

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, Mandamus and Prohibition under
and in terms of Article 140 of the Constitution.*

C. A. (Writ) Application

No. 841/2024

1. Mohomed Pradeep Carder

(Carrying on business under the name and style of “L
C Global Services and Suppliers” having its principle
place of business at No. 765/417, Bodhiraja Mawatha,
Colombo 10.)

Residential Address:

190/7, Manikkamulla, Gothatuwa,
Angoda.

2. Mohamed Razik Mohamed Faizal

(Carrying on business under the name and style of “L
C Global Services and Suppliers” having its principle
place of business at No. 359/39, Jumma Masjid Road,
Colombo 10.)

Residential Address:

No. 359/39, Jumma Masjid Road, Maligawatta,
Colombo 10.

3. Premier Constructions and Services (Pvt) Ltd

16, 1st Rohini Lane, Colombo 11.

Principle place of business;
650, Dr. Danister de silva Mawatha,
Colombo 09

PETITIONERS

Vs.

1. The Colombo Municipal Council
Dr, C. W.w. Kannangara Mawatha.
Colombo 07.
2. Palitha nanayakkra
Municipal Commissioner,
The Colombo Municipal Council
Dr, C. W.w. Kannangara Mawatha.
Colombo 07.
3. P.A. Chandrapala
Director Engineering (Traffic, Design And Road Safety)
The Colombo Municipal Council
Dr, C. W.w. Kannangara Mawatha.
Colombo 07.

RESPONDENTS

Before : N. Bandula Karunarathna, J, (P/CA)
B. Sasi Mahendran, J.

Counsel : Shantha Jayawardena with Amila Perera,
Hiranya Damunupola, Aslam Alawdeen and
Ilham Hussanali for the Petitioners.
Ruwantha Cooray for the 1st to 3rd
Respondents.

Supported On : 31.12.2024

Written Submissions : Petitioners : Not filed
tendered On Respondents : Not filed

Order On : 21.01.2025

B. Sasi Mahendran, J

This order pertains to whether to issue notice to the Respondents and to grant interim reliefs.

The Petitioners instituted this application by petition dated 30.12.2024 seeking *inter alia* writs in the nature of Certiorari to quash the decision marked P28 to disqualify the Petitioners on the purported condition that the Petitioners are in default of arrears payments pertaining to parking rentals due to the 1st Respondent and a writ of Prohibition restraining the 1st to 3rd Respondents and/or their employees and/or servants and/or agents and/or any one acting under them from disqualifying the Petitioners from placing valid bids to the tender for the leasing out of operation and management of road

side parking fee collection in the city of Colombo – stage xxvi, on the purported basis that they are in default of arrears payments pertaining to parking rentals.

The facts relevant to this case are as follows:

The Petitioners state that the 1st Respondent initially carried on the operation and management of parking fee collection in the city of Colombo which was later decided to be leased out. The Petitioners further state that the Petitioners have been carrying on the said operation and management of parking fee from or about 2019.

The Petitioners aver that the 1st Respondent called for bids under the tender for the leasing out of operation and management of Road side parking fee collection in the selected areas in Colombo – Stage XXI for Ananda Kumaraswamy Mawatha, F.R. Senanayake Mawatha, Sri Sangarajah Mawatha/ Sumanatissa Mawatha, Stage XXV for Jawatta Road and Jayantha Weerasekara Mawatha by newspaper advertisements. Consequent to being the most responsive bidder, the Municipal Commissioner accepted the bid of the 1st Petitioner for the aforesaid roads. The 1st Petitioner was also awarded the leasing out and management of Parking fee collection in Orabipasha Mawatha and T.B. Jaya Mawatha under Stage HQ 08.

The Petitioners further aver that the 1st Respondent called for bids under the tender for the leasing out of operation and management of Road side parking fee collection in the selected areas in Colombo – Stage XXIV for 1st Cross Street, Stage XX for Bank of Ceylon Mawatha and Kinsey Road, Stage XXIII for Sea Beach Road and Stage XXI for Bankshall Street by newspaper advertisements. Consequent to being the most responsive bidder, the Municipal Commissioner accepted the bid of the 2nd Petitioner for the aforesaid roads.

The 2nd Petitioner was also awarded the leasing out and management of Parking fee collection in D.R. Wijewardhana Mawatha and Prince Street under Stage HQ 08 and in Beach Street and Prof. Nandadasa Kodagoda Mawatha under Stage HQ 09.

Further, the Petitioners state that the 1st Respondent called for bids under the tender for the leasing out of operation and management of Road side parking fee collection in the selected areas in Colombo – Stage XXV for E.W. Perera Mawatha (in front of the new OPD), Stage XVIII for 4th Cross Street, and Stage XX for Dharmapala Mawatha and Lotus Road only in front of Telecom by newspaper advertisements. Consequent to being the most responsive bidder, the Municipal Commissioner accepted the bid of the 3rd Petitioner for the aforesaid roads. The 3rd Petitioner was also awarded the leasing out and management of Parking fee collection in Laundrywatta Nawam Mawatha and Vinayalankara Mawatha under Stage HQ 09 and Duke Street and Khan Clock Tower in front of Wimaladharma under Stage HQ 08. The Petitioners further state that by subsequent decisions taken by the 1st Respondent and/or its Municipal Commissioner, these contracts were extended until 31st December 2024.

According to the Petitioners, they could not collect the anticipated revenue during the years 2020, 2021, and 2022 due to the reduction of parking, amidst the Covid-19 pandemic, and economic and political crisis. The Petitioners state that they made representations to the 1st Respondent and its Council regarding the difficulties they faced and sought relief pertaining to the monthly rental payments payable to the 1st Respondent. Consequent to such representations, the 3rd Respondent by letter dated 31.10.2022 informed the Petitioners that an analysis of the possibility of rental reduction due to the economic crisis will be carried out from March 2022 to the end of September 2022. The Petitioners further state by resolution bearing No. 3366 of the Colombo

Municipal Council marked P24, the 1st Respondent Council approved the recommendations of the Standing Committee Finance of the 1st Respondent Council.

The Petitioners state that though the Petitioners were informed that the amounts to be deducted from the outstanding arrears had already been calculated, they were not informed of the exact amounts to be deducted.

The Petitioners aver that by paper notices published on 03rd October 2024 marked P27, the 1st Respondent advertised a tender for the leasing out of operation and management of road side parking fee collection in the city of Colombo – Stage XXVI which contained a condition that disqualifies a party with an arrears/ outstanding amount for parking fee from participating in the tender. The Petitioners further aver that according to the tender document marked P28, the following is contained under Eligibility of Bidders in Section I of the said document.

“2.2 The CMC will not consider the following persons/companies for the award of the contract.

.....

2. Who are in defaulted arrears of payments of parking rentals to the CMC”

The Petitioners contend that though the Petitioners have repeatedly requested for a computation of the amount deductible from the arrears rental for the purpose of settling the outstanding from the 1st Respondent Council, such was not communicated to the Petitioners. The Petitioners state that the Petitioners participated at the pre-bid meeting held on 15th October 2024 and raised concerns regarding the impossibility created for them to place a valid bid under the impugned tender which was answered by the officers of the 1st Respondent including the 3rd Respondent that the Petitioners are not eligible

to place bids. The Petitioners further state that the Petitioners could not place the bids prior to the closing date. Further, the Petitioners state that the Petitioners extended the validity of the performance securities placed on behalf of them pertaining to contracts already awarded to them until 31st March 2025 upon the 3rd Respondent's request.

The main grievance of the Petitioners is that the decision of the Respondents to disqualify the Petitioners based on the impugned criteria is illegal and ultra vires.

In this context, the Petitioners have invoked the writ jurisdiction of this Court seeking *inter alia*, writs of Certiorari to quash the decision marked P28 disqualifying the Petitioners from participating and/or placing a valid bid for the tender for the leasing out of operation and management of road side parking fee collection in the city of Colombo – Stage XXVI.

On the other hand, the Respondents by their Statement of Objections dated 10.01.2025 state that, the Petitioners were given several concessions during the economic crisis from March 2022 to September 2022. Further, the Respondents aver that even if the deductions are yet to be made as claimed by the Petitioners, it shall only be in respect of 4 contracts, not in respect of all the contracts. The Respondents further aver that even after the expiration of the concession/waiving off of the totality of the monthly rental during the concession period, the Petitioners have continuously defaulted on the monthly rental, therefore, the Petitioners are defaulters.

In the instant application, the conduct of the Petitioners is crucial. The Petitioners have failed to pay the rentals which are due to the 1st Respondent Council claiming that the Respondents failed to communicate the exact outstanding amount to be settled by the Petitioners. Nevertheless, the Petitioners have defaulted on the payments of the

contracts that were not subject to the concessions granted due to the economic crisis and did not even pay the rentals for the year 2024. The Petitioners' conduct therefore is a question of law which denies them the reliefs sought from this Court.

Our Courts have held that even though the Petitioners are entitled to relief, still the Courts can refuse such, considering his conduct.

In Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another (1996) 2 SLR 70 at page 73, His Lordship Jayasuriya, J held that:

“I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief. Applying these principles, I hold that this court is not disposed to grant the Petitioner discretionary relief upon this application in view of inordinate delay and laches in filing the application in Court.”

In Center for Environmental Justice and Others v. National Housing Development Authority and Others, CA/WRIT/264/19, Decided on 23.02.2022, His Lordship Mohammed Laffar, J held that:

“In this context, I observe that the Petitioners have been negligent in not addressing the Court in a timely manner and that they have slept over their rights, if any, without any reasonable excuse whatsoever. Therefore, as identified above, the Petitioners' prayer for grant of Writs by prayers (c) and (d) being substantial

relief sought in their Petition, cannot be granted due to severe laches. This Court also observes that the rest of the relief sought by the Petitioners are consequential to the said relief thereto and thus will not be entitled to such.”

This Court notes that the Respondents have informed the 3rd Petitioner by letters dated 13.09.2024 marked R4(x), R4 (xxiii), and R4 (xxviii) that the total amount due up to 31.08.2024 is respectively Rs. 19,143,841.93, Rs. 924,143.55 and Rs. 277,120.00. Further, the 2nd Petitioner was informed by letters dated 13.09.2024 marked R4 (xi), R4(xviii), and R4(xix) that the total amount due up to 31.08.2024 is Rs. 11,109,269.26, Rs. 8,611,725.21 and Rs. 648,410.47 respectively. Further, the 1st Petitioner was also informed by the Respondents by letters dated 13.09.2024 marked R4(xiv), R4 (xv), and R4 (xxii) that the total amount due up to 31.08.2024 is Rs. 3,512,087.21, Rs. 7,667,307.83, and Rs. 557,520.45 respectively. These amounts are in accordance with the tenders that each Petitioner has been awarded for the respective roads.

This Court notes that these amounts due are collected from the public that were misused by the Petitioners. We also observe that in the year 2024, there is no proof that the Petitioners have paid the amount due to the 1st Respondent Council. This Court is therefore mindful that if the 1st Respondent Council is not paid the due, how the Council would function without such revenue.

We further observe that according to the petition, the 1st Respondent has taken steps to call for a new tender and successful bidder has been selected and tenders have been awarded to them.

We are also mindful that, the advertisement which was published on 3rd October 2024 indicates that whoever has defaulted the arrears of payments of parking rental to the 1st

Respondent is disqualified from placing bids. But the Petitioners have waited for 4 months to challenge that said decision. Further, we note that this condition applied to all the tenders for years and even applied to the Petitioners when they were awarded the tenders initially in 2021 as well.

In view of this reasoning, we dismiss this application with costs of Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL