

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

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

Thiyagaraja Vinayagamurthy,
Engaged in a business as the sole proprietor of
“A B C Enterprises”,
No. 05, Hospital Road,
Batticaloa.
and/ or
No. 3/1/5, Umpichchi Place,
Woolfedhal Street,
Colombo 13.

PETITIONER

C.A. Case No. WRT/0058/25

Vs.

1. Dr. Nalinda Jayatissa,
Minister of Health,
“Suwasiripaya”,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.

2. Dr. Anil Jasinghe,
Secretary,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
3. Dr. Dilka Saransinghe,
Director,
District General Hospital,
Trincomalee.
4. Dr. Mrs. T.L.C. Somathunga - Chairman,
The Additional Secretary (Public Health
Service),
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
5. Mrs. K.M. Wathsala Priyadharshani,
The Additional Secretary (Administration) I,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
6. Mr. K.P. Yogachandra,
The Additional Secretary (Administration) III,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.

7. Mrs. G.N. Munaweera,
Chief Finance Officer III,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Thero
Mawatha, Colombo 10.
8. Mr. M.A. Karunaratne,
Director (Management Service Department),
Ministry of Finance,
3rd Floor, The Secretariat,
Colombo 01.

**The 4th to 8th Respondents;
Chairman and members of the Ministry
Procurement Committee (C),**

9. Mr. Noor Mohamed Mohammed Rafeek,
Riskhan Stores alias Rishan Stores;
Rizkhan Stores; Rizkan Stores; Riscan
Stores,
Adappanaruvayal,
Kinniya 05.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Thishya Weragoda with B. Illeperuma and Mahesh N.
Warnakulasooriya for the Petitioner.
K. Jackson for the 9th Respondent.
Nayomi Kahawita, SSC for the State.

ARGUED ON : 06.08.2025

DECIDED ON: 25.08.2025

JUDGEMENT**K.M.G.H. KULATUNGA, J.**

1. The petitioner is seeking a writ of *certiorari* to quash the tender awarded to the 9th respondent for the supply of raw food items for the period of 2024-2025 to the District General Hospital of Trincomalee. This is the substantive relief, whilst consequential writs of *mandamus* and prohibition are also sought, to prevent the 1st to 8th respondents from awarding the said tender to any other person. This matter was taken up for argument on 06.08.2025 and this judgement is accordingly pronounced.
2. The 9th respondent was continuously absent and unrepresented notwithstanding notices being sent. However, when this matter was mentioned on 08.07.2025, the 9th respondent was present on notice and was represented by Mr. K. Jackson, Attorney-at-Law. Accordingly, time was granted for the 9th respondent to file his objections. 1st to 8th respondents were represented by the learned Senior State Counsel, who informed that the limited statement of objections has already been filed at the stage of supporting, and that the same be considered as the objections of the substantive matter as well. However, permission was sought to submit further documents along with an affidavit on behalf of the said respondents. The Senior State Counsel was permitted to do so. Accordingly, by motion dated 16.07.2025, an affidavit of the 2nd respondent R-9 was tendered, with Annexures 1 - 20. The matter was then taken up for argument on 06.08.2025, on which day the 9th respondent was once again absent and unrepresented, and the said respondent had failed and not filed any objections either.
3. The petitioner is engaged in the business under the business names registration of ABC Enterprises. The petitioner, under the name and style of ABC Enterprises, has submitted a bid in response to a tender for the supply of raw food to the District General Hospital of Trincomalee for the period 2024-2025. He had been a responsive and

qualifying bidder; however, as the 9th respondent's bid amount was less than that of the petitioner, the said tender had been awarded to the 9th respondent.

4. Upon the selection of the 9th respondent, the petitioner has lodged an objection and preferred an appeal to the Tender Appeals Committee of the Ministry of Health. The basis of the said objection and appeal is that the purported business name registration certificate P-6 submitted with the tender document is false or fraudulent. According to the bid documents and the advertisement, submitting a valid business registration certificate was required in accordance with Clause 2 (g) (III) of the tender conditions contained in bid document P-4. As submitted by Mr. Weragoda, this was a requirement to prove the experience of such bidder in such business (the supply of fresh food). The said Appeals Committee, upon considering the same, had rejected the appeal, and the tender had been awarded to the 9th respondent.
5. The petitioner, in this application, is seeking a writ to quash the award of the said tender, on the same basis of the absence of a valid business names registration certificate. Thus, the issue for determination by this Court is substantially based on a question of fact; namely, the validity of the said certificate P-6. The learned Senior State Counsel, on behalf of the respondents did submit that the facts are in dispute, and the petitioner cannot have and maintain this application. It is settled law that if facts are in dispute, that a writ will not issue. In **Thajudeen vs. Sri Lanka Tea Board and Another** (1981) 2 SLR 471, Ranasinghe, J., (as His Lordship was then) held as follows:

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue.”

However, upon a perusal of the petition, objection, and documentation, it appears that the relevant fact as to the dates, events, and fact of the issue of the certificate are available in the record, and it is no more than a matter of considering the said facts in the correct perspective and facts are in dispute in that sense. Accordingly, I will now proceed to consider the arguments advanced.

6. According to the petitioner, the said business names registration of the 9th respondent under the name and style of Riskhan Stores, bearing registration no. DKB/00/12 (marked P-6), is a false or a forged document. The basis of this assertion is that the business names registration was originally issued on 14.05.2000. The Assistant Divisional Secretary, Mr. Krishnendran, whose signature appears on P-6 was not in service at the time. Accordingly, it was submitted that P-6 is a forgery or a false document and this defect disqualifies and disentitles the 9th respondent to have been awarded with the said tender. In support of this position, the petitioner submitted the letter P-7 from the person who is said to have signed the said business registration certificate P-6, namely Mr. Chandran Krishnendran, Assistant Divisional Secretary of Kinniya. According to letter P-7, the said Mr. Krishnendran had joined the Sri Lanka Administrative Service in October 2006. The submission was that, he could not have signed the said certificate (P-6) in the year 2000. It was also submitted that the date of issue of P-6 is 14.05.2000, which happens to be a Sunday. Therefore, there is an inherent improbability, as this document could not have been signed by Mr. Krishnendran before he assumed duties in the year 2006. On these grounds, the said certificate was impugned and an appeal had been preferred to the Appeals Committee of the Ministry of Health. However, the said appeal, upon being considered by the Procurements Appeals Committee 'C' of the Ministry of Health has decided that the material submitted by the appellant ABC Enterprises is not sufficient and the appeal had been rejected. Then, it was decided to award the tender to Riskhan Stores, subject to it being amended if

the said certificate was found to be a false document at any time thereafter. Accordingly, this tender had been so awarded to the 9th respondent. The said Report of the Committee is marked R-7 by the respondents.

7. The position taken up by the 1st - 8th respondents is that the certificate of business registration (P-6) was submitted along with the tender. P-6 is a duplicate copy issued later. The respondents annexed an affidavit (R-5) from the person who has checked the certified copy P-6 at the point of issuing the same. The said affidavit of the said officer, Mohammed Ismail Ansar, deposes to the fact that he is the officer who checked the same and states that the original certificate, bearing No. DKB/00/12, was issued in the year 2000, and the duplicate copy of the said certificate was issued in or after 2007, signed by the then Assistant Divisional Secretary Mr. Krishnendran at Kinniya. This fact is further confirmed by the affidavit marked R-6 of the 9th respondent where it is deposed that the copy was obtained in 2007/2008. Mr. Ansar further deposes to the fact that his signature appears as the person who had checked the same. Further, according to document P-14, subsequent inquiries made under the Right to Information Act have confirmed that the relevant records, which happened to be older than 10 years, were not available at the Divisional Secretariat. In P-7, Mr. Krishnendran does not deny the signature on P-6 either.

8. The business names registration certificate that has been submitted along with the tender by the 9th respondent (P-6), is a copy issued in the year 2007, the original of which has been registered on 14.05.2000. The petitioner's position is that Mr. Krishnendran was not in service prior to 2006. As such, this certificate could not have been issued by him. In support of this, the letter P-7 issued by Mr. Krishnendran was tendered by the petitioner. According to P-7, Mr. C. Krishnendran has joined the Sri Lanka Administrative Service in October 2006, and has assumed the duties of Assistant Divisional Secretary in January 2007,

and was serving at the Divisional Secretariat of Kinniya. The argument of impossibility advanced by Mr. Weragoda is on the premise that Mr. Krishnendran could not have signed a certificate in May 2000. This is misconceived. Though registered in 14.05.2000, the copy P-6 has been issued subsequently in 2007, at which point of time Mr. Krishnendran had been holding office and he could have thus signed the copy P-6. Hence there is no impossibility. The petitioner has not submitted any letter or document from Mr. Krishnendran denying his signature either. Accordingly, the argument advanced and the position taken up by the petitioner is misconceived and erroneous to that extent. The issue was also raised that the original certificate of P-6 had been registered on 14.05.2000, which happens to be a Sunday. What is relevant and important to this application is not the date of first registration but the validity of the copy of the business names registration (P-6) as certified and issued in 2007. To that extent, the acceptance of P-6 and the rejection of this appeal by R-7 and awarding of the tender to the 9th respondent cannot be found fault with.

9. Mr. Weragoda, during the course of the arguments emphasized the fact that a valid business names registration certificate was necessary for the purpose of satisfying that such tenderer has sufficient experience, in this instance, in the supply of fresh vegetables and fruits. According to the Appeals Committee Report (R-7) under the sub-topic of 'Observations' under item no. 6 it is observed that the 9th respondent had been supplying fresh food to other hospitals within the Ministry during the period 2022-23, and the 9th respondent has sufficient experience in this field. Accordingly, in awarding the tender to the 9th respondent, the 1st – 8th respondents have considered the alleged flaw of the certificate *per se* and had been mindful and adverted to the aspect of experience of the 9th respondent in this field. In the above premises, there is no irregularity or irrationality, all relevant facts have been considered, the lawful procedure has been followed and the petitioner has been duly heard. This is basically errors of fact. In the exercise of

the writ jurisdiction, courts will readily review errors of law. However, courts will be slow and reluctant to review errors of fact. The rationale is that when a decision maker is provided with a discretion to determine matters of fact such authority would decide the same based on the factual information in his hands. Therefore, in the exercise of the power of review courts exercise caution in stepping on to shoes of the relevant decision maker. That being so, errors of fact which are of a fundamental nature that would render a decision unlawful would be reviewed. In this regard, I find that the following view expressed by Hilaire Barnett in **Constitution and Administrative Law** - 9th Edition at page 581 is relevant;

“Errors of fact raise difficult questions. As has been seen, an error of law will be made when the decision maker acts contrary to the requirements of legality - or, in other words, he has broken one of the rules for lawful decision-making. Errors of fact are more complex. If a decision maker bases his decision on a misunderstanding of the factual situation of the case, he will reach a decision which is wrong. The question which then arises is whether the courts will review such an error in judicial review proceedings. In general, the answer to that question is that the courts will be very cautious. After all, the courts will often not have the expertise to assess the factual situation, and may have great difficulty in deciding whether a factual error has resulted in the wrong decision. The courts have traditionally approached this matter by dividing errors of fact into two categories. The first relates to reviewable errors of facts which are jurisdictional, and the other category is that of non-reviewable, non-jurisdictional facts”.

10. Notwithstanding the aforesaid legal position, I have considered the said issue of fact to determine the correctness and the reasonableness of the decision to accept the certificate of business names registration marked P-6. For the reasons adverted to above, I find the said decision is reasonable and correct. In the above circumstances, I am of the view that the petitioner has failed to make out any lawful ground on which the writs as prayed for could be issued.

11. Accordingly, I see no basis in law or otherwise, to grant the relief prayed for by the petitioner by prayer (c), for a writ of *certiorari* to quash the award of the tender to the 9th respondent and other consequential relief sought.
12. Accordingly, this application is dismissed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL