FORBES & WALKER TEA BROKERS
v.
MALIGASPE AND OTHERS

COURT OF APPEAL
YAPA, J. AND
U. DE Z. GUNAWARDANA, J.
C.A. NO. 191/98
NOVEMBER 11, 1998

Writ of certiorari – Licensing of Produce Brokers Act, No. 9 of 1979 – Application for new licence – Applicability of regulations 8 (b), 11 and 11A – Locus standi – Person aggrieved – Lex non cogit impossibilia – Meaning of the word "every".

The petitioner sought to quash the decision made by the appropriate authority under Act No. 9 of 1979 granting a licence to Asia Siyaka Commodities (Pvt) Ltd. the 3rd respondent which authorised the 3rd respondent to carry on the business of licensed produce broker for tea.

It was contended that the 3rd respondent could not have been issued with a licence on 22. 2. 98 to do business as a produce broker during the year 1998 as the 3rd respondent had failed to submit the application before the 30th of September of the preceding year 1997 as required by regulation 11.

It was contended on behalf of the 3rd respondent that a company entering the business for the first time is governed by regulation 11A of 13. 6. 81, and not by regulation 11. It was further contended that the petitioner has no *locus standi* to invoke the jurisdiction of the Court of Appeal.

Held:

1. The Requirement in regulation 8 (*b*) did not apply to an application made by a company seeking to enter the relevant business for the first time because regulation 8 (*b*) which imposed the requirement that the application must be accompanied by an audited balance sheet and profit and loss statement for the 3 years immediately preceding must necessarily be read or understood subject to the overriding maxim of interpretation – *lex non logit impossibilia.*

Per Gunawardana, J.

2. "The argument that the law required every application for a licence, even when it related to a new business and was made for the first time ought

to be accompanied by an audited balance sheet in respect of the 3 years immediately preceding, if accepted would vindicate Mr. Bumble's opinion about the law – 'that law is an ass'."

2. The tendency in the past seems to have been to limit the *locus standi* to persons who had a particular interest or grievance of his own and above the rest of the community. In more recent years, the concept of *locus standi* seems to have been progressively widened to extend standing to 'almost anyone coming to court to get the law declared and enforced'. The strict concept that the applicant for judicial review must have an interest superior to that of the general public has been transformed in England and seems to be virtually jettisoned.

Per Gunawardena, J.

"I take it that Rule of Law means that no one is above the law and a necessary corollary of that proposition is that no one can flout the law with impunity. Prerogative writs, certiorari in particular are the means whereby allegations such as issuing licences contrary to and in disregard of the provisions of the law can be brought to light in order to get the unlawful conduct stopped and so vindicate the rule of law".

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Cases referred to:

1. *Whitehead v. James Stott Ltd.* – 1949 1 KB 358.
2. *Galashiels Gas Co. Ltd. v. O'donne* – 1949 Ac 275.
3. *Sulters v. Briggs* – 1922 1 AC 1.
4. *Harding v. Price* – 1948 – 1 K1B 695.
5. *Kikabhoy v. I. T. Commissioner* – AIR 1950 Bom. 6.
6. *Secretary of State v. Pumendi Narayan* – 1LR 1940 Cal 123.
7. *Thiru Manikkam Co., Ltd. v. Tamil Nadu State* – 1977 AIR SC 518.
8. *Hardware v. Glidden & Co.* – 284 US 151, 158.
9. *Chuni Singh v. Union of India* – 1968 AIR Delhi 196.
10. *Patents Agents v. Lockwood* – 1894 AC 347.
11. *Wijesinghe v. Tea Export Controller* – 39 NLR 437.
12. *R. V. Richmond Confirming Authority* – 1970 AER 481.
13. *Gouriets Case* – 1977 1 AER 696.
14. *R. v. Greater London Council* – Ex P. Blackburn 1976 1 SLR 550.
15. *Dr. Mohideen v. Bangladesh* – 48 DLR SC Bangladesh.
16. *R. v. Paddington Valuation Officer* – 1965 – 2 AER 836.

K. N. Choksy, PC with *Romesh de Silva*, PC and *Harsha Amerasekare* for petitioner.

Saleem Marsoof DSG for 1st and 2nd respondents.

D. S. Wijesinghe, PC with *Gomin Dayasiri, Kushan de Alwis, Dilan de Silva* and *Prasanne Obeysekare* for 3rd respondent.

November 11, 1998.

U. DE Z. GUNAWARDANA, J.

This is an application made by the petitioner for a Writ of Certiorari to quash the decision made on or about 26th February, 1998 by the 1st respondent, who is the appropriate authority under the Licensing of Produce Brokers Act No. 9 of 1979, granting a licence to Asia Siyaka Commodities Private Ltd., which is cited as the 3rd respondent to the application, thereby authorizing the 3rd respondent to carry on the business of licensed produce broker for tea.

It is pertinent to observe that the petitioner which is a duly incorporated company, itself is a licensed produce broker in tea and has been granted a licence in that regard.

The argument of the learned President's Counsel for the petitioner is that the 3rd respondent couldn't have been issued with a licence on 26th February, 1998, to do business as a produce broker during the current year, ie 1998, as the said 3rd respondent company had failed to submit the application for licensing to the appropriate authority (1st respondent) before the 30th day of September of the preceding year, ie 1997 as required by regulation 11 published in the Gazette notification dated 27. 8. 1979 the relevant excerpt of which regulation reads thus: "Every application for a licence for a particular year shall be submitted to the appropriate authority on or before the thirtieth day of September of the year immediately preceding that year . . ." It is, admitted by the 3rd respondent that the application was made not before the 30th September, 1997, as the 3rd respondent company ought to have done, if, in fact, regulation of 27. 8. 1979 applied to the date before which any application had to be made whether that application related to a new business or not. It is common ground that the relevant application, for licence in respect of the current year, ie 1998, had been made by the 3rd respondent on the 16th of February,1998.

The 1st and 3rd respondents counter the position of the petitioner outlined above by submitting that the 3rd respondent which is admittedly a firm or company entering the business of a produce broker for the first time is exempted from the requirement of making the application for a licence on or before the 30th of September of the preceding year, ie 1997 as 3rd respondent (being a company entering the business for the first time) is governed not by the above-mentioned regulation 11 but by regulation 11A of 03. 06. 1981 which reads thus: "Every application for a licence made by an individual firm or company entering the business of a produce broker for the first time shall be determined by the appropriate authority within thirty days from the date on which such application was made".

The pith and substance of the argument advanced, at first, by the learned counsel appearing for the 1st and 3rd respondents is this: inasmuch as the appropriate authority is required by regulation 11A to make a determination one way or the other within 30 days, in respect of the application for a licence made for the first time, it is open to such an applicant seeking to enter the business of a produce broker to forward or submit the application at any time during the year. In other words, what that argument connotes is this, ie the fact that it is stated in regulation 11A (which was inserted on 03. 06. 1981 into the original regulation 11) that the appropriate authority shall make a determination within 30 days in respect of the application (made by a person entering the business for the first time) ought to be construed to mean also that the said application can be made at any time during the year. If the requirement that relevant application ought to be decided within 30 days can mean that it also can be made at any time during the year – then the statement that an application can be made at any time during the year ought to convey the meaning or must admit of the construction that the relevant application shall be dealt with within 30 days. If the fact or statement "A" means the fact "B" as well – then fact or statement "B" must necessarily mean "A" as well. Just as much as the statement (had there been such a provision) that the relevant application can be made during the year at any time in itself can never mean that the said application must be decided within 30 days or within any time limit at all – the statement or the requirement that a determination has to be made in respect of the application within 30 days can never admit of the interpretation or the sense that the said application can be made at any time – more so as the requirement in the original regulation 11 that the

application shall be made on or before the 30th of September of the preceding year applies in all its rigour, as would appear from the sequel, to an application made by a person entering the business for the first time, as well. In fact, that is the solitary question, viz whether the requirement in regulation 11 that the application has to be made before 30th September of the year immediately preceding is applicable to an application made by a person entering the business for the first time, as well – that demands consideration and the decision of this application depends solely and squarely on that question.

It must not be forgotten that the argument put forward on behalf of the 1-3 respondents by their respective learned President's Counsel, originally or at the very outset, was that regulation 11 of 27. 08. 1979 had no application whatsoever to the applications made by those seeking to enter the business for the first time and new applications could not even be made thereunder although that argument suffered somewhat of a metamorphosis, perhaps, when they had an intuitive perception of the right thing do and credited the court also with a little insight and conceded that new applications made for the first time could be made under regulation 11 of 27. 08. 1979 as well. It will be recalled that earlier they drew the attention of the court to regulation 8 (*b*) in P2 (*Government Gazette* dated 27. 08. 1979) and argued that in view of the requirement (imposed by the said regulation 8 (*b*) which regulation was of the same date as regulation 11, ie 27. 08. 1979) that an audited balance sheet in respect of the 03 years immediately preceding ought to accompany the application couldn't be complied with by those seeking to enter the business for the first time – those seeking to enter the business of produce broker for the first time could not make an application for a licence (to carry on the business of produce broker) under regulation 11 of 27. 08. 1979 and that the new applicants were permitted to do so only after the introduction of regulation 11A of 03. 06. 1981. But, since the argument that the regulation 11 had no applicability and relevance to new applications was advanced, which was, in fact, the only solitary argument put forward at first and since there is a possibility of that argument being resurrected elsewhere, that argument too demands consideration in this order – although it has now been abandoned – for the counsel for the 1 - 3 respondents later submitted that those seeking to enter the business of a produce broker for the first time could make the application for the licence either under regulation 11 or 11A.

The stance that the 1 - 3 respondents adopted towards the ending of their submissions was that a new applicant had to submit the application for a licence before the 30th September of a particular year only if he chose to make the application under regulation 11 but that a new applicant was entitled to make the application at any time of the year if he (new applicant) made the application under regulation 11A – because regulation 11A, as the learned President's counsel for the respondents argued, authorized the making of an application, by a person seeking to enter the business for the first time – at any time of the year.

It is to be observed that the original regulation 11 (*supra*) basically covered or made provision in regard to 2 matters: (*a*) the date before which "every application" for a licence had to be made; and (*b*) date before which the determination had to be made by the appropriate authority in respect of that application.

It is relevant to notice one significant point in this regard. It is this: prior to the introduction of regulation 11A although an application had to be made on or before the 30th September of the preceding year there was no express or strict requirement that a determination in respect of the application had to be made within thirty days. Of course, regulation 11 in its original form, ie before the introduction of 11A, required the application to be made on or before the 30th of September of a particular year and the determination in respect thereof to be made before the 30th of October of the same year. But under regulation 11 of 27. 8. 1979 an application could be made well before the 30th of September, say, January of a particular year, and yet as there was no requirement until the introduction of regulation 11A, that a determination had to be made within 30 days of the date of making the application, the appropriate authority was under no duty to make a determination in respect thereof until 30th October of that year. The object of regulation 11A was plainly to require the relevant authority to make a determination in the case of applications relating to new business within 30 days of the making of the application, and the said regulation 11A left untouched the other matter covered by regulation 11 dated 27. 08. 1979, viz the date of making the application – so that "every application" so far as the date before which it had to be made was concerned, irrespective of whether it related to an old or new business, continues to be governed, as it did before the introduction of regulations 11A, by regulation 11. It is to be understood

that regulations 11 and 11A are not two separate and distinct regulations as such. They are integral to each other and act reciprocally on each other and neither can be interpreted in isolation. Had regulation 11A not been introduced – regulation 11 would have provided for or covered "every application" relating to both old and new business as regards both the date of making "every application" and the date before which or the period within which such application had to be dealt with by the appropriate authority. The learned President's Counsel for the respondents had, at first, argued, rather tentatively and irresolutely, that regulation 11 of 27. 8. 1979 does not, in fact, apply to an application in respect of a new business and that it (regulation 11) never did. To vindicate that submission reference was made in particular to regulation 8 (*b*) in P2 (Government Gazette – 27. 8. 1979 which required every individual or firm making an application for a licence to furnish an audited balance sheet and a profit and loss statement for the three years immediately preceding the year in which the application was made. The argument, somewhat discursive in its genre, which, in some degree, accentuates the tendency to baffle, seems to be as follows and I take it meant this: inasmuch as an individual or firm seeking to enter the business for the first time cannot possibly furnish information with regard to an audited balance sheet and profit and loss statement in respect of the 3 years immediately preceding the date of the application as required by regulation 8 (*b*) in the Government Gazette of 27. 8. 1979 – the regulation 11 contained in the same Gazette (of the same date) couldn't have had in contemplation, and therefore could not have applied to an application made by a person or firm seeking to enter the relevant business for the first time. By means of this argument the respondents were seeking to show that regulation 11 is wholly irrelevant and therefore had no application or relevance to an application in respect of a new business which application (in respect of a new business) therefore was governed solely by regulation 11A which was introduced by Gazette on 3. 6. 1981. But it is worth notice that regulation 11A is silent on the question as to the date on which or when an application in respect of a new business has to be made, clearly because the legislature intended that the provision in regulation 11 with respect to the date before which the application has to be made, ie 30th day of September was to govern all applications, indiscriminately whether they related to old or new business. Assuming for the sake of argument, that regulation 08 (*b*) (in the Government Gazette of 27. 8. 79) applied, as argued by the respondents, to an application

in respect of a new business which had the effect of disqualifying an application relating to a new business – then it cannot in the same breath, be argued logically that regulation 11 in the same *Gazette* did not apply or did not have in contemplation an application in respect of a new business. Assuming that the said regulation 08 (*b*) in the *Government Gazette* of 27. 8. 1979 did apply also to an application in respect of a new business (which cannot rationally be thought to be so) the application (in respect of a new business) failed because it could not satisfy the impossible condition, viz furnishing an audited balance sheet and so on in respect of the 03 years immediately preceding and not because it (the application) related to a new business – because if the requirement of furnishing an audited balance sheet in respect of the preceding 03 years was not there – the application could not have been disqualified even if the application related to a new business and so couldn't furnish an audited balance sheet in respect of the preceding three years. Nowhere is it stated in any one of the regulations in the Government Gazette of 27. 8. 1979, in which Gazette regulation 08 (*b*) too appears, that no application in respects a new business can ever be made. Anyhow, if as originally argued by the learned President's Counsel for the 1st and 3rd respondents, if it was the failure or rather the impossibility to satisfy the requirement in regulation 08 (*b*) – ie to furnish an audited balance sheet, etc. for the past 3 years that made or rendered regulation 11 inapplicable to an application in respect of a new business – then dispensing with that requirement by the amendment of the said regulation which amendment was introduced by the *Government Gazette* of 3. 6. 1981 should logically make regulation 11 now applicable to applications relating to even a new business – subject of course, to the amendment introduced by regulation 11 A. In any event the meaning of the term "every application" as used in regulation 11 cannot be limited to applications other than those relating to a new business. The word "every" is a term which admits of no qualification or limitation. The word "every is used in the sense of everything which means all things which would include all manner of or all kinds of applications, irrespective of whether they related to a business already in existence or not. In the new Shorter Oxford English Dictionary, illustrating the meaning of the term "every" the expression: "every theory is open to objection" – has been explained to refer to all theories that may exist. Likewise, the phrase "every application" in regulation 11 dated 27. 9. 1979 ought to be construed to include or embrace all applications ie each single application, that

may conceivably be made. In fact, the very fact that the regulation dated 27. 8. 1979 was amended by the insertion of regulation 11A (03. 06. 1981) is proof of the fact that if not for the said amendment the provisions in regulation 11 would have applied to an application made for the first time even as regards the period within which a determination had to be made in respect of the same ie an application made for the first time.

The arguments put forward on behalf of the respondents being always in a flux – the learned Additional Solicitor-General at one stage, submitted that in interpreting regulation 11 of 27. 8. 1979, the words: "excepting the applications made by a firm or company entering the business of a produce broker for the the first time" – has to be read into the said regulation. I do not think that the legislature ever intended to exclude or remove the applications made for the first time from the operation or purview of regulation 11. Although "the object of all interpretation is to discover the intention of Parliament" yet as Lord Parker, CJ. said: "the intention of Parliament must be deduced from language used". "Words are not to be construed contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded". *Whitehead v. James, Stott Ltd.*[1], *Galashiels Gas Co., Ltd. v. O'Donne*[2]. "The duty of court is to expound the law as it stands and to leave the remedy (if one be resolved upon) to others" – *Sutters v. Briggs*[3] per Lord Birkenhead. As Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity it is a wrong thing to do".

Initial suggestion, if not the argument, of the learned Additional Solicitor-General that in construing the regulation 11 one should write or read into the said regulation the words: "excepting the applications made by a firm or company entering the business of a produce broker for the first time" carries with it the necessary and irresistible implication that if the suggested words are not read into regulation 11 as it stands the said regulation would necessarily include "every application" without exception, whether, the application was made in respect of an established business or a new one.

There is a blatant and conspicuous inconsistency inherent in the argument, put forward on behalf of the respondents, ie that regulation 08 in the *Government Gazette* 27. 08. 1979 when it spoke of : "every

individual firm or company making an application under these regulations for a licence . . . shall furnish the following information to the appropriate authority:

(*a*) . . .

(*b*) The audited balance sheet and a profit and loss statement for three calendar years immediately preceding the year in which an application for such licence is made" – applied also to an application in respect of a new business making an application for a licence for the first time but that regulation 11 in the same Gazette of the same date which regulation 11 also spoke of : "Every application for a licence . . ." did not apply to an identical application ie to new application or application made by a person or firm seeking to enter the relevant business for the first time. The argument of the learned President's Counsel for the respondents, it will be recalled, was that the above requirement enunciated in regulation 08 (*b*) ie of furnishing a balance sheet operated to disqualify a new application made for the first time. If, as argued by the learned President's Counsel for the respondents, the aforesaid regulation 08 (*b*) (27. 08. 1979) applied to a new application as well made by a person or firm seeking to enter the relevant business for the first time, it is not open to them to contend that regulation 11 contained in the same Gazette of the same date did not apply to an application made for the first time – for regulation 08, as was pointed out earlier, speaks of "every individual firm or company making an application under these regulations for a licence" which mode of expression is, in substance, no way different from the phraseology of regulation 11 (27. 08. 1979) and does, in fact, mean or connote "every application for a licence" which is exactly the phraseology employed in regulation 11 of 27. 08. 1979.

But the true legal position is that the requirement in regulation 08 (*b*) (contained in the Gazette dated 27. 08. 1979) did not, in fact, apply to an application made by a firm or company seeking to enter the relevant business for the first time because the regulation 8 (*b*) which imposed that requirement, viz that the application for a licence must be accompanied by an audited balance sheet and profit and loss statement for the 3 years immediately preceding must necessarily be read or understood subject to the overriding and time-honoured canon or maxim of interpretation which is so well-known ie *lex non cogit impossibilia* which means that impossibility is an excuse for non performance of a duty or obligation – an aspect which was not touched

on by any one of the parties to this application. Conditions imposed by law "are understood as dispensing with the performance of what is prescribed when performance of it is impossible" – Maxwell on the Interpretation of Statutes. For instance, in *Harding v. Price*[4] the trailer of a vehicle collided with and damaged a stationary car. But owing to the noise made by the vehicle as it travelled along – the driver was unaware that the accident occurred because he did not hear the noise of the impact or the collision and so did not report the matter to the police as required by section 22 (2) of the Road Traffic Act 1930. The driver was held to be not guilty of failure to report the accident to the police – the reasoning of Lord Goddard CJ. being as follows: ". . . unless a man knows that the event has happened, how can he carry out the duty imposed? If the duty be to report, he cannot report something of which he has no knowledge . . . any other view would lead to calling on a man to do the impossible". By analogy, a person who has not been in the relevant business, and who is seeking to enter the relevant business making an application "for the first time" if required to submit an audited balance sheet and a profit and loss statement for the three years immediately previous to the year in which the application for a licence is made for the first time – there is something inherently impossible in that condition for he simply cannot comply with that condition since he had not been in that business during the 3 years immediately preceding. Above all, that such a person seeking to enter the business for the first time must be excused willy-nilly from complying with such a requirement, is the common sense approach to adopt is all too plain. This aspect was not touched upon, in the course of argument, although this case was argued by the very aristocrats amongst the President's Counsel. Perhaps, it is not the habit of great men to descend from their lofty mental pinnacle to the humble level of ordinary minds.

The argument on the part of the learned counsel for the respondent, to make it appear that the law "in its majestic equality" required every application for a licence, even when it related to a new business and was made for the first time ought to be accompanied by an audited balance sheet in respect of the 03 years immediately preceding, if accepted would, perhaps, vindicate Mr. Bumble's opinion about the law, ie that "law is ass" (Mr. Bumble had as little respect for the rules of syntax and grammar as he had for the law and chose to disregard them when he spoke and did not think it necessary to use "an" before vowel sounds). Although perhaps it is true that it is due to its

impartiality far more than to its wisdom that are the due influence and reputation which the law has possessed at all time – yet, in this context, the law has exhibited its robust common sense by clarifying or making it more manifest, so to say (by means of the amendment of 03. 06. 1981 if it can properly be called an amendment for it is not an amendment but a veritable clarification) what the intention of the authority (that framed or enacted the regulation) was as expressed in regulation 8 (*b*) – however belated the clarification may be. The clarification in the Gazette of 03. 6. 1981 is not an amendment of the law as such but a mere explanation because it makes clear, what perhaps would otherwise, have been somewhat of an enigmatic regulation to the uninitiated. It is not an amendment in the sense of an act or regulation which alters or changes the law but an elucidation aimed at preventing the possibility of any misconception arising in the mind of the reader that regulation 8 (*b*) operated to disqualify an application made for the first time unless it was accompanied by an audited balance sheet in respect of the 03 years immediately preceding – for the law must be clear even to the ordinary citizen. To cite from Bindra:". . . . It is not necessary to hold that in every case where the legislature amends the law that it does so because but for the amendment the effect would have been something different. There are innumerable cases in the history of legislation where the legislature has added or deleted words in order to clarify the position. Vide *Kikabhoy v. I. T. Commissioner*[5] Amendments are often made to clear up ambiguities and such amendments which are intended to prevent misinterpretation do not in themselves alter the law in any way. When the legislature amends to clarify things it does not necessarily mean that the original act did not include and cover those things". In the case of *Secretary of State v. Purnendu Narayan*[6] their Lordships did not assent to the proposition that any amendment made in the language of any legal enactment must be taken to import a change in law.

When regulation 08 was clarified by *Gazette* dated 03. 06. 1981 to prevent the requirement in regulation 8 (*b*) in *Gazette* dated 27. 08. 1979, viz that an application for license must be accompanied by an audited balance sheet in respect of the 03 years immediately preceding the date of the application being misunderstood or misconstrued to apply to even an application made for the first time relating to new business – its object was not an amendment in the sense of an act which changes the law. A law or regulation can be said

to be amended when "something is added to or taken from it". When a clarification was made, as had been done by what may be called a clarifying amendment of regulation 8 (*b*) by the *Gazette* dated 03. 06. 1981, there was no change introduced in the legal position – the legal position continuing to remain the same as it was prior to the said clarification – the legal position at all times, being that an application made for first time need not, as it possibly couldn't comply with the requirement of furnishing an audited balance sheet, etc., in respect of the 03 years immediately preceding, be accompained by such an audited balance sheet. Of one thing one can be sure, if of no other, that is, that regulation 8 (*b*) of 27. 08. 1979 was never intended by the authority who framed it to apply to applications made for the first time, reasons being, at least, twofold: (i) the authority or body that made the relevant regulations, the regulation 8 (*b*) in particular, must be presumed to know the canons of interpretation and the "regulations that have been enacted by the said authority ought to construed in keeping therewith – just as much as the legislative language will be interpreted on the assumption that the legislature was aware of . . . the rules of statutory construction . . ." – Sutherland: Statutory Construction. The fact, that no statute or regulation, as had been pointed out above, ought to be construed so as to require a person to do the impossible, is a salient and inveterate maxim of interpretation calls for remark in this regard;

(ii) To hold that the regulation 8 (*b*) of 27. 08. 1979 applied to a firm or company that had not been in business earlier and as such had to furnish an audited balance sheet and so on in respect of the 3 years immediately preceding the date of the application (which is made for the first time) would obviously produce an irrational construction because that would involve the absurdity of requiring a firm or company that had never ever been in business before to furnish an audited balance sheet for 03 years immediately preceding the date of the application made – be it noted – for the first time. It would be an injustice to the wisdom of the body itself that framed the relevant regulation to proceed on the assumption that that body was so devoid of concern for common – sense as to have expected that even the people, making applications for a licence to start a business (for the first time) ought to comply with that requirement of furnishing an audited balance sheet in respect of the 03 years immediately preceding the date of the application. Even assuming for the sake of argument that the intention of the authority that enacted or framed the regulation

8 (*b*) was of doubtful significance or was enveloped in doubt that is, even if it is doubtful whether the authority that framed the relevant regulation intended it (the said regulation 8 (*b*) to apply to an application for a licence made for the first time – yet, paradoxically enough, as argued by the learned Additional Solicitor-General himself "the intention which appears to be most in accord with convenience, reason, justice and legal principles in all cases of doubtful significance is presumed to be the true one". Vide Maxwell on The Interpretation of Statutes. But the fact that the intention of the authority that framed regulation 8 (*b*) was not of doubtful significance and that the framing or the enacting authority never intended that regulation 8 (*b*) of 27. 08. 1979 ought to apply to an application made for the first time, is evidenced by the clarification or explanation given in the Gazette dated 03. 06. 1981 that an application made for the first time does not come within the operation or purview of regulation 8 (*b*) of 27. 08. 1979. It is worth repeating, for it simply cannot be helped, that the clarification made by the of *Gazette* of 03. 06. 1981 is not an amendment of the law – since it does not represent a change in the intention of the enacting or framing authority for, the enacting authority could not have possibly intended that the requirement enunciated in regulation 8 (*b*) should be complied with by a person making an application for a licence for the first time for to suppose that the enacting authority intended that regulation 8 (*b*) applied in all its rigour to even to an application which is made for the first time in respect of new business would be contrary to common sense as it is humanly impossible for a person making an application for the first time to comply with that requirement.

Thus it is abundantly clear that the authority that enacted the regulation 8 (*b*) entertained no intention, that the requirement prescribed therein, viz that the application must be accompanied by an audited balance sheet, should be complied with by a firm or company making an application for licence seeking to enter the relevant business for the first time as it possibly couldn't have done so for reasons as explained above. This in turn further serves to make it clear that *Gazette* dated 03. 06. 1981 merely made a clarification of the intention of the enacting authority as expressed in regulation 8 (*b*) dated 27. 08. 1979 and not an amendment of regulation 8 (*b*) in the technical sense, because the intention (of the enacting authority) was the same prior to the "amendment" to 8 (*b*) (introduced by *Gazette* on 03. 06. 1981 which amendment was, in fact, a clarification) as

it, ie the intention of the enacting authority was thereafter and at no time was it ever intended that a firm or company making an application for the first time should submit an audited balance sheet and so on for the three years immediately preceding. And when the amendment (clarification) of 03. 06. 1981 expressly says it, ie that requirement of an audited balance sheet will not apply in the case of new applications made for the first time, the question is placed beyond any controversy. So that the argument, advanced at the beginning, on behalf of the 1st – 3rd respondents is not tenable – the argument being that the provisions of regulation 11 dated 27. 08. 1979 could not and, in fact, did not, have in contemplation a new application being made thereunder, let alone govern such new applications, as the aforesaid requirement created by the regulation 8 (*b*) of the same date as the regulation 11 – in the submission of the learned counsel for the respondents – operated as an insuperable legal impediment to such an application made for the first time relating to a new business being made under regulation 11.

The original position of the respondents, it is to be recalled, based almost wholly on the sheer impossibility of complying with regulation 8 (*b*) of 27. 8. 1979 was that inasmuch as the regulation 11 (27. 8. 1979) did not govern and had no applicability to applications made for the first time the said regulation 11 of 27. 8. 1979 could not govern such applications (made for the first time) even after the introduction of regulation 11A which regulation 11A alone (so the respondents seemed to say) for the first time, facilated or enabled the making of an application made for the first time relating to a new business and therefore governed such an application ie, a new application to the total exclusion of regulation 11 of 27. 8. 1979. But as explained below, the regulation 11A of 3. 6. 1981 left intact the provision in regulation 11 dated 27. 8. 1979 that "every application" (which expression admits of no qualification or limitation) and embraced applications irrespective of whether they related to business already in existence or a new one had to be made before the 30th of September of the preceding year. Needless to say, the argument put forward on behalf of the respondents, viz that the regulation 11A (03. 06. 1981) governs applications made for the first time, both as regards the date or time of making the application and also the period within which a determination has to be made in respect thereof necessarily involves or entails the construction or interpretation of the said regulation 11A. The regulation 11A (03. 06. 1981) being what it is,

that is an amendment of the law or a regulation, it will be particularly helpful, in the construction of regulation 11A, to ascertain the previous state of the law in order to get a better or clear insight into the meaning of the said regulation 11A of 03. 06. 1981 through an appreciation of the mischief in the previous state of the law which the amendment of the earlier regulation (by means of 11A of 3. 6. 1981) was intended to remedy. And the regulation 11A of 3. 6. 81 (which represents an amendment of the previous state of the law) is then construed, more or less in such a way, as to suppress the mischief and advance the remedy. "The golden rule to follow in such a case is to find out what was the provision before the amendment; secondly, what was the defect in the previous law; thirdly, what remedy the legislature has adopted to cure the defect; and lastly, to find out the true reason for the remedy adopted". – *Thiru Manikkam and Co. v. Tamil Nadu State*[7].

The ascertainment of the previous state of the law involved the consideration of the question whether regulation 11 of 27. 08. 1979 governed the applications made by persons seeking to enter the relevant business, for the first time as well. I have made above a reasoned finding that regulation 11 of 27. 08. 1979 applied to applications made for the first time as well. I have explained above that it is self-evident that the authority that framed regulation 11 of 27. 8. 1979 could not have intended to preclude altogether applications for licences being made by persons seeking to enter the relevant business for the first time for such an interpretation would have led to absurd results which would also be harsh. It is such an interpretation that would have annihilated the fundamental rights for which the learned President's Counsel for the 1st to 3rd respondents showed so much solicitude – for, then, no one (citizen) would be free or have the right to engage in business as a produce broker except those who had already obtained licences and as to how they, ie those who are already engaged in the business obtained licences would remain an impenetrable mystery which no human ingenuity would ever be able to explain – they, ie those who are already engaged in the business, too, would have had to make an application for the first time. As argued by the learned President's Counsel for the petitioner whose lucid submissions were characterised by discernment, regulation 11 dated 27. 08. 1979 basically covered two matters: (*a*) the date before which an application, irrespective of whether it was made by a person already engaged in the relevant business or one who

was seeking to enter the relevant business for the first time to be made; (*b*) the date before which a determination had to be made by the relevant authority in respect of such an application. In terms of regulation 11 dated 27. 08. 1979, as pointed out although the deadline for making an application for a licence (irrespective of whether such application related to an established business or a new one) was 30th September of the preceding year yet it, that is, the application could be made several months before that date ie 30th of September. Still the relevant authority was at liberty to delay making a determination in respect of the application till 30th October for the law (regulation 11 dated 27. 08. 1979) required him (the relevant authority) to make a determination in respect of the application only before the 30th of October. The regulation 11A of 03. 06. 81 framed to deal with that undesirable situation or state of affairs in which an applicant for a licence seeking to enter the relevant business for the first time had to wait for several months for a determination in respect of the same. Perhaps, it would have been better and more sensible also to have permitted a person seeking to enter the relevant business for the first time to make the application at any time. But the law has stopped short of doing that although, paradoxical as it may seem, it is not permitted to be wiser than the law even in circumstances when the law is an ass for as Aristotle had said: "To seek to be wiser than the law is the very thing which by all good laws forbidden".

That regulation 11A dated 3. 6. 1981 had amended the regulation 11 dated 27. 08. 1979 in relation to applications for licence made for the first time only, but only in so far as the period or the time limit within which a determination had to be made in respect thereof and left intact or untouched the provision in regulation 11 that – "every application" (which must be interpreted to include applications of every kind whether they related to new or established business) had to made before the 30th of September of the preceding year which is self-evident from regulation 11A itself which reads thus: "Every application for a licence made by an individual firm or company entering the business of a produce broker for the first time shall be determined by the appropriate authority within thirty days from the date on which such application was made". Had not the terms of the regulation 11 of 27. 08. 1979 applied to applications made for first time, that is, if new applications (made for the first time) could not have been made thereunder ie under regulation 11 of 27. 08. 1979 then of course, it would have had to be held that regulation 11A enabled a new

application (made for the first time by a person seeking to enter the relevant business for the first time) to be made at any time. Although the regulation 11A of 03. 06. 1981 itself, taken by itself or in isolation, did not in express terms or specifically authorize the making of a (new) application at any time of the year, yet the regulation 11A dated 03. 06. 1981 (if taken in isolation) did not expressly impose a prohibition against new applications (made for the first time) being made at any time of the year. "The courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibitions cannot be presumed". Vide *Narasingh Das v. Mangal Dubey* (1883) 5 Allahabad.

But the principle, exemplified or enunciated in the Indian judgment quoted above would not apply in the context of this application because, as explained above, that part of the specific provision in regulation 11 dated 27. 08. 1979 to the effect that: "every application for a licence for a particular year shall be submitted to relevant authority before the 30th day of September of the year immediately preceding" – remains unaltered or unaffected by the introduction of regulation 11A of 03. 06. 1981 – thereby prohibiting or precluding the making of a new application at any time of the year. The expression ie "every application" occuring or employed in regulation 11 of 27. 08. 1979 includes both types of applications, viz applications made by those already engaged in the relevant business and those applications made by persons seeking to enter the relevant business for the first time – because the word "every" like the word "any" is a term which admits of no limitation or qualification and connotes wide generality.

Thus, the law existing before the amendment introduced by regulation 11A of 03. 06. 1981 must be considered to continue to be good law still in force except in so far as the amendment (regulation 11 A) makes it clear on the face of it a change in the law as it stood before the amendment.

That being so the principle that what is not prohibited must be deemed to be permitted cannot apply in relation to the facts of this

case because that part of the regulation 11 of 27. 08. 1979 which prescribes the date of making the application ie, on or before the 30th of September of the preceding year still remains in force and applies as explained above, to new applications as well and that requirement must be taken as a prohibition against even a new application being made at any time of the year.

Further, the learned President's Counsel for the 1st - 3rd respondents mounted somewhat of a challenge to the vires and constitutionality of the relevant regulations ie 11 and 11A aforesaid as well.

The learned President's Counsel appearing for the 1st-3rd Respondents – the learned Additional Solicitor- General in particular – argued (to reproduce his argument in his own words): "It is further submitted that the regulation in question would be ultra vires the Constitution if they are interpreted as suggested by the petitioner" – vide 7.07 of the written submissions.

The learned Additional Solicitor-General however, conceded that the regulations in question, that is, 11 and 11A are not intrinsically unconstitutional. It is, he argued, the interpretation contended for by the petitioner's counsel, if accepted by the court, that will make the regulations ultra vires. I wonder whether an interpretation can ever make a regulation ultra vires, if, in fact, the regulation itself is inherently sound. However, be that as it may, the argument of the learned Additional Solicitor-General that the court must, of necessity, place an interpretation on the regulations in order to prevent the regulations or the statute from being invalid if that was what the learned Additional Solicitor-General intended to say – is wholly unacceptable. The true rule had been stated by Stone, J. in *Hardware v. Glidden and Co.* as follows: "A statute dealing with a subject within the scope of the legislative power is presumably constitutional. It is settled law that if any interpretation is possible which will save an act from the attack of unconstitutionality, that interpretation should always be accepted in preference to an alternative interpretation, that might also be possible, under which the statute could be void. But it is not for the court to put an unnatural and forced meaning on the words that have been used by the legislature in the search for interpretation to save statutory provisions or to read a policy which is not there merely because a policy could have been given".

However, this canon of interpretation that the court ought to uphold the construction which preserves the validity of the regulation or the statute, will apply and will have any relevance, if at all, only where two constructions or interpretations are equally possible, and not as in the case in hand, where only one solitary construction and nothing else is possible. This position, viz that preference should be given to the intra vires meaning only when there is ambiguity is placed beyond controversy, paradoxically enough, by an excerpt from Bennion on Statutory Interpretation submitted to us in chambers while the writing of this judgment was in progress. To quote: "where an item of delegated legislation is ambiguous, one possible meaning being ultra vires and the other intra vires, preference should be given to the latter". As has been explained above, the effect of regulation 11 and 11 A is plainly to require the new applicants as well to make the application for licence on or before the 30th of September of the preceding year – irrespective of whether the application related to an on – going business or a new one. In this case, no other interpretation is conceivably possible.

It had also been contended, at one stage, on behalf of respondents, that regulation 11A of 03. 06. 1981 must be held to be ultra vires if the said regulation cannot be interpreted so as to permit the 3rd respondent to make an application for a licence at any time of the year. As pointed out earlier on in this order, if regulation 11 of 27. 08. 1979 had no applicability to a person seeking to enter the trade or business of a produce broker for the first time – it would have been open to a new applicant to make the application at any time of the year. This position does not seem to have been distinctly understood ie that, if at all, it is not regulation 11A of 03. 06. 1981 but regulation 11 of 27. 08. 1979 that prevents or denies to the 3rd respondent the right to make an application for a licence and so start or enter the business of produce broker as and when he wanted, So that the argument put forward in relation to regulation 11A, viz that it is ultra vires has to be examined or considered in relation to regulation 11 of 27. 08. 1979 – because it is the latter regulation, ie regulation 11 of 27. 08. 1979 by prescribing that the application for licence shall be made on or before the 30th September of the preceding year, that has restricted, if at all, the right to make an application for a licence at any time of the year and so taken away the right to enter the business as and when one wanted.

The argument of the respondents was that the regulation 11A, which reference to 11A must now be treated, for the aforesaid reason as a reference to regulation 11 preventing, as it did, the making of an application for a licence at any time of the year thereby denying to a person the right to start business as a produce broker immediately, ie as and when he wanted – involved or entailed – in the submission of the learned President's Counsel for the 1st-3rd respondents – a restriction of a fundamental right to do business or engage in a trade and therefore was ultra vires the Constitution.

It was further contended that even reasonable restrictions or limitations on a fundamental right could be introduced only by law, in contradistinction to a regulation – such as regulation 11. To vindicate that submission reference was made to an excerpt from a 5-bench judgment of the Supreme Court of Sri Lanka (in application SC No. 3 of 1978) which is as follows: "The exercise of a fundamental right given by Article 14 (1) (*g*) can be made subject to such restrictions or may be prescribed by law in terms of Article 15 (5) of the Constitution . . . law here means any Act of Parliament . . . clearly regulations have been excluded".

But the learned President's Counsel for the petitioner submitted relying or an excerpt of the self-same judgment that reasonable restrictions on fundamental rights could be placed in conformity with guidelines spelt out in the Act or the statute. To quote the relevant excerpt: "Therefore the Constitution does not contemplate the conferment of power on the executive to make restrictions by regulation except in terms of the guidlines laid down in the Act itself. In the circumstances whatever restrictions that are to be placed upon the exercise of fundamental rights in terms of Article 15 (5) must be prescribed by the Act. We find no such restriction for the issue of licence prescribed by this Act".

The excerpts quoted above, which are somewhat obscure for there seems to be, with respect, some inconsistency therein, for it seems to say, so far as I can understand, that restrictions can be placed on fundamental rights also by means of regulations formulated in conformity with guidelines while in the same breath it states that restrictions that are to be placed upon the exercise of fundamental rights in terms of Article 15 (5) must be prescribed by law as opposed to regulations. I think what it means is this, viz the restrictions on

fundamental rights to be vaild must be prescribed by the statute or the Act itself; if not so prescribed, reasonable restrictions on the fundamental rights introduced by means of regulations can be said to be valid only if such regulations have been framed in terms of guidelines prescribed or spelt out in the Act itself.

If the above excerpts from the 5-bench judgment are not explicit enough in regard to the question whether or not reasonable restrictions can be placed on fundamental rights by means of regulations – all doubt in regard to this aspect had been dissipated in the case of *Chuni Singh v. Union of India*[9] where Dua, CJ. stated thus: "In all such cases the test is, has the legislature laid down intelligible standards for the guidance of administrative agencies. Every statute has to be adapted to complex conditions involving a host of details with which the legislature cannot deal directly. Filling in of such details must be left to the administrative agencies . . . having regard to varying demands of the situation from time to time. The Constitution has never been regarded as denying to the legislature the necessary resources of flexibility and practicability, though in so doing, the legislature is expected to indicate something to be thus supplemented. In other words, the legislature must first adopt a policy or set an intelligible standard to which administrative action must conform. The legislature though best conversant with the needs of its subjects cannot deal with all details required to be filled in and for this reason the matter of such details has of necessity to be left to the administrative agencies in the interest of achievement of goals shared by different limbs of a democratic government. The fact that the power has to be exercised for the purposes mentioned above provide the necessary safeguards and guidelines for the administrative agencies to observe".

One can trace somewhat of an analogy between a case where regulations have been framed in terms of guidelines prescribed in the Act itself and a case where provision is made in the Act, as is sometimes done, to the effect that regulations made thereunder were to have the same effect "as if enacted in this Act". In *Institute of Patents Agents v. Lockwood*[10] Lord Herschell was of the opinion that the effect of these words was to make subordinate legislation as exempt from judicial review as the statute itself. Of course, such a situation cannot arise, in that way, in Sri Lanka in view of the guarantee of fundamental rights in the Constitution and the Act itself, would be the subject of judicial review in the appropriate court, at least, for the

specified period. Sovereignty of Parliament is a peculiar feature of the British constitution and one consequence of Parliamentary sovereignty is that in the United Kingdom there are no constitutional guarantees of the sort we have in this country. But what is of interest to us is this: as the regulations promulgated under an Act are treated as having the force of the statute, where there is provision in the Act itself to that effect – whether one cannot take the innovative step of according the same force to regulations framed in terms of guidelines set out in the statute. In fact, that step can be said to have been taken in the 5-bench judgment (Sri Lankan) and even more clearly in the indian judgment (Dua, CJ.) cited above.

Perhaps, there is even greater reason to recognize the practice of formulating regulations in terms of guidelines laid down in the Act or statute than the usage of treating regulations promulgated under an Act wherein there is a provision that regulations made thereunder shall have the same force or effect as if they were contained in the Act itself – because it is easier to detect any rule or regulation promulgated in excess of authority when the limits of authority to formulate regulations are delineated in the guidelines in so many words that it would be in the case where regulations acquire the force of the statute in virtue of the provision in the statute to that effect.

The learned President's Counsel for the petitioner pointed out that regulation 11 of 27. 08. 1979 in particular, that being the decisive regulation, had been formulated conformably to the guidelines spelt out in section 2 (6) of the Licensing of Produce Brokers Act, No. 9 of 1979 the relevant of which guidelines are as follows:

(*a*) Subject to the provisions of this Act the circumstances in which licences may be granted or refused;

(*b*) the person to whom and the period for which licences may be granted;

(*c*) the mode and manner in which applications for licences may be made and disposed of.

The regulations 11 and 11A could both have been validly made in terms of any one of the guidelines adumbrated above and more particularly in terms of guideline (*c*) above because the said

guideline (*c*) clearly empowers the making of rules with respect to the "mode and manner in which applications for licences" are to be made and disposed of which means that the guideline (*c*) above authorizes the Minister to prescribe or specify the method of procedure for making and disposing of applications for licences. As the said guideline (*c*) reproduced above empowers the *prescribing* of a method of procedure it must necessarily be taken to empower the Minister to make regulations appointing a date, which he had done through regulation 11 of 27. 08. 1979 by appointing 30th of September of the preceding year, before which the applications ought to be made, that, ie the making of an application, being an element or component part of the method of procedure relating to application for licence and disposal thereof – which procedure the Minister is empowered to prescribe by the guidelines *set out above.* As the authority is empowered by the guidelines to prescribe the mode ie, the method of procedure for licensing – the authority so empowered to make the guidelines must necessarily be taken to have been also empowered to appoint a date, in the interests of sound administration, before which the applications have to be made or submitted.

It is worth pointing out that these regulations in question having been laid before the Parliament and approved thereby have a democratic and constitutional basis. There is the legal authority of the legislature behind such regulations. While the right to pursue any lawful trade or profession is recognised in any democratic country – yet the right of state to regulate such business where its unregulated operation may injuriously affect the welfare of others is equally well settled. Regulation of *freedom to trade* or do business is an accepted mode and principle in any modern welfare state and Sri Lanka is no exception. Regulation is essential for social good. The preamble to the Act ie, Licensing of Produce Brokers Act throws light on and explains the objects sought to be achieved thereby. To quote from the preamble of the said Act: "An Act to provide for the regulation and control of the carrying on of the business of Produce Broker by the introduction of and operation of a system of licensing and matters connected therewith or incidental thereto".

The preamble places it beyond controversy that the object of the Act, viz Licensing of Produce Brokers Act, No. 9 of 1979 is the regulation of business of a produce broker by the introduction of a system of licensing. The preamble, it is said, unlocks the mind of the

legislature. Through the power of regulation of trade or business the state orders economy for social good. In fact, the state, if it chooses to do so, has an unqualifed power under Article 15 (5) (*b*) of the Constitution of Sri Lanka to completely forbid its citizens from engaging in certain kinds of trade or business. And it must not be forgotten that even total deprivation of property or extinction or annihilation of the right to trade or do business would still be perfectly constitutional if it is sanctioned and is in accordance with the Articles or the provisions of the Constitution of Sri Lanka. As explained earlier, the solitary issue for determination in this application was the interpretation of the above mentioned regulations 11 and 11A. That issue was muddled immeasurably by the learned counsel for the 1st-3rd respondents needlessly raising arguments (although lacking in zeal) in regard to the vires and constitutionality of the relevant regulations. They need not have done that. Aricle 15 (5) of the Constitution of Sri Lanka permits restrictions to be imposed on the fundamental right to trade or do business. There cannot be any such thing as absolute or uncontrolled liberty – the kind of idyllic liberty contended for or rather envisioned, by the learned President's Counsel for the 1st-3rd respondents – for that will lead to anarchy and disorder. The possession and enjoyment of all rights as was observed by the Supreme Court of the United States in *Jacobson v. Massachusettes* are "subject to such reasonable conditions as may be deemed by the governing authority of the country essential to safety, health, peace, general order and morals of community".

I think I have said enough to show that the regulations in question are – if in fact they are restrictions – reasonable restrictions which are authorized by and in harmony with the guidelines spelt out in the Act itself. To sum up, what has happened in this case is not the denial of a fundamental right to trade or do business as provided for by Article 14 (1) (*g*) of the Constitution but the issuing of a licence to the 3rd respondent by the 1st respondent in violation of constitutionally valid restrictions, imposed upon the exercise of the rights guaranteed under the said Article.

Next, the question whether the petitioner has standing or *locus standi* to invoke the jurisdiction of this court by way of certiorari falls to be considered. When a question regarding status is raised in any given case, as has been done in this case, the traditional approach is to deal with it is as a threshold question. But the view that the

requirement of *locus standi* cannot be divorced from consideration of the merits of the application has gained considerable acceptance of late and it is not wholly inappropriate, therefore, to have considered the merits before the question of standing is considered for several judgments contain statements to the effect that if serious or grave illegality existed standing (*locus standi*) would be accorded. In other words, the question of *locus standi* cannot be properly considered in isolation of the relevant factual and statutory context. The English judgments contain a number of references to the need to view standing (*locus standi*) expansively, yet they (the older judgments), are balanced by caution lest the gates be thrown open too wide.

As Lord Denning had said: "in administrative law the question of *locus standi* is the most vexed question of all". – Perhaps, he would have said so because the attitude of the courts on the question of *locus standi* does not appear to be all that uniform – at least, in the past. The relevant law obviously had been in a flux and still seems to be somewhat so.

The law relating to *locus standi,* as at present, seems to be somewhat in a transitional stage although the trend undoubtedly seems to be towards liberalisation of the rules (as to standing). In England, the rules of the court (which have now been incorporated into the Supreme Court Act of 1981) provided: The court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which application relates.

Since the adoption of the above rule there is discernible a vigorous judicial predilection which favours enlargement of the purview of the concept of *locus standi.* Lord Denning, MR has expressed the view, extrajudicially, that the above rule (which has now been incorporated into the Supreme Court Act of 1981) "lays down one simple test and confers standing on an ordinary citizen who comes asking that law should be declared and enforced". How far and to what extent these changes and innovations in the principles governing the grant of writs in English law will have a bearing in Sri Lanka remains to be seen; but there is no denying that Sri Lankan rules relating to standing, striking root in English principles and traditions, would not remain impervious to such changes in the direction of liberalization that have taken place in England.

The test or the criterion for deciding whether an applicant for judicial review has *locus standi* has been defined in English and local decisions by using varying phraseology although all the criteria or the tests seem to point one thing, that is, that redress through medium of certiorari can be made available only to a person who has a genuine grievance as opposed to a busy body who would make a futile and frivolous application – although strictness in the rules as to standing has been, as pointed out above, considerably relaxed – in England since 1981 – in what may be called the "new law" of standing (*locus standi*) – although seemingly, there are no signs of relaxation, as such, in the local decisions nor any significant departure from the rule or the concept that a person (applicant for certiorari) does not answer to the character of a "person aggrieved" if he has only some grievance or even an injury in common with the rest of the public". However the local (Sri Lankan) case of *Wijesinghe v. Tea Export Controller*[11] makes it clear that the concept of "party aggrieved" does not connote that personal interest is *sine quan non* of *locus standi*. It is worth explaining the facts of that case in some detail. In the said case the Supreme Court considered an application by the Tea Controller for issue of a writ of certiorari to have the legality of an order made by the Board of Review appointed under the Tea Control Ordinance inquired into and quashed. By his order the Tea Controller declared that the extent of an estate should be reduced from 32 acres to 24 acres. The 4th respondent who was the owner of the estate appealed against the order to the Board of Review which set aside the said order of the Tea Controller. It was argued on behalf of the 4th respondent, who was the owner of the estate, that the Tea Controller had no status to make an application for certiorari on the basis that he (the Tea Controller) was no more aggrieved or prejudiced than a judge of an inferior court would be whose decision is reversed on appeal. Nevertheless Fernando, AJ. (with whom Abrahms, CJ. agreed) held that the Tea Export Controller was a person sufficiently interested to be entitled to apply for the writ of certiorari. This Sri Lankan case is significant in that it breaks new ground by recognising the principle that a personal interest, as such, is not a *sine qua non* of *locus standi* to make an application for certiorari.

The petitioner in this application before us, as would be clear from the sequel, has a larger interest than, for instance, the interest that the Tea Export Controller had on the facts of that case reported in 39 NLR for the application of the petitioner in this case, based as

it is on a licence granted "personally" to the petitioner, gives the petitioner's application to this court a distinctive personal character. It is to be observed that, in the general run of cases, a legal right residing in the applicant or a personal interest of his (the applicant's) have been recognised as alternative requirements of standing – for it is the personal interest that enables the applicant in any application for judicial review to prove a grievance distinguishable from that suffered by the community at large. The official, ie the Tea Controller in the case referred to above, cannot be said to have suffered any personal or individual harm when his order was overturned by the Board of Review and perhaps the Tea Controller's interest, if any, was not superior to that which any ordinary member of the public had in seeing that justice is properly administered or that the law is duly complied with.

Furthermore, the petitioner in the case in hand, unlike the Tea Controller, is not seeking judicial review purely from motives of public interest for the petitioner, in this case has a private licence duly issued to him by authorities, ie, by the first respondent entitling the petitioner to carry on business as a produce broker for tea.

Even if the test that is adopted in order to decide whether the petitioner in this case is to be accorded *locus standi* is the narrow test, viz that the petitioner ought to have a "peculiar grievance beyond that which affects the public at large" which concept now seems to be obsolescent if, in fact, it is not obsolete – yet the petitioner ought to be held to have satisfied that criterion for the petitioner being a licence holder to whom a licence had been validly and legally issued has a personal or private interest over and above that of the community at large – in the form of a legitimate expectation that a firm or company, such as the 3rd respondent, to whom a licence had been wrongfully and illegally issued, – and thus must be treated as having no licence, is not placed on the same footing and accorded the same right ie, the right to engage in the business of produce broker for tea to which right the petitioner is also entitled, but on a licence validly issued to the petitioner. So that by virtue of the fact that the petitioner is a vaild licence holder – as opposed to one who holds an invalid licence in that it had been issued in violation of the relevant provisions of the law – the petitioner can aptly be said to be a person aggrieved beyond any other member of the public because it is not every ordinary member of the public who holds a licence as the petitioner does

although every citizen, particularly one who is public spirited, can be said to be concerned that the law is obeyed in the interests of all.

The traditional view is that an applicant for certiorari must show some interest before being accorded standing. The fact that the applicant ought to show some interest, in practice, means that the basis of entitlement to judicial redress is some kind of personal injury arising from violation, actual or threatened, of a legally protected interest of the person seeking redress by way of certiorari. The older, rather the conservative, view is that applicant must show that he has legal capacity to challenge the act or decision by means of prerogative writs in that he is an "aggrieved person" in the sense that there is some harm personalized to the applicant. In other words, the applicant is required to establish or prove some individual harm over and above that of the general community or the public at large – although the waning of the rigid reliance on the concept that an applicant must have an interest of his own at stake, seems to be a universal trend. A necessary corollary of the rule that the applicant ought not to be accorded standing because his (applicant's) requirement or grievance is one which is complained of "in common with the rest of the public" is to deny to the applicant access to court for no other or better reason than that governmental irregularity or illegality does affect a large number of people. This seems irrational for as Craig (tutor in law – Worcester College – Oxford) had said: "To deny access in such a case seems indefensible. If the subject matter of the case is otherwise appropriate for judicial resolution . . . to erect a barrier of "no standing" would be to render many important areas of governmental activity immune from censure for no better reason than that they do affect a large number of people. One might be forgiven for thinking that the common sense of the reasonable man would indicate the opposite conclusion; that the wide range of people affected is a positive reason for allowing a challenge by someone". It is to be observed that this test or criterion that the applicant for the prerogative Writ of Certiorari must show some interest over and above the rest of the community – or else the writ should be refused was adopted by Darling, J. in *R. v. Richmond Confirming Authority*[12], the case cited by Mr. Choksy, President's Counsel, in the following terms: "In such a case the court will consider whether the interest of the applicant . . . or his grievance is so like that of the rest of her majesty's subjects as to leave no sufficient ground for the issue of the writ".

The tendency in the past seems to have been to limit *locus standi* to persons who had a particular interest or grievance of his own over and above the rest of the community. But in more recent years there is in England a veering away from that view and the concept of *locus standi* seems to have been progressively widened to extend standing, if I may use the words of Lord Denning, to almost "anyone coming to court to get the law declared and enforced". To deprive or to deny, as had been done in the past, *locus standi* to any applicant for judicial review merely because he (the applicant) happens to share the injury complained of with others is utterly illogical as explained by Lord Wilberforce in the *Gouriet case*[13]. "A right is none the less a right or a wrong any the less a wrong because millions of people have a similar right or may suffer a similar wrong. It is illogical to treat the adequacy of interest of an applicant for judicial review to be as having being vitiated or wiped out by its being shared with a large or indefinite group of persons; on the contrary, each member of the definite group ought to be treated as a person "interested" or having a stake in the matter and accorded standing".

In Sri Lanka the very fact of the enactment of the statute, ie the Produce Brokers Act shows that it has been found desirable to subject the activities of a produce broker to some form of governmental control. Licensing is undertaken in order to enforce or maintain standards – although, perhaps, the main reason may be the collection of revenue. Licensing, in principle, is also a way of restricting the number of persons engaging in any activity so as to ensure a reasonably secure continuing livelihood for those already so engaged. So that viewed against the background of rationale for licensing there is no denying that the petitioner, who holds a valid licence to engage in the business as a produce broker for tea has to, say the least, a personal or private stake in the matter to which the application relates – over and above that of any other member of the public – the substance of the petitioner's complaint to this court being that that the 3rd respondent ought not to be permitted on an invalid licence to continue to engage in business as a produce broker for tea. And the 3rd respondent can be prevented from operating on an invalid licence – in that it had been granted in violation of express provisions of the law – contrary to the provisions of regulation 11 of 27. 08. 1979 – only by quashing the licence as prayed for by the petitioner.

Thus it would be seen that even if the more rigorous or stringent test – of insisting that an applicant for the prerogative Writ of Certiorari ought to have a private right or a particular grievance, if not a greater interest than any other member of the public – is adopted in the decision of this case – still the petitioner in this case ought to be accorded standing because the petitioner (firm) has a particular right of its own, by virtue of the fact that it (the petitioner) is a licence holder, over and above that enjoyed by any ordinary member of the public, because, as stated above, each and every member of community does not hold a licence to engage in business as a produce broker. In other words, the petitioner has on his licence, duly issued to the petitioner in accordance with the law, a right which it (the petitioner) is entitled to have protected by the law. And the 3rd respondent's carrying on the same business as the petitioner without a valid licence on an illegal one (licence) must be treated as an unlawful interference with the lawful business of a produce broker carried on by the petitioner to whom the licence has been validly granted. Produce broking like any other trade or business for the doing of which a valid licence is required by law, ought to be treated as the preserve of those who hold such a licence and one who seeks to engage in that business on an invalid licence must be treated as one who makes an unwarrantable or unlawful intrusion upon the preserve of those who hold a valid licence. The holder of a lawful right has a right to complain against a tresspasser.

Had not the petitioner satisfied court that the petitioner had a peculiar grievance or an interest over and above the interest which any member of the public has in seeing that the law is not flouted with impunity – still I would not have been backward in according or granting *locus standi* to the petitioner in this factual matrix for if the petitioner is affected by decision of the 1st respondent as, in fact, he is – it does not matter that it is a right or a private right which the petitioner shares in common, even assuming that it is so, with others. To repeat the words of Lord Wilberforce "A right is none the less a right or wrong any the less a wrong, because millions of people have a similar right or may suffer a similar wrong". I strongly feel that the test or rather the concept of denying *locus standi* to an applicant for judicial review for no other reason than that his interest or grievance is shared by many others in common with the applicant is as illogical and irrational as refusing to treat any one member of the public for a disease which has assumed epidemic proportions and has afflicted virtually the entire community.

In the factual matrix of this case, I cannot conceive of any more worthy applicant for judicial review than the petitioner in this matter to be accorded standing to challenge the order of the 1st respondent dated 26.02.1998 which order is clearly illegal because I cannot possibly visualize anyone more directly or more genuinely affected by the said order even assuming for the sake of argument that the petitioner in this case who has applied for the Writ of Certiorari in relation to the order in question – is one who has suffered some injury in common with the rest of the public – which in fact, is not so. I strongly feel that the petitioner ought to be accorded the *locus standi* because the recent trend of authorities seem to favour relaxation of rules as to standing when the allegation of illegality is vindicated as, it had been, in this application. In *R. v. Greater London Council ex. P. Blackburn*[14] the Court of Appeal of Engalnd held that prohibition might issue at the instance of a private person applying from motives of public interest to prevent the Greater London Council from licensing an indecent film. As Lord Denning, MR said: "If he has not sufficient interest no other citizen has and unless any citizen has standing there is often no means of keeping public authorities within the law". Dearth and scarceness of Blackburns on the local scene seems to have kept the law in this sphere somewhat stationary and static in Sri Lanka.

If there is no such means the result will be to encourage government departments to break the law and so to "protect illegalities committed by public servants". But there is no gainsaying that the valid licence which the petitioner holds confers on the petitioner an interest superior to that of the general public.

I take it that Rule of Law means that no one is above the law and a necessary corollary of that proposition is that no one can flout the law with impunity. Prerogative writs, certiorari in particular, are the means whereby illegalities such as issuing licenses contrary to and in disregard of the provisions of the law, can be brought to light in order to get the unlawful conduct stopped and so vindicate the rule of law. The certainty that irregularities or illegalities will be exposed and removed I think, is the most effective way of making public authorities or servants conscious of their duty to act in obedience to the law and so uphold the Rule If Law. Perusing the judgments and authorities of more recent times on the matter of *locus standi* the impression is irresistible that there is need for greater certainty in this area for, as at present, too much discretion seems to be allowed to

the court so that the matter of standing seemingly depends on the whim of the individual judge before whom the application for review comes up for decision. Law ought, I presume, to move on the lines suggested by Lord Denning, MR in the direction of much wider concept of *locus standi* which has now been accepted in England by the adoption of the New Rules of Court of 1978. Commenting on the new rules of court Lord Denning said: As a result therefore, of the new procedure, it can I hope be said that we have in England an *Actio Popularis* by which an ordinary citizen can enforce the law for the benefit of all – as against public authorities in respect of their statutory duties – The Discipline of Law – page 133. The strict concept that the applicant for judicial review must have an interest superior to that of the general public has been transformed in England and seems to be virtually jettisoned.

The question has been raised in the following form: If a government department or a public authority transgresses the law can a member of the public come to court and draw the matter to its attention. He may himself be affected by the breach. So many thousands of others like him. Is each and every one of them debarred from access to the court?

I am spared the need to answer that question in this case because the petitioner, as has been repeatedly stressed in this order, being a vaild licence holder, must be taken to have an interest superior to that of the general public. But one can be sure of one thing, if of no other, that is, that had the question enunciated above been raised in England, as at present, since the marked liberalization of rules as to standing after the process started somewhere in the late seventies or early eighties, that question would almost for certain be answered in the negative for the position is now settled that if it can be shown that the applicant for judicial review is affected in some demonstrable way, he ought, almost of necessity, to be accorded standing. What has happened in this case is easy to explain: the 1st respondent has clearly acted in excess of the powers given to him by the Act and the regulations framed in conformity with the guidelines spelt out in the Act. As such the court must have some power to intervene and award a remedy to the petitioner who is an aggrieved citizen – aggrieved in the sense as had been explained above in that he has a 'sufficient interest' to complain to the court.

In *Dr. Mohideen v. Bangladesh*[15] it was held that the expression "any person aggrieved" approximates to what is called "sufficient interest" which of course, depended on "the co-relation between the matter brought before the court and the person who is bringing it". However, in that case too it was further held that a person can be said to have a "sufficient interest" only if he has some interest beyond the interest of the general people of the country". This view seems closer to the old traditional view which had been, as pointed out above, somewhat ridiculed by Craig although it is reminiscent of the theory on which the decision in *R. v. Richmond* was rested. As had been stated earlier Craig felt strongly that the "wide range of people affected is a positive reason for allowing a challenge by someone".

Principles governing the prerogative writs being derived from English law, changes and innovations in England are bound to make their presence felt locally sooner or later. Yet the test or the concept of "sufficient interest" eludes precise definition which will introduce an undesirable element of uncertainty because of the imprecision, if I may say so, inherent in the concept of "sufficient interest" itself which leaves the court with considerable discretion in deciding whether or not to make the remedy available for judicial review. But this degree of uncertainty and imprecision is arguably compensated for by flexibility and adaptability. As somebody had said, the rules governing judicial review have no more substance at the core than a seedless grape, ie the rules are amoeba-like, shapeless and open to wide variation in interpretation. The obvious result is that it is very difficult to predict with any degree of certainty just where the courts will not choose to intervene. Time is especially favourable or opportune now for the whole of the local cases relating to the concept of *locus standi* to be reviewed for as had been observed by a celebrated judge: "If we never do anything which had not been done before, we shall never get anywhere. The law will stand while the rest of the world goes on; and that will be bad for both". The words such as "sufficient interest" are easily written but whether they conduce to clearness and the facility of administering justice may perhaps be open to argument.

Finally, it was also submitted on behalf of the 3rd respondent that the granting of certiorari would be productive of a great deal of inconvenience and even loss – so far as the 3rd respondent was concerned, and that, in any event, the court in its discretion ought to withhold the writ for that reason. I cannot be oblivious to the fact

that the 3rd respondent had chosen to press ahead with his application for the licence when the matter was, in fact, sub-judice and he must take consequences of his own decision to take the risk. The 3rd respondent seems to be one who has adopted – as a guide to action – the principle expounded by Thomas Fuller: "Boldness in business is the first, second and third thing". It should be recognised that certiorari is available even if it results in far-reaching consequences. In *R. v. Paddington Valuation Officer*[16], a grant of certiorari was sought which would have invalidated valuation list prepared by the local authority for an entire area. Although the remedy was not granted in that case, Salmon, LJ was in no doubt that: "If the valuation officer acted illegally and thereby produced an unjust and invalid list, this would be an abuse of power and one which the courts would certainly redress. It could be no answer that to do so would produce inconvenience for the rating authority – otherwise the law could be flouted and injustice perpetrated with impunity". It was also stated, at the hearing, by the learned President's Counsel for the 3rd respondent that the 3rd respondent has already made an application before the 30th of September, 1998 seeking a licence in respect of the year 1999 – so that in consequence of this order – the 3rd respondent will have to stay or discontinue its business only for a period of very short duration – a matter of few weeks.

For the aforesaid reasons I do hereby make order granting the writ of certiorari as prayed for by the petitioner quashing the decision made by the 1st respondent on 26.02.1998 granting a licence to the 3rd respondent.

HECTOR YAPA, J. – I agree.

Application allowed.