

**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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0801/24

1. Epic Lanka (Private) Limited,
Epic Techno – Village,
No. 158/1/A, Kaduwela Road,
Thalangama, Battaramulla.
2. Nayana Darshana Prasad Dehigama,
Executive Chairman,
Epic Techno – Village,
No. 158/1/A, Kaduwela Road,
Thalangama, Battaramulla.

PETITIONERS

Vs.

1. Hon. Bimal Rathnayake,
Minister of Transport, Highways, Ports and
Civil Aviation,
7th Floor, Sethsiripaya Stage II,
Battaramulla.
2. Hon. (Dr.) Harini Amarasuriya,
Minister of Education, Higher
Education and Vocational Education,
Ministry of Education,
Isurupaya, Battaramulla.

3. Hon. Vijitha Herath,
Minister of Foreign Affairs, Foreign Employment
and Tourism,
Ministry of Foreign Affairs,
Republic Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.
4. Hon. K.D. Lalkantha,
Minister of Agriculture, Livestock, Land and
Irrigation,
Ministry of Agriculture and Plantation Industries,
No. 80/5, “Govijana Mandiraya”,
Rajamalwatta Lane, Battaramulla.
5. Hon. Sunil Handuneththi,
Minister of Industry and Entrepreneurship
Development,
Ministry of Industry and Entrepreneurship
Development,
No. 73/1, Galle Road,
Colombo 03.
6. Hon. Ramalingam Chandrasekar,
Minister of Fisheries, Aquatic and Ocean
Resources,
Ministry of Fisheries, Aquatic and Ocean
Resources,
New Secretariat, Maligawatta,
Colombo 10.
7. Hon. (Prof.) Anil Jayantha Fernando,
Minister of Labour,
Ministry of Labour, 6th Floor,
Mehewara Piyasa, Colombo 05.
8. Hon. Samantha Vidyarathne,

Minister of Plantation and Community Infrastructure,

Ministry of Plantation and Community Infrastructure,

11th Floor, Sethsiripaya 2nd Stage,
Battaramulla.

9. Hon. Anura Karunathilaka,

Minister of Urban Development, Construction and Housing,

Ministry of Urban Development, Construction and Housing,

12th Floor, Sethsiripaya Stage – II,
Battaramulla.

10. Hon. (Dr). Nalinda Jayathissa,

Minister of Health and Mass Media,

Ministry of Health and Mass Media,

Suwasiripaya, No. 385,

Rev. Baddegama Wimalawansa Thero Mw,
Colombo 10.

11. Hon. (Prof) A.H.M.H. Abayarathna,

Minister of Public Administration, Provincial Councils and Local Government,

Ministry of Public Administration, Provincial Councils and Local Government,

Independence Square, Colombo 07.

12. Hon. Wasantha Samarasinghe,

Minister of Trade, Commerce, Food Security and Cooperative Development,

Ministry of Trade, Commerce, Food Security and Cooperative Development,

No. 492, R.A. De Mel Mawatha, Colombo.

13. Hon. Saroja Savithri Paulraj,

Minister of Women and Child Affairs,
Ministry of Women and Child Affairs,
No. 19, Sri Sangharaja Mawatha,
Colombo 10.

14. Hon. Harshana Nanayakkara,
Minister of Justice and National Integration,
Ministry of Justice and National Integration,
5th Floor, Sethsiripaya (Stage II),
Battaramulla.
15. Hon. Upali Pannilage,
Minister of Rural Development, Social Security
and Community Empowerment,
Ministry of Rural Development, Social Security
and Community Empowerment,
1st Floor, Sethsiripaya (Stage II),
Battaramulla.
16. Hon. K.M. Ananda Wijepala,
Minister of Public Security and Parliamentary
Affairs,
Ministry of Public Security and Parliamentary
Affairs,
17th Floor, “Suhurupaya”,
Sri Subhuthipura Road, Battaramulla.
17. Hon. (DR) Hiniduma Sunil Senevi,
Minister of Buddhasasana, Religious and
Cultural Affairs,
Ministry of Buddhasasana, Religious and
Cultural Affairs, No. 135, Srimath Anagarika
Dharmapala Mw, Colombo 07.
18. Hon. Sunil Kumara Gamage,
Minister of Youth Affairs and Sports,
Ministry of Youth Affairs and Sports,

No. 09, Philip Gunawardena Mawatha,
Colombo 07.

19. Hon. (Prof) Crishantha Abeyseña,
Minister of Science and Technology,
Ministry of Science and Technology,
3rd Floor, Sethsiripaya Stage I,
Battaramulla.

20. Hon. (Eng.) Kumara Jayakody,
Minister of Energy,
Ministry of Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07.

21. Hon. (Dr) Dammika Patabendi,
Minister of Environment,
Ministry of Environment,
Sobadam Piyasa, 416/C/1,
Robert Gunawardena Mawatha,
Battaramulla.

22. W.M.D.J. Fernando,
Secretary to the Cabinet of Ministers,
Office of the Cabinet of Ministers,
Lloyd's Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.

23. Secretary to the Ministry of Transport and
Highways,
7th Floor, Sethsiripaya Stage II,
Battaramulla.

24. Commissioner General,
Department of Motor Traffic,
No. 341, Alvitigala Mawatha,

Narahenpita, Colombo 05.

25. Dharmasiri Kumaratunge,
Chairman,

26. Ranjith Ganganath Rubasinghe,
Member,

27. Ravindra Pathmapriya,
Member,

The 25th – 27th Respondents all of;
Cabinet Appointed Negotiating Committee,
7th Floor, Sethisiripaya Stage II, Battaramulla.

28. Y.K. Shiromi Jeewamala,
Chairperson,

29. Indika Hapugoda,
Member,

30. Nandana Gunaratne,
Member,

31. Udaya Kasthurirathne,
Member,

32. Dileepa Pieris,
Member,

33. T.V.D.D.S. Karunaratne,
Member,

34. D.M.S.S. Bandara,
Member,

35. T.A.D.D. Premarathne,
Member,

36. S. Porage,
Member,

The 28th – 36th Respondents all of;
Project Committee,

7th Floor, Sethsiripaya Stage II,
Battaramulla.

37. G.S. Withanage,
Chairman,

38. M. Dewasurendra,
Member,

39. A. Lokugamage,
Member,

40. Chithra Thilakarathna,
Secretary,

The 37th – 40th Respondents all of;
Procurement Appeal Board,
Presidential Secretariat,
Colombo 01.

41. Sudharma Karunaratna,
Chairperson,

42. W. Ivan Tissera,
Commission Member,

43. D.A.P.S. Daranagama,
Commission Member,

44. S. Sumanthiran,
Commission Member,

45. A.G.P.A. Gunawansa, PC,
Commission Member,

46. D.C. Siribaddana,
Secretary – General,

The 41st – 46th Respondents all of;
National Procurement Commission,
No. 44 (B90), R.G. Senanayake Mawatha,
Colombo 07.

47. Millennium IT ESP (Pvt) Ltd,
No. 450D, R.A. De Mel Mawatha,
Colombo 03.
48. Metropolitan Technologies (Pvt) Ltd,
No. 12, Magazine Road, Colombo 08.
49. Access International (Pvt) Ltd,
Access Tower, No. 278, union Place,
Colombo 02.
50. Hon. Bandula Gunawardena,
Former Minister of Transport and Highways,
7th Floor, Sethsiripaya Stage II,
Battaramulla.
And
Former Minister of Mass Media,
Ministry of Mass Media,
No. 163, Asi Disi Medura, Kirulapone Mw,
Polhengoda, Colombo 05.
51. Hon. Dinesh Gunawardena,
Former Minister of Public Administration, Home
Affairs, Provincial Councils and Local
Government,
Ministry of Public Administration, Home Affairs,
Provincial Councils and Local Government,
Independence Square, Colombo 07.
52. Hon. Nimal Siripala De Silva,
Former Minister of Ports, Shipping and Aviation,
Ministry of Ports, Shipping and Aviation,
No. 19, Chaithya Road, Colombo 01.
53. Hon. Pavithra Devi Wanniarachchi,
Former Minister of irrigation,
Ministry of Irrigation,

No. 500, T.B. Jayah Mawatha, Colombo 10.

And

Former Minister of Wildlife and Forest Resources
Conservation,

Ministry of Wildlife and Forest Resources
Conservation,

No. 07, Hector Kobbekaduwa Mawatha,
Colombo 07.

54. Hon. Douglas Devananda,

Former Minister of Fisheries,
Ministry of Fisheries,

New Secretariat, Maligawatta, Colombo 10.

55. Hon. Susil Premajayanththa,

Former Minister of Education,
Ministry of Education,
Isurupaya, Battaramulla.

56. Hon. Mahinda Amaraweera,

Former Minister of Agriculture and Plantation
Industries,
Ministry of Agriculture and Plantation Industries,
No. 80/5, “Govijana Mandiraya”,
Rajamalwatta Lane, Battaramulla.

57. Hon. Ramesh Pathirana,

Former Minister of Health,
Ministry of health,
Suwasiripaya, No. 385,

Rev. Baddegama Vimalawansa Thero Mw,
Colombo 10.

And

Former Minister of Industries,
Ministry of Industries,
No. 73/1, Galle Road, Colombo 03.

58. Hon. Prasanna Ranatunga,
Former Minister of Urban Development and
Housing,
Ministry of Urban Development and Housing,
12th Floor, Sethsiripaya Stage II,
Battaramulla.

59. Hon. Ali Sabry,
Former Minister of Justice, Prison Affairs and
Constitutional Reforms,
Ministry of Justice, Prison Affairs and
Constitutional Reforms,
No. 19, Sri Sangharaja Mawatha,
Colombo 10.

And

Former Minister of Foreign Affairs,
Ministry of Foreign Affairs,
Republic Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.

60. Hon. Vidura Wickramanayake,
Former Minister of Buddhasasana, Religious and
Cultural Affairs,
Ministry of Buddhasasana, Religious and
Cultural Affairs,
No. 135, Srimath Anagarika Dharmapala
Mawatha, Colombo 07.

61. Hon. Kanchana Wijesekara,
Former Minister of Power and Energy,
Ministry of Power and Energy,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07.

62. Hon. Nalin Fernando,
Former Minister of Trade, Commerce and Food
Security,
Ministry of Trade, Commerce and Food Security,
No. 492, R.A. De Mel Mawatha,
Colombo.
63. Hon. Jeevan Thondaman,
Former Minister of Water Supply and Estate
Infrastructure Development,
Ministry of Water Supply and Estate
Infrastructure Development,
No. 45, St. Michaels Road,
Colombo 03.
64. Hon. Tiran Alles,
Former Minister of Public Security,
Ministry of Public Security,
17th Floor, “Suhurupaya”,
Sri Subhuthipura Road, Battaramulla.
65. Hon. Ranil Wickramasinghe,
No. 117, 5th Lane, Colombo 03.
66. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

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

COUNSEL : Viran Corea, PC, with Pramod Perera and Nishika Fonseka,
instructed by Neelakandan and Neelakandan for the Petitioners.

Sumathi Dharmawardhena, PC, ASG, with Rajika Aluwihare,
SC, for the 1st – 46th Respondents.

ARGUED ON : 22.07.2025

WRITTEN SUBMISSIONS ON : 28.08.2025 and 04.09.2025

DECIDED ON : 27.10.2025

JUDGEMENT

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

1. This application arises out of the awarding of a tender to design, build, finance, and operate (DBFO) the ***Non-Court Fine Collection and Drivers' De-Merit Point System***. After calling for tenders, the joint tender of the 47th and the 48th respondents (Millennium IT ESP Pvt. Ltd.) was accepted and approved by the Cabinet of Ministers on 09.09.2024. The letter of award dated 18.09.2024 (1R-10) was issued. Accordingly, the per transaction price, with handheld devices for Traffic Police Officers, was awarded at Rs. 254, on a DBFO basis for 5 years initially, extendable up to 10 years.
2. Upon the said award, one of the two other responsive bidders, Epic Lanka (Pvt) Ltd., preferred this application challenging the said award. There are two petitioners named, the first being the said company and the second, the Executive Chairman of the 1st petitioner. The respondents did raise a legal objection on the maintainability of this application on the basis that the 2nd petitioner has no *locus standi* to be so named. This will be considered later.
3. The grounds on which the petitioners are challenging the award of the tender are as follows:
 - Prejudice Caused to the Petitioners (by the following)
 - Deficiencies in the Technical Evaluation Process and Absence of a Benchmark
 - Breach of the Integrity of the Two-Envelope Procurement System

- Deficiencies in the Notification of Intention to Award the Contract
 - Superficial, Inadequate, and Rushed Appeal Process
 - Procedural Impropriety and the Breach of Public Trust
 - Status of the Contract and Post-Filing Conduct
4. The complaint and the basis of this application, as argued by the learned Counsel for the petitioner, is that the alleged procedural irregularities and non-compliances of the procurement process caused substantive prejudice, and the process is thus not lawful. Further, that the petitioner, having offered the lowest financial bid amongst the technically qualified bidders, ought to have been awarded this tender. Primarily, it is on these two grounds that the petitioners argue this application. The petitioners are thus seeking that the impugned award of the tender be quashed and a *mandamus* be issued directing the award of the tender to the petitioners or, in the alternative, the conduct of the tender process afresh.

Facts

5. The bid document is marked and produced as P-3, which extensively provides the specific information to be provided and the procedure that would be followed. Upon the issue of the bid documents, a pre-bid meeting was held on 21.05.2021, which provided the opportunity for prospective bidders to make any queries and seek clarification and thereon. The evaluation criteria and formula in respect of the technical evaluation as well as determining the financial score were all prescribed in detail. No complaint, clarification, or query was made by the petitioner. Time has been further granted to make further written queries if necessary. All queries made by others had been answered and clarified. Thereupon, the technical evaluation was done according to the prescribed formula and criteria, according to which, three successful bidders obtained the following scores:

Bidder	Score
Access Lanka International (Pvt) Ltd (49 th respondent)	70.3

Epic Lanka (Pvt) Ltd (1 st petitioner)	75.0
Millennium IT ESP and Metropolitan Technologies (47 th and 48 th respondents)	89.0

This evaluation was based on a TEC report which was approved by the Cabinet-Approved Negotiation Committee (CANC). On their approval, the financial bids of the three bidders were opened on 02.08.2024.

6. Accordingly, the prices submitted by the bidders are as follows:

Bidder	Price for Option 1 (with hardware)	Price for Option 2 (without hardware)
Access Lanka International (Pvt) Ltd (49 th respondent)	390.00	190.00
Epic Lanka (Pvt) Ltd (1 st petitioner)	254.00	154.00
Millennium IT ESP (47 th and 48 th respondents)	289.15	209.50

The petitioners' price is no doubt the lowest in respect of both Option 1 as well as Option 2 (Rs. 254.00 and Rs. 154.00, respectively). Upon considering these prices, the financial evaluation was combined with the technical evaluation score, and the combined score was calculated in accordance with the formula prescribed by the bid document.

7. Considering the financial evaluation and the technical evaluation scores, based on the instructions of the CANC, applying the formula set out in the Section 03 of the bid document, the 47th and 48th respondents, Millennium IT, were selected. According to the tabulation, Millennium IT obtained a combined score of 96% for Option 01, whereas the petitioners received 89%. As per the Procurement Committee Report 1R-6, Millennium IT was

found to be the substantially responsive qualified bidder. That being so, upon negotiations between CANC and Millennium IT, a price had been revised to match that of the petitioner's price of Rs. 254, which included the handheld devices (*vide* minutes marked 1R-7). Then, upon awaiting the PAB determination, the successful bidder was approved by the Cabinet, and the letter of award (1R-10) had been issued. The letter of award was preceded by the notification of intention to award the contract dated 09.08.2024 (P-11). Now I will proceed to consider the arguments advanced by and on behalf of the petitioners.

Breach of the Integrity of the Two-Envelope Procurement System.

8. The procurement process prescribed by the tender document followed in this instance is a *two-envelope bidding system*. A two-envelope bidding system is a procurement method used to ensure that the technical evaluation and the financial evaluation of a tender process occur independently. This process is carried out in two stages:
 - i. the **Technical Evaluation**, during which, bidders submit one envelope containing their technical proposal and qualifications, which are reviewed to confirm compliance with project requirements; and
 - ii. the **Financial Evaluation**, which is opened and assessed only if the technical submission meets the specified criteria.

9. The petitioners allege that this system was followed in the in breach due to the following reasons:
 - i. *the technical scores of the qualified bidders were not disclosed prior to the opening of the financial bids;*
 - ii. *material considerations (such as being informed whether the evaluation was based on pricing with/without the handheld device) were not communicated prior to the opening of the financial bids; and*
 - iii. *the lack of required disclosures meant that the 1st petitioner and other bidders had no way of knowing whether the technical evaluation had been completed before the financial bids were*

opened or whether the evaluation scores were influenced by the knowledge of the financial bids.

The petitioners submit that the failure to maintain these procedural safeguards *created a reasonable perception of bias, back-calculation, and manipulation of technical scores to allegedly favour a preferred bidder, also breaching the legitimate expectation created in to the petitioners.* The petitioners also submitted that there had been a failure to provide and make available the minutes of the pre-bid meeting.

10. Primarily, the petitioners submit that they were expecting a disclosure of the technical scores prior to the opening of the financial bid. It is their position that the technical scores were not revealed prior to the financial evaluation. It is submitted that the petitioners apprehend that the technical scores may have been open to manipulation to favour a particular bidder. The disclosure of the technical evaluation score was not done as expected, which is common ground. That being so, it was not known to any other bidder either. There is no specific allegation of the technical evaluation score being, in fact, tampered with or manipulated. It is only an apprehension that the petitioners claim to have harboured. The technical evaluation was based on guidelines open to scrutiny by any bidder. The said report was also made available. The petitioners do not make any specific allegation against the technical evaluation on any substantive basis. The substantive evaluation is thus not impeached, but the complaint is that it was not in conformity or in line with the prescribed procedure. Apart from the presumptuous prospect, there is no specific allegation nor any demonstrable *bias, back-calculation, or manipulation of technical scores in favour of any bidder.*

11. The fact of the technical evaluation score not being disclosed as intimated and as required by the bid document remains a fact. However, on a perusal of the respective scores of the petitioners and that of the successful bidder, the margin is not substantial. It is 89 and 75, respectively. The technical

score of the 47th and 48th respondents is 14 points more than that of the petitioner. The substantive technical evaluation *per se* is not assailed or challenged. An extremely detailed formula or method was adopted, and the technical properties taken into account in calculating the score has been made available and provided to all the bidders. What is significant and critical is that the petitioners do not impeach nor complain against the quantification and the technical evaluation *per se*, nor do the petitioners make any comment or complaint against the scores awarded. It is just that there may be the occasion or opportunity for a post-financial evaluation adjustment in favour of one of the other parties. As aforestated, if there had been such a post-financial evaluation score tampering, the petitioners could have necessarily been able to demonstrate the same to some extent upon a comparison and consideration of the technical score. In the absence of any such complaint, or to that matter, at least an assertion of a positive nature of the substantive evaluation, the petitioners are not entitled in law to seek a writ merely because such party believes so. It should have a correlation to the actual outcome, and there should be prejudice of a substantive nature caused. In the current context, to my mind, it is more probable than not that the petitioners are now attempting to seize upon and capitalise on a non-disclosure, which in fact had caused no prejudice or effect on the evaluation, selection, and the award of the tender. That being so, even if there was a technical requirement to disclose, such non-disclosure, when shown to have caused no substantial prejudice to the petitioner, no writ will issue.

Deficiencies in the Notification of Intention to Award the Contract.

12. The petitioners then allege that the notification of the intention to award the contract was deficient. The notification on the intent to award P-11 was issued on 09.08.2024. The argument is that the contents of this notice do not meet the minimum requirements as set out in para 43.1 of the bid document P-3. Paragraph 43(1) of the bid document provides thus:

"The purchaser shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder. The Notification of

Intention to Award shall contain, at a minimum, the following information:

- (a) *the name and address of the Bidder submitting the successful Bid;*
- (b) *the contract price of the successful Bid;*
- (c) *the total combined scores of the successful Bid;*
- (d) *the names of all Bidders who submitted Bids, and their Bid prices as readout and as evaluated prices and technical scores (if applicable);*
- (e) *a statement of reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful;*
- (f) *the expiry date of the Standstill Period; and*
- (g) *instructions on how to request a debriefing or submit a complaint during the standstill period.”*

The petitioners allege that, of the said requirements, P-11 has failed to sufficiently disclose the following:

- i. *the contract price of the successful bid;*
- ii. *the total combined score of the successful bid;*
- iii. *the technical scores and financial details of all participating bidders;*
- iv. *a valid and reasoned basis for the rejection of the Petitioner's bid, other than a vague assertion that its 'evaluated combined score percentage was lower';*
- v. *any indication of the standstill period; and*
- vi. *the required instructions for lodging a complaint or requesting a debriefing.*

13.The argument advanced and the complaint made is that these are not mere procedural defects but does go to the substance and affect the right of the petitioners to be properly informed in the context of making a proper assessment and then deciding if the decision should be challenged (appealed). The petitioners also put it on the footing that complying with the said provisions of paragraph 43(1) of the bid document is mandatory, so to say, and such non-compliance will vitiate the award made.

14.No doubt, the said provision uses the word “shall” and requires information (a) - (g) expressly stated therein to be provided, and it is

required to be the minimum. Notice of intent P-11 does contain the fact that the bid is intended to be awarded to Millennium IT ESP, and that the petitioners' combined evaluated score percentage is lower, and any representation against this determination may be made within seven working days to the Chairman, PAB. The petitioners have, in fact, submitted the appeal P-12, dated 20.08.2024. It runs into seven pages in small print and specifically raised the issue of the failure to provide all information as required by paragraph 43(1) of the bid document. Upon submitting this appeal, the petitioners have been provided an opportunity for the petitioners or a representative to obtain clarification (*vide* P-13). The affidavit P-14 confirms that a representative attended the said meeting and the PAB has facilitated the obtaining of information, including the technical scores, upon the request of the CANC Chairman. The fact of the failure to provide the information as alleged has been addressed, and it is upon that, the aforesaid information, *inter alia*, has been so made available. In these circumstances, there appears to have been some non-compliance with the requirement in paragraph 43(1) of the bid document. It is apparent that the specific issue being so raised before the PAB, it has addressed the issue and taken remedial action thereby minimising or rectifying whatever prejudice that may otherwise have caused to the petitioners. As to the contract price, the respondents submit that it was made available and known since all financial bids were publicly read out. The technical scores were also made available at the PAB. That being so, as much of the information was subsequently made available, no substantive prejudice has been caused to the petitioners by the non-inclusion of all the information required under paragraph 43(1). To that extent, the said failure too has not caused prejudice, in that sense.

15. Considering a similar complaint in a Fundamental Rights application where the petitioner *primarily challenged the decision to award the contract not on the merits, but on procedural irregularities*, Justice Mahinda Samayawardhena in ***Sierra Construction Ltd vs. Road***

Development Authority (SC/FR/135/2023, decided on 10.02.2025), held that;

"In any event, the non-compliance with procedural requirements pertains only to the process of awarding the contract and not to the evaluation of bids, which directly relates to substantial justice. Therefore, as there has been no compromise on substantial justice, I am not inclined to place significant weight on procedural irregularities, particularly as no prejudice has been caused to the petitioner, as evidenced by P10 and P11."

It is settled law that if there be no prejudice, no writ would issue. This was so held in **Seneviratne and Others vs. Urban Council of Kegalle and Others** (2001) 3 Sri L.R. 105, where J. A. N. De Silva, J. (P/CA), relying on de Smith's 'Judicial Review of Administrative Action' (5th Ed., 1995),

"If the applicant has not been prejudiced by the matters on which he relies then the Court may refuse relief even though he has succeeded in establishing some defect. The literal or technical breach of an apparently mandatory provision in a Statute may be so insignificant as not in effect to matter. In these circumstances the Court may in its discretion refuse relief."

Citing the above dicta with approval, Samayawardhena, J., in **S. A. R. S. P. Kumara vs. Vice Admiral J. S. K. Colombage, Commander of the Sri Lanka Navy and Others** (CA/Writ/178/2014, decided on 13.03.2020), stated as follows:

"Writ being a discretionary remedy, the Court can, in considering the totality of the matter in issue, overlook any error, no matter its severity, if it has not caused injustice to the party applying for writ."

16. In the above circumstances, notwithstanding the alleged non-compliances with the procedure prescribed by the bid document, the petitioners have failed to satisfy this Court of any substantial prejudice caused to them. Thus, the complaints remain no more than procedural irregularities at its most. In the grounds urged, there is a reference to the absence of a benchmark in the technical evaluation. However, the petitioners have not

provided any basis for this complaint and have not impeached or assailed the benchmarks and the formula prescribed for the technical evaluation. Upon the issue of the bid document, the prospective bidders were provided with the opportunity to make any suggestions or complaints or raise any concerns at the pre-bid meeting held in this respect. Specifically, the petitioners raised no concern as regards to any matter dealing with the technical evaluation or any other matter. At that stage, the petitioners have been satisfied with the benchmarks and the formula prescribed for the technical evaluation. That being so, late in the day, the mere allegation of the absence of a benchmark is untenable and does not appear to be made in good faith.

17. Therefore, in substance and in form, the allegations are mere irregularities of procedure which has caused no prejudice of whatever nature to the petitioners. In these circumstances, I am inclined to follow the dicta of the several authorities cited hereinabove. The non-compliances, if at all, is in respect of procedural requirements which affect the process that caused no prejudice. Further, the substantive evaluation of both the technical as well as the financial bids remains unassailed. The end result is that the petitioners have failed to establish any form of substantial prejudice or injustice caused to them. No doubt, the petitioners have succeeded in establishing some form of procedural non-compliance. These may even be of a mandatory nature, but they remain merely technical breaches. In these circumstances, as the alleged irregularities have not caused any injustice or prejudice or resulted in any illegality, the petitioners are not entitled, and this Court is not inclined to grant the relief as prayed for by the petitioners. However, I will consider two other issues raised by the petitioners during the argument: namely, the subsequent adjustment of the prices; and the appeal process being a farce.

Subsequent adjustment of the prices.

18. The next complaint of the petitioners is that the adjustment of the price to match that of the petitioners was after the evaluation and is improper

and causes prejudice. In the context of this award, even the evaluation to determine the assigned weight was considered on the higher price as initially tendered by Millennium IT ESP. Even based on the higher price as quoted by them, Millennium IT received the highest combined score percentage of 92%, which, according to the Project Committee Report 1R-5, is the most advantageous bid. What is relevant and important at this juncture is that Millennium IT would have, in any event, been the successful bidder, and their bid was accepted on that basis. However, subsequent negotiations by the CANC has resulted in the reduction of the price to match that of the petitioner's quoted price. This process and procedure cannot and has not caused any prejudice to this petitioner or any violation of the tender procedure. In effect, the end result has been that the successful bidder who has qualified to receive the award of the tender has, upon being so successful, agreed to a reduction of the price. This process and procedure, thus, cannot and has not caused any prejudice to the petitioners nor any other bidder, nor has it afforded any unfair advantage to the 47th and 48th respondents. End of the day, the benefit has accrued and inured to the advantage of the procuring entity, the Ministry of Transport and Highways. Therefore, the argument based on the subsequent adjustment of the price is misconceived and untenable.

The appeal process being a farce.

19. The petitioners then complain that the appeal process was superficial, inadequate, and rushed. As observed and narrated hereinabove, the PAB has considered the appeal, granted an opportunity to the appellants (the petitioners) to make representations, and as evidenced by the petitioners' representative's affidavit, the PAB has even provided certain information required to meaningfully consider the appeal. Then, the said appeal board has made a finding considering and addressing the necessary issues. The petitioners have not specifically made any allegation except to go into the merits of certain findings of the PAB. The current application is not against the findings of the PAB; hence,

considering the merits of the PAB is not the primary concern of this application. Accordingly, this submission has no relevance to this application and the said argument is misconceived.

20.The petitioners finally submitted that there has been procedural impropriety which had resulted in a breach of the public trust. This, once again, is related to and based on the several procedural deficiencies as considered, including the alleged irregularity in the two-envelope procurement system as followed. I have already considered these issues and found that they are no more than technical non-compliances of procedural requirements. In view of such non-compliances, which caused no prejudice, they cannot result in any breach of public trust as alleged.

Conclusion.

21.In the above circumstances, as the petitioners have failed to establish any prejudice as aforesaid, I find that the petitioners have not established any valid ground that entitles the petitioners to any relief as prayed for. Accordingly, I see no basis in law or otherwise to grant or consider the relief as prayed for by the petitioners in this application.

22.This application is accordingly refused and dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL