

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

*In the matter of an application for a Writ of  
Mandamus under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

Sulochana Constructions (Pvt) Ltd.,  
Jambugasmulla Road,  
Nugegoda.

**C.A. Case No. WRT-0575/21**

**PETITIONER**

**Vs**

1. Janatha Estate Development Board,  
No. 55/15, Vauxhall Street,  
Colombo 02.

2. Buwanaka D. Abeysuriya,  
Chairman,  
Janatha Estate Development Board,  
No. 55/15, Vauxhall Street,  
Colombo 02.

(Ceased to Hold Office)

3. Udith K. Jayasinghe,  
Secretary,  
Ministry of Agriculture,  
Govijana Mandiraya,  
Battaramulla.

3a. B. L. A. J. Dharmakeerthi,  
Secretary,  
Ministry of Plantation Industries,  
8<sup>th</sup> Floor, Sethsiripaya, Stage II,  
Battaramulla.

4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE :** **M. T. MOHAMMED LAFFAR, J**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** P. K. Prince Perera for the Petitioner.  
Rasika Dissanayake for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.  
Madhushka Kannangara, SC, for the 3a and 4<sup>th</sup>  
Respondents.

**WRITTEN SUBMISSIONS**

**TENDERED ON :** 16.10.2023 (On behalf of the Petitioner)  
09.11.2023 (On behalf of the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents)

**DECIDED ON :** 08.12.2023

**WICKUM A. KALUARACHCHI, J.**

The facts relating to this application are as follows: In January 2018, the Cabinet of Ministers had taken a policy decision to implement a restructuring program and decided to lease out lands belonging to state institutions to small and medium-scale investors. The 1<sup>st</sup> respondent, Janatha Estate Development Board (hereinafter referred to as "JEDB") had called for applications from private companies to develop a land belonging to the 1<sup>st</sup> respondent by the advertisement published in the "Daily News" newspaper dated 24.05.2019, marked P-5. The petitioner stated that Mount Jean Estate Watawala is an estate that belonged to the 1<sup>st</sup> respondent and was under the restructuring program. The petitioner has submitted a project proposal in respect of Mount Jean Estate. Thereafter,

the interview board of JEDB conveyed its preliminary acceptance of the proposal forwarded by the petitioner by the letter dated 2019.07.31, marked P-7. By the same letter, the petitioner was informed to express the agreement to comply with the conditions attached to the letter P-7. It is stated further in the letter P-7 that upon the agreement to comply with the conditions, the JEDB can enter into a contract with the petitioner after a feasibility review of the project report. Accordingly, the petitioner confirmed the agreement to the said conditions.

The petitioner states that after submitting confirmation for their conditions, the 2<sup>nd</sup> respondent directed the superintendent of the Mount Jean Estate by the letter P-9 to show the land that could be given for the special project. Thereafter, the Managing Director of the petitioner showed the said land to be surveyed, prepared a map for 8 blocks, and submitted it to the 2<sup>nd</sup> respondent.

However, the petitioner states that the 1<sup>st</sup> to 3<sup>rd</sup> respondents have taken no steps so far to enter into an agreement with the petitioner, and the 1<sup>st</sup> to 3<sup>rd</sup> respondents are going to enter into contracts with some other persons in respect of the surveyed 8 blocks of land of the Mount Jean Estate. The contention of the learned Counsel for the petitioner was that the 1<sup>st</sup> to 3<sup>rd</sup> respondents were bound to enter into a contract with the petitioner. Also, the learned Counsel contended that the petitioner had been denied its legitimate expectations due to the failure of the 1<sup>st</sup> to 3<sup>rd</sup> respondents to enter into a contract. This is the reason why the petitioner company has come before this court seeking a Writ of Mandamus against the respondents to enter into a contract with the petitioner company regarding the 08 blocks of land described in the prayer (b) of the petition.

The position taken up in the statement of objections of the 1<sup>st</sup> and 2<sup>nd</sup> respondents was that the 2<sup>nd</sup> respondent communicated only the preliminary approval for the project proposal; the subsequent review by the interview board on the feasibility of the project was to be considered

after the petitioner communicated its consent to the conditions set out by the 1<sup>st</sup> respondent in the document marked P-8(a) and the preliminary acceptance of the project proposal is no guarantee for the final acceptance. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state further that the petitioner company could not have a legitimate expectation because the discretion to grant final acceptance rests on the interview board of the 1<sup>st</sup> respondent on consideration of a multitude of factors.

The learned Counsel for all the parties consented to dispose this matter by way of written submissions and written submissions were tendered on behalf of the petitioner and the 1<sup>st</sup> & 2<sup>nd</sup> respondents. The learned Counsel for the petitioner presented the petitioner's case on the ground of legitimate expectation. The learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents advanced his arguments on the following four grounds:

- i. The petitioner has no *locus standi* to seek a Writ of Mandamus.
- ii. A contract cannot be enforced by way of a Writ of Mandamus.
- iii. The documents P-7 and P-8 cannot be interpreted as a contract.
- iv. There cannot be a legitimate expectation that the tender would be awarded to the petitioner.

Now, I proceed to consider the aforesaid four grounds and the ground of legitimate expectation on which the petitioner's application is based.

The petitioner has no *locus standi* to seek a Writ of Mandamus.

It is pointed out in the written submissions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents that according to the caption of the petition, the petitioner has been described as "Sulochana Constructions (Pvt) Ltd". However, the project proposal marked P-6 had been tendered by a company, namely "S.C. (Pvt) Ltd." Further, it was stated that according to the document marked P-8(b), the accepted proposals had been communicated by 'Sulochana Constructions (Pvt) Ltd'. Therefore, the contention of the learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents was that on the face of it, the tenderer and

the petitioner are two different entities and thus the petitioner has no *locus standi* to seek a Writ of Mandamus because the said ambiguity has not been resolved by annexing the certificate of incorporation of the petitioner company.

P-6 is the project report tendered by a company called “S.C. (Pvt) Ltd”. However, the petitioner who seeks a Writ of Mandamus is a company called “Sulochana Constructions (Pvt) Ltd”. It cannot be taken for granted that the project report has been tendered by the petitioner company because the beginning letters of the name “Sulochana Constructions” are ‘S’ and ‘C’. As stated by the learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, there is no proof that both names are used for the same company. Hence, there is a substance in the said argument advanced by the learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents regarding the *locus standi* of the petitioner to seek a Writ of Mandamus.

A contract cannot be enforced by way of a Writ of Mandamus.

The contention of the learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents was that an invitation to express interest was called from business enterprises for projects that are commercial in nature and thus a commercial agreement/ contract cannot be enforced by a Writ of Mandamus. Line of Judicial Authorities have been cited in substantiating the said argument.

The learned Counsel raised this argument because, in the advertisement marked P-5, it is mentioned that ‘... to generate agricultural projects commercially to contribute the national economy...’. Although the project is of a commercial nature, selection of candidates is done by a public body; JEDB as described in the said advertisement. In addition, the selection of candidates is an administrative function. Hence, both the source of power and the nature of power sought to be reviewed are administrative in nature. Therefore, I hold that this matter is amenable to writ jurisdiction.

The documents P-7 and P-8 cannot be interpreted as a contract.

There cannot be a legitimate expectation that the tender would be awarded to the petitioner.

The aforesaid two grounds of argument could be considered together. The petitioner has come to this Court on the ground of legitimate expectation. What is stated in the written submission tendered by the learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents was that P-7 is only a preliminary acceptance. It is emphasized in the written submission that upon expressing the petitioner's agreement to comply with the conditions, the interview board of the Janatha Estate Development Board conducts a feasibility review, and the final contract is entered with the petitioner company only if the petitioner's proposal is accepted by the JEDB.

The letter P-7 sent by the Chairman of Janatha Estate Development Board to the petitioner company is important in this respect. The said letter reads as follows;

‘ව්‍යාපෘති යෝජනා ක්‍රියාත්මක කිරීම

ජනතා වතු සංවර්ධන මණ්ඩලය යටතේ ප්‍රතිච්ඡාදන ගත කිරීම යටතේ 2019.05.24 දිනැති අපගේ පුවත්පත් දැන්වීමට ප්‍රකාරව, අප විසින් අයදුම්පත් කැඳවීමෙන් අනතුරුව සිදුකළ සම්මුඛ පරීක්ෂණ මණ්ඩලය මගින් ඔබගේ ව්‍යාපෘති යෝජනා සඳහා මූලික එකඟතාවය පළකර ඇත.

මෙම ව්‍යාපෘතියේ ඉදිරි කටයුතු කරගෙන යෑම සඳහා මෙහි පහත සඳහන් කොන්දේසි සමග ඔබගේ එකඟත්වය පළකරන්නේ නම් ඔබගේ ව්‍යාපෘති වාර්තාව ඇගයීමට ලක් කොට ගිවිසුම් ගත කිරීමට කටයුතු කළ හැක. එබැවින් ඔබගේ එකඟත්වය මෙම ලිපිය ලැබී දින 07ක් ඇතුළත ලිඛිතව අප වෙත ලබාදෙන ලෙස දන්වා සිටිමි.’

It is clearly stated in that letter that only the preliminary approval for the proposal had been granted by the Janatha Estate Development Board. It is also clearly stated that the Janatha Estate Development Board would enter into a contract with the petitioner company subsequent to a review by the Board on the feasibility of the project report. In the letter P-7, it is also stated that if the petitioner agrees to comply with the conditions set out in the annexure to the P-7, the feasibility of the petitioner's project

report would be reviewed by the JEDB. The petitioner does not dispute the fact that after reviewing the feasibility of the report, the JEDB has not informed the petitioner that they are satisfied with the project report submitted by the petitioner company. If it was so informed, that would have created a legitimate expectation that the 1<sup>st</sup> respondent would enter into a contract with the petitioner. But here, only a preliminary approval has been given by the JEDB. The petitioner stated in the written submission that the respondents had not informed the petitioner about its shortcomings or failures. It is not revealed from any document or in any other way that there was such an obligation on the part of the 1<sup>st</sup> respondent.

In addition, it is stated in the letter P-9 that in consequence to the paper advertisement published on 24.05.2019, project proposals are being accepted. The said letter P-9 was sent on 16.09.2019 subsequent to the letter P-7. The said letter P-9 has also been tendered by the petitioner with the petition. Therefore, it is apparent that the petitioner knew about P-9. It is evident from P-9, that even by 16.09.2019, the JEDB was accepting project proposals. Thus, there was no reason for the petitioner to have a legitimate expectation that the 1<sup>st</sup> respondent would enter into a contract with the petitioner company because the petitioner should have realized that, even though preliminary approval was given for its project proposal, project proposals were still being accepted.

**H.W.R. Wade and C.F. Forsyth in ‘Administrative Law’, 11<sup>th</sup> edition, at page 452, 453** discussing the question of legitimate expectation, states that “It is not enough that an expectation should exist; it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law.”

Citing the cases of ***ex p MFK Underwriting Agencies Ltd, ex p Matrix-Securities Ltd*** and ***R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs***- [2009] UKHL 61 Wade and Forsyth further states that “A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after a close analysis of the assurance. The test is ‘how on a fair reading of the promise it would have been reasonably understood by those to whom it was made’.” (***R (Association of British Civilian Internees: Far East Region) v. Secretary of State for Defence***- [2003] EWCA Civ 473, [2003] QB 1397.)

A clear, unequivocal, and unambiguous assurance that the 1st respondent would necessarily enter into a contract with the petitioner company regarding the eight blocks of land of the Mount Jean Estate of Watawala cannot be reasonably ascertained on a fair reading of P-7 and P-9 because P-7 clearly states that preliminary approval has been granted and JED would enter into a contract with the petitioner after reviewing the feasibility of the report. That is a clear indication that the JEDB was going to enter into a contract with the petitioner, only if the JEDB is satisfied with the feasibility of the report. If the intention of the JEDB, at the time of sending P-7 was to enter into a contract with the petitioner, there was no reason to mention in P-7 the words “preliminary approval”. Also, there was no reason to mention that after reviewing the feasibility of the report, they would enter into a contract. These circumstances do not reflect a possibility for the petitioner to have a legitimate expectation.

For the reasons stated above, a Writ of Mandamus cannot be issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents compelling them to enter into a contract with the petitioner as prayed for in the petition.



Accordingly, the Writ application is dismissed with costs fixed at Rs.25,000/-

**JUDGE OF THE COURT OF APPEAL**

M. T. Mohammed Laffar, J

I agree.

**JUDGE OF THE COURT OF APPEAL**