

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

In the matter of an application under and in respect of violation of Fundamental Rights in terms of Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. (F.R.) Application No. 64/2015

ACME Lanka Distillers (Pvt.) Ltd.,
73/1,
Old Awissawella Road,
Hanwella.

Petitioner

Vs.

1. Hon Ravi Karunanayake,
Minister of Finance, Ministry of Finance,
General Treasury,
Colombo 1.
2. L.K.G. Gunawardhane,
Commissioner General of Excise,
No. 34,
W.A.D. Ramanayake Mawatha,
Colombo 02.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

COUNSEL

R. Chula Bandara with S.L. Samarakoon and E.M.L.K. Edirisinghe, M.L.R. De Silva, Mangala Jeevendra and R. De Silva on the instructions of Ananda G. Silva for the Petitioner.

Viraj Dayaratne, DSG with Ms. Viveka Siriwardena, DSG and Dr. Avanti Perera, SSC for the Respondents

S.C. F.R. Application No. 71/2015

1. Uva Glen (Pvt) Ltd., Duwahenawatta, Millewa, Moragahahena, And No. 13A, Badulupitiya Road, Badulla.
2. Mr. Karupaippiahpillai Kumaranayagam, No. 48-1/2, Dickman's Road, Colombo 05.
3. Mr. Karupaippiahpillai Jayanayagam, No. 38, Elibank Road, Colombo 05.
4. Ms. Priyashanthini Kumaranayagam, No. 48-1/2. Dickman's Road, Colombo 05.

Petitioners

Vs.

1. Hon Ravi Karunanayake, Minister of Finance, Ministry of Finance Colombo 1.
2. Dr. R.H.S. Samaratunga, Secretary, Ministry of Finance, The Secretariat, Colombo 01.
3. Mr. L.K.G. Gunawardena, Commissioner General of Excise, Department of Excise, No. 34. W.A.D. Ramanayake Mawatha, Colombo 02.
4. Mr. D.P.M.V. Hapuarachchi, Former Commissioner General of Excise, Department of Excise, No. 34. W.A.D. Ramanayake Mawatha, Colombo 02.
5. Mr. A. Bodaragama, Deputy Commissioner of Excise (Revenue), Department of Excise, No. 34. W.A.D. Ramanayake Mawatha, Colombo 02.

Respondents

COUNSEL

Saliya Pieris with Thanuka Nandasiri, Susil Wanigapura and Pasindu Thilakarathne instructed by Mrs. G. Thavarasa for the Petitioners

Viraj Dayaratne, DSG with Ms. Viveka Siriwardena, DSG and
Dr. Avanti Perera, SSC for the Respondents

S.C. F.R. Application No. 72/2015

1. Nipponexpo (Private) Limited,
No. 123,
Kumaran Ratnam Road,
Colombo 2

And also of

No. 152/A, Nagahalanda Watte,
Palugama,
Dompe.

- 2 Vethody Kumaran Chandrasena,
No. 123,
Kumaran Ratnam Road,
Colombo 2.
3. Prasannan Chandan,
No. 123,
Kumaran Ratnam Road,
Colombo 2.
4. Vethody Chandrasena Kumara,
No. 123,
Kumaran Ratnam Road,
Colombo 2.
5. Vishnu Valsan Vethody,
No. 123,
Kumaran Ratnam Road,
Colombo 2.

Petitioners

Vs.

1. Hon. Ravi Karunananayake,
Minister of Finance,

The Ministry of Finance,
The Secretariat, Colombo 01.

2. Dr. R.H.S. Samaratunga,
Secretary,
The Ministry of Finance,
The Secretariat,
Colombo 01.
3. Mr. L.K.G. Gunawardena,
The Commissioner General of Excise,
Department of Excise,
No. 34,
W.A.D. Ramanayake Mawatha,
Colombo 02.
4. Mr. D.P.M.V. Hapuarachchi,
Former Commissioner General of Excise,
Department of Excise,
No. 34, W.A.D. Ramanayake Mawatha,
Colombo 02.
5. Mr. A. Bodaragama, Deputy Commissioner of Excise (Revenue),
Department of Excise,
No. 34, W.A.D. Ramanayake Mawatha,
Colombo 02.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

COUNSEL

Sanjeewa Jayawardane, P.C. with Rajeev Amarasuriya and
Charitha Rupesinghe instructed by Ashoka Niuwhella for the
Petitioners

Viraj Dayaratne, DSG with Ms. Viveka Siriwardena, DSG and
Dr. Avanti Perera, SSC for the Respondents

S.C. F.R. Application No. 84/2015

1. Scotland Distillers and Blenders (Pvt) Ltd.,
30/7, Galpotta Street,
Colombo 13.
2. Sundary Sundaralingam,
20/2, Lower Kings Street,
Badulla

Petitioners

Vs.

1. Hon. Ravi Karunanayake,
Minister of Finance,
Ministry of Finance,
The Secretariat,
2nd Floor,
Colombo 01.
2. The Secretary,
Ministry of Finance,
The Secretariat, 2nd Floor,
Colombo 01.
3. The Commissioner General of Excise,
Excise Department of Sri Lanka,
No. 34,
W.A.D. Ramanayake Mawatha,
Colombo 02.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

COUNSEL Kushan de Alwis, P.C. with Ms Ayendra Wickremasekara for the 1st and 2nd Petitioners.

Viraj Dayaratne, DSG with Ms. Viveka Siriwardena, DSG and Dr. Avanti Perera, SSC for the Respondents

BEFORE K. Sripavan, C.J.,
C. Ekanayake, J.,
R. Marasinghe, J.

ARGUED ON 30TH April 2015

DECIDED ON 24.06.2015

K. SRIPAVAN, C.J.,

It was agreed among Counsel that the aforesaid applications were to be heard together as they were similar in nature and one order could be made in respect of the said four applications.

When the applications were taken up for hearing, Learned D.S.G. raised a preliminary objection on the ground that the said applications had been filed outside the time period

stipulated in Article 126(2) of the Constitution and hence should be dismissed in limine. Learned D.S.G. contended that the alleged infringement of the Petitioners' fundamental rights by the Respondents took place when the budget proposal was brought to the public domain by way of a budget speech made in Parliament on 29th January 2015 and that the Petitioners should have invoked the jurisdictions of this Court within one month from 29th January 2015.

It is common ground that S.C. Applications 64/2015, 71/2015, 72/2015 and 84/2015 were filed on 12th March 2015, 13th March 2015, 13th March 2015 and 17th March 2015 respectively. The Petitioners in all these applications impugn the Excise Notification No. 973 published in the Gazette Extraordinary No. 1901/19 dated 13th February 2015 by the Hon. Minister of Finance. The Petitioners in S.C. Applications 71/2015, 72/2015 and 84/2015 in paragraphs 16, 30 and 14 respectively averred that they became aware of the said publication only at a later date and were able to secure a copy of the relevant Gazette only after 27th February 2015.

It must be emphasized that courts of law have nothing directly to do with mere decisions of policy or budget speeches made in Parliament. Such speeches or budget proposals have no legal impact until Parliament confers some legal power on it. As soon as the Parliament confers some legal power or authority it becomes the function of the courts to see that the power is not exceeded or abused. Additionally, this Court has to consider, the violation, if any, of the Petitioners is by "executive or administrative" action. The Rule of Law which postulates equal subjection to the law requires the observance of the law in all cases. In fact, it could be said that perhaps the most important defining feature in a democratic society based upon the rule of law is that any aggrieved person has the opportunity of challenging the decision of the Hon. Minister of the Government of the day, in appropriate cases.

I am not of the view that the moment a person becomes aware of the possibility of an infringement, he must rush to Court and invoke the jurisdiction under Article 126. Any aggrieved person has the right to challenge the infringement not only when it is imminent but also after it has occurred. The failure to challenge an imminent infringement will never

be a bar to challenge the actual infringement. In *Siriwardena and Others Vs. Brigadier J. Rodrigo and Others* (1986) 1 S L R 384 at 387, Ranasinghe, J. stated that “*where a Petitioner establishes that he became aware of an infringement, or the imminent infringement, not on the very day the act complained of was so committed, but only subsequently on a later date, then, in such case, the said period of one month will be computed only from the date on which such Petitioner did in fact become aware of such infringement and was in a position to take effective steps to come before this Court.*”

In the instant applications, the infringement occurred not when the budget proposals were made in Parliament but only when the Hon. Minister of Finance acted upon the budget speech and published the impugned Gazette notification.

Article 126(2) must be given a generous and purposive construction. The starting point of one month prescribed by Article 126(2) is when the Petitioners were freely able to purchase a copy of the impugned Gazette, which is on or after 27th February 2015. The preliminary objection raised by the learned D.S.G. is therefore overruled as the Petitioners have invoked the jurisdiction of this Court within one month from 27th February 2015. The applications are now set down for hearing on its merits.

CHIEF JUSTICE

C. EKANAYAKE, J.

I agree.

JUDGE OF THE SUPREME COURT

R. MARASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

