this power is not mandatory but permissive, thereby conferring discretion. However, the exercise of this discretion is not absolute; it is contingent upon the additional requirement of ministerial approval. In effect, while the Commissioner holds the discretion to grant a license, that discretion remains subject to the concurrence of the minister.

The documents submitted by the Petitioners reveal that the 2nd Respondent has forwarded them to the 3rd Respondent. Approval from the Ministry of Finance is required before any further action can be taken. Only after such approval may the 2nd Respondent issue the license. In the absence of approval, the 2nd Respondent lacks the authority to grant it. In the present case, there is no evidence to suggest that the 1st or 2nd Respondent has made a decision to deny the Petitioners the requested license.

Furthermore, it is observed that the Petitioners have sought a Writ of Mandamus compelling the 1st and 2nd Respondents to issue the license in question. It must be emphasized that the grant of a Writ of Mandamus is subject to certain conditions which the Petitioners are required to satisfy.

In this regard, it is appropriate to refer to the following judgment.

The King v. Revising Barrister for the Borough of Hanley, The King v. The Town Clerk of Stoke on Trent, (1912) 3 KB 518 at 531, Channell J.

“Those being the facts which I assume, a question of some difficulty arises as to whether that mistake can be set right. In my opinion it can, under a doctrine of this Court, which is an extremely useful one, and which was established by a majority of

*the judges in the Court of Exchequer Chamber in Mayor of Rochester v. Reg. (1) The principle laid down in that case is well established and has to my knowledge been acted upon frequently. The principle is that a mandamus will lie to compel the performance of a public duty by a public officer although the time prescribed by statute for the performance of it has passed; and if the public officer to whom belongs the performance of that duty has in the meantime quitted his office and been succeeded by another person, the writ may be directed to the successor, and it is his duty to obey it; and where there is no successor, but the person who ought to have performed the duty has become functus officio, the latter may be ordered to perform it, though the time within which he could of his own motion have performed it has passed. It is a most useful jurisdiction which enables this Court to set right mistakes. That principle, it seems to me, is applicable to the present case, and it is applicable not only to the non-performance of duties which the person who ought to have performed them has refused upon demand to perform, but also to cases where the non-performance arises from mere inadvertence, where he cannot have had his attention directed to the matter and cannot have refused upon demand to perform them. The requirement that before the Court will issue a mandamus there must be a **demand to perform the act sought to be enforced and a refusal to perform it is a very useful one**, but it cannot be applicable in all possible cases. Obviously it cannot apply where a person has by inadvertence omitted to do some act which he was under a duty to do and ER. where the time within which he can do it has passed.” [emphasis added]*

Based on the judicial authorities cited above, there is no evidence to suggest that the 2nd Respondent refused to issue the license. Furthermore, it must be observed that the 2nd Respondent cannot exercise his powers under Section 19 of the Excise Ordinance unless prior approval is granted by the Minister.

For the said reasons, we dismiss the application without issuing notice.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL