

**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 Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.*

1. Komuthi Engineering Services  
(Private) Limited,  
No. 595, Nawala Road,  
Rajagiriya.
2. Nimal Chandraratne Korale,  
Director & Managing Director,  
Komuthi Engineering Services  
(Private) Limited,  
No.19 Bodiraja Mawatha,  
Jayanthipura,  
Battaramulla.

**CA (Writ) App. No. 1145/2025**

**PETITIONERS**

**Vs.**

1. Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,

- Koswatta, Battaramulla.
2. K.W. Kandambi,  
Director General,  
Road Development Authority,  
"Maganeguma Mahamedura"  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
  3. I.L.M. Shafeek,  
Deputy Director General (Procurement  
Management),  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
  4. T. Paskaran,  
Chairman,  
Road Development Authority  
Procurement Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
  5. B.M.K. Banneka,  
Former Deputy Director General  
(RM & M),  
Former Chairman of the Bid  
Evaluation Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
  6. M.K.M. Weerathunga,  
Additional Director (Construction),

Member of Bid Evaluation Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

7. J.I.N.D. Karunaratne,  
SE (Procurement),  
Member of Bid Evaluation Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
8. W.N.R.P.N. Nilmini,  
Engineer (Construction),  
Member of Bid Evaluation Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
9. D. Pushpakanthi,  
Accountant (Finance),  
Member of Bid Evaluation Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
10. K.M.K. Kavinda,  
Management Assistant,  
Procurement Management,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,

Koswatta, Battaramulla.

11. Nishanthi Karunarathna,  
Member of the Procurement  
Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
12. R.M.R.P.N. Bandara,  
RTI Officer,  
Information Centre,  
1<sup>st</sup> Floor,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
13. Subhanee Dharmasena,  
Deputy Director General (Legal),  
Member of the Appeal Committee,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
14. A. P. K. Abeydeera,  
Member of the Appeal Committee,  
Additional Director General,  
Construction, Asset Operation &  
Maintenance,  
Road Development Authority,  
"Maganeguma Mahamedura",  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

15. Senior Prof. Kapila C.K. Perera,  
Secretary,  
Ministry of Transport, Highways and  
Urban Development,  
7<sup>th</sup> Floor, Sethsiripaya, Stage II,  
Battaramulla.
16. K.K. Sunil,  
Team Leader (Engineer for the  
Project),  
GreenTech - Ocyana Joint Venture,  
No. 227/4, Katuwana Road,  
Homagama.
17. I.K. Baddegama,  
Project Director,  
Miscellaneous Foreign Aided Projects  
(MFAP),  
Road Development Authority,  
No. 465, Ganahena, Battaramulla.
18. Director,  
Senarath Engineering (Pvt) Ltd.,  
No. 925, Maddumamulla Estate,  
Thalammehera Estate,  
Pannala.
19. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Shehan De Silva with Nuwan Premadasa and Helindu Abeyrathne instructed by Danushika Priyadarshani for the Petitioners.

Jemiah Saroujah, S.C. for all the Respondent (except 16<sup>th</sup> and 18<sup>th</sup> Respondents).

Harith de Mel with Hasini Rupasinghe instructed by Chamali Ranatunga for the 16<sup>th</sup> Respondent.

**Supported on:** 16.12.2025

**Order delivered on:** 20.02.2026

**Dr. D. F. H. Gunawardhana, J.**

## **Order**

### **Introduction**

The 1<sup>st</sup> Petitioner is a body corporate incorporated under the laws of Sri Lanka, which is capable of suing and being sued in its corporate name. The 2<sup>nd</sup> Petitioner is the Managing Director of the said company.

The 1<sup>st</sup> Respondent is the Road Development Authority (RDA) which is also incorporated by law and has the capability of suing and being sued in its corporate name; the 2<sup>nd</sup> Respondent is its Director General, the 3<sup>rd</sup> to 14<sup>th</sup> Respondents are its officers who acted in this course in different capacities. The 15<sup>th</sup> Respondent is the Secretary to the Ministry of Transport, while the 16<sup>th</sup> Respondent is an engineer who had issued a notice of correction to the Petitioner who was in charge of an earlier project where the tender had been awarded to the Petitioner. The 17<sup>th</sup> Respondent is the Project Manager, and the 18<sup>th</sup> Respondent is the company selected by the 1<sup>st</sup> Respondent to award the tender of the project.

The project pertaining to this Application concerns the development of the Ja-Ela - Ekala Road, which is known as the A33 Highway, situated within the District of Gampaha. A tender for that purpose had been invited by the document marked as **P2** and **P3** in the media, as well as the website of the 1<sup>st</sup> Respondent from prospective contractors.

It is also an undisputed fact that several prospective contractors had submitted their applications by 30.04.2025, including the Petitioner and the 18<sup>th</sup> Respondent.

The Petitioner alleges that his tender was the 4<sup>th</sup> lowest tender submitted. However; 18<sup>th</sup> Respondent has been awarded the tender to develop the Ja-Ela - Ekala Highway, who had submitted the 5<sup>th</sup> lowest quoted price.

The Petitioner's complaint is that, it was informed by the Respondents that he had been disqualified even at the time of the submission of tender, due to the service of a notice to correct by the 16<sup>th</sup> Respondent who was the Engineer-in-charge of a similar project of the development of Orugodawatta-Ambatale highway, which had been awarded to the 1<sup>st</sup> Petitioner, as the contractor. Petitioners challenge the decision of the Respondents to have the 1<sup>st</sup> Petitioner disqualified and instead award the tender to 18<sup>th</sup> Respondent.

As such, the Petitioners challenge the decision taken not to award the said tender to the 1<sup>st</sup> Petitioner and further turning down the appeal by **P21**.

This Application was supported on 16.12.2025, for formal notice and the same was opposed by the Respondents, and the following contentions were advanced by the counsel; hence, this order.

### **Arguments**

Mr. Sahan Silva, learned Counsel for the Petitioner, contends that the guidelines are stipulated in the document marked as **P3**, to be followed by the bidder and the Respondents. According to Section 2 of **P3**, the bidding data are stipulated, and according to Bidding Data Schedule sub-clause 4.2(h), no bidder should have been issued with a notice to correct within five years and twenty-eight days from the date of the bidding. However, the Petitioner was disqualified on the erroneous basis that the Petitioner had been served with the notice marked as **P14** by the 16<sup>th</sup> Respondent, who was in charge of the earlier project of widening of the Orugodawatta-Ambatale highway, a contract of which had been issued to the Petitioner.

He further contended that thereafter, by **P17** and **P18**, the said notice to correct has been withdrawn by the same 16<sup>th</sup> Respondent; thus, not awarding the contract of tender to the Petitioner is erroneous, capricious, irrational, and against evidence. Therefore, even turning down the appeal made by the Petitioner by document marked as **P21** is erroneous. Therefore, he contended that a *Writ of Certiorari* should be issued, and the interim relief should be granted.

On the other hand, Ms. Saroujah argues that the notice to correct was given by **P14** by the 1<sup>st</sup> Respondent, and is thus disqualified. She further argued that on the perusal of **P17** and **P18**, nowhere is it stated by the 16<sup>th</sup> Respondent that he has withdrawn the notice to correct given by **P14**; it has only extended the time within which the correction has to be made; therefore, the Petitioner is disqualified in terms of the sub-clause 4.2(h) of **P3**.

Mr. Harith de Mel argued for the 16<sup>th</sup> Respondent, that the Petitioner had filed another similar Writ Application in the same Court by **P2**, based on the same **P14**, **P17** and **P18** for not awarding another tender as he had been disqualified. The disqualification was based on **P14**, the notice to correct. He argued that the notice to correct is only extended by **P17** and **P18**; therefore, the Court should take a decision based on that.

In reply, Mr. Silva argued that what is extended is not the period, but the deadline by **P17**, and since **P17** is ambiguous, **P18** had been issued by the 16<sup>th</sup> Respondent.

### **Factual matrix**

It is an undisputed fact, that the 1<sup>st</sup> Petitioner is a company duly incorporated under the laws of Sri Lanka, and is engaged in the construction business. It is also undisputed that it has undertaken numerous construction projects over the last 30 years. Further, it asserts that it has established a good reputation and goodwill in the construction industry. The 1<sup>st</sup> Petitioner having responded to

an advertisement that appeared on the web, as well as in the media on 04.04.2025, in relation to a tender notice, and submitted a tender responding to a calling for the tenders to develop the Ja-Ela - Ekala Road situated in the District of Gampaha, which is known as “A33”.

The relevant documents and the terms and conditions of the tender, as advertised by the Respondents, are submitted and marked as **P3** annexed to the Petition.

The 1<sup>st</sup> Petitioner has submitted its application before the deadline, quoting a tender price of Rs. 82,995,781.75 (“Eighty-Two Million Nine Hundred Ninety-Five Thousand Seven Hundred Eighty-One Rupees and Seventy-Five Cents”).

The 1<sup>st</sup> Petitioner states that it came to know later after the opening of the tender, that it was the 4<sup>th</sup> lowest bidder, while there were three lower bidders than it who had also submitted their tenders. However, it came to be aware that the tender was awarded to 18<sup>th</sup> Respondent, despite being the 5<sup>th</sup> lowest bidder, who had quoted Rs. 83,929,696.75 (Eighty-Three Million Nine Hundred and Twenty-Nine Thousand Six Hundred Ninety-Six Rupees and Seventy-Five Cents) as the quoted tender price.

According to the Petitioner, they were informed by the Respondents that the 1<sup>st</sup> Petitioner had been disqualified even at the time of submission of his tender papers. Thereafter, the Petitioner made appeals, as reflected in **P4** and **P5**, but those appeals were turned down. Subsequently, the Petitioner wrote to the Respondents to ascertain why the 1<sup>st</sup> Petitioner was disqualified and why its tender was rejected, and also to ascertain how the 18<sup>th</sup> Respondent was awarded the tender, under the Right to Information Act, as reflected in **P10** and **P11**. However, as indicated in **P12**, the information requested by the Petitioners was later refused on the basis that it constituted commercially sensitive information.

Further, the Petitioner asserts that the notice of correction served by the Project engineer, who was in charge of the Orugodawatta-Ambatale Road development project, which the 1<sup>st</sup> Petitioner had been undertaken as the contractor had been withdrawn.

The Petitioner alleges it was the position of the Respondents that at the time of Petitioners submitted the tender, the notice to correct served on the 1<sup>st</sup> Petitioner by the Project Engineer was still alive, and therefore, the 1<sup>st</sup> Petitioner is disqualified according to sub-clause 15.1 of the annexed document **P20**, which stipulates the terms and conditions of the tender as published by the Respondent.

The Petitioners annexed the said notice to correct, served by the project manager, who is the 16<sup>th</sup> Respondent in charge of the development project of Orugodawatta-Ambatale Road, marked as **P14**, and thereafter; subsequent correspondence marked as **P15** and **P16**, between Petitioners and project manager is submitted. Further, the Petitioners marked the documents issued by the same project as **P17** and **P18**, to establish that the notice to correct, **P14**, was modified.

However, the Petitioners contends that by **P18**, an additional confirmation and clarification is made that the notice to correct is not active; therefore, Mr. Silva argues that in terms of Rule 15.1 of **P20**, the general conditions of contract for construction for building and engineering work described by the employer, the disqualification is invalid and *ultra vires*. Thus, the Petitioners challenge the rejection of appeal for the disqualification by **P21**, as it is irrational and *ultra vires*.

Therefore, the 1<sup>st</sup> Petitioner challenges decision taken to disqualify it by the other Respondents, and to award the tender to 18<sup>th</sup> Respondents by the Respondents is irrational, illegal, and *ultra vires*.

However, when this was supported, objections were raised as to issuance of notice by Ms. Saroujah, learned State Counsel. She further asserted that served notice to correct was alive, and valid until 20.05.2025. Therefore, the Petitioner is disqualified at the time of his tender which was done by 30.04.2025.

### **Questions to be decided**

Therefore, the main issue to be considered at this junction is whether, in fact, the 1<sup>st</sup> Petitioner was disqualified at the time of submission of the tender documents in terms of documents marked as **P2**, **P3** and **P20**. Accordingly, I will consider them now.

I considered the relevant documents and materials placed before me, and the only question that has to be decided here is whether the Petitioner is disqualified by reason of a valid notice, alive at the time the tender was submitted on 30.04.2025.

According to **P14**, the Project Engineer had issued a ‘notice to correct’, dated 27<sup>th</sup> January 2025, to the Petitioner in respect of the defects which were overdue to be corrected within the stipulated time, namely 28<sup>th</sup> February 2025. An extract from **P14** is reproduced below as follows;

*“As such, the Engineer hereby issue the "Notice to Correct" in pursuance to Sub Clause 15.1 of the Conditions of Contract (COC) to complete the balance of the outstanding Works listed in my letter No. date (letter of Taking over of Works), before 28th February 2025.”*

However, by letters as submitted by the Petitioners marked as **P16**, the Petitioners requested further time till 31<sup>st</sup> May 2025 to do the outstanding work, which reads thus;

*“We acknowledge receipt of your letter dated 27th January 2025, referenced GTC-OC/OFID2/9A/TL/MFAP/653, regarding the Notice to Correct issued in pursuance of Sub-Clause 15.1 of the Conditions of Contract.*

*We wish to respectfully inform you that while we had initially planned to complete the remaining works by February 2025, we commenced the Asphalt Wearing Course in November 2024 as instructed by the Engineer. This work was completed within the scheduled timeframe and concluded on the 10th of January 2025.*

*However, due to delays in receiving payments for the Interim Payment Certificates (IPCs)—a matter we had previously communicated both to your office and to the Project Director—our cash flow has been significantly impacted. This has, unfortunately, caused delays in completing the balance of the work within the originally planned period.*

*Taking these circumstances into consideration, **we kindly request an extension of time until 31st May 2025** to complete the outstanding work. Furthermore, we respectfully request that the Notice to Correct issued on 27th January 2025 be withdrawn, in light of the above facts and our demonstrated commitment to progressing with the works diligently.”*

[Emphasis is mine]

### **‘Notice to correct’ was alive**

Finally, the Engineer granted time with effect from the 8<sup>th</sup> of April 2025, giving time till 20.05.2025 as the deadline, by the document marked as **P17**. The relevant portion reads thus;

*“The Employer, in his opinion, has informed that the reasonable time for completing the outstanding works and addressing defects under this contract is 30 days, with the exception of final road marking, which must be completed immediately.*

*Therefore, please be advised that the deadline for completing all outstanding works and defects is **20th May 2025** (i.e., 30 days from the earliest practicable working day after the April vacation), excluding road marking, which must be completed immediately. This letter is issued on the Employer's instruction and pursuant to Sub-Clause 11.4 of the Conditions of Contract.” [Emphasis is mine]*

Therefore, according to document marked **P14**, the notice to correct in respect of the development project of the Orugodawatta-Ambatale Road had still not been complied with, and the project had not been handed over, because the notice to correct was still alive as at the 30<sup>th</sup> of April, which was the last day of tender submission and the opening of tenders. By the time the tender was opened, the notice was still alive. During that time, the Petitioner had to correct the defects that he failed to attend during the course of carrying out the contract for the development of the Orugodawatta-Ambatale Road. Hence, the Petitioner cannot now contend that the decision is irrational, illegal, or *ultra vires*. Therefore, according to Rule 15.1 read with the Bidding Data Schedule sub-clause 4.2(h) annexed in document **P3**, if the notice to correct is alive, the Petitioner is disqualified.

It is very clear on the perusal of **P17** that the notice given under **P14** was kept alive. Accordingly, the extended period has to be counted from the date of issuance of **P17**, which is 8<sup>th</sup> April 2025, and thus, is operative until 20<sup>th</sup> May 2025.

During that time, the Petitioner had to correct the defects of the development project of Orugodawatta-Ambatale Road. Therefore, at the time the Petitioner submitted the tender to be successful, he had to first qualify, or he should not have had any disqualification. The 1<sup>st</sup> Petitioner is disqualified according to the rules, given the fact that there was a notice to correct still alive in respect of a similar project undertaken by the Petitioner from the very Respondents, the RDA, to develop and improve the Orugodawatta-Ambatale Road.

Therefore, once the defects are corrected and the tender is submitted after successful correction, the 1<sup>st</sup> Petitioner would be eligible to apply. However, it is my view that the Petitioners in this case have not made out a *prima facie* case, and as such, it is my view that the Petitioners are not entitled to issuance of formal notice.

Furthermore, according to **P18**, the ‘notice to correct’ issued on 27.01.2025 is withdrawn in letter **P17**. This notice to correct is further mentioned in the said letter. The letter marked as **P18** is reproduced as follows;

*“I refer to your letter No. KHCM/TL/NTC/2025-001 dated 20<sup>th</sup> August 2025 regarding the captioned matter.*

*Please be informed that no "Notice to Correct," issued pursuant to Sub-Clause 15.1 of the Conditions of Contract, is currently in effect under or in connection with this Contract (i.e Contract No. RDA/MFAP/ICB/OFID-2/09A).*

*The "Notice to Correct" (NC) issued vide my letter No. GTC-OC/OFID2/9A/TL/KHCM/653 dated 27<sup>th</sup> January 2025 is already withdrawn in my letter,*

*GTC-OC/OFID2/9A/TL/KHCM/660. This withdrawal of NC is further reported in my letter No. GTC-OC/OFID2/9A/TL/MFAP/231 as well”*

However, it should be noted by the letter referred to as No. GTC-OC/OFID2/9A/TL/KHCM/660, which is marked and annexed to the Petition as **P17**, which I have referred to, and by which notice is not withdrawn. However, notice to correct is alive only till 20.05.2025; thereafter it may stand corrected, subject to the condition is that defects and overdue work would be attended before the deadline; 20.05.2025, and handed over by the Petitioners.

However, the third letter referred to in the said **P18**, is not briefed to this court, which is referred to as No. GTC-OC/OFID2/9A/TL/MFAP/231, which should be a letter prior to even the letter dated 27.01.2025; document marked as **P14**; because the serial number is a prior number.

Therefore, the letter **P18** further substantiates **P17** is alive, which is the stand taken by the RDA, the 1<sup>st</sup> Respondent.

Therefore, once the defects are corrected and the tender is submitted after successful correction, the Petitioner would be eligible to apply. However, it is my view that the Petitioner in this case has not made out a *prima facie* case, and as such, it is my view that the Petitioner is not entitled to the issuance of formal notice.

## **Conclusion**

In those circumstances, I am compelled to refuse the issuance of formal notice and dismiss this Application *in limine*.

**JUDGE OF THE COURT OF APPEAL**