

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

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 Republic of Sri Lanka.

C.A (Writ) Application
No.105/2020

1. J.C. Holdings Lanka (Pvt) Ltd.,
No.398-1/D, Hendala Road,
Hendala,
Wattala.
2. Shanmugapriya Karthigesu
Managing Director/Director,
J.C. Holdings Lanka (Pvt) Ltd.,
No.05, Deanston Place,
Colombo 03.

PETITIONERS

-Vs-

1. Major General G.V. Ravipriya (Retd)
Director General of Customs
2. S.A.S.P. Senanayake
Director of Customs
(Preventive Directorate)
3. Jayantha Bangamuwa
Inquiring Officer
Deputy Director of Customs

4. R.A.D. Sirantha

Assistant Preventive Officer/Productive Officer,
Preventive Directorate

1st to 3rd Respondents are from:

Sri Lanka Customs,
Customs House, Charmers query,
Main Street, No: 40,
Colombo 11.

5. Nimal Karunathilaka

Acting Director General of Commerce,
Department of Commerce,
4th Floor, "Rakshana Mandiraya",
No.21, Vauxhall Street,
Colombo 02.

6. W.M.U.K. Rathnayake

Additional Director,
Rice Research and Development Institute,
Department of Agriculture,
Batalagoda,
Ibbagamuwa.

7. The Director

Sri Lanka Standards Institution,
Laboratory Services Division,
Food Laboratory,
No.17, Victoria Place,
Elvitigala Mawatha,
Colombo 08.

8. TCIS Inspections Lanka (Pvt) Ltd.,
No.127, Grandpass Road,
Colombo 14.

9. Hon. Attorney General
Attorney General's Department,
Colombo 12.

BEFORE : Hon. A.H.M.D. Nawaz (P/CA) &
Hon. Sobhitha Rajakaruna, J.

COUNSEL : K. Deekiriwewa with Ms. L.M. Deekiriwewa and
Dr. M.K. Herath for the Petitioner.
Vikum de Abrew, SDSG with Dr. Charuka
Ekanayake, SC for 1st - 4th and 6th Respondent.
Udaya Bandara for the 8th Respondent.

Argued & Delivered on : 26.06.2020

ORDER ON NOTICE AND INTERIM RELIEF

We have heard submissions from the learned Counsel for the Petitioner and the learned Senior Deputy Solicitor General who appears for the 1st to 4th and 6th Respondents. Mr. Udaya Bandara who appears for the 8th Respondent states that the 8th Respondent only issued a certificate.

The question that arises before this Court is whether the impugned order of forfeiture and mitigated forfeiture dated 30.03.2020 is amenable to a Writ of Certiorari. By way of this order the Deputy Director of Customs has made a decision to forfeit 182 metric tons of rice which the Petitioner claims as Pakistan Supper Basmati. The inquiry officer who conducted the customs inquiry has taken the view that the rice imported does not fall within the Basmati category. The inquiry officer has relied upon the reports ('X5(a)' and

'X5(b)') submitted to him and on oral evidence led at the inquiry, to arrive at a finding that this was not Basmati Rice. However there is also documentary evidence that has been led by way of certificates from Pakistan to establish that what was imported is of Basmati variety. In the face of this conflicting evidence, the question arises whether the finding reached by the inquiry officer is reviewable or not. The learned Counsel for the Petitioner submits that there is no acceptable reason that has been given to reject these certificates that came along with the documents pertaining to the import. Thus, the question arises whether the Inquiry Officer reached a finding which can be challenged on any of the grounds that are recognized for this Court to impugn the decision namely, *illegality, irrationality or procedural impropriety*. Thus, this case raises a *prima facie* issue that has to be fully gone into at a merit stage. Undoubtedly, the learned Senior Deputy Solicitor General raises strong grounds of rejection of the application on the grounds of alternate remedy that has allegedly been made use of by the Petitioners and the conduct exhibited by the Petitioners in their attempt to pay the mitigated amount.

The learned Senior Deputy Solicitor General Mr. Vikum de Abrew also cites the judgment of *Jayaweera v. Assistant Commissioner of Agrarian Services* (1996) 2 Sri.LR 70 where Hon. Justice Frederick Ninian Dimitri (F.N.D) Jayasuriya reiterated the general view that discretionary remedies could be defeated on recognized grounds of discretionary bars. The learned judge emphasized the grounds of refusal to relief thus:-

"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

Undoubtedly these are eloquent words of an erudite and learned Judge which are entitled to much weight and recognition in our courts but I also take note of the jurisprudence that has been developed by learned English Judges such as Law Lord Thomas Bingham who writing in (1990) Denning Law Journal 27 "**The Discretion of the Judge**": Royal Bank of Scotland Lecture, Oxford (May 17, 1990) made these perspicacious comments:-

“an issue falls within a judge’s discretion if, being governed by no rule of law, its resolution depends on the individual judge’s assessment (within such boundaries as have been laid down) of what it is fair and just to do in the particular case. He has no discretion in making his findings of fact. He has no discretion in his rulings on the law. But when, having made any necessary finding of fact and any necessary ruling of law, he has to choose between different courses of action, orders, penalties or remedies he then exercises a discretion. It is only when he reaches the stage of asking himself what is the fair and just thing to do or order in the instant case that he embarks on the exercise of a discretion.”

So that stage is yet to arrive in this case. So I take the view that preliminary issues of rejection have to be gone into only at the merit stage in the circumstances of the case.

In the circumstances, the Court decides to issue notices on the Respondents and have all these matters adjudicated after objections are filed by the State.

As regards the interim relief prayed for, the Court is possessed of what the Inquiry Officer has stated in his order marked as ‘X2’ namely, the goods could be released on recovery of Rs. 21, 621, 600/-. (Rupees Twenty One Million Six Hundred and Twenty One Thousand Six Hundred)-Vide the order made on 30.03.2020.

In satisfaction of this order the Petitioner must provide a bank guarantee to the value of this amount as this amount has been found by the Inquiry Officer to be equivalent to double the sum of the alleged fiscal levies due from the Petitioners. .

The Registrar is directed to issue notices on the Respondents returnable for 22.07.2020.

An interim order in terms of prayer (e) to accept a bank guarantee and release the goods is also granted.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE COURT OF APPEAL