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

In the matter of an application for Special Leave to Appeal against the Judgment of the Court of Appeal dated 06.12.2010

Paudgalika Tha Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association
No.475 1/1, Nawala Road,
Rajagiriya.

Petitioner

S.C. Appeal No. 47/2011
S.C. Spl. L.A. No. 13/2011 Vs.
CA Writ Application No. 569/2003

1. Mr. H.D. Hemaratna,
   Tea Commissioner,
   Tea Commissioner's Division,
   Sri Lanka Tea Board,
   No. 572, Galle Road,
   Colombo 03.
2. Pankandurage Jemis,
   No. 117,
   Bolawana North,
   Gilimale, Ratnapura.
3. Samastha Lanka Kuda Tea Wathu Sanvardana Samithi Sanvidanaya also known as the Sri Lanka Federation of Tea Small Holdings Development Societies , No. 70, Parliament Road, Pelawatte, Battaramulla.
4. Ratnayake Liyanage Nevil Priyanga, President of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla.

5. K.L. Gunarathne,
   Secretary of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla.
6. Kumara Gunasinghe, Treasurer of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla

Respondents-Respondents

AND NOW BETWEEN

Paudgalika Tha Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association now known as The Sri Lanka Tea Factory Owners Association.
No. 64-12A, Nawala Road,
Nugegoda.

Petitioner- Petitioner

Vs.

1. Jayantha Edirisinghe, Tea Commissioner (Acting)
   Tea Commissioner's Division, Sri Lanka Tea Board, No. 572, Galle Road, Colombo 03.
2. Pankandurage Jemis,
   No. 117, Bolawana North,
   Gilimale, Ratnapura.
3. Samastha Lanka Kuda Tea Wathu Sanvardana Samithi Sanvidanaya also known as the Sri Lanka Federation of Tea Samall Holdings Development Societies , No. 70, Parliament Road, Pelawatte, Battaramulla.
4. Ratnayake Liyanage Nevil Priyanga, President of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla.

5. K.L. Gunarathne, Treasurer of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla.

6. Kumara Gunasinghe, President of the Sri Lanka Federation of Tea Small Holdings Development Societies, No. 70, Parliament Road, Pelawatte, Battaramulla.

Respondents-Respondents

BEFORE : K. Sripavan, C.J.,
R. Marasinghe, J.
Sarath de Abrew, J.

COUNSEL Gamini Marapana, P.C. With Navin Marapana for the Petitioner-Petitioner.
Nayomi Kahawita, S.C. For 1st Respondent-Respondent.

S.T. Goonawardane for 2nd Respondent-Respondent
Dr. Sunil Cooray for 3rd - 6th Respondents-Respondents.

ARGUED ON : 4/6/2014 and 19/11/2014

WRITTEN SUBMISSIONS FILED
By the the Petitioner-Petitioner on : 8/6/14
By the the 1st Respondent-Respondent on : 22/7/14
By the the 2ndRespondent-Respndent on : 3/7/14
By the the 3rd-6th Respondents on : 12/7/14

DECIDED ON : **09.03.2015**

K. SRIPAVAN, C.J.,

The Petitioner-Petitioner (hereinafter referred to as the Petitioner) instituted an application in the Court of Appeal against the 1st Respondent-Respondent

(hereinafter referred to as the Respondent) seeking, inter alia, the following reliefs by way of Writ of Certiorari :-

(1) To quash the decision of the respondent to impose a "Reasonable Price Formula" (RPF) as evidenced by the Circulars bearing Nos. MF/BL 40, MF/BL 66, MF/BL 74, MF/BL 75, MF/BL 93, MF/BL 112, MF/BL 115, MF/BL 118, MF/BL 120, MF/BL 124, MF/BL 125,MF/BL 132, MF/BL 135, MF/BL 136, MF/BL 144 and MF/BL 146.

(2) To quash the decision of the Respondent contained in the letter dated 3rd March 2003 (**P12)** informing the Uva Halpewatte Tea Factory that it had contravened the express provisions of the Tea Control Act ,

(3) To quash the decision of the Respondent as contained in the letter dated 4th February 2003 **(P13)** to use the provisions of the Tea Control Act to enforce "Reasonable Price Formula" stipulated by the Respondent.

The legal basis upon which the Petitioner sought his reliefs are contained in paragraphs 43 and 47 of the Petition dated 3rd April 2003 which could be summarized as follows :-

(i) That the Respondent had no authority in terms of the Tea Control Act to lay down the "Reasonable Price Formula".

(ii) That the imposition of such a Formula is arbitrary, unilateral, and illegal.

(iii) That accordingly, the penal provisions of Section 8(2) of the Tea Control Act are superfluous.

(iv) That the enforcement of the provisions contained in Section 8.2 of the Tea Control Act as amended by Act No. 3 of 1993

when read with the other provisions of the Act, does not confer any right on the Respondent.

(v) That in any event, the decision of the Respondent fixing a "Reasonable Price Formula" has been made without giving the Petitioner or its members an opportunity of being heard thus violating the fundamental legal principle of a*udi alteram partem.*

The Court of Appeal, by its Order dated 6th December 2010, held, inter alia, that the Teal Control Act specifically provides that if the Tea Commissioner is satisfied after such inquiry, as he may deem necessary, he may issue the direction specified in Section 8(2) of the said Act and that the form of inquiry is left to the "Controller" to decide depending on the nature of the violation. The Petitioner preferred an appeal against the said Order and Special Leave to Appeal was granted by this Court on 27th April 2011 on the following questions of law :

1. Has the Court of Appeal erred in interpreting the provisions of the Tea Control Act ?
2. Has the Court of Appeal erred in interpreting the provisions of Section 8 of the Tea Control Act as giving the Respondent the power to impose a "Reasonable Price Formula" when the wording of the said Section deals only with the purported power given to the Tea Controller to penalise a party for not adhering to the "Reasonable Price Formula" ?
3. Has the Court of Appeal erred in ignoring the submission of the Petitioner that Section 8 of the Tea Control Act (as amended) conferred power on a non-existent Tea Controller ?

4. Has the Court of Appeal erred ignoring the fact that the Respondent had no legal basis to impose a “Reasonable Price Formula”?

5. In any event, was the application seeking relief by way of Certiorari, filed after the lapse of an unreasonable period of time, made the application unmaintainable in law?

The Learned President's Counsel for the Petitioner sought to argue that the Office of ”Tea Controller” created by Section 50(1) of the Tea Control Act No. 51 of 1957 was abolished by Section 9(2) of the Sri Lanka Tea Board Law No. 14 of 1975. Counsel submitted that the Office of the “Tea Controller” ceased to exist as far back as in 1975 and at the time when the Tea Control (Amendment) Act No. 3 of 1993 was passed there was no officer known to the law as the Tea Controller. It is on this basis Learned President's Counsel argued that no amendment to the Tea Control Act could seek to clothe a non-existent officer with legal power. With profound respect to the learned President's Counsel, I am unable to agree with his submission.

The dominant purpose in construing a statute is to ascertain the intention of Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expressions and unless there is any ambiguity in the language used the Court should adopt literal construction if it does not lead to an absurdity. In construing the provisions contained in Section 9(1) and 9(2) of the Sri Lanka Tea Board Law No. 14 of 1975 efforts should be made to ensure that each provision will have its play without any conflict with each other. The Court must look to the object which the statute seeks to achieve while interpreting the provisions in Sections 9(1) and 9(2). When the material words assists the achievement of the legislative policy, the Court would look at

the context and the object of such words and interpret the meaning intended to be conveyed by the use of such words.

It is observed that prior to the abolition of Office of "Tea Controller" by Section 9(2) of the Sri Lanka Tea Board Law No. 14 of 1975, the Office of the "Tea Commissioner" was created by Section 9(1). The said Sections read as follows :

> *"9. (1) There may be appointed, for the purposes of this Law, a person, by name or by office, to be or to act as Tea Commissioner who shall, subject to provisions of this Law or any other written Law,-*
>
> (a) *exercise, discharge and perform the powers, functions and duties vested in, and imposed on, the Tea Controller under any other written law;"*
>
> *(2) The Office of the Tea Controller ….. hereby abolished and accordingly shall cease to exist.*(emphasis added)

Thus, it could well be seen that the intention of the legislature was to create the office of the "Tea Commissioner" prior to the abolition of the office of the "Tea Controller". It further provides that the "Tea Commissioner" is by law empowered to exercise, discharge and perform the powers, functions and duties vested in the "Tea Controller" under any other written law. The necessary implication is that whatever the powers, functions and duties entrusted to the "Tea Controller" under the Tea Control Act No. 51 of 1957 can now be validly exercised by the "Tea Commissioner". But the office of the "Tea Controller" shall cease to exist with effect from the date on which Law No. 14 of 1975 came into existence, namely, 17.3.1975.

Thus, there can be no doubt that the "Tea Controller" has no power to issue directions or orders after 17-3-1975 affecting the rights of the owners of the Tea Factory, as the said office of the "Tea Controller" does not exist. However, the "Tea Commissioner" may exercise and discharge the powers, functions and duties already vested in the Tea Controller .

The Tea Control Act No. 51 of 1957 was amended by Act Nos. 3 of 1983 and No. 3 of 1993. The amending Acts brought in certain amendments to the parent Act. No amending Act can operate unless the parent Act is alive at the time the later Act was passed. There is nothing to indicate that the parent Act, namely Act No. 15 of 1957 was completely repealed. Further, the amending Act No. 3 of 1983 in Section 11 states thus :

> *"11. Section 63 of the principal enactment is hereby amended by the insertion immediately after the definition of the expression "appointed date" of the following definition :*
>
> *"Commissioner" means the person appointed to be or to act as The Tea Commissioner under the Tea Board Law, No. 14 of 1975.*

The amending Act No. 3 of 1993 in Section 6 states thus:-

> "6. *Wherever, in any provision of the principal enactment, the word "Controller" occurs, there shall be substituted the word "Commissioner".*

The underlying purpose of all legislation is to promote justice among people. A construction which operates in a harsh, unreasonable and absurd manner resulting in hardship, serious inconvenience, injustice, anomaly, uncertainty or friction in the system certainly does not represent the legislative intent because it must be presumed that the legislature has acted for the welfare of the people.

Having abolished the office of “Tea Controller “ by Law No. 14 of 1975, one does not know why the legislature used the word “Controller” again in Act No. 3 of 1993. Mistakes may creep into legislation due to various circumstances and causes. They could have caused by the printer making an incorrect reproduction of the draftman's manuscript or they may be due to the draftsman's unskillfulness. They may even creep in during its passage from a Bill to an Act. However, the fact remains that considering Section 9(2) of the Sri Lanka Tea Board Law No. 14 of 1975 and the amendment brought by the Tea Control Act No. 3 of 1983 and No. 3 of 1993 to Section 11 and Section 6 respectively, the intention of the legislature is very clear, namely, the “Tea Commissioner” is empowered by law to exercise, discharge and perform the powers, duties and functions vested in and imposed on the “Tea Controller” in the Tea Control Act as amended and under any other written law. In view of the said finding, the word “Tea Commissioner” would be used in this judgment wherever reference is made to the “Tea Controller” in the Tea Control Act as amended.

The primary object of Section 8 of the Tea Control Act is to decide :-

(a) Whether any person is entitled to be registered as a manufacturer for the purposes of this Act; and

(b) Whether any tea factory should be registered for the purposes of this Act.

It is well settled that the marginal note to Section 8 affords guidance in understanding the legislative intent. It simply refers to determination of questions relating to registration and furnishes a clue to the meaning and purpose of the said Section. Section 8(2) of the said Act as amended by Act No. 3 of 1993 reads thus :

"8.(2) Where the Controller 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 Controller having regard to the price fetched for made tea manufactured as 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 Controller 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 Controller and the actual price paid by such owner for the green tea leaf bought by him;

(ii) in any case referred to 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 Controller 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."

Thus, the learned State Counsel argued that the inquiry referred to therein by the Tea Commissioner was not for the purpose of determining the reasonable price but to satisfy himself with regard to any entitlement for registration of any person as a manufacturer or for registration of a tea factory. What has been overlooked by the learned State Counsel was that Section 8(2)(b) authorizes the Tea Commissioner to determine the reasonable price payable for green tea leaf.

The Act does not envisage the procedure to be followed by the Tea Commissioner in determining the reasonable price. The following extract from the speech of Lord Pearson in *Pearlberg* v. *Varty* [1972] 1 W.L.R. 534 at 537 is worth reproducing.

> *"A tribunal to whom judicial or quasi-judicial functions are entrusted is held to be required to apply those principles [i.e. the rules of natural justice] in performing those functions unless there is a provision to the contrary. But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required, although, as 'Parliament is not to be presumed to act unfairly,' the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness."*

It is therefore necessary that the Tea Commissioner adopts a fair procedure although there may not be a hearing of the kind normally required by natural justice. 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. The power conferred upon the Tea Commissioner must be exercised on the considerations relevant to the purpose for which it is conferred. Instead, if the Tea Commissioner takes into account wholly irrelevant or extraneous considerations the exercise of power by the authority will be ultra vires and the action is bad in law.

The following paragraphs of the Statement of Objections filed by the Tea Commissioner before the Court of Appeal shows the factors that were taken into account in determining the "reasonable price".

13. Answering the averments contained in paragraph 17 of the petition, the Respondent states that the Reasonable Price Formula is determined on the Net Sale Average, Elevational Average and the out turn ratio of tea factories.

14. (e) The Elevational Average is the average NSA of all tea factories in an elevation.

(k) The conversion ratio used to decide on the out turn is not an artificial conversion ratio but has been arrived at by after considering the relevant data available at factories and on data collected by the Tea Research Institute. (emphasis added)

The explanation given by the Tea Commissioner demonstrates that he has taken into account various factors in order to arrive a "Reasonable Price Formula" . 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.

In *Saraswati Industrial Syndicate* Vs. *Union of India (* AIR 1975 SC 460) the Government was empowered to fix the price of sugar "having regard to" estimated cost of production of sugar on the basis of the relevant schedule. The Supreme Court held that the only obligation of the Government was to consider as relevant data material to which it must have regard. But there was no obligation whatsoever cast upon the Government to make any "adjustment" to compensate for losses due to any previous erroneous fixation.

In *State of Karnataka* Vs. *Ranganatha Reddy* (AIR 1978 SC 215) Section 6(1)(2) of the Karnataka Contract Carriages (Acquisition) Act 1976 authorized the arbitrator to determine the amount of compensation which appeared to him to be just and reasonable. In making the award, the arbitrator was required to have regard to the circumstances of each case and the provisions of the schedule providing principles of determination of the amount of compensation. Interpreting the provision Untwalia, J. observed at 227, (AIR) :

> *"The arbitrator has to fix the amount which appears to him just and reasonable on the totality of the facts and circumstances keeping primarily in mind the amount mentioned in the schedule*".

From the cases discussed above, it becomes clear that the statutory authority cannot ignore the legislative intent and to decide the matter taking into account extraneous factors. The expression "having regard to" whenever and wherever occurs in the Statute, it requires to be construed in relation to its context and to its subject matter.

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.

One of the questions of law on which leave was granted was whether a writ of certiorari would lie in view of the unreasonable period of delay in instituting the writ application. Sharvananda J. in *Biso Menika* Vs. *Cyril de Alwis* (1982) 1 S.L.R. 368 at page 379, discussing the question of laches states thus :-

> *"An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law.*
>
> *When the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically. "*

The Court may therefore in its discretion entertain an application in spite of the fact that a petitioner comes to Court late, especially where the order challenged is a nullity. The conduct of the petitioner cannot be branded as unreasonable to dis-entitle it to a Writ especially when the decisions contained in the letters marked P12 and P13 are ultra vires the powers of the Tea Commissioner. The Petitioner seeks to set-aside various circulars issued by different Tea Commissioners at different times, which refer to the decisions made on sixteen occasions on the "Reasonable Price Formula". It would appear that the latest circular had been issued on 1999 and the earliest one was in 1977. The writ application was filed before the Court of Appeal in April 2003, which means nearly four years after the issuance of the latest circular of 1999 and after twenty six years of the issuance of the earliest circular of 1977. None of the Tea Commissioners who issued those circulars are parties to the writ application. Based on the said circulars the owners of the Tea factories made payments to green leaf suppliers without challenging the "formula" adopted. It is in these circumstances the Court has to consider whether the said circulars are to be set aside or not.

There has undoubtedly been great delay in challenging the validity or legality of the said circulars. However, the rule of laches or delay is not a rigid rule which can be cast in a straight-jacket formula, for there may be cases where despite delay and creation of third party rights, the Court may still in the exercise of its discretion interfere and grant relief to the Petitioner. Thus, the question whether in a given case the delay involved is such that it dis-entitles a person to relief is a matter within the discretion of Court and has to be exercised judiciously and reasonably having regard to the surrounding circumstances. Declaring the said circulars to be bad in law at this stage would result in the amounts recovered under them to be illegal and lead to serious consequences. It would be a sound

and wise exercise of discretion for the Court to refuse to exercise its discretionary power in favour of the Petitioner who does not approach expeditiously for relief and who stand by and allow things to happen and then approach the Court to try to unsettle, settled matters. Justice, equity and good conscience do not permit me to quash the said circulars.

For the reasons stated above, I answer the questions of law on which Special Leave to Appeal was granted as follows :-

(1) The Court of Appeal has misinterpreted the provisions contained in Section 8 of the Tea Control Act as amended.
(2) The Court of Appeal has erred in holding that the Tea Controller is empowered to to impose a reasonable price applicable to all tea factories on an equal basis.
(3) The powers, duties and functions vested in and imposed on the Tea Controller can validly be exercised by the Tea Commissioner.
(4) Section 8(2)(b) of the Tea Control Act as amended empowers the Tea Commissioner to determine a reasonable price.
(5) The recent practice shows where the authority has acted ultra vires or where the proceedings were a nullity an award of certiorari will not readily be denied. No hard and fast rule can be laid down as to when the Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay. This is a matter which must be left to the discretion of Court which discretion shall be exercised judiciously and reasonably considering the surrounding circumstances.

Considering the totality of the circumstances, I make no order as to costs.

CHIEF JUSTICE.

R. MARASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

SARATH DE ABREW, J.

I agree.

JUDGE OF THE SUPREME COURT