

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

1. Harsha Panduwawala,
No.1116, Pannipitiya Road,
Thalangama South,
Battaramulla.
 2. Shirani Wijeratne Rambukwella,
No.121/7, Duwa Road,
off Beddagana Road,
Kotte.
- Petitioners

CASE NO: CA/WRIT/370/2018

Vs.

1. K. H. A. Meegasmulla,
Commissioner General of Excise,
Department of Excise,
No.353, Kotte Road.
Rajagiriya.
And 6 others.
- Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Shivan Cooray with Pulasthi Rupasinghe and
 Nilma Abeysuriya for the Petitioners.
 Manohara Jayasinghe, S.S.C. for the 1st-6th
 Respondents.
 Jivan Goonetilleke with Nadine
 Puvimanasinghe for the 7th Respondent.

Argued on: 16.07.2020

Decided on: 20.07.2020

Mahinda Samayawardhena, J.

The Petitioners have filed this application seeking two prerogative writs.

Firstly, a writ of prohibition against the 1st-6th Respondents issuing a licence and/or in any manner allowing the 7th Respondent restaurant to sell liquor for consumption on its premises.

Secondly, a writ of mandamus compelling the 1st-6th Respondents to take adequate steps to prevent the 7th Respondent from selling liquor on its premises.

By the writ of prohibition, the Petitioners essentially seek a blanket permanent prohibition against the 1st-6th Respondents issuing a liquor license to the 7th Respondent.

As per the Gazette marked P4(a), liquor licences are issued only by the 1st Respondent, the Commissioner General of Excise, on an annual basis, subject to strict conditions. The Petitioners' complaint is the 7th Respondent's restaurant is within 500

meters of a leading girls' school. The 7th Respondent has a license issued by the Tourism Development Authority to carry on business as a Tourist Restaurant. The 7th Respondent also says there are several similar restaurants where liquor is sold within the said radius of schools.

According to proviso (i) to Rule 20(c) of Schedule III of the aforesaid Gazette, the 1st Respondent can consider relaxing the 500 meter distance barrier, provided a license has been issued by the Tourism Development Authority and there are no objections to a liquor license being issued.

In light of the foregoing, the Court cannot issue a writ of prohibition permanently preventing the 1st Respondent from issuing a liquor licence to the 7th Respondent. If an application for a liquor licence is tendered, the 1st Respondent shall consider it and take a decision on a case by case basis. Let me again remind that licences are issued or refused not on a permanent basis but on a yearly basis.

The writ of mandamus sought is couched in broader terms. By this, the Petitioners ask the Court to compel the 1st-6th Respondents *“to take adequate steps to prevent the 7th Respondent from selling liquor for consumption at the premises in violation of the applicable law.”* It is not clear what is meant by “adequate steps” and “the applicable law”. There is no proof the authorities have failed to act according to the law. Unless the relief is specific and clear, the Court cannot issue mandamus simply for the sake of doing so.

I refuse to issue formal notice on the Respondents.

The application of the Petitioners is dismissed but without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal