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

In the matter of an Application under and in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC (FR) Application No.

1. Bhavani Fonseka,
294/1 Nawala Road
Nawala
2. Weliweriya Liyanage Sumika Perera
No. 71, Ayesha Watta
Yakkalla Ibbagamuwa
3. Anushya Coomaraswamy
60/10 Bogahahena Road
Battaramulla
4. Shreen Abdul Saroor
102A Canal Bank Road,
Hill Street, Nedimala,
Dehiwala
5. Minoli Chandrika de Soysa
207/6 Dharmapala Mawatha
Colombo 00700

PETITIONERS

VS

1. Mangala Samaraweera
Minister of Finance and Mass Media,
The Ministry of Finance and Mass Media
The Secretariat Lotus Road
Colombo 00100
2. Dr. R.H.S. Samaratinga,
Secretary to the Treasury and Secretary to the
Ministry of Finance
The Ministry of Finance and Mass Media
The Secretariat, Lotus Road
Colombo 00100

Sinnadurai Sundaralingam & Balendra
Attorneys-at-Law & Notaries Public
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Tel: 25 444 00 E-Mail: lawyers@sblaw.lk

3. The Honourable Attorney General
Attorney General's Department
Hulftsdorp,
Colombo 01200

RESPONDENTS


On this 22nd day of January 2018

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

The **Petition** of the Petitioners above named appearing by RAJ MOAHAN BALENDRA practising in the name style and firm of

SINNADURAI SUNDARALINGAM & BALENDRA
and his Assistants JAYASURIYA ARACHCHIGE JUDITH SONALI PERERA,
USHETTIGE NIMASHA SHAMEN PERERA and THARINI SEVINDI
SALWATHURA their Registered Attorneys state as follows:

THE PETITIONERS

1. The 1st to 5th Petitioners above named are citizens of Sri Lanka and women above the age of 18.
2. The 1st Petitioner is an Attorney-at-Law and Senior Researcher working with the Centre for Policy Alternatives (CPA) in Colombo.
3. The 2nd Petitioner is a women's rights activist and coordinator of the Women's Resource Centre. She is also a visiting lecturer at the Sri Lanka Open University. 
4. The 3rd Petitioner is a Fellow of the Institute of Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants of the UK.
5. The 4th Petitioner is a Human Rights activist and the Co-founder of the Women's Action Network (WAN) and the Mannar Women's Development Federation (MWDF).
6. The 5th Petitioner is a writer and editor at a local organization working on peace building. She has previously worked as a journalist with local and international newspapers and publications.

7. The Petitioners make this application in their own right and in the public interest, with the objective of securing due respect, regard for and adherence to the Rule of Law, the Constitution, which is the supreme law of the land, and with a view to protecting and promoting the fundamental rights of women in Sri Lanka which require to be respected, secured and advanced as more fully set out hereinafter.

THE RESPONDENTS

8. The 1st Respondent is the Minister of Finance and Mass Media, and is the competent authority to issue the Gazette sought to be impugned in these proceedings and accordingly made a party to this application in that official capacity.
9. The 2nd Respondent is the Secretary to the Treasury and the Secretary to the Ministry of Finance, and is accordingly made a party to this application in his official capacity.
10. The 3rd Respondent is the Honourable Attorney General of the Republic who is made a party to this application as required by law, in terms of Supreme Court Rule 44(3) read with Article 126(2) of the Constitution. No substantive relief is sought against the 3rd Respondent.

BACKGROUND TO THE INSTANT APPLICATION

11. The (then) Minister in charge of the Ministry of Finance and Planning issued Excise Notification No. 666 of the Gazette Extraordinary No.69/5, dated 31st December 1979.

A copy of Gazette (Extraordinary) No. 69/5 dated 31st December 1979 in English is annexed hereto marked as **PI** and pleaded as part and parcel hereof.

Excise Notification No. 666 is contained in 3A to 8A of Gazette (Extraordinary) No. 69/5 dated 31st December 1979.

12. The said Excise Notification *inter alia* prescribed the following restrictions;

“Paragraph 5 Who may not be employed - The manufacture, collection, bottling, sale or transport of liquor by the following persons and the employment of such persons for the manufacture, collection, bottling, sale or transport of the same is prohibited;

... (V) Male persons under the age of eighteen years **and female persons of any age.** Provided that the Excise Commissioner may in his discretion permit the employment of female persons above the age of eighteen years, only as waitresses in licensed premises specially approved by him for the purpose;

Paragraph 11 Person 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.”

[emphasis added]

13. The 1st Respondent Minister in charge of the Ministry of Finance and Media issued Excise Notification No 2/2018 of the Gazette Extraordinary No. 2053-26 dated 10th January 2018.

A copy of the said Excise Notification No 2/2018 dated 10th January 2018 in English is annexed hereto marked **P2** and pleaded as part and parcel hereof.

Despite several attempts to do so, the Petitioners have not been able to obtain a copy of Gazette (Extraordinary) No. 2053-26 dated 10th January 2018 as it was not available to them as at the date of filing this Application. The Petitioners respectfully reserve their right to submit the said Gazette [marking same as **P2(a)**] as soon as it is made available and obtained by the Petitioners.

14. The said Excise Notification No 2/2018 amended the Schedule in the said Excise Notification marked **P1** by;

“(1) repealing sub - paragraph (v) of paragraph 5 and substituting thereof with following sub - paragraph,

“ (v) Any persons under the age of eighteen years. ”,

(2) removing sub - paragraph (c) of paragraph 11 , and

(3) renumbering sub - paragraph (d) as sub - paragraph (c) in paragraph 11.”

15. The effect of the said Excise Notification No 2/2018 (**P2**) was to:

- (a) Remove the prohibition on women above the age of 18 to manufacture, collect, bottle, sell or transport liquor;
- (b) Remove the prohibition on women above the age of 18 being employed for the manufacture, collection, bottling, sale or transport of liquor; and
- (c) Remove the prohibition on “giving” liquor to “a woman within the premises of a tavern”.

16. Thereafter, amidst rumours of moves to enable implementation of such prohibitions, the 1st Respondent Minister in charge of the Ministry of Finance and Media issued Excise Notification No. 4/2018 of the Gazette Extraordinary No. 2054-42 dated 18th January 2018.

A copy of the said Excise Notification No 4/2018 dated 18th January 2018 in English is annexed hereto marked as **P3** and pleaded part and parcel hereof.

Despite several attempts to do so, the Petitioners have not been able to obtain a copy of Gazette (Extraordinary) No. 2054-42 dated 18th January 2018 as it was not available as at the date of filing this Application. The Petitioners respectfully reserve the right to submit the said Gazette [marking same as **P3(a)**] as soon as it is made available and obtained by the Petitioners.

17. The said Excise Notification No 4/2018 amends the schedule in the Excise Notification No. 666 of the Extraordinary Gazette Notification No.69/5, dated 31st December 1979 as amended by Excise Notification No. 02/2018 of the Extraordinary Gazette Notification No. 2053/26, dated 10th January 2018.
18. The effect of the said Excise Notification No 4/2018 dated 18th January 2018 (**P3**) is to:
- (a) Prohibit women above the age of 18 to manufacture, collect, bottle, sell or transport liquor;
 - (b) Prohibit women above the age of 18 from being employed for the manufacture, collection, bottling, sale or transport of liquor; and
 - (c) Prohibit “giving” liquor to “a woman within the premises of a tavern”.

INFRINGEMENT OF FUNDAMENTAL RIGHTS

Equality and Non-discrimination

19. The Petitioners state that the provisions of the said Excise Notification No 4/2018 dated 18th January 2018 (**P3**) impose unreasonable, arbitrary and irrational restrictions on their rights and rights of other adult women in Sri Lanka based solely and completely on their gender/sex.

20. The Petitioner state that the said action of the 1st Respondent in placing the said disabilities on them and on other women above the age of 18 whilst placing no such disability on men above the age of 18, constitute and entail infringement of the Petitioners' fundamental rights and the fundamental rights of all women in Sri Lanka above the age of 18 including:

(a) A denial of the right to Equal Protection of the Law (**Article 12(1)** of the Constitution);

and

(b) A denial of the right to non-discrimination based on sex (**Article 12(2)** of the Constitution).

Freedom to engage in a lawful occupation

21. The Petitioners state that the prohibition imposed on women over the age of 18 years to manufacture, collect, bottle, sell or transport liquor and to be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor infringes the freedom of the Petitioners and other adult women to engage (if they so choose) by themselves or in association with others in any lawful occupation, profession, trade, business or enterprise as guaranteed by **Article 14(1)(g)** of the Constitution.

Freedom of thought/ arbitrary restriction of choice

22. The Petitioners further state that by the said unreasonable and irrational restrictions placed by the said Excise Notification No 4/2018 dated 18th January 2018 (P3), the State is in effect stating that women who have otherwise attained the age of majority do not possess the capacity to properly make informed decisions for themselves as to whether they should:

(a) Manufacture, collect, bottle, sell or transport liquor; and/or

(b) Be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor; and/or

(c) Obtain and/or purchase and/or consume liquor "within the premises of a tavern".

23. The Petitioners state that whether or not any one of them decides to engage in any one or more of the above mentioned activities, that they as persons who have attained the age of majority and/or who satisfy any reasonable conditions imposed on men, should be free to and/or have the right to choose for themselves whether or not they should engage in the said activities.
24. The Petitioners state that insofar as the aforesaid Excise Notification No 4/2018 dated 18th January 2018 (P3) takes away from them as women who have attained the age of majority the ability to make the choice as to whether they should engage in the aforesaid activities based on their gender, the aforesaid acts of the 1st Respondent constitute and entail infringement and effective negation of their freedom of thought (guaranteed under **Article 10** of the Constitution).
25. The Petitioners state that the provisions of the aforesaid Excise Notification No 4/2018 dated 18th January 2018 (P3) effectively demean, denigrate and belittle women based on their gender as the said provisions are predicated on the notion that as a rule/in general:
- (a) Women are inferior to men;
 - (b) Women have weak minds;
 - (c) Women are lacking in terms of responsibility;
 - (d) Women are lacking in self-control; and
 - (e) Women lack the requisite capacity to properly determine for themselves whether or not to engage in the activities prohibited thereby.

Continuing violation and irreparable harm

26. Furthermore, in the circumstances the Petitioners respectfully state that the continuous and imminent further infringement of their fundamental rights and the fundamental rights of a significant segment of the People of Sri Lanka [particularly the fundamental rights guaranteed by **Articles 10, 12(1), 12(2) and 14(1)(g)**] is facilitated and permitted by the 1st Respondent by the imposition of the provisions of the said Excise Notification No 4/2018 dated 18th January 2018 (P3).
27. The Petitioners state that unless Your Lordships' Court makes interim orders sought through this application until the hearing and final determination of this application, grave and irreparable loss, harm, damage and prejudice would be caused to the fundamental rights of the Petitioners and other adult women, a significant segment of the People of Sri Lanka.

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28. The Petitioners further state that unless appropriate interim order(s) as sought through this application are granted and/or issued by Your Lordships' Court until the hearing and final determination of this application, the Rule of Law itself would be eroded.
29. The Petitioners have invoked the jurisdiction of Your Lordships' Court in respect of this matter, in view of the significance of the issues involved, to the fundamental rights of women in Sri Lanka.
30. Accordingly, the Petitioners respectfully reserve the right to furnish to Your Lordships' Court such further and/or other material, developments, facts or circumstances as may transpire and/or appear relevant to the subject matter of this application as well as to add such parties and/or effect any amendment of pleadings as may become or transpire to be necessary.
31. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
32. An affidavit of the 1st Petitioner is appended hereto in support of the averments contained herein.

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

- (a) Grant the Petitioners leave to proceed with this Application;
- (b) Declare that the imposition of the said disabilities on women above and/or reaching the age of 18 by the State constitute and entail present, continuing and imminent further infringement of the fundamental rights of a significant segment of the People of Sri Lanka guaranteed under **Article 10** and/or **Article 12(1)** and/or **Article 12(2)** and/or **Article 14(1)(g)** of the Constitution;
- (c) Declare that the actions of the 1st Respondent and/or the State in taking away from the Petitioners and other women in Sri Lanka over or reaching the age of 18 the ability to exercise a choice as to whether they should manufacture, collect, bottle, sell or transport liquor and/or be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern, constitute present and/or continuing and/or imminent further infringement of the fundamental rights of the Petitioners and women in Sri Lanka guaranteed under **Articles 10** of the Constitution;

- (d) Declare that the prohibition and/or restriction of women above and/or reaching the age of 18 by the 1st Respondent and/or the State from manufacturing, collecting, bottling, selling or transporting liquor and/or being employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern constitutes present and/or continuous and/or imminent further infringement of the fundamental rights guaranteed to the Petitioners and other women in Sri Lanka under **Article 12(1)** of the Constitution;
- (e) Declare that the prohibition and/or restriction of women above and/or reaching the age of 18 by the 1st Respondent and/or the State from manufacturing, collecting, bottling, selling or transporting liquor and/or being employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern, based on their gender constitutes present and/or continuous and/or imminent further infringement of the fundamental rights guaranteed to the Petitioners and other female citizens of Sri Lanka under **Article 12(2)** of the Constitution;
- (f) Declare that the prohibiting and/or restricting of women over the age of 18 years by the 1st Respondent and/or the State from being able to engage in manufacture, collection, bottling, selling or transport of liquor and/or to be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor constitutes present and/or continuous and/or imminent further infringement of the fundamental rights guaranteed to the Petitioners and/or other female citizens above and/or reaching the age of 18 to their rights guaranteed under and in terms of **Article 14(1)(g)** of the Constitution;
- (g) Declare that Excise Notification No 4/2018 dated 18th January 2018 (P3) issued by the 1st Respondent is null and void and/or of no force and/or effect in law;
- (h) Make Interim Order(s) restraining and/or preventing and/or suspending the operation and/or implementation and/or enforcement of the provisions of Excise Notification No 4/2018 dated 18th January 2018 (P3) issued by the 1st Respondent until the hearing and final determination of this application;
- (i) Grant compensation to the Petitioners in such sum as Your Lordships' Court may deem meet;

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- (j) Grant costs; and
- (k) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

Sgd. Sinnadurai Sundaralingam & Balendra

REGISTERED ATTORNEYS FOR THE PETITIONERS

Documents annexed to the Petition
Documents marked 'P1' to 'P3(a)'

Sgd. Sinnadurai Sundaralingam & Balendra

REGISTERED ATTORNEYS FOR THE PETITIONERS

Settled by:

Luwie Ganeshathasan Esqr.,
Ms. Sarita de Fonseka
Viran Corea Esqr.,
Attorneys-at-Law