

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

In the matter of an application for Writs
in the nature of *Certiorari* and
Mandamus in terms of Article 140 of the
Constitution.

1. A.T. Ariyapala,
No. 22, Bullers Lane,
Colombo 07.
2. Atlantic Club
19/1, Daisyvilla Avenue.
Colombo 04.

Petitioners

Court of Appeal case
No. CA 210/2014 Writ

Vs.

1. The Deputy Commissioner,
Betting and Gaming Levy,
National Building Tax and Economic,
Service Charge Unit, 10th Floor,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
2. The Commissioner General
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 02.

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : Nissanka Nanayakkara PC, with Yasas de Silva for the
Petitioners.

Indula Ratnayake. SC for Respondents.

Argued on : 15/09/2017

Written submission on : 01/11/2017

Judgement on : 12/01/2018

A.L. Shiran Gooneratne J.

The 1st Petitioner (A.T. Ariyapala) made an application dated 19th July 2013, (marked 'X10') to register the 2nd Petitioner, (Atlantic Club), under the Betting and Gaming Levy Act. No. 40 of 1988, and subsequent Amendments. In this application it is stated that the date of commencement of the business was 31st December 1984.

By letter dated 09th October 2013, (marked 'X 12'), the 1st Respondent (the Deputy Commissioner, Betting and Gaming Levy) has stated, *inter alia*, that the said application for registration should have been made before the 31st May 2013, in terms of the Betting and Gaming Levy (Amendment) Act No. 19 of 2013 (hereinafter sometimes referred to as the "Amending Act") and, as the application of the 1st Petitioner had been made after that date, such application had been

rejected and the registration had been refused. (The relevant provisions of the Amending Act are quoted later).

The Petitioners have thereupon filed Petition dated 3rd July 2014, praying, *inter alia*, that,

- a) This Court be pleased “to issue a writ of *Certiorari* quashing the decision of the 1st Respondent as stated in ‘X 12’.
- b) To “issue a writ of *Mandamus* directing the 1st and 2nd Respondent (The Commissioner General of Inland Revenue) to register the 2nd Petitioner Atlantic Club under Section 3 (2A) 1 of the Betting and Gaming Levy (Amendment) Act No. 19 of 2013, for the purpose of levy payment”.

The 1st and 2nd Respondents have filed their statements of objection dated 14th October 2014. Also, the Petitioners have filed their Written Submissions dated the 30th October 2017, and the Respondents have filed their Written Submissions dated the 31st October 2017.

The English text of the Betting and Gaming Levy (Amendment) Act No. 19 of 2013, states, *inter alia*, as follows,

- a) Certified on 24th April 2013.

- b) “This Act may be cited as the Betting and Gaming Levy (Amendment) Act, No. 19 of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013”. (Section 1)
- c) “Every person who, on or after January 1, 2013 carries on the business of a bookmaker or gaming, as is referred to in subsection (1) of section 2, shall register with the Department of Inland Revenue, within five months from the date of commencement of this Act or within one month from the date of commencement of the business as the case may be”. (Section 2A (1), inserted after section 2 of the principal enactment (Betting and Gaming Levy Act, No.40 of 1988), by section 3 of the amending Act No. 19 of 2013)

In regard to the above, the Sinhala text of the Amending Act No. 19 of 2013 states,

- a) සහතිකය සටහන් කළේ 2013 අප්‍රේල් මස 24 වැනි දින.
- b) මෙම පනත 2013 අංක 19 දරන අටවූ අල්ලීම හා සුදු බදු (සංශෝධන) පනත යනුවෙන් හඳුන්වනු ලබන අතර මේ පනතේ විධිවිධාන සියලු කාර්ය සඳහා 2013 ජනවාරි මස 1 වන දින සිට ක්‍රියාත්මක වූ ලෙස සලකනු ලැබිය යුතු ය. (Section 1)
- c) 2 වන වගන්තියේ (1) වන උප වගන්තියේ සඳහන් වන පරිදි බුකිකරුවකුගේ ව්‍යාපාරය හෝ සුදු ව්‍යාපාරය කරගෙන යනු ලබන සෑම තැනැත්තෙක් ම 2013 ජනවාරි මස 1 වන දින හෝ ඒදිනට පසුව අවස්ථාවෝචිත පරිදි මේ පනත ක්‍රියාත්මකවීමේ දිනයේ සිට මාස පහක

කාලසීමාවක් ඇතුළත හෝ ව්‍යාපාරය ආරම්භ කිරීමේ දින සිට එක් මසක් ඇතුළත දේශීය ආදායම් බදු දෙපාර්තමේන්තුව වෙත ලියාපදිංචි විය යුතුය.
(Section 2අ (1)).

The 1st Petitioner contends that, the application for registration of the 2nd Petitioner, in terms of the Amending Act, could be made, within five months of the date of “commencement” of such Amending Act, which he has claimed to mean, the 24th April 2013 – the date on which the Amending Act was certified by the Speaker – that is, on or before 24th September 2013; ignoring the provisions of Section 1 of the Amending Act, which provides that the Amending Act “..... shall be deemed for all purposes to have come into operation on January 1, 2013”, which is relied on by the Respondents, who contend that, accordingly, such application should have been made on or before the 31st May 2013. (As stated earlier, the date of the said application (marked ‘X10’) is 19th July 2013).

Section 2(e) of the Interpretation Ordinance provides that –

“2. In this Ordinance and in every written law, whether made before or after the commencement of this Ordinance, unless there be something repugnant in the subject or context –

(e) “commencement”, “used with reference to an enactment, shall mean the day on which such enactment comes into force; and “operation”, used with reference to an enactment, which is not to take effect immediately upon coming into force, shall mean the day on which such enactment takes effect”.

Dealing with "Legislative Power". The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) ("the Constitution"), provides in Article 75 that, "Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution or adding any provision to the Constitution:

Provided that" (relating to the suspension or repeal of the Constitution, which is not relevant in this instance).

Article 80 (1) of the Constitution provides, *inter alia*, that "Subject to the provisions of paragraph (2) of this Article, a Bill passed by Parliament shall become law when the certificate of the Speaker is endorsed thereon." (Sub paragraph 2 relates to a Bill requiring a referendum and is not relevant in this instance.)

In relation to "Retrospective Operation of Statutes", Maxwell on "The Interpretation of Statutes", Twelfth Edition by P. St. J. Langon states, at page 215, that --

"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a

*construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication". This passage has been cited, with approval, in **Sivarajasingham Vs Sivasubramaniam (1978-79-80) 1 SLR 327 at page 330.***

Also, as pointed out earlier, Section 1 of the Amending Act provides, *inter alia*, that such Act. "...shall be deemed for all purposes to have come into operation on January 1st 2013."

The Supreme Court has considered the effect of a "deeming provision" in a statute, in the case of **Jinawathie and others vs. Emalin Perera (1986) 2 SLR 121**, and has stated, (at page 130), *inter alia*, as follows -

"In statutes the expression "deemed" is commonly used for the purpose of creating a statutory fiction so that the meaning of a term is extended to a subject matter which it properly does not designate. Thus where a person is "deemed to be something" it only means that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. When a thing is deemed to be something, it does not mean that it is that which it is deemed to be, but it is rather an admission that it is not what it is deemed to be, and that notwithstanding it is not that particular thing it is nevertheless deemed to be that thing. Where a statute declares that a person or thing shall be deemed to be or shall be treated as

something which in reality it is not, it shall have to be treated as so during the entire course of the proceeding - vide Bindra: Interpretation of Statutes (6th Ed.) pp. 912-914."

Further, relating to the "Language of Legislation", Article 23 of the Constitution, repealed and substituted by the Sixteenth Amendment to the constitution (certified on the 17th December, 1988) provides, inter alia, as follows –

"23.(1) All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English:

Provided that Parliament shall, at the stage of enactment of any law determine which text shall prevail in the event of any inconsistency between texts.

Provided further (not relevant in this instance)".

Accordingly, the English text of the Amending Act is only a translation thereof.

Section 7 of the Amending Act provides that, "in the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail."

Therefore, it is the Sinhala text of the Amending Act, which should be considered when interpreting the provisions of the Amending Act. The Sinhala text of Sections 1 and 2A (1), which has been quoted earlier, contains the word “ක්‍රියාත්මක වීමේ දිනය”, in both such Sections 1 and 2A(1).

Thus, it is clear that the date, on or before which the 1st Petitioner should have made the application (marked “X10”), in terms of the Amending Act, was within five months of 1st January 2013, that is, on or before the 31st May 2013, whereas the 1st Petitioner’s application was, as stated earlier, dated 19th July 2013, which is outside the time permitted by such Amending Act.

There was also a dispute between the parties as to the date on which the said application (marked “X10”) was received by the 1st Respondent: the 1st Petitioner claiming that such application was submitted “by hand”, on the date of the application itself, that is, 19th July 2013. (paragraph 13 of the said Petition dated 3rd July 2014); while, the Statement of Objections dated 14th October 2014 of the 1st and 2nd Respondents claims that such application (marked “X10”) was received on the 2nd August 2013 (paragraphs 6 and 10 of the said Statement of Objections). However, in view of this Judgment, it is immaterial whether the said application (marked “X10”) was received by the 1st Respondent on the 19th July 2013 or on the 2nd August 2013.

Also, the 1st Petitioner has stated that “he had invested over Rs.100 million for his new building and, the entire investment will go waste if the 1st respondents decision continued to prevail “(paragraph 19 of the said Petition dated 3rd July 2014). In the case of The Chairman, Urban Council, Matara Vs. Abeysuriya 52 NLR 349. “The accused erected a new building within a limit of twenty five feet from the centre of a road, in contravention of the provisions of section 87 of the Urban Councils Ordinance No.31 of 1939 and section 13 (1) of the Housing and Town Improvement Ordinance. The chairman of the Urban Council was not agreeable to granting any concession to the accused in regard to the demolition of the building”. the Supreme Court held “that the Court was bound to issue a mandatory order under section 13(2) of the Housing and Town Improvement Ordinance for the demolition of the building. It is not open to a Court to take upon itself the task of permitting a breach of an enactment on grounds that an accused person would suffer hardship or loss”.

In the circumstances, the Petitioners application for the reliefs prayed for is refused, without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL