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

In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

S.C. (FR) Application No. SC/FR/25/2018

- 1. Nishanthi Bandaranayake**
3/3 King's Court, 15 Havelock Road,
Colombo 5.
- 2. MDJB Fernando**
500/112A, Thimbirigasyaya Road, Colombo
05
- 3. Wannī Arachchige Samanalee Shanika
Fonseka**
51/A, Dharmaloka MW, Waragoda Road,
Kelaniya.
- 4. M.D. Chandima Ravini Jinadasa**
16/A First Lane Gammana Road, Arawwala,
Pannipitiya.
- 5. Deepanjali Abeywardana**
No.21/1/1, Kalubowila, Dehiwela.
- 6. Sabrina Esufally**
25 Guilford Crescent, Colombo 7.
- 7. Sharanya Sekaram**
14/1 Bois Place Off Isipathana Mw Colombo
05.

- 8. Randhula de Silva**
296/19A, Shanthi Mawatha, High Level
road, Colombo 6.
- 9. Meneka Galgamuwa**
7/4 Anderson Road,
Dehiwala.
- 10. Sujatha Gamage**
1, Rockwood Place, Colombo 7.
- 11. Wadduwage Visakha Perera**
Tillekeratne,
73/12, Kirillapone Ave
Colombo 5

PETITIONERS

Vs.

- 1) Mangala Samaraweera,**
Minister of Finance & Mass Media,
'The Secretariat',
Colombo 01.
- 2) Dr. R. H. S Samaratunga,**
Secretary,
Ministry of Finance & Mass Media,
'The Secretariat',
Colombo 01.
- 3) Hon. Attorney General**
Attorney General's Department
Hulftsdorp,
Colombo 12.

RESPONDENTS

On this 17th day of January 2018

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The **Petition** of the Petitioners abovenamed, appearing by **Ms. Thamila Dinushi Perera**, their Registered Attorney-at-Law, states as follows:

1. The Petitioners state that the Petitioners are all female citizens of the Republic and are from various walks of life. The Petitioners state that the Petitioners are above the age of 21 years.

True copies of the National Identity Cards of the Petitioners are annexed hereto compendiously marked as "P1" and are pleaded as part and parcel hereof.

2. The Petitioners state that
 - (a) the 1st Petitioner is a 52 year old retired communications specialist who retired prematurely to become a homemaker and is a mother of two adult offspring.
 - (b) the 2nd Petitioner is a divorced mother of two with tertiary and graduate qualifications in Journalism, Sociology and Criminology. The 2nd Petitioner at present engages herself as a Start-up entrepreneur of a creative agency.

- (c) the 3rd Petitioner holds a Bachelor of Arts degree from the University of Colombo and a Postgraduate diploma in fine arts from the University of Peradeniya. She entered the Sri Lankan film industry as a child artist and currently works as a professional actress in Films, Stage Dramas and Tele-dramas. She's also a cultural and political activist representing youth and advocating social and cultural freedom.
- (d) the 4th Petitioner is a 38 year old Digital Marketing Professional working in the advertising industry handling several of the biggest brands in Sri Lanka. The 4th Petitioner holds a First Class Bachelor's Degree in Computing.
- (e) the 5th Petitioner is a 34 year old media researcher and holds a BA in International Relations and a MA in South Asian Studies.
- (f) the 6th Respondent is a 29 year old Attorney at Law of the Supreme Court and a Senior Analyst and Head of Law at Verite Research, and independent think tank based in Colombo.
- (g) The 7th Petitioner is a law graduate reading for her Masters in Peace and Conflict Studies. The 7th Petitioner is also a Gender Activist and writer, working for the Grassrooted Trust and the English Editor of a trilingual online relationship and gender education site Bakamoono.lk
- (h) The 8th Petitioner is a 30 year old development practitioner working in private sector development and holds her Bachelor's and Masters degrees from university of Colombo. As a social cultural activist, the 8th Petitioner dedicates her time to create an equal and innovative Sri Lankan society.
- (i) The 9th Petitioner is a qualified finance professional working as the Head of planning for a leading organization. She is also an active member of Zonta club II of Colombo, which advocates and works to empower women and against gender based violence.
- (j) The 10th Petitioner holds a PhD in Chemistry with a follow up Masters in public policy. The 10th Petitioner is a former university teacher, researcher, public administrator and at present engages herself as a policy analyst focusing on data analytics and policy formulation for performance and results in government.
- (k) The 11th Petitioner is a Specialist in food and nutrition security working in community development for the past 25 years. Deeply committed to issues of

public interest concerning women, children animals and the environment. Currently partner in a consultancy firm Multi Sector Development Solutions (Pvt) Ltd, Functioning as Chief Commissioner Sri Lanka Girl Guides Association and President Nutrition Society of Sri Lanka

3. The Petitioners state that the instant application is preferred by the Petitioners in their personal capacity as citizens of the Republic and in public interest.

4. The Petitioners state that;

(a) The 1st Respondent is the Minister of Finance and Mass Media.

(b) The 2nd Respondent is the Secretary to the Ministry of Finance and Mass Media.

The 3rd Respondent is the Hon. Attorney General of the Republic who is made a party Respondent to this application in compliance with the law.

5. The Petitioners state that the Excise Notification No. 666 promulgated in terms of the provisions of the Excise Ordinance published in Gazette notification dated 31st December 1979 *inter alia* contains the following restrictions on the sale of liquor;

(a) Paragraph 5(v) - The restriction on “male persons under the age of eighteen years and female persons of any age” from working at places of production and marketing of liquor, provided that “Excise Commissioner in his discretion may permit the employment of female persons above the age of eighteen years, only as waitresses in licensed premises specially approved by him for that purpose”.

(b) Paragraph 11(c) - “Persons to whom Liquor is not to be sold or given - No liquor shall be sold or given..... (c) to a woman within the premises of a tavern”.....

A true copy of the said Excise Notification No. 666 is annexed hereto marked "P2" and is pleaded as part and parcel hereof.

6. The Petitioners state that this prohibition was a draconian measure that was arbitrary, irrational, unreasonable and discriminatory to female citizens of the Republic.
7. The Petitioners state that by Excise Notification No. 02/2018 dated 10th January 2018, the 1st Respondent has *inter alia* revised the Excise Notification No. 666 produced marked "P2" by inter alia repealing paragraphs 5(v) and 11(c) of the said Excise Notification No. 666 marked "P2".

A true copy of the said Excise Notification No. 02/2018 dated 10th January 2018 is annexed hereto marked "P3" and is pleaded as part and parcel hereof.

8. The Petitioners state that the promulgation of the said Excise Notification 02/2018 produced marked "P3" resulted in the revocation of an arbitrary, unreasonable and discriminatory prohibition imposed against female citizens of the Republic.
9. The Petitioners state that when matters remained as such the Petitioners were reliably informed that at a media briefing, a member of the Cabinet of Ministers, Mr. Mahinda Samarasinghe has declared that at a meeting of the Cabinet of Ministers ostensibly held on 16th January 2016 the Cabinet of Ministers has purportedly decided to "revoke the recent gazette allowing women to purchase alcohol" which the Petitioners verily believe refers to the said Excise Notification marked "P3".

A printed true copy of a news report titled "Gazette allowing women to purchase alcohol revoked" dated 16th January 2018 published in the official website of the 'Daily News' (www.dailynews.lk) is annexed hereto marked "P4" and is pleaded as part and parcel hereof.

10. The Petitioners state that the above circumstances gives rise to a reasonable apprehension regarding an imminent infringement of the Petitioners' right to equality and equal protection of the law guaranteed to them by Article 12 (1) of the Constitution in as much as-

- (a) Any revocation of the said Excise Notification marked "P3" would be unreasonable.
- (b) Any such measure would deprive the members of the female gender who have attained the requisite age specified by Law from being lawfully employed at places of production and sale of liquor.
- (c) Any such measure would deprive the members of the female gender who has attained the requisite age specified by Law from lawfully purchasing liquor which is a legal product that can only be manufactured, distributed and sold with the express regulation and control of the State.
- (d) An imposition of a prohibition applicable to members of only one gender would tantamount to an unequal treatment of the members of such gender.

11. The Petitioners state that the above circumstances gives rise to a reasonable apprehension regarding an imminent infringement of the Petitioners' right not to be discriminated against on the grounds of their sex guaranteed to them by Article 12(2) of the Constitution in as much as-

- (a) Any revocation of the said Excise Notification marked “P3” would mean that members of only the female gender who have attained the requisite age specified by Law, would not be able to lawfully be employed at places of production and sale of liquor.

- (b) Any revocation of the said Excise Notification marked “P3” would mean that members of only the female gender who have attained the requisite age specified by Law would not be able to lawfully purchase liquor which is a legal product that can only be manufactured, distributed and sold with the express regulation and control of the State.

The Petitioners state that the above circumstances gives rise to a reasonable apprehension regarding an imminent infringement of the Petitioners’ right to engage by themselves or in association with others in any lawful occupation, profession, trade, business or enterprise guaranteed to them by Article 14(1)(g) of the Constitution in as much as the members of the female gender who have attained the requisite age would not be able to be employed at places of production and sale of liquor, depriving female citizens an opportunity to engage in a lawful vocation.

12. In the totality of the foregoing circumstances the Petitioners plead that they are entitled in Law to seek the following reliefs from Your Lordships’ Court;

- (a) A Declaration that the Petitioners’ fundamental rights enshrined in Article 12(1) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;

- (b) A Declaration that the Petitioners' fundamental rights enshrined in Article 12(2) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;
- (c) A Declaration that the Petitioners' fundamental rights enshrined in Article 14(1)(g) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;
- (d) A Declaration that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which is contrary to Articles 12(1) and/or 12(2) and/or 14(1)(g) of the Constitution;
- (e) A Declaration that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which is contrary to Articles 12(1) and/or 12(2) and/or 14(1)(g) of the Constitution;
- (f) A Declaration that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which directly or indirectly prevents female person from lawfully being employed at a place of production and/or sale of liquor;

(g) A Declaration that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which directly or indirectly prevents a female person from lawfully purchasing liquor;

13. In the circumstances aforesaid, The Petitioners state that irreparable loss and damage would be caused to the Petitioners and to the general public and entire application would be rendered futile if the Excise Notification marked “P3” is revoked prior to the determination of this application. Therefore the Petitioners respectfully plead that Your Lordships’ be pleased to grant an interim Order preventing the amendment and/or revocation of the Excise Notification marked “P3” until the final hearing and determination of this application.
14. The Petitioners reserve their right to tender originals and/or certified copies of the documents pleaded above and further material, documents and affidavits to Your Lordships Court in the course of the proceedings of this application. The Petitioners further reserve their right to add any further parties if deemed necessary during the course of the proceedings of this application.
15. The Petitioners respectfully plead that they are invoking the jurisdiction of Your Lordships' Court in respect of the matters pleaded herein in the interest of the public as well, and states that the issues to be determined in this application by Your Lordships' Court are of significant interest and importance to the general public.
16. The Petitioners have not previously invoked the jurisdiction of Your Lordships’ Court in respect of this matter.

17. Affidavits of 6th, 10th, 11th petitioners are annexed hereto in support of the averments pleaded herein.

WHEREFORE the Petitioners pray that Your Lordships' be pleased to:

- (a) Grant leave to proceed to this application;
- (b) Issue notice on the Respondents;
- (c) Declare that the Petitioners' fundamental rights enshrined in Article 12(1) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;
- (d) Declare that the Petitioners' fundamental rights enshrined in Article 12(2) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;
- (e) Declare that the Petitioners' fundamental rights enshrined in Article 14(1)(g) of the Constitution of the Republic is in danger of being imminently infringed by any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State;
- (f) Declare that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or by the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which is contrary to Articles 12(1) and/or 12(2) and/or 14(1)(g) of the Constitution;

- (g) Declare that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which directly or indirectly prevents female person from lawfully being employed at a place of production and/or sale of liquor;
- (h) Declare that any one or more of the 1st and 2nd Respondents and/or anyone acting under the 1st and/or 2nd Respondents and/or the State are not entitled in Law to revoke and/or amend the Excise Notification 02/2018 dated 10th January 2018 in a manner which directly or indirectly prevents a female person from lawfully purchasing liquor;
- (i) Grant costs; and,
- (j) Grant such other and further relief as to Your Lordships' Court shall seem meet.

ATTORNEY-AT-LAW FOR THE PETITIONERS

Settled by:

Pulasthi Rupasinha

Thishya Weragoda

Attorneys-at-Law