

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

In the matter of an application under and in terms of Article s 17 and 126 of the Constitution.

1. Coral Sands Hotel (Private) Limited,
No. 326, Galle Road,
Hikkaduwa.
2. S.E. Goonewardena,
Managing Director,
Coral Sands Hotel Limited, Hikkaduwa.

Petitioners

Vs.

S.C. FR Application No. 170/2015

1. Ravi Karunanayake, MP,
The Minister of Finance,
The Ministry of Finance and Planning,
The Secretariat,
Colombo 01.
- 2 L.K.G. Gunawardena,
Commissioner General of Excise,
Excise Department of Sri Lanka,
No. 34, W.A.D. Ramanayaka Mawatha,
Colombo 02.
- 3 Damayanthi Paranagama,
The Divisional Secretary,
The Divisional Secretariat,
Hikkaduwa.
- 4 The Attorney General,
Department of Attorney General,
Colombo12.

Respondents

BEFORE	:	K. Sripavan., C.J. P. Jayawardena, P.C., J. U. Abeyrathne, J.
COUNSEL		Senany Dayaratne with Eshanthy Mendis instructed by Suraj Rajapakse for the Petitioners.
ARGUED ON	:	Viveka Siriwardene, D.S.G. for the . Attorney General 30.11.2015

WRITTEN SUBMISSIONS)

FILED ON) : 04.12.2015

DECIDED ON : **08.12.2015**

SRIPAVAN, C.J.

The Petitioners in this application sought to challenge the Excise Notification bearing No. 974 published in the Gazette Extraordinary No. 1901/19 dated 13.02.15 marked **P7** on several grounds as set out in the Petition dated 15.05.15. Leave to proceed was granted on 09.06.15 under Articles 12(1) and 13(6) of the Constitution for the alleged violation of the Petitioners' fundamental rights. While the application was pending, the 3rd Respondent issued a letter dated 07.10.2015 marked **X1** (annexed to the Motion dated 29.10.15) requesting the Petitioners to make a payment of Rs. 240,000/= being the balance enhanced licence fees for the year 2015 in terms of **P7**, if the Petitioners application for the Excise licence for the year 2016 is to be considered. In these circumstances, the Petitioners sought interim relief restraining any one or more of the Respondents from requiring the payment of an enhanced licence fees as referred to in the Excise Notification bearing No. 974.

The impugned Excise Notification 974 is issued by the First Respondent by virtue of the powers vested in him by Section 25 read with Section 32 of the Excise Ordinance. It further provides that Schedule "A" of the said Notification shall come into operation with effect from 01.01.15. Whilst Section 25 of the Excise Ordinance deals with the form, conditions and restrictions subject to which every Excise Licence shall be granted, Section 32(1) empowers the Minister to make rules for the purpose of carrying out the provisions of the Excise Ordinance. Thus, the Minister is empowered to make rules relating to "excise revenue". When an objection was taken by the Attorney-General in the case of *Rajanayagam Vs. Wijeratne* (1998) 3 S.L.R. 129 that Excise Notification did not relate to "excise revenue" the Court at page 136 noted as follows:-

"Excise revenue" is defined in section 2 as "revenue derived or derivable from any duty, fee, tax, fine..." Learned State Counsel's contention is plainly untenable because the notification refers to "application fees", and "fees for shifting", and thus obviously relates to excise revenue. But, more important, that contention is based on a misinterpretation of section 32(1), because the phrase "relating to excise revenue" does not qualify "rules", but only "other law for the time being in force". Thus Section

32(1) imperatively requires Parliamentary approval for all rules made under the Excise Ordinance, whether or not they relate to “excise revenue”.

It is therefore manifest that “annual licence fees” referred to in Schedule A of the Excise Notification No. 974 falls within the definition of “Excise revenue.” Section 32 further provides that the rules made by the Minister by way of notification once confirmed by Parliament with or without modification AND upon such confirmation being notified in the Gazette shall have the force of law from the date of such notification. (emphasis added). There is no evidence before Court to establish that Excise Notification No. 974 has been placed before Parliament and has been confirmed without any modification. Even if the said Notification is confirmed, it will acquire the status of law from the date on which the confirmation is notified in the Gazette. In the absence of any confirmation by Parliament and the subsequent publication of such confirmation in the Gazette, can the Third Respondent recover the enhanced licence fee imposed under Section 32 of the Excise Ordinance ?

Section 25 of the Excise Ordinance states that every licence shall be granted on payment of such fees, if any, for such period. (emphasis added). This necessarily implies that a statutory duty is cast upon the person granting licence to recover the fees limited to such period. If the licence is to be granted for the period commencing from 01.01.16 until 31.12.16 the authority granting licence cannot insist upon the payment of the balance fees for the previous year, imposed by Excise Notification 974 not confirmed by Parliament and the notification of such confirmation is not gazetted in terms of Section 32. Statutory power conferred upon the authority granting the licence must be exercised on considerations relevant to the purpose for which it is conferred. Instead, if the authority takes into account wholly irrelevant or extraneous considerations not provided by law, the exercise of power by the authority will be ultra-vires and the action becomes bad in law.

There is another reason why the licence fees should be imposed by law passed by Parliament. The constitutional role of the Parliament in exercising full control over public finance is provided for in Article 148 of the Constitution thus:-

“Parliament shall have full control over public finance. No tax, rate or any other levy

shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by Parliament or of any existing law.” (emphasis added).

Thus, statutes imposing any tax, rate or levy upon a citizen should have the approval of Parliament. It is a matter for the legislature to decide what considerations relating to the amelioration of hardship or to the interests of the economic progress of the people should be given effect to.

This Court, under Article 126 of the Constitution has the implicit power to issue whatever direction or order necessary in a given case, including all incidental or ancillary powers required to secure enforcement of the citizen’s fundamental right. The Constitution enshrines and guarantees the rule of law and Article 12(1) is designed to ensure that each and every authority of the State, acts bona fide and within the limits of its power and when the Court is satisfied that there is an abuse or misuse of power and the jurisdiction of the Court is invoked, it is incumbent on the Court to afford justice to the affected citizen.

For the reasons stated, Court issues an interim order restraining and/or preventing the Respondents and/or their servants and agents from taking any consequential steps requiring the Petitioners to pay the licence fees, being the purported arrears for the year 2015 in terms of the Excise Notification No. 974 published in the Gazette Extraordinary No. 1901/19 dated 13.02.15, until the final hearing and determination of this application. Consequently, any action on the document marked **X1** dated 07.10.2015 issued by the 3rd Respondent is also stayed until the final hearing and determination of this application.

CHIEF JUSTICE

P. JAYAWARDENA, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT.

U. ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT.

