

**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.*

Case No. CA WRIT/ 647/2025

**EXPRESS ENVIRONMENTAL SERVICES
(PRIVATE) LIMITED**

No. 402,
George R De Silva Mawatha,
Colombo 13.

PETITIONER

VS.

1. LAKMENDRA THENNAKOON

CHAIRMAN
Technical Evaluation Committee
Ministry of Health and Mass Media,
No. 385,
Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

2. MUDITHA WIMALASENA

MEMBER
Technical Evaluation Committee

Ministry of Health and Mass Media,
No. 385,
Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

3. MEMBER

Technical Evaluation Committee
DIRECTOR - FINANCE
Ministry of Health and Mass Media,
No. 385,
Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

4. MEMBER

Technical Evaluation Committee
ASSISTANT COMMISSIONER
Department of Labour
No. 41, Kirula Road, Colombo 05.

5. PRIYANTHA MENAKARATHNE

MEMBER
Technical Evaluation Committee
ADMINISTRATIVE OFFICER
Nuwara Eliya District General Hospital,
Nuwara Eliya.

**1st to 5th Respondents all of whom are
members of the Technical Evaluation
Committee**

6. SUNIL GALAGAMUWA

CHAIRMAN

Ministry Procurement Committee “E”

Procurement Division

Ministry of Health and Mass Media,

2nd Floor, No. 26,

Sri Sangaraja Mawatha,

Colombo 10.

7. VIJAYA KUMAR

MEMBER

Ministry Procurement Committee “E”

Procurement Division

Ministry of Health and Mass Media,

No. 385,

Rev. Baddegama Wimalawansa Thero Mw,

Colombo 10.

**6th and 7th Respondents all of whom are
members of the Ministry Procurement
Committee “E” of Ministry of Health and
Mass Media**

8. DR. ASELA GUNAWARDENA

DIRECTOR GENERAL OF HEALTH

SERVICES

CHAIRMAN

Ministry Procurement Appeals Committee

E,

Ministry of Health and Mass Media,

No. 385,

Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

9. DR. ANIL JASINGHE

SECRETARY

Ministry of Health and Mass Media,
No. 385,

Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

**10. CLEANSY FACILITY MANAGEMENT
SERVICES (PVT) LTD**

No. 03, Nandana Gardens,
Yahampath Mawatha,
Maharagama.

RESPONDENTS

Before : **Hon. Rohantha Abeyesuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : M.U.M. Ali Sabry, P.C. with Naamiq Nafath
instructed by Ramzi Bacha Associates for the
Petitioner.

Nigel Bartholomeuz for the 10th Respondent.

Chaya Sri Nammuni, D.S.G. for the State.

Written Submissions on : 25.11.2025 for the 10th Respondent
02.12.2025 for the Petitioner

Supported on : 11.09.2025 & 21.10.2025

Decided on : 09.12.2025

K. Priyantha Fernando, J.(CA)

The Petitioner has filed the Petition dated 11.06.2025 seeking Writs, *inter alia* Certiorari to quash the decision to reject the Petitioner's bid and award the tender to the 10th Respondent, and a Writ of *Mandamus* directing the 1st to 9th Respondents to award the tender to the Petitioner. Interim relief was sought to stay the decision and the Letter of Award in favour of the 10th Respondent.

The Petitioner Company, Express Environmental Services (Private) Limited, was a duly registered entity under the Companies Act No. 7 of 2007 in Sri Lanka, which engaged in the provision of janitorial services across the country, including to various Ministries, Base Hospitals, and State Universities. The Petitioner Company was also certified by ISO 9001:2015.

The subject matter of the application is a tender for the provision of Janitorial and Cleaning Services to District General Hospital, Nuwara Eliya for a period of one year, bearing BID No. MH/PB/12/CL-E/17/2025. The Petitioner sought to impugn the failure of the 1st to 9th Respondents to award the bid to the Petitioner, who was claimed to be the lowest responsive bidder, and the decision to award the bid to the 10th Respondent.

THE POSITION OF THE PETITIONER:

The Director General of Health Services and Chairman of the Ministry Procurement Appeals Committee, called for Bids for the said services on or around February 25, 2025, via a newspaper publication. The advertisement stipulated conditions, *inter alia* a prospective bidder should be registered under the Companies Act No. 07 of 2007, should have provided cleaning and janitorial services for a period exceeding one year, and should have experience in providing

such services to a government/semi-government institute or private hospital for a minimum of one year.

The Petitioner paid the Bidding Document fee and submitted a duly completed Bid along with supporting documents and a Bid Security. The Petitioner further stated that it satisfied the requirements stipulated in the Invitation to Bid and the Bidding Document. The bid was subsequently opened on March 18, 2025. The 10th Respondent, Cleansy Facility Management Services (Pvt) Ltd, submitted a bid for Rs. 96,000,000.00 per year, while the Petitioner submitted a bid for Rs. 96,996,918.00 per year.

The Petitioner subsequently learned that the 10th Respondent was ineligible due to alleged lack of necessary experience, requisite staff, necessary financial capacity, and failure to pay EPF, other statutory payments, and due taxes. It was asserted that the 10th Respondent's bid ought to have been rejected for non-compliance.

The Petitioner wrote to the 6th Respondent on April 22, 2025, outlining the ineligibility of the 10th Respondent and the failure to comply with the bid conditions. Thereafter, the Petitioner was informed by a letter dated April 24, 2025, that the bid was awarded to the 10th Respondent for a total contract value of Rs. 92,157,864.39/-. This letter also provided unsuccessful bidders the entitlement to appeal against the decision on or before May 9, 2025. The Petitioner lodged an appeal on May 8, 2025, against the decision to award the bid, setting out the grounds of appeal and making the required deposit of Rs. 25,000/-. However, the Petitioner had not been informed of the outcome of the appeal to-date but was reasonably made aware that the appeal had been rejected and the information was being withheld.

The Petitioner contended that the bid submitted by the 10th Respondent was non-compliant, contained major deviations, and was thus not responsive. It was further contended that the TEC and MPC (1st to 9th Respondents) failed to take into account relevant considerations, failed to follow the terms and conditions in

the bid document, and failed to abide by the Procurement Guidelines 2024 (Goods, Works, and Non-Consulting Services) and the corresponding Procurement Manual, rendering the decision to award the bid to the 10th Respondent illegal, unlawful, and *ultra vires*.

The Petitioner specifically alleged that the failure to award the bid to the lowest responsive bidder, namely the Petitioner, was contrary to the provisions of the Procurement Guidelines. It was also stated that the Petitioner had been providing janitorial services to the District General Hospital of *Nuwara Eliya* for the past six years, and the services had been extended until June 15, 2025.

THE POSITION OF THE 10TH RESPONDENT:

By filing Limited statement of objections dated 09.07.2025, the 10th Respondent objected to the issue of Notice and the extension of the temporary *status quo* order granted *ex parte*.

The 10th Respondent raised **Preliminary Objections**, arguing that there was no valid application before the Court because the Affidavit supporting the Petition was sworn by *Nambukara Wasam Appuwa Baduge Dinushka Madusanka De Silva*, who falsely claimed to be a Director and the Secretary of the Petitioner Company. This individual had resigned on August 6, 2024, as evidenced by the Petitioner's Form 20 and Form 15. This failure to comply with Rule 3 (1) of the Court of Appeal Rules 1990 should have led to the dismissal of the application.

The Petitioner was also guilty of laches, having been aware that the tender was being awarded to the 10th Respondent by at least April 22, 2025 (document X10) and officially informed by April 24, 2025 (document X11), yet procured temporary *status quo* orders on an 'urgent' basis.

It was contended that the Petitioner's *mala fides* were evident as the interim relief resulted in the incumbent Petitioner effectively continuing services without recourse to the tender process. Furthermore, the Petitioner's challenge was

based on mere supposition in paragraph 14 of the Petition. The 10th Respondent asserted that the Petitioner was invoking the Court's jurisdiction *mala fide* and for collateral purposes to perpetuate its monopoly of six years. It was argued that the Petition was abundant with disputed questions of fact. The Petitioner was also accused of wanton misrepresentation by claiming to be the lowest responsive bidder when document X9 *ex facie* showed the 10th Respondent was the lowest bidder.

The 10th Respondent stated that it was duly incorporated under the Companies Act No. 7 of 2007 and was currently providing janitorial services to several governmental and private sector entities, including the Mahaweli Authority of Sri Lanka and the Postal Headquarters. The 10th Respondent admitted the general facts regarding the Invitation to Tender for the 19 hospitals and the bid opening results in paragraph 12 of the Petition, which unequivocally set out that the 10th Respondent was the lowest most responsive bidder.

The 10th Respondent denied the allegations of ineligibility in paragraph 14 of the Petition. The 10th Respondent confirmed that it had substantial experience, met the requirement for approximately 30 employees, employed 35 janitorial labourers at the Mahaweli Authority, and had furnished a balance confirmation from the Department of Labour affirming no outstanding dues payable for Employees' Provident Fund contributions. The 10th Respondent also submitted letters from several banks indicating the availability of requisite funds and provided proof of tax payment for the year 2023-2024.

The 10th Respondent was thereafter informed by the relevant authorities to commence work on May 1, 2025, as it was the lowest bidder, and agreed to a request to reduce staff salaries.

Following the Petitioner's appeal, the 10th Respondent met with the Director General of the Ministry, and all queries were duly clarified, leading to the award in favour of the 10th Respondent being affirmed by the Appeal Committee. The 10th Respondent has been issued an Offer Letter dated June 9, 2025, for Rs.

92,157,864.39, awarding the tender for the period June 16, 2025, to June 15, 2026. The 10th Respondent expended substantial monies in preparation, including increasing the daily wages of employees (from Rs. 1,261 to Rs. 1,600.00 per day) and the monthly salaries of supervisors (from Rs. 41,000 to Rs. 53,000.00). The Petitioner removed its belongings on June 15, 2025, discontinuing its services. On June 16, 2025, when the 10th Respondent's officer arrived to commence operations, certain persons reportedly shouted that "their Sir had come with a court order and that there was no need for any further meetings," preventing the commencement of operations.

The 10th Respondent stated that the Petitioner's bid was flawed *inter alia* because certified copies of payment receipts for 12 months over the past three years from the Employees' Provident Fund were not included, the 2024 audit reports lacked the required seal, and the ITI Certificates submitted had all expired. The 10th Respondent prayed that the Court dismiss the Petition *in limine* with punitive costs and vacate the interim orders.

IS THE SUPPORTING AFFIDAVIT VALID?

The 10th Respondent submitted that the Petition dated June 11, 2025, was violative of Rule 3(1)(a) of the Court of Appeal Rules, which mandates that every application for the exercise of powers under Articles 140 or 141 of the Constitution must be by way of Petition, together with an affidavit in support of the averments therein. The person who affirmed the Affidavit, Nambukkara Wasam Appuwa Baduge Dinushka Madusanka De Silva, was not a Director or the Secretary of the Petitioner Company as at the date of filing (June 11, 2025). The absence of a valid affidavit meant the Petition was unsupported and ought to be dismissed *in limine*. Several judgments were cited to emphasize the mandatory nature of this rule, including *Hatton National Bank PLC v Kodikara Gedara Seetha Sriyani Kumar and Others* [S.C. Appeal 121/2021 decided on 30th October 2023], *Seylan Bank v Christobel Daniels* [CA Revision Application No. CA

(PHC) APN 58/2014), decided on 14th December 2016], Vasudeva Nanayakkara v Hon. Sagala Ratnayaka and Others [C.A. Writ Application No. 370/2019, decided on 15th September 2027.], and *M.H.M. Riyaz v Institution of Engineers and Others* [C.A. Writ 424/2022, decided on 4th April 2024.].

The 10th Respondent argued that the Petitioner perpetrated a fraud on the Court. On the date of the Petition, the only evidence before the Court was the Petitioner's Annual Return of 2023 ("X2"), which purported to show the Affirmant, *Nambukkara Wasam Appuwa Baduge Dinushka Madusanka De Silva*, as a director, but he was not a director or Secretary as of June 11, 2025. The Petitioner was accused of misleading the Court by annexing the old document. Evidence was presented to show that the Affirmant had resigned as Director and Secretary on August 6, 2024, as shown in Form 20 ("10-R1") dated November 11, 2024, and was also not listed in Form 15 ("10R-1(a)") filed on May 26, 2025.

The 10th Respondent alleged that when this infirmity was raised, the Petitioner engaged in a "deceptive conduct" by producing purported resignations of the subsequent director and secretary, and a new Form 20 ("X20") dated July 3, 2025 (submitted to the Registrar of Companies on July 4, 2025), claiming the Affirmant was reappointed on February 10, 2025. The 10th Respondent highlighted that the mandatory statutory forms for appointment, Form 18 (for Directors) and Form 19 (for Secretaries), both of which consent to the appointment, were dated July 3, 2025, and submitted to the Registrar of Companies only on July 4, 2025, after the invalidity of the Affidavit had been raised in open Court on July 1, 2025.

It was submitted that the appointment takes effect only upon the lodging of these duly completed forms. The 10th Respondent argued that the Petitioner's subsequent submission of backdated forms was a continuation of the fraud perpetrated on the Court. The Petitioner was also guilty of withholding documents ("A6" and "A7") that were unfavourable and would have exposed the deceptive conduct, raising a presumption under Section 114, Illustration (f) of

the Evidence Ordinance. The Petitioner's reliance on Section 209 of the Companies Act No. 7 of 2007 (Acts of a person as a director shall be valid notwithstanding the fact that the person's appointment was defective) was submitted to be irrelevant, as Section 209 was an extension of the "*indoor management rule*" intended to protect third parties transacting business with the company, and did not permit a company to circumvent a mandatory requirement of the Court Rules.

The 10th Respondent cited *New Lanka Property (Pvt) Limited v Richard Fredrick Maurice Andree and Others* [C.A. Case No. 171/2000 [F] decided on 10th August 2018] and argued that the Petitioner's fraudulent and disingenuous conduct disentitled it from any relief whatsoever under the '*clean hands doctrine*'.

The Petitioner admitted that *Nambukara Wasam Appuwa Baduge Dinushka Madusanka De Silva* had initially resigned as Director and Secretary on August 6, 2024. However, the Petitioner asserted that the said *Nambukara Wasam Appuwa Baduge Dinushka Madusanka De Silva* **was reappointed as a Director and Secretary of the Petitioner Company on February 10, 2025.** Furthermore, *Ratnayake Mudiyansele Waranga Lakshan Ratnayake* resigned as a Director on February 10, 2025, and *Mahammadaachchi Inshiya Chandimali* resigned as a Secretary on February 10, 2025. The Petitioner claimed to have duly complied with Rule 3(1) of the Court of Appeal Rules 1990, rendering the 10th Respondent's preliminary objection on this ground untenable.

It is important to note that raising technical objections should be discouraged to facilitate justice on the merits of cases: in *L.H.G. Elias vs Anton Gajasinghe* decided on 28th June 2011, where His Lordship Suresh Chandra J held that technical objections took up time and added to the backlog.

The objection concerned a delay in informing the Registrar of Companies about the appointment of the affirmant as a Director, an alleged violation of the twenty-day period stipulated in Section 223 of the Companies Act No. 07 of 2007. The

Petitioner submitted that while a delay in notifying the Registrar constituted an offense, it did not invalidate the appointment or removal of a director.

Furthermore, the acts and decisions of a director were valid despite any later-found defect in their appointment or qualification, as noted by Arittha R. Wickramanayake in *Company Law in Sri Lanka* (First Ed.).

The Petitioner maintained it had complied with the Court of Appeal Rules. Even in cases of non-compliance with the relevant Court of Appeal Rules, dismissal was not warranted, as the Court had discretionary power.

In the case bearing No. SC Appeal No. 11/2024 decided on 08th May 2024, His Lordship Janak De Silva, J. held that the rule did not require an application to be dismissed for every failure. His Lordship Laffar, J. in *Prasanna Deepal and others v Western Province Provincial Passenger Transport Authority and others* [CA Writ 137/2019 decided on 02-05-2024] held that the **application should not have been dismissed because the supporting affidavit was defective, as technical objections should not be encouraged, and the defect was curable.**

For the foregoing reasons, the preliminary objection is devoid of merit and technicalities must not impede justice.

IS THE PETITIONER GUILTY OF LACHES?

Regarding the allegation of laches, the Petitioner admitted that it was informed by letter dated April 24, 2025, that the bid was awarded to the 10th Respondent, and that the letter notified unsuccessful bidders of their right to appeal on or before May 9, 2025. The Petitioner submitted an appeal on May 8, 2025, accordingly. The Petitioner stated that it awaited a response, but the Procurement Appeals Committee failed to notify the Petitioner of the outcome of the appeal or provide reasons for its rejection, which was considered a violation of the rules of natural justice. It was due to the lack of notification that the

Petitioner was prompted to invoke the jurisdiction of the Court, and therefore, the Petitioner is not guilty of laches.

The Petitioner further contended that the 10th Respondent had raised a series of purported preliminary objections to prevent the Court from going into the merits of the matter. The Petitioner asserted that the 9th Respondent, by letter dated June 9, 2025 (the Letter of Award), informed the 10th Respondent that the Procurement Committee had **decided to award the tender subject to certain documents which should have been tendered with the bid document being submitted**. This, the Petitioner argued, evidenced that the 10th Respondent had not submitted the necessary documents along with the bid document, meaning the bid was not in conformity with the Bidding document as at the closing date for submissions of bids. Consequently, the bid submitted by the 10th Respondent was not responsive, and the 10th Respondent was not entitled to the award of the Tender. The Petitioner also noted that the 10th Respondent had failed to furnish the documents submitted along with the original bid and the documents referred to in the letter dated June 13, 2025 (marked '10R8' to the Statement of Limited Objections).

THE POSITION OF THE 1st to 9th RESPONDENTS:

The Respondents detailed the procedural steps that were taken in respect of the tender. Bids for the provision of janitorial services for hospitals and health institutions, including for District General Hospital Nuwara Eliya, were called under the National Competitive Bidding Procedure by publishing a notice in all three languages on February 25, 2025. Two bids were received and opened at the Bid Opening meeting held on March 18, 2025. The Technical Evaluation Committee (TEC) evaluated the bids and identified that the 10th Respondent had submitted the lowest bid, but this was subject to several observations, including: inability to verify registration for janitorial services, non-submission of contracts to verify service experience, no proof that 25% of current employees allocated for

this contract had been in service under previous contracts, and issues with the letter of overdraft, Industrial Technology Institute (ITI) certificates for certain chemicals, proof of income tax payment, and the validity of the VAT exemption letter. The TEC, having considered these matters, subsequently recommended the 10th Respondent as the lowest most responsive bidder, subject to the 10th Respondent complying with all the documentary requirements.

Thereafter, the Ministry Procurement Committee E, meeting on April 11, 2025, considered the bids and the TEC's recommendation, and decided to award the contract for the period from June 16, 2025, to June 15, 2026, in favour of the 10th Respondent for a total sum of Rs. 92,157,864.39 (without VAT). This decision was contingent upon the 10th Respondent submitting proof of compliance with all observations made by the TEC. This decision was communicated to the Petitioner by letter dated April 24, 2025.

The Petitioner has preferred an appeal to the Chairman of the Ministry Procurement Appeal Committee by letter dated May 8, 2025. Upon receipt of the appeal, the Ministerial Procurement Appeal Committee held a meeting on or about May 19, 2025, where the Petitioner was represented. The Ministerial Procurement Appeal Committee subsequently recommended to affirm the decision of the Procurement Committee, and this recommendation was approved by the 01st Respondent. The decision to award the contract in favour of the 10th Respondent was then communicated to the 10th Respondent by letter dated June 9, 2025, subject to the conditions set out in that letter.

The Respondents stated that the 10th Respondent had addressed the initial observations of the TEC. The 10th Respondent submitted the certificate of incorporation for the provision of janitorial services. In order to verify service experience and proof that 25% of current employees allocated for this contract had been in service under previous contracts, the 10th Respondent submitted copies of service contracts with the Department of Post and the Mahaweli Authority. For the overdraft facility, the 10th Respondent submitted an Overdraft

facility amounting to Rs 22,365,000/- from Peoples Bank, *Homagama* branch. The 10th Respondent also submitted the Tax Identification Certificate and the payment slip in proof of income tax payment for 2023/2024 (except for April 2024), and a letter of exemption dated March 17, 2025, issued by the Commissioner General of Inland Revenue for VAT exemption.

The Respondents concluded that the TEC, MPC, and PAC were duly satisfied that the 10th Respondent was the substantially responsive lowest bidder. Granting an interim order staying the award of the contract would trigger a crisis in the Nuwara Eliya Hospital and have severe implications for health and safety. The Respondents asserted that they had at all times acted fairly, reasonably, and according to the law. The Respondents prayed that the Court vacate the *ex parte status quo* order granted and dismiss the application without notice.

The 10th Respondent also argued that the Petitioner's bid was non-compliant and contained major deviations identified by the TEC Report ("9R3"). The Petitioner's entire prayer for relief was predicated on the false premise that it was the 'lowest responsive bidder'.

In the context where both the Petitioner's and the 10th Respondent's bids were non-compliant with major deviations, the decision to award the tender was based on the fact that the 10th Respondent made the lower offer, subject to addressing the documentary gaps. The 10th Respondent asserted that the Petitioner, having submitted a non-compliant bid, was not entitled to invoke the jurisdiction of the Court. Reliance was placed on the judgment *Walter Abeysundara v Dr. S. H. Munasinghe* [C.A. Writ Application No. 518/2021, decided on 31st May 2022], which emphasized that a party claiming relief against an irregularity of another stakeholder in a judicial review application should come to Court with clean hands.

CONCLUSION:

Regarding the **law governing procurement**, the compliance with a tender had to be determined as of the date of bid closure. This principle is supported by several landmark judgments.

1. In Pamkayu (M) SND BHD (appearing by its Attorney, Hemachandra and another) Vs. Liyanarachchi, Secretary, Ministry of Transport and Highways and Another (2001) 1 S.L.R. 118, His Lordship Amerasinghe, J. held that the award of a tender had to be based on compliance with the terms and conditions of the tender documents **on the date and at the time specified for closing, and an offer that did not comply had to be rejected.**
2. The importance of strict observance of procurement guidelines was emphasized in Smithkline Beecham Biologicals S.A. and Another v. State Pharmaceutical Corporation of Sri Lanka and others [1997] 3 SLR 20, which held that the **State and its agencies were bound to rigorously and scrupulously observe laid-down procedures, otherwise their actions were subject to invalidation.**
3. Chief Justice Sripavan in Noble Resources International Private Limited v Hon Ranjith Siyamabalapitiya and Others [SC FR No. 394/2015 decided on 24th June 2016] held that neither the State nor the Procurement Committee was to act contrary to the Bid Documents and Government Procurement Guidelines, and that **full and strict compliance with all necessary safeguards was of utmost importance, with any departure making the evaluation process void.**
4. The same judgment cited Pamkayu (M) SND BHD (appearing by its Attorney, Hemachandra and another) Vs. Liyanarachchi, Secretary, Ministry of Transport and Highways and Another (2001) 1 S.L.R. 118 with approval, noting that the failure to submit a required certificate was a valid ground for bid rejection, reinforcing that the **underlying principle was compliance with terms and conditions at the time specified for bid**

closing. Judicial precedents clearly highlighted the standard of strict compliance with procurement guidelines.

It was petitioner's position that the bid submitted by the 10th Respondent was non-compliant and ought to have been rejected. The First to Ninth Respondents had conceded in their Limited Statement of Objections that the 10th Respondent failed to produce certain documents with its bid, but the tender was awarded subject to subsequent compliance.

The Technical Evaluation Committee (TEC) had observed eight discrepancies in the 10th Respondent's bid, including the inability to verify registration for janitorial services, non-submission of contracts to verify service experience, no proof regarding the service tenure of allocated employees, and the letter of overdraft not fulfilling the threshold limit. The 10th Respondent's bid had five major deviations and three minor deviations. The 10th Respondent had attempted to rectify these deviations after the bid closure date of March 17, 2025, in clear violation of the law. For instance, a letter confirming the Overdraft facility has been issued on June 27, 2025, several months after the closure. According to the Government Procurement Guidelines, if a bid was incomplete or lacked all required legitimate documents (Stage Two, Step Zero One), it should have been rejected and excluded from further consideration.

The TEC ought to have excluded the 10th Respondent's bid at this stage. Despite these deviations, the TEC proceeded and issued the Letter of Award to the 10th Respondent subject to the rectification of major deviations after the bid closure. The 10th Respondent's bid was *prima facie* non-compliant, there was no valid bid from the 10th Respondent, and the decision to award the bid was bad in law, contrary to the Procurement Guidelines and the principles set forth by apex Courts. The 10th Respondent also failed to submit its bid to the Court despite having the opportunity to do so, leading the Petitioner to submit that an adverse inference should be drawn in terms of Section 114 (f) of the Evidence Ordinance.

The Petitioner submitted that its own bid was compliant. The First to Ninth Respondents made no comment or observation of any deviation on the part of the Petitioner in their Limited Statement of Objections. While the TEC report purported to identify certain discrepancies in the Petitioner's bid, the Petitioner contended these purported discrepancies were incorrect and were refuted by the documents already submitted to the Court. The Petitioner submitted that the TEC had acted partially and in a biased manner in favour of the 10th Respondent.

For example, the 10th Respondent's Certificate of Incorporation has been accepted to establish registration for cleaning services, but the Petitioner's identical Certificate of Incorporation has been rejected for the same purpose. This conduct seems arbitrary, unreasonable, and violated the principles of equality and fairness expected in public procurement. Thus, the TEC ought to have rejected the 10th Respondent's bid and accepted the Petitioner's bid as the lowest substantially responsive bid.

Based on the submissions made by the learned Counsel and material provided before this Court, **following questions of law can be identified:**

- (1) WHETHER THE 10TH RESPONDENT'S BID WAS IN COMPLIANCE WITH THE REQUIREMENTS SET OUT IN THE BID DOCUMENT AS AT THE CLOSING DATE FOR SUBMISSION OF BIDS?
- (2) WHETHER BIDDING DOCUMENT OR THE PROCUREMENT GUIDELINES PERMIT THE PARTIES TO RECTIFY DEFECTS OR FURNISH DOCUMENTS AFTER THE CLOSURE OF THE BID?

In the circumstances, this Court takes the view that this matter raises questions of law that must be assayed and evaluated along with the merits of the arguments in this application. Therefore, this Court is of the view that the Petitioner has satisfied the initial threshold requirement which warrants this Court to issue formal notice of this application on the Respondents.

Having considered the issuance of notice, the question arises whether this Court can grant interim reliefs that the Petitioner has sought.

The Petitioner sought interim orders to stay the decision and Letter of Award in favour of the 10th Respondent, prevent the 1st to 9th Respondents from acting on the award, and direct the Respondents to produce various documents, including the TEC report, the Letter of Award, and the bids of both parties. Regarding the claim that granting an interim order would trigger a crisis, the Petitioner denied this averment, stating that the Petitioner was currently providing janitorial services to the *Nuwara Eliya* District Hospital, and therefore the issuance of an interim order would not trigger a crisis as alleged.

The Petitioner further stated that no material whatsoever had been furnished in proof of the issuance of an interim order causing a crisis, and that the 01st to 09th Respondents had misrepresented facts to the Court. The Petitioner also stated that the 01st to 09th Respondents and the 10th Respondent had failed to furnish the documents submitted along with the original bid and had, for reasons best known to them, decided to withhold the said information from the Court.

The Petitioner prayed that the Court grant the interim reliefs and the substantive reliefs sought in the original Petition, along with costs.

The Petitioner is currently providing services at a lower annual contract value of Rs. 89,753,491.30/-, whereas the 10th Respondent's awarded bid was a higher amount of Rs. 92,157,864.39/- per year. Therefore, neither the Respondents nor the State faced loss by allowing the Petitioner to continue providing services.

The principles for granting an interim stay order were set out in *Duwearatchi and Another v. Vincent Perera and Others* (1984) 2 SLR 94, considering whether the final order would be rendered nugatory, where the balance of convenience lay, and whether irreparable mischief or injury would be caused. The balance of convenience favoured the Petitioner, as not granting the order would permit the 10th Respondent to benefit from its wrongdoing, and the Petitioner's services risked termination due to the unlawful conduct.

In *Preston v Luck* (1984) 27 Ch 497, a *prima facie* case was defined by stating the Court had to be satisfied that there was a serious question to be tried and that there was a probability that the Plaintiffs were entitled to relief.

For the aforesaid reasons, since the bid of the 10th Respondent seems non-compliant with major deviations and the bid submitted by the Petitioner was compliant and was the lowest substantially responsive bid, a *prima facie* case had been presented, and the balance of convenience favours the Petitioner.

Therefore, formal notices are issued on the Respondents, and the Petitioner is granted the interim reliefs prayed for in prayers (I), (J), (K) and (L) of the petition dated 11.06.2025.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal