

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

In the matter of an Application for mandates in the nature of Writs of *Certiorari*, *Mandamus* and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0085/2025

N. Seelanatha Holdings (Private) Limited,
No. 29/7,
Walawatta Place, Galpotta Road,
Nawala.

Petitioner

Vs.

- 1. Colombo Lotus Tower Management Company (Private) Limited,**
No. 320, D. R. Wijewardana Mawatha,
Colombo 10.

- 2. Telecommunications Regulatory Commission of Sri Lanka,**

No. 276, Elvitigala Mawatha, Colombo 08.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel : Ali Sabry, P.C. with Naamiq Nafath and
Vimukthi Karunarathne for the Petitioner.

Janaprith Fernando with Amila Pereram
Zam Zam Ismail and Lakshika
Mahindasinghe instructed by K. U.
Gunasekara for the 1st Respondent.

Sumathi Dharmawardhena, A. S. G. for
the 2nd Respondent.

Argued on : 28.02.2025

Written Submissions
by the Petitioner tendered
on : 07.03.2025

Written Submissions
by the 1st Respondent
tendered on : 07.03.2025

Decided on : 04.04.2025

K. M. S. DISSANAYAKE, J.

Instant application had been preferred to this Court by the Petitioner - N. Seelanatha Holdings (Private) Limited (hereinafter called and referred to as 'the Petitioner') citing therein Colombo Lotus Tower Management Company (Private) Limited and Telecommunications Regulatory Commission of Sri Lanka, as the 1st and 2nd Respondents respectively, (hereinafter called and referred to as 'the 1st and 2nd Respondents') under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as 'The Constitution') praying *inter alia*, for the grant and issue of an order in the nature of a writ of *Certiorari* calling for and quashing the purported decision of the 1st Respondent and/or their servants and/or agents to evict the Petitioner from the premises more fully described in the Letter of award dated 06.09.2023, annexed to the petition marked as '**X3**' (hereinafter called and referred to as 'the Letter of award'.) namely; 'Ground Floor Commercial Space 01 having an extent of 2583 Sq.ft at the Colombo Lotus Tower Premises' (hereinafter called and referred to as 'the premises in suit') - (Vide – Prayer 'C' to the petition); for the grant and issue of an order in the nature of a writ of *Certiorari* calling for and quashing the purported decision of the 1st Respondent and/or their servants and/or agents to charge and/or recover from the Petitioner the full monthly lease rental in respect of the premises in suit in the absence of adequate supply of electricity and other utility services which are necessary to conduct the operations of the Petitioner - (Vide – Prayer 'D' to the petition); for the grant and issue of an order in the nature of a writ of *Mandamus* directing the 1st Respondent and/or their servants and/or agents to enter into a lease agreement as set out in the terms and conditions stipulated in the Letter of award - (Vide – Prayer 'E' to the petition); for the grant and issue of an order in the nature of a writ of

Mandamus directing the 1st Respondent and/or their servants and/or agents to act in terms of the conditions contained in the Letter of award - (Vide – Prayer ‘F’ to the petition); for the grant and issue of an order in the nature of a writ of *Mandamus* directing the 1st Respondent and/or their servants and/or agents to comply with the terms and conditions contained in the Letter of award read together with the terms and conditions annexed to the email dated 30.06.2024 annexed to the petition marked as ‘**X9(i)**’ confirming the assignment especially adequate supply of electricity - (Vide – Prayer ‘G’ to the petition); for the grant and issue of an order in the nature of a writ of *Prohibition* restraining the 1st Respondent and/or their servants and/or agents to thereof, from illegally and unlawfully interfering in respect of the possession of the Petitioner and/or evicting the Petitioner in the absence of a lawful termination - (Vide – Prayer ‘H’ to the petition); for the grant and issue of an order in the nature of a writ of *Prohibition* restraining the 1st Respondent and/or their servants and/or agents thereof from terminating the agreement on the failure of the Petitioner to pay full lease rental in the absence of adequate supply of electricity and other utility services which are necessary to conduct the operations of the Petitioner - (Vide – Prayer ‘I’ to the petition) together with kind of interim orders as prayed for in prayer ‘J’, ‘K’ and ‘L’ of the petition against the 1st Respondent.

When this matter came on before us on 07.02.2025, the learned President’s Counsel furnished documents to this Court to establish that notices had been issued to the Respondents under courier service. This Court then, having scrutinized the petition, affidavit, documents and the submissions of the learned President’s Counsel for the Petitioner, directed formal notices to be issued on the Respondents together with temporary interim orders as prayed for in paragraphs ‘j’ and ‘l’ of the prayers to the petition operative till next date.

It is to be noted that, the 2nd Respondent had been made a party to the instant application only for the purpose of notice in terms of paragraph 3(c) of the petition.

On the notice returnable day on 28.02.2025, the 1st Respondent raised a number of preliminary legal objections as to the maintainability of the instant application and as to the grant of the interim relief and invited this Court to hear and determine them in the first instance. We then, having heard oral submissions of the respective counsel for the parties on the preliminary legal objections, permitted them to file written submission at the registry on or before 07.03.2025 as urged, and then, fixed it for order.

In the light of the paragraph 3 (a), (b), (c) and (d) of the written submissions of the 1st Respondent, preliminary legal objections so raised by the learned Counsel for the 1st Respondent are four-fold and they may be enumerated as outlined therein as follows;

- a) The relationship between the Petitioner and the 1st Respondent is purely contractual;
- b) The Petitioner could have sought specific performance for their purported grievance;
- c) Without prejudice to the submission set out in (b) above, the Petitioner could have sought damages for their purported grievance;
- d) The purported grievance of the Petitioner does not amount to a violation of natural justice;

Since, it appears to me that the preliminary legal objections (a) and (d) enumerated above, are interwoven, I would propose to deal both of them together for convenience and clarity.

- (a) **The relationship between the Petitioner and the 1st Respondent is purely contractual;**

(d) The purported grievance of the Petitioner does not amount to a violation of natural justice;

It was the position of the 1st Respondent that the relationship between the Petitioner and the 1st Respondent is purely contractual, thus, the transaction culminated in the leasing out of the premises in suit to the Petitioner by the 1st Respondent, subject to the terms and conditions embodied in the Letter of award ('X3') and the email ('X9'), is a commercial transaction and therefore, not amenable to judicial review and/or writ jurisdiction of this Court and as such, instant application of the Petitioner cannot be maintainable in law and it should therefore, be dismissed *in-limine*.

In support thereof, the 1st Respondent had sought to heavily, rely on a passage from the book titled "The Law of Contracts" by C.G. Weeramanthri - Volume 1 at page 83, a passage from the book titled "Administrative Law"- 10th Edition, by H. W. R. Wade at pages 526 and 527, a passage from the book titled "Principles of Administrative Law in Sri Lanka" - 3rd Edition – Volume 2, by Dr. Sunil F. A. Cooray, and also on the decisions in Siva Kumar Vs. Director-General of Samurdhi Authority of Sri Lanka & another 2007 [1] SLR 96, U. K. Karunawathie Vs. People's Bank and Others CA (Writ) Application No. 863/10 decided on 12.05.2025, Podi Nona Vs. Urban Council of Horana-1981 (2) SLR 141, Gawarammana Vs. Tea Research Board and Others 2003 (3) SLR 120, Jayaweera Vs. Wijerathne-1985 (2) SLR 413, Dayanthi Dais Kaluarachchi Hitiyawatta Vs. Ceylon Petroleum Corporation and Other SC-Appeal 43/2013 – SC Minutes – 19.06.2019, Ven. Walawahangunuwawe Dharmarathana Thero Vs. Mihinthale Pradeshiya Sabhawa – CA(PHC) 107/2014- CA Minutes- 10.11.2021 and Madugalle Vs. National Housing Development Authority and Others CA/Writ/ 540/2019-CA Minutes-16.06.2020.

The Petitioner had on the other hand, sought to counter the said preliminary objection by contending that if, a contractual matter amounts to an executive

or administrative action, the same is subject to judicial review by this Court, for; Bodies performing public duties or exercising powers that may well, be characterized as “public”, may be subject to judicial review in respect of those powers and duties even though they are not statutory or prerogative. It was therefore, submitted by the Petitioner that as there has been a clear breach of statutory duty by the 1st Respondent, the Petitioner in the instant application is entitled to seek relief through a writ application before this Court by invoking jurisdiction of this Court conferred upon it under and in terms of Article 140 of the Constitution based on the legitimate expectation accrued to the Petitioner.

In support thereof, the Petitioner had sought to heavily, rely on a passage from the book titled, “Judicial Remedies in Public Law”-6th Edition by Sir Clive Lewis, a passage from the book titled “De Smith’s Judicial Review”- 9th Edition and the decisions in Wijewardhana Vs. Kurunegala Plantations Ltd-SCFR-24/2013-decided on 03.09.2014, Wickrematunga Vs. Anuruddha Rathwatte & Others 1998 (1) SLR 201, CA/Writ/ 540/2019- decided on 16.06.2020, CA/Writ 64/2021- decided on 05.09.2023, Harjani and Another Vs. Indian Overseas Bank and Others 2005 (1) SLR 167 at page 171, Lanka Securities Pvt (Ltd) Vs. Colombo Stock Exchange and Others 2020 (2) SLR 121, at page 125.

In view of the preliminary legal objection enumerated above and its’ counter, the thresh-hold issue that would arise for our decision is whether the matter before this Court is within the category of “contract” as contended by the 1st Respondent, or “executive or administrative action” as contended by the Petitioner.

It is in this context, let me now briefly, set out the facts relevant to the instant application as averred in the petition by the Petitioner. The 1st Respondent is a fully State owned company duly registered in terms of the Companies Act No. 07 of 2007; that the 2nd Respondent is the Telecommunications Regulatory Commission of Sri Lanka established under and in terms of the Sri Lanka

Telecommunications Act No. 25 of 1991 (as amended) and is a body corporate which is capable of *inter-alia* of suing and being sued in its own name; that 2nd Respondent is seized and possessed and/or well and sufficiently entitled to Colombo Lotus Tower; that under and by virtue of the Indenture of lease No. 33 dated 10.04.2023 attested by S. K. M. Perera Notary Public, the 2nd Respondent leased the said Colombo Lotus Tower to the 1st Respondent; that the 2nd Respondent is made a party only for the purpose of notice; that it was brought to the notice of the predecessor of the Petitioner, namely; Virtrans Capital Deliveries (Pvt.) Ltd that the Ground Floor Commercial Space 01 having an extent of 2583 Sq.ft at the Colombo Lotus Tower Premises' was available for lease; that the predecessor of the Petitioner by Expression of interest dated 22.08.2023 expressed its interest to lease the premises to carry out a business of food and beverages, namely; "Foodie Outlet" for a period of 5 years; that the concept was to set up a food court with 10 outlets and the outlets to subleased to vendors; that the 1st Respondent awarded the lease of the premises of the predecessor of the Petitioner by Letter of award dated 06.09.2023 subject to *inter-alia* the terms and conditions stipulated therein; that since, the relationship between Virtrans Capital Deliveries (Pvt.) Ltd and the 1st Respondent had become strained, the Petitioner requested the 1st Respondent it to be officially recognized as the business operator thereof and agreed to settle the outstanding lease rentals by Virtrans Capital Deliveries (Pvt.) Ltd to the 1st Respondent; that by email dated 30.06.2024, the director of the Petitioner company was informed by the 1st Respondent company that permission has been granted to the Petitioner company to continue the "Foodie" operations whereby the Board of the 1st Respondent had decided to continue with the Petitioner on the same terms and conditions set out in the Letter of award to be read together with the set of terms and conditions annexed to the email; that the 1st Respondent was unable to provide adequate capacity of electricity for the Petitioner to operate all the outlets in the Food Court and accordingly, the 1st Respondent had raised invoices on a *Pro-rata*

basis in respect of the number of outlets occupied and as at the date of the lease was assigned to the Petitioner, lease rentals and or service charge amounting to Rs. 4,492,821.73/- was outstanding which was duly, settled by the Petitioner and a further invoice was raised for the month of June 2024 on a *Pro-rata* basis in respect of 3 outlets that were occupied which had been duly settled by the Petitioner; that due to the differences of opinion, a lease agreement could not be executed to-date; that operations of the Food Court were disrupted due to the insufficiency of the load capacity of electricity supplied to the premises in suit and the Petitioner informed the 1st Respondent about this issue and the 1st Respondent requested the Petitioner to provide detailed information on the power consumption for each outlet and a report from an electrical engineer thereon, was made available to the 1st Respondent but, the 1st Respondent failed to address the issue thereby causing to the Petitioner a loss of several clients and investment opportunities; that when matters remained as such on or around 01.02.2025, the 1st Respondent purported to unlawfully and illegally restrict the Petitioner and its sub-lessees from accessing the premises and the supply of utility facilities and as a result, the Petitioners and the sub-lessees were likely to lose business and incur heavy losses; that in the absence of a valid termination, the 1st Respondent had no ground whatsoever to disrupt the operations and or evict the Petitioner, and thus, the conduct of the Petitioner is illegal, unlawful, ultra vires, unreasonable, arbitrary and contrary to the legitimate expectation of the Petitioner and in the circumstances, the Petitioner is entitled to invoke the jurisdiction of this Court conferred upon it by Article 140 of the Constitution to obtain a kind of relief as prayed for in the prayers to the petition of the Petitioner against the 1st Respondent.

It is significant to observe that, the 1st Respondent opted not to file objections to the instant application of the Petitioner. However, the 1st Respondent by way of oral submissions, raised a number of preliminary legal objections to the

maintainability of the instant application and to the grant of interim order as enumerated above.

In view of the paragraph 4 (a), (b), (c), (d), (e) and (f) of the petition, the Petitioner seeks to impugn *inter-alia*;

- a) The purported decision of the 1st Respondent to evict the Petitioner from the premises in suit;
- b) The purported decision of the 1st Respondent to charge the Petitioner the full monthly lease rental in the absence of adequate supply of electricity and provision of other utility services.
- c) Failure of the 1st Respondent to comply with the terms and conditions contained in the Letter of award read together with the terms and the conditions annexed to the email dated 30.06.2024 confirming the assignment especially adequate supply of electricity;
- d) Failure of the 1st Respondent to enter into a lease agreement as set out in the terms and conditions stipulated in the Letter of award;
- e) Failure of the 1st Respondent to follow the due process and/or rules of natural justice and/or comply with the terms and conditions set out in the Letter of award in purporting to evict and or terminate the agreement; and
- f) The illegal and /or unlawful interference of the 1st Respondent in respect of the possession of the Petitioner of the premises;

Upon a careful reading of the principle relief prayed for by the Petitioner in the prayers (C), (D), (E), (F), (G), (H) and (I) to the petition against the 1st Respondent in conjunction with the averments in paragraph 4 (a) to (f) which according to the Petitioner, constitute the scope of the instant application, it becomes abundantly, clear that the Petitioner had thereby, sought to base those relief mainly on the Letter of award (**X3**) read together with the terms and the conditions ('**X9(i)**') annexed to the email (**X9**), and thus, source of the relief

being the Letter of award (**X3**) read together with the terms and the conditions ('**X9(i)**') annexed to the email (**X9**).

Accordingly, the pivotal basis of the challenge being; (a) failure on the part of the 1st Respondent to follow the due process and/or rules of Natural Justice and/or failure on the part of the 1st Respondent to comply with the terms and conditions stipulated in the Letter of award to be read together with the terms and conditions ('**X9(i)**') attached to the email ('**X9**'); (b) illegal and unlawful interference by the 1st Respondent with the possession of the Petitioner of the premises in suit in contravention of the terms and conditions embodied both in the Letter of award and the email.

It is in this backdrop of the instant application, let me now, and examine the legal status of the 1st Respondent.

It is an admitted fact that the 1st Respondent being a company duly registered under and in terms of the Companies Act No. 07 of 2007 (as amended).

The 1st Respondent had furnished to this Court along with the motion dated 07.03.2025 through which its written submissions were tendered to Court, a true copy of Form 39 under Companies Act No. 07 of 2007 annexed thereto marked as '**R1**' and the Articles of Association of the 1st Respondent company, annexed thereto marked as '**R1(a)**' together with the special resolution of the sole shareholder of the 1st Respondent adopted by Circulation in terms of section 144 of the Companies Act No. 07 of 2007 on 23.09.2022.

Upon careful perusal of the special resolution and the Articles of Association '**R1(a)**', it clearly, appears that Secretary to the Treasury being the shareholder of the 1st Respondent company; and that the 2nd Respondent being its regulatory entity; and that the Auditor General of Sri Lanka being the one responsible for auditing the 1st Respondent company.

Furthermore, in view of the notification published by his Excellency-the President of this Country under his hand in the Gazette of the Democratic Socialist Republic of Sri Lanka – Extra Ordinary bearing No. 2403/53, dated 27.09.2024, by virtue of the powers vested in him by Article 44(1) of the Constitution, a copy of which was annexed to the written submission of the Petitioner marked as '**P1**', the 1st Respondent being Colombo Lotus Tower Management Company (Private) Limited had been assigned to the Hon. Minister in charge of Trade, Commerce, Food Security, Co-Operative Development, Industry and Entrepreneurship thus, bringing the 1st Respondent under the direct ministerial control.

Hence, the fact that Secretary to the Treasury being the shareholder of the 1st Respondent company; the fact that the 2nd Respondent being its regulatory entity; the fact that the Auditor General of Sri Lanka being the one responsible for auditing the 1st Respondent company; and that the 1st Respondent being Colombo Lotus Tower Management Company (Private) Limited had been assigned to the Hon. Minister in charge of Trade, Commerce, Food Security, Co-Operative Development, Industry and Entrepreneurship thus, bringing the 1st Respondent under the direct ministerial control, clearly, and unequivocally, shows that the 1st Respondent Company though duly established as a limited liability company under and in terms of the provisions of the Companies Act of 07 of 2007, has been given the legal status of a State Agency.

It clearly, and unequivocally, appears that the Letter of award ('**X3**') to be read together with the email ('**X9**'), is plainly, a contract mutually, entered into between the Petitioner and the 1st Respondent on the terms and conditions mutually agreed upon by the Petitioner and the 1st Respondent under the Law of Contract and it does not in any manner, prescribe any function or a duty on the 1st Respondent having any statutory flavor or any statutory potential.

The vital point to be stressed and emphasized here is that the reliefs prayed for by the Petitioner against the 1st Respondent, are entirely, on the footing of the contract based on its own terms and conditions embodied therein, which were mutually agreed upon by the Petitioner as well as the 1st Respondent.

Hence, the Petitioner is now, urging that this Court exercising writ jurisdiction vested in it, orders the 1st Respondent to perform its obligations laid down on the contract mutually entered upon by and between the Petitioner and the 1st Respondent in terms of the terms and conditions mutually agreed upon by the Petitioner and the 1st Respondent at their free will.

In the circumstances, the pertinent question is whether the actions of a State agency having entered into a contact with a third-party, comes under the wing of “administrative action” as contended by the learned President’s Counsel for the Petitioner, or else whether the action of the State agency should be regarded as only confined to the terms and conditions embodied in the realms of contract between two private parties as contended by the learned Counsel for the 1st Respondent.

In “Constitutional and Administrative law”- Eleventh edition, Wade and Bradley, at pages 714 and 715 observed as follows;

“.....If an application for review concerns decisions of central government, or any public authority or official, the Courts readily accept jurisdiction in judicial review, except if a reason to the contrary is shown. Thus, decision taken under prerogative powers are subject to review, unless in their subject matter the Court considers them to be non-justiciable.....Such decisions arise from an exercise of public power susceptible to control on principles of public law. Two exceptions to the availability of judicial review exist. First, some decisions are subject to statutory appeals **and similar procedures which exclude review** under RSC Order 53. **Secondly, public authorities are in general subject to**

the ordinary law of contract, tort and property. Since *O'Reilly v. Mackman*, such branches of law may be termed 'private law' to distinguish them from the rules of 'public law' applied on judicial review. An application for judicial review may not be used in place of an ordinary action in contract or tort, just because the defendant is a public authority. Thus, when such an authority dismisses an employee, the employee's primary remedy is a claim for unfair dismissal, or a claim under the contract of employment. **However, depending on the circumstances, decision by public authorities as employers may stem from or involve issues of public law. One test applied has been whether the employee's position is 'under-pinned' by statute.**

A difficult question is what constitutes a 'public body' for judicial review. The prerogative orders were not, and judicial review is not, available against bodies such as trade unions **or companies**. Membership of a trade union is based on a contract. If a trade unionist complains that his expulsion from the union was in breach of union rules or infringed natural justice, he may sue the union for damages and an injunction. Bodies such as the National Greyhound Racing Club and the Jockey Club are not subject to judicial review under Order 53, even if they regulate major areas of sport, but the contractual remedies will often be available.

Most difficult case is that of regulatory bodies which derive their powers neither directly from statute nor from contract. Despite having no formal legal status, the City Panel on Take-Overs and Mergers is subject to judicial review, **since its functions 'de facto' are in the nature of public law powers and are indirectly supported by statutory sanctions....."** [Emphasis is mine].

H. W. R. Wade in his “Administrative Law”- Tenth Edition at Pages 526 and 527 observes as follows;

“A distinction which needs to be clarified is that, between public duties enforceable by a mandatory order, which are usually statutory, and duties arising merely from the contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies such as damages, injunctions, specific performance and declaration. They are not enforceable by a mandatory order, which in the first place is confined to public duties and secondly, is not granted where there are other adequate remedies.”

Dr. Sunil F. A. Cooray in his “Principles of Administrative Law in Sri Lanka” – Third Edition- Volume 2 observes as follows;

“The exercise of power arising purely from the contract by one of the contracting parties who was a Public Authority cannot be quashed by *Certiorari* whether such contract be a lease of a shop premises by a local authority, a contract of employment, or a contract of dealership. A writ of *Certiorari* will not lie to quash a decision of the Maha Sanga Sabha or the Sanga Sabha of a Buddhist Nikaya because such Sabha is domestic tribunal functioning under an agreement of parties and not under any statutory provision.”

The Supreme Court in a recent decision in SC/Appeal 43/2013 – Decided on 19.06.2019 cited with approval of a passage from the judgement in **Gawarammana Vs. Tea Research Board and Others 2003 (3) SLR 120** to the following effect;

“Powers derived from contract are matters of private law. The fact that, one of the parties to a contact is a public authority is not relevant since

the decision sought to be quashed by way of *Certiorari* itself was not made in the exercise of any statutory power.”

It was held in **Podi Nona Vs. Urban Council of Horana-1981 (2) SLR 141 at pages 145 and 146** held that

“The Relationship between the parties were contractual and accordingly, the Petitioner is not entitled to obtain a writ of *Certiorari*. Another remedy was open to her.”

It was held in **Jayaweera Vs. Wijerathne** 1985 (2) SLR 413, that,

“Where the relationship between the parties is purely, contractual one of commercial nature, neither *Certiorari* nor *Mandamus* will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of Natural Justice even if one of the parties is a Public Authority.”

See also; **Dayanthi Dais Kaluarachchi Hitiyawatta Vs. Ceylon Petroleum Corporation and Other, Ven. Walawahangunuwawe Dharmarathana Thero Vs. Mihinthale Pradeshiya Sabhawa and Madugalle Vs. National Housing Development Authority and Others** (Supra).

It is trite law that, he who asserts that the relationship between the contracting parties has any statutory flavor or it prescribes any functions or duty on the Respondent having statutory potential in order to bring its case within the purview of writ jurisdiction of this Court vested in it under Article 140 of the Constitution, must establish as required by section 3 of the Evidence Ordinance to be read with sections 101 and 103 thereof, that the functions and/or duty complained of, had any statutory flavor or it prescribes any functions or duty on the Respondent having statutory potential, nevertheless, they are arising out of a contract mutually entered into between the parties under the Law of Contract.

As observed by me elsewhere in this judgment, the Letter of award ('X3') to be read together with the email ('X9'), is admittedly, a contract mutually, entered into between the Petitioner and the 1st Respondent on the terms and conditions mutually agreed upon by the Petitioner and the 1st Respondent under the Law of Contract and it does not in any manner, prescribe any function or a duty on the 1st Respondent having any statutory flavor or any statutory potential.

However, upon a careful scrutiny of the averments in the petition of the Petitioner, the submissions both oral and written, made by the learned President's Counsel before us at the hearing into the preliminary legal objections so raised by the 1st Respondent, in its correct perspective, it clearly, and unequivocally, appears to me that the Petitioner had not in any manner, established to the satisfaction of this Court that although, the Letter of award ('X3') to be read together with the email ('X9'), is admittedly, a contract mutually, entered into between the Petitioner and the 1st Respondent on the terms and conditions mutually, agreed upon by the Petitioner and the 1st Respondent under the Law of Contract, nevertheless, it does prescribe a function or a duty complained of, on the 1st Respondent having any statutory flavor or any statutory potential thus, bringing its case within the purview of writ jurisdiction of this Court vested in it under Article 140 of the Constitution, as required by section 3 of the Evidence Ordinance to be read with sections 101 and 103 thereof.

Instead, what the Petitioner attempted to do was to make an effort to enlighten this Court with the law relating to a suit where, although, a matter complained of, arises from a contract mutually, entered into between the parties to a suit under Article 140 of the Constitution on the terms and conditions mutually, agreed upon by the parties thereto under the Law of Contract, nevertheless, it does prescribe a function or a duty complained of on the other contracting party being a State agency, having any statutory flavor or any statutory

potential thus, bringing its case within the purview of writ jurisdiction of this Court vested in it under Article 140 of the Constitution.

I would therefore, hold that, the relationship between the Petitioner and the 1st Respondent is purely, contractual arising out of the said contract having no statutory flavor or having any statutory potential necessary to bring its case within the purview of writ jurisdiction of this Court vested in it under Article 140 of the Constitution as rightly, contended by the learned Counsel for the 1st Respondent by way of the preliminary legal objection (a) as enumerated above, namely; that the relationship between the Petitioner and the 1st Respondent is purely contractual.

It is settled law that if, the complaint is with regard to a breach by a contracting party being a State agency, of a term and/or a condition embodied in a contract mutually, agreed upon by the parties to a suit under Article 140 of the Constitution, the proper remedy being an action for a declaration or damages together with an application for an injunction as the case may be, in the absence of a relationship between them, having a statutory flavor or having a statutory potential in case of one party thereto being a State agency. In a situation as such, the Court will not as a rule, quash the decision on the ground that natural justice has not been observed as laid down by Court in the decision in **Gawarammana Vs. Tea Research Board and Others** and **Jayaweera vs. Wijerathne** (Supra)

In view of the foregoing, I would hold that the preliminary legal objection (d) as enumerated above, too, is tenable both in fact and law and therefore, is entitled to succeed both in fact and law.

In the circumstances, I would hold that the preliminary legal objections (a) and (d) as enumerated above, are tenable both in fact and law and therefore, are entitled to succeed both in fact and law.

I would therefore, uphold the both.

In the result, I would hold that the instant application should be dismissed *in-limine* on those preliminary legal objections alone.

Since, it appears to me that the preliminary legal objections (b) and (c) enumerated above, too, are interwoven, I would propose to deal both of them together for convenience and clarity.

The Petitioner could have sought specific performance for their purported grievance;

- b) The Petitioner could have sought specific performance for their purported grievance;**
- c) Without prejudice to the submission set out in (b) above, the Petitioner could have sought damages for their purported grievance;**

In “Constitutional and Administrative law”- Eleventh edition, Wade and Bradley, at pages 715 observed as follows;

“An application for judicial review may not be used in place of an ordinary action in contract or tort, just because the defendant is a public authority.”

It was held further in **Gawarammana Vs. Tea Research Board and Others** at page 124 (Supra) that,

“As such, judicial review would not be appropriate remedy since there was an alternative and more effective remedy available from an Industrial Tribunal. The application for judicial review would therefore be dismissed.”

Upon a careful scrutiny of the reliefs prayed for in prayers (C), (D), (E), (F), (G), and (I) to the petition, it clearly, appears that they can more effectively, be

perused and enforced by way of a decree for specific performance in a properly constituted civil action in a District Court of competent jurisdiction while, the relief prayed for in prayer (H) to the petition can more effectively, be perused and enforced by way of a possessory decree under section 4 of the Prescription Ordinance in a properly constituted civil action in a District Court of competent jurisdiction together with injunctive relief as prayed for in prayers (J) to (L) to the Petition based on the Contract mutually entered upon by and between the Petitioner and the 1st Respondent founded on the Letter of award (**X3**) to be read together with the email (**X9**). Or else, the Petitioner could have pursued more effectively, an action in a District Court of competent jurisdiction for damages for any alleged breach of the Contract mutually entered upon by and between the Petitioner and the 1st Respondent founded on the Letter of award (**X3**) to be read together with the email (**X9**).

In the light of the facts and law set out above, I would hold that, judicial review would not be an appropriate remedy since, there was an alternative and more effective remedy available to the Petitioner under the Common Law in respect of any alleged breach of the contract and the application for judicial review would therefore, essentially, be dismissed *in-limine*.

In view of the foregoing, I would hold that the preliminary legal objections (b) and (c) as enumerated above, too, are tenable both in fact and law and therefore, are entitled to succeed both in fact and law.

I would therefore, uphold the both.

In the result, I would hold that the instant application should be dismissed *in-limine* on those preliminary legal objections too.

In view of the foregoing, I would if I may say so respectfully, hold that the authorities cited and the passages quoted from the learned authors in the submissions both oral and written (Supra) by the learned President's Counsel

for the Petitioner in countering the preliminary legal objections so raised by the learned Counsel for the 1st Respondent with regard to the maintainability of the instant application, are of no assistance whatsoever to establish the respective positions taken up by the learned President's Counsel for the Petitioner in countering the same at the hearing into the preliminary legal objections before us.

In the light of the, facts and law set out above, I would hold, that all the preliminary legal objections enumerated above as (a), (b), (c) and (d) are entitled to succeed both in fact and in law.

In the circumstances, I would uphold all the preliminary legal objections enumerated above as (a), (b), (c) and (d).

In the result, I would hold that the instant application of the Petitioner ought to be dismissed *in-limine*.

Finally, let me deal with the contention raised by the learned President's Counsel for the Petitioner on the legitimate expectation alleged to have accrued to the Petitioner on the contract in question as forming the principle basis for the array of reliefs sought in the Petition by the Petitioner.

It was an admitted fact that, the Petitioner had failed to pay monthly rental due under the lease of premises in suit which clearly, and unequivocally, shows that the Petitioner had failed to fulfill its obligation to pay lease rental as mutually agreed upon by the Petitioner and the 1st Respondent in the said contract. In a situation as such, the pertinent question is; Can the Petitioner who breached the covenant as to the payment of lease rental due there-under in respect of the premises in suit, now, claim legitimate expectation under the very same contract as forming the basis for the instant application?. I think certainly, not, for; the Petitioner has not come to Court with clean hands in as much-as in an application of this kind, conduct and the dealings of the

Petitioner should strictly, be taken into consideration by Court in determining as to whether the Petitioner is entitled to the relief sought by him by reason of the fact that relief sought by the Petitioner under Article 140 of the Constitution is a prerogative and discretionary remedy vested in this Court.

In view of the foregoing, I would hold that, the Petitioner is not entitled to found his relief sought from this Court under Article 140 of the Constitution against the 1st Respondent entirely, based on the legitimate expectation of any kind either substantive, or procedural, alleged to have accrued to the Petitioner under the said contract as forming the basis of the instant application.

In view of the facts and the law set out above, I would hold that, the instant application is not entitled to succeed both in fact and law.

In the result, I would dismiss the instant application with costs payable by the Petitioner to the 1st Respondent only, upholding all the preliminary legal objections so raised by the learned Counsel for the 1st Respondent as to the maintainability of the instant application.

In the circumstances, I would vacate and set aside all the interim reliefs already granted by this Court to the Petitioner.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J.

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL