

**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.

S. A. V. Inoka Sanjeevanie,  
No. 296/1, Sirinanda Jothikarama Mawatha,  
Thalawathugoda.

**PETITIONER**

**C.A. Case No. WRT/0366/24**

**Vs.**

1. National Water Supply & Drainage Board,  
Galle Road, Ratmalana.
2. W. C. A. Gunaratne,  
Chief Engineer (P&C),  
Greater Colombo Water Reclamation Division,  
National Water Supply & Drainage Board,  
No. 26/2, Attidiya Road, Ratmalana.
3. P. H. W. K. Samarawickrema,  
The Officer-in-Charge,  
OIC (Jayawadanagama) Office,  
National Water Supply & Drainage Board,  
Wickremasinghepura,  
Battaramulla.

**RESPONDENTS**

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

**COUNSEL :** Faisza Markar, PC, with Kaushalya Molligoda and Zainab Markar instructed by Dilini Gamage for the Petitioner.

Sachitha Fernando, SC, for the Respondents.

**ARGUED ON** : 08.10.2025

**WRITTEN SUBMISSIONS ON** : 21.10.2025

**DECIDED ON** : 27.10.2025

### **JUDGEMENT**

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

1. The petitioner has been engaging in business under the business name and style of “Amaratunga Enterprises” with the 1<sup>st</sup> respondent Water Board. The said business involved the engaging of gully bowsers in transporting and discharging sewage and wastewater at a pumping station of the 1<sup>st</sup> respondent. The petitioner had been informed by letter P-11 that 10 gully bowsers so engaged will be suspended pending an inquiry. The petitioner, by this application, is challenging the said decision and seeking a writ of *certiorari* to quash the said suspension.
2. The petitioner is the owner of the business name registered under the style of “Amaratunga Enterprises” (*vide* P-2). The petitioner admits that K. K. Shantha, her husband, is employed by the 1<sup>st</sup> respondent Board in the capacity of a driver, and the said Shantha has been in the employment of the 1<sup>st</sup> respondent before the petitioner entered into the business relationship with the 1<sup>st</sup> respondent Board. The petitioner, at paragraph 12 of the petition, admits that the said Shantha is her husband, so employed by the 1<sup>st</sup> respondent, and that an intimation to her husband that his employment with the 1<sup>st</sup> respondent may

disqualify his wife from engaging in business with the 1<sup>st</sup> respondent. In view of this, the petitioner admits that her husband has tendered his resignation with effect from 21.02.2024. However, in view of a pending audit, his resignation has not been accepted [*vide* P-9(b)]. The petitioner at paragraph 13 admits that her husband did inform her on 17.05.2024 that he received a letter intimating of an investigation being conducted by the Human Resources Department of the 1<sup>st</sup> respondent with regard to the disposal of sewage by gully bowsers owned by Amaratunga Enterprises to the Jayawadanagama pumping station.

3. Further, in view of the said inquiry her husband has been transferred to the Dehiwala - Mount Lavinia office of the 1<sup>st</sup> respondent. Thereafter, her husband has received letter P-11 dated 21.05.2024 informing him of the temporary suspension of the services of 10 gully bowsers referred to in the said letter until the conclusion of the said inquiry/investigation. The said letter also informed that the said temporary suspension was operative from 27.05.2024. The petitioner submits that her husband has, by letter dated 25.05.2024, informed the 1<sup>st</sup> respondent that he has no connection to the business activities of Amaratunga Enterprises.
4. The petitioner's primary argument is that the suspension of the engagement of the gully bowsers referred to in P-11 has been made without any prior intimation or affording a fair hearing to Amaratunga Enterprises and that the said decision to so suspend is in violation of rules of natural justice, unreasonable and in breach of the legitimate expectation of the petitioner and is illegal and *ultra vires*.
5. The substantial issue for determination is the legality and propriety of the decision to suspend the engagement of the 10 gully bowsers as made by P-11. The petitioner claims that these 10 gully bowsers were engaged by Amaratunga Enterprises to the 1<sup>st</sup> respondent. As such, any suspension without due intimation to the said Amaratunga Enterprises

is illegal and unlawful. P-11 is a temporary suspension pending an inquiry or an investigation. It is alleged that K. Shantha is engaged in business with the 1<sup>st</sup> respondent through Amaratunga Enterprises, which is owned by him or his family. The petitioner admits that her husband informed her of P-11. This letter had also been copied to Amaratunga Enterprises.

6. The petitioner's main position is that the suspension of the services of the gully bowlers without prior intimation to Amaratunga Enterprises and the petitioner is a clear violation of the right to be heard, and to that extent, the said decision is arbitrary and illegal. On a close perusal of P-11, it is apparent that the suspension was the engagement of the 10 gully bowlers referred to in P-11. This is addressed to K. K. Shantha, and the sum total and the basis of the said temporary suspension is that the said K. K. Shantha is engaged in business with the 1<sup>st</sup> respondent board under the name and style or through the business entity of Amaratunga Enterprises. In view of which, the suspension of the engagement of 10 bowlers is what has been intimated.
7. The petitioner attempts to assert that her husband, K. K. Shantha, has no connection or involvement in engaging these 10 gully bowlers to the 1<sup>st</sup> respondent. The bare minimum, and the starting point to establish an absence of any direct link in the context of this allegation, is to establish that K. K. Shantha is not the owner of these gully bowlers. To this end, the registration certificates of the said vehicles ought to have been produced. The petitioner has merely produced a document confirming the finance lease facility in respect of two of the said gully bowlers [P-4(a), P-4(b)]. The obligation to tender the documents of ownership of the said gully bowlers to exclude the alleged connection of K. K. Shantha was upon the petitioner. This vital piece of information had not been made available. Further, providing the information in respect of two gully bowlers and not others leads to the necessary inference that the details of the other gully bowlers have been

deliberately withheld, which amounts to a suppression of a relevant fact. This is more so, as P-11 proceeds on the premise and intimates that K. K. Shantha has in fact engaged in business with the 1<sup>st</sup> respondent through Amaratunga Enterprises. In this context, the aforesaid failure amounts to a serious suppression of a material fact.

8. The next relevant issue is the reason for K. K. Shantha to immediately make an attempt to tender his resignation from the employment of the 1<sup>st</sup> respondent by P-9(a) dated 21.02.2024. The attempt to tender his resignation and so resign has not succeeded, as it had not been accepted by the 1<sup>st</sup> respondent in view of an internal audit and investigation that was pending.
  
9. In the normal course of events, if K. K. Shantha had no connection whatsoever to the business activities of Amaratunga Enterprises, one would not expect the husband of the petitioner to resign from his employment in this manner. The letter of resignation had preceded P-11 by several months. According to the petitioner, her husband attempted to so resign, as he feared his continued employment with the 1<sup>st</sup> respondent would create issues and/or prejudice for the continuation of the said business activities of Amaratunga Enterprises with the 1<sup>st</sup> respondent. It is also admitted at paragraph 12(d) of the petition that her husband has received information unofficially of a complaint had been received, to the effect that he, being an employee of the 1<sup>st</sup> respondent, disqualifies the petitioner as his wife (the petitioner) from engaging and carrying on business with the 1<sup>st</sup> respondent. These are the reasons advanced by the petitioner to explain her husband's sudden decision to tender the letter of resignation. This averment considered in conjunction with the contents of P-11 leads to a reasonable inference as to the actual reason for the decision to so act. That is, the petitioner's husband was in fact involved, to some degree, with the business enterprise as alleged by P-11. This is further

buttressed and compounded by the fact of the petitioner not disclosing the ownership of the 10 gully bowsers.

10. Unfortunately, the respondents have failed to file objections, and the documents tendered by the respondent along with a motion were also objected to by the petitioner. As such, this court is only left with the petitioner's version and the documents annexed thereto to ascertain the relevant factual position. A petitioner is required to make a full and complete disclosure of all relevant facts. The failure to so disclose or attempt to conceal some material information will disentitle such petitioner from obtaining relief by way of writ. It is established law that discretionary relief will be refused by Court without going into and considering the merits if there has been any suppression and/or misrepresentation of material facts.

11. It is relevant, in this context, to refer to the following passage from the judgment of Pathirana, J., in **W. S. Alphonso Appuhamy vs. Hettiarachchi** (77 NLR 131) at pages 135-136, held as follows:

*“The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the **King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington — Ex-parte Princess Edmond de Poignac — (1917)**. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.”*

The above dicta, inter alia, was cited with approval by Janak De Silva, J., in **Wickramasinghe Arachchilage Bhatiya Indika Wickramasinghe vs. Land Commissioner General**, Case No. CA (Writ) 381/2017, decided on 12.05.2020, and has been followed in a number of prior decisions; namely, **Dahanayake and Others vs. Sri Lanka Insurance Corporation Ltd. and Others** [(2005) 1 Sri.L.R. 67]; **Hulangamuwa vs. Siriwardena** [(1986) 1 Sri.L.R. 275]; **Collettes Ltd. vs. Commissioner of Labour** [(1989) 2 Sri.L.R. 6]; **Laub vs. Attorney General** [(1995) 2 Sri.L.R. 88]; **Blanca Diamonds (Pvt) Ltd. vs. Wilfred Van Els** [(1997) 1 Sri.L.R. 360]; **Jayasinghe vs. The National Institute of Fisheries** [(2002) 1 Sri.L.R. 277]; and **Lt. Commander Ruwan Pathirana vs. Commodore Dharmasiriwardene & Others** [(2007) 1 Sri.L.R. 24].

Reiterating this position, Saleem Marsoof, PC, J., in **Namunukula Plantations Limited vs. Minister of Lands and others** (2012) 1 SLR 376, held that,

*“If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to **pollute the pure stream of justice**, the court not only has the right but a duty to deny relief to such person.”* [emphasis added].

12. When a petitioner makes an application for a writ to invoke this Court’s discretionary jurisdiction, such petitioner enters into an understanding or an agreement with the Court which requires the petitioner to act with *uberrima fides*. Therefore, such petitioner is required to place before Court all relevant facts material to the issue at hand. The failure to place such material fact/s, as well as misrepresentation of facts, will both result in the denial of the relief so sought by such petitioner. The issue of suppression or misrepresentation of fact and the lack of *uberrima fides* thus will be an issue primarily between the Court and the petitioner

as opposed to it being between the parties. Pathirana, J., in the decision of **Alphonso Appuhamy vs. Hettiarachchi** (supra), cited the following:

“*Scrutton L. J., ... cited the words of Wigram V. C. in the case of **Castelli v. Cook** — (1849) 7 Hare, 89, 94: —*

*“A plaintiff applying ex-parte comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact had been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go.”*

13. Accordingly, on a perusal and consideration of the petition by itself, if there be material which suffices to satisfy this Court of such conduct that amounts to suppression or misrepresentation or, for that matter, a serious lack of *uberrima fides*, this Court is entitled to consider such matter *ex mero motu* or on its own volition, even without the opposing party raising such concern, issue, or objection, so to say. The writ jurisdiction which the petitioner intends to invoke is a discretionary remedy. If there be a serious lack of *uberrima fides*, non-disclosure, or misrepresentation, that *per se* will result in the refusal and dismissal of such application. A petitioner is not, as of right, entitled to relief in the exercise of this Court’s discretionary writ jurisdiction. So much so, that even at the Support stage, in the absence of the opposing party, if it is apparent and it clearly appears that there is misrepresentation, suppression, or lack of *uberrima fides*, then this Court on its own volition is entitled to refuse and reject such application on that score alone.

14. In this application, the petitioner is seeking to quash P-11, which is addressed to the husband of the petitioner. The petitioner has made several averments in the petition, at paragraph 12 (a) – (h), with reference to her husband, K. K. Shantha. The receipt of P-11 was by the husband

of the petitioner; the reasons for the suspension of the engagement of certain gully bowsers is referred to therein, with specific reference to K. K. Shantha, who was either directly or through a family member engaging in business under the name and style “Amaratunga Enterprises”, and also to the pending inquiry. It is significant and relevant to note that the permission granted by P-5 has not been suspended. What had been specifically suspended is the engagement of 10 gully bowsers referred to in P-11. On the face of it, it appears that the suspension is due to some form of link between the said gully bowsers and K. K. Shantha, the husband of the petitioner.

15. The petitioner, in challenging P-11, is thus required to place before this Court and satisfy as to the ownership of the 10 gully bowsers referred to in P-11. The basic document by which this information could and should have been placed before this Court is by producing the certificates of registration of the said gully bowsers. The petitioner has not provided this material. This becomes further relevant and critical, as the petitioner specifically avers in paragraph 10 of the said petition that the said fleet of vehicles “*are owned and maintained by the petitioner.*” The singularly relevant document to confirm this averment in relation to P-11 is none other than the certificate of registration as aforesaid. During the course of the arguments and in the written submissions of the petitioner, it was contended that the letter P-11 stipulates that the said gully bowsers have been tendered for registration to the Regional Office of the Water Board, under the name and style of “Amaratunga Enterprises”. This fact does not establish the ownership. It merely provides that these gully bowsers have been so registered for the purposes of discharging sewage and wastewater with the 1<sup>st</sup> respondent, under the name and style of “Amaratunga Enterprises”. As this does not establish the ownership, to that extent, there is a suppression of a relevant and material fact.

16. The respondents in this instance may not have filed their objections, but by way of a motion dated 24.06.2025, three documents were

tendered, marked 'A', 'B', and 'C'. Document 'C' is an audit query calling for information and clarification by the National Audit Office. 'A' and 'B' are certain Circulars of the 1<sup>st</sup> respondent. The learned President's Counsel, Ms. Faisza Markar, for the petitioner vehemently objected to the consideration of these documents on the basis that they have not been properly tendered to this Court. These documents no doubt, were tendered to this Court by way of a motion, and there is no supporting affidavit. However, of the said documents, document 'C' is of relevance and importance. The starting point is that the petitioner by prayer (e) seeks to quash, in the abstract form, certain reports, which undoubtedly is also a reference to the report marked 'C'. P-11 also makes reference to a pending investigation and also the audit query. In these circumstances, the audit query marked 'C' amounts to a necessary document vis-à-vis the petitioner's application when considered in its totality. The petitioner has also by prayer (b) sought for the calling of and the examination of the file pertaining to the purported decision as communicated by P-11. Correspondingly, by prayer (e), the petitioner is also seeking the quashing of any report of any other governmental department or body or other functionary containing any adverse finding. This, *inter alia*, is an apparent reference to the audit query marked 'C'. In that context, the respondents have now placed before this Court the said material and documents by way of a motion, with notice to the petitioner.

17. The petitioner has, by paragraph 27 of the petition, reserved the right to tender any additional documents. It is thus incumbent upon the petitioner, upon receipt of the same, to so tender this as an additional document. The petitioner having failed and not done so is now objecting to the consideration of the said document 'C'. As aforementioned, the issue of suppression of a material fact, or to that matter even a misrepresentation, is an issue between Court and such petitioner. In consideration and determination of this primary issue, I find that this Court is entitled to consider the specific document 'C' to which the

petitioner herself makes several references to in the petition. It is a true copy, certified by an Attorney-at-Law. Thus, as opposed to it being considered to decide the merits of the application between the parties, I hold that such document can be taken cognisance of and considered to determine the *uberrima fides* of the petitioner.

18. As concluded above, the registration certificates of the respective gully bowsers are primarily relevant to this application. In this backdrop, I observe that paragraph 5.1 of the audit query marked 'C' makes specific reference to the employment and engagement of gully bowsers bearing registration nos. WP LO-3672, WP LM-4679, 68-7245, and WP LL-1190 by the 1<sup>st</sup> respondent. It is then observed that the said vehicles are registered in the name of a driver employed by the 1<sup>st</sup> respondent Board and that the owner is the spouse of the person who had engaged the same. The abovementioned vehicle registration numbers also appear on P-11. This clearly leads to the necessary inference that K. K. Shantha, the driver of the 1<sup>st</sup> respondent is the registered owner of these gully bowsers. The said ownership is thus a very relevant fact that has been suppressed by the petitioner.

19. Going beyond that, I also observe that the petitioner at paragraph 11 of the petition makes a specific reference that a fleet of gully bowsers is owned and maintained by the petitioner. Further thereto, the petitioner tenders the letter marked P-12 alleged to have been written by the petitioner's husband, K. K. Shantha, stating that he has no connection to, or with, the business activities of Amaratunga Enterprises. The sum total of the aforesaid is to make out that the said vehicles referred to in P-11 are owned by the petitioner and K. K. Shantha has nothing to do with those vehicles. In light of the material in the document marked 'C' aforesaid, it is apparent and obvious. I am satisfied that this amounts to and is a serious suppression and a misrepresentation of fact. In the above circumstances, this Court, in the least, is lawfully entitled to consider the contents of the document marked 'C' for the Court to

consider and determine the issues of suppression, misrepresentation or the lack of *uberrima fides*, which is a matter between the petitioner and this Court.

20. In **L. G. J. De Silva and Another vs. Paranahencharige Siridiyas and Others** (SC Appeal No. 171/2010, decided on 14.03.2025), P. P. Surasena, J. (as his Lordship then was), with Janak De Silva, J. and Arjuna Obeyesekere, J. agreeing, considered the doctrine of ‘clean hands’ and held as follows:

*“A Petitioner filing a Writ Petition must come to Court with clean hands. Our Courts have persistently held that the Courts must not grant writs which are discretionary in nature, when there are grounds to believe that such writs have been prayed for, with ulterior motives.*

*The ‘clean hands’ doctrine is a maxim in equity which says that the one who comes to Court should come with clean hands with no fault of their own. In the case of **K. G. D. Walter Abeyesundara vs. Dr. S. H. Munasinghe** (CA/Writ/514/2021), the Court of Appeal dismissed the Petitioner’s application as they have come to Courts with ‘unclean hands’. The learned Judge of the Court of Appeal in that case further held that:*

*“By perusing legal literature and the Superior Court judgements, it emanates that, the doctrine of clean hands is also an important limb of the principle of *uberrimae fidei*.”*

*In the case of **Sella Kapu Lilani Abeychandra vs. Principal & Other** (SC/FR/52/2018), the Court held:*

*“the Petitioner has misrepresented the facts as to the residence, and in violation of the ‘clean hands doctrine’ in equity. This court is obliged to protect the integrity of the court and simultaneously, bound to prevent the ‘improper acts’ being committed in the matter of public policy.”*

21. Accordingly, I am of the view that the aforesaid suppression of the details of the ownership of the gully bowsers, considered in conjunction with the conduct of the pre-emptive attempt to resign by K. K. Shantha, clearly amounts to a deliberate suppression of a material fact. To my mind, if this fact was so observed at the outset, this Court may not have issued formal notice either. The impugned document P-11 is *prima facie* no more than an interim measure pending an inquiry. On this basis too, the petitioner is not entitled to have and maintain this application or the relief as prayed for.

22. According to the petitioner, her husband's sudden decision to resign was in view of an intimation that if a family member is being employed by the 1<sup>st</sup> respondent, it would be an impediment for the petitioner to engage in business with the 1<sup>st</sup> respondent. The petitioner also avers that her husband has received information of a complaint being made that his employment with the 1<sup>st</sup> respondent would disqualify the petitioner, to the effect that he, being an employee of the 1<sup>st</sup> respondent, disqualified his wife from carrying on a business relationship with the 1<sup>st</sup> respondent [*vide* paragraph 13(d) of the petition]. It is also averred that there is an audit/investigation against him, which was the apparent reason for the refusal to accept the letter of resignation. This intimation is made by letter P-9(b). According to letter P-11, there is also a reference to an inquiry. The above clearly proves that the petitioner was aware of the reasons to suspend the registration of the gully bowsers. It is the connection between the gully bowser and K. K. Shantha. This, the 1<sup>st</sup> respondent has been aware and privy to. That being so, the petitioner knew and ought to have known the relevance and importance of the ownership of the gully bowsers and the certificates of registration to this application.

23. In the above circumstances, I hold that the petitioner is not entitled to the relief sought by way of writ, as the petitioner is guilty of suppression and misrepresentation of material facts, and there is a serious lack of

*uberrima fides*. Further thereto, there is no suspension or cancellation of the permission granted to the petitioner/Amaratunga Enterprises by P-5. It is only the suspension of the engagement of certain gully bowsers for that purpose. Therefore, I hold that the petitioner is not entitled to and cannot have and maintain this application.

24. Accordingly, this application is refused and dismissed, subject to costs fixed at Rs. 75,000.00, of which Rs. 25,000.00 is to be paid to the 1<sup>st</sup> respondent and Rs. 50,000.00 to be paid to the State as State costs in view of the serious suppression, misrepresentation of material facts, and the abuse of process, as I observed above.

Application dismissed subject to costs.

**JUDGE OF THE COURT OF APPEAL**