

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

1. Mihindukulasuriya Marian Pradeepa
Fernando,
2. Salpadoruge Praboth Dinuwantha Perera,
3. Salpadoruge Nethmi Kawshalya Perera,
4. Salpadoruge Parami Thimansa Perera,

All of Coolman Ice Factory
1056, Pitipana, Negombo.

CA/ WRIT/ 573/2025

Petitioners

Vs.

1. Peliyagoda Madyama Mathsya
Welandapola Sankeeranaya
Kalamanakarana bhaaraya,
Peliyagoda Central Fish Market Complex,
Peliyagoda.
2. Sampath Manthrinayake
Chairperson of the Peliyagoda Central
Fish Market Complex Management Trust,
Secretary to the Ministry of Aquatic
Resources,
New Secretariat, Maligawatte,

Colombo 10.

3. S.J. Kahawaththa
Member of the Management Trust,
Director General,
Ministry of Fisheries and Aquatic
Resources,
Maligawatta,
Colombo 10.
4. Eng. Lalith Liyanage
Member of the Management Trust,
General Manager,
Ceylon Fisheries Corporation,
No. 1384,
Rock house Lane,
Mutwal, Colombo 15.
5. J.A.D.G.S. Ranasinghe
Member of the Management Trust,
Divisional Secretary,
Kelaniya Divisional Secretariat,
No.23/5D, Bangalawaththa road,
Kadawatha.
6. J.M. Thilakarathna Bandara
Member of the Management Trust,
Director General,
Consumer Affairs Authority,
C.W.E. Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.
7. Jayasiri Wickramarachchi
Member of the Management Trust,
Chairman,

Peliyagoda Madyama Mathsya Welanda
Wiyaparakayinge Sangamaya,
(පැලියගොඩ මත්ස්‍ය වෙළඳ
ව්‍යාපාරිකයන්ගේ සංගමය),
Peliyagoda Central Fish Market Complex,
Peliyagoda.

8. N. Gamini De Silva
Member of the Management Trust,
Sri Lanka National Co-operative Society,
(ශ්‍රී ලංකා ජාතික සමුපකාර සංගමයේ
සභාපති)
No. 190, Kudapaduwa,
Negambo.
9. H.M.B. Ekanayake
Member of the Management Trust,
Chairman of Kolamba Paribogika
Sangamaya,
(කොළඹ පාරිභෝගික සංගමය)
E/2/4/1,
Maligawatte, Colombo 10.
10. H.A.Chadimal Fernando
Member of the Management Trust,
Assistant Director,
Department of State Enterprise,
Dr. Wijewardena Mawatha,
Colombo 10.
11. B.H.M.D. Herath
Member of the Management Trust,
Director (planning),
Ministry of Trade,
No. 492, R.A. De Mel Mawatha,
Colombo.

12. Dr. Inoka Suraweera
Member of the Management Trust,
Public Health Specialist,
Ministry of Health,
No. 385, Rev. Baddegama Wimalaratne
Mawatha, Colombo 10.
13. Prof.Thilak Hewawasam
Member of the Management Trust,
Chairman,
Central Environment Authority,
No. 104, Denzil Kobbekaduwa Mawatha,
Sri Jayawardenapura Kotte.
14. Kushlani Tharanga Gamlathge
Member of the Management Trust,
Secretary,
Urban Council of Peliyagoda,
Peliyagoda.
15. H.S. Hathurusinghe
Member of the Management Trust,
Representative of the Minister of
Fisheries and Aquatic Resources,
New Secretariat,
Colombo 10.
16. Deputy Director
Ministry of Finance and Planning,
මුදල් හා ක්‍රම සම්පාදන අමාත්‍යාංශයේ
නියෝජ්‍ය අධ්‍යක්ෂ,
Member of the Management Trust,
The Secretariat,
Colombo 01.
17. Chief Accountant

Ministry of Economic Development,
Member of the Management Trust,
The Secretariat, Colombo 01.

18. Senior Assistant Secretary
Ministry of Co-operative and Internal
Trade,
Member of the Management Trust,
No. 27, CWE Secretarial Building,
Vauxhall Street, Colombo 02.
19. Deputy Director General
Public Health Services,
Ministry of Health,
Member of the Management Trust,
No. 385, Rev. Baddegama Wimalaratne
Mawatha, Colombo 10.
20. Deputy Director General
Environment Pollution Control Unit,
Central Environmental Authority,
Member of the Management Trust,
No. 104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
21. Chairman of the Peliyagoda Urban
Council
Member of the Management Trust,
Peliyagoda Urban Council,
Peliyagoda.
22. Chairman of Sri Lanka National Co-
operative Society
(ශ්‍රී ලංකා ජාතික සමූපකාර සංගමයේ
සභාපති)
No. 190, Kudapaduwa,

Negambo.

23. N.A.A.P.S. Nissanka
Acting Manager,
Peliyagoda Central Fish Market Complex,
Information Officer,
Additional Secretary (Administration),
Ministry of Fisheries and Aquatic
Resources,
New Secretariat, Maligawatte,
Colombo 10.
24. Lanka East Coast Ice Company (Private)
Limited
370, Kandy Road, Andamkulam,
Trincomalee.
25. Lanka Ice Company (Private) Limited
No. 38, Station Road, Wattala.

Respondents

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Manohara de Silva, PC with Chandana
Wijesooriya instructed by Nilanga Perera
for the Petitioner.
Sumathi Dharmawardhana, ASG, PC with
Pulina Jayasooriya, SC for the 1st – 23rd
Respondents.
Suren Gnanaraj with Amindri

Sinnathamby instructed by Tharushika

Fernando for the 24th Respondent.

Rukshan Senadheera instructed by Amila

Kumara for the 25th Respondent.

Supported on : 2025.07.16, 2025.07.29

Written Submissions : Petitioners : 11.08.2025

tendered on 24th Respondent : 07.08.2025

Ordered on : 2025.10.31

Dhammika Ganepola, J.

In the instant application the Petitioners seek *inter alia* Writs of Certiorari quashing the decision reflected in the letter dated 06th February 2025 marked X4 and the decision reflected in the letter dated 06th February 2025 marked X6 requesting the 25th Respondent to supply ice instead of the Petitioner and Writ of Prohibition prohibiting the 2nd Respondent and several other Respondents from making any further order for cancellation of the award made in favour of the Petitioner.

The Salpadoruge Asiri Dimuthu Perera (hereinafter sometimes referred to as the Deceased), the husband of the 1st Petitioner and the father of the 2nd, 3rd, and 4th Petitioners, who had passed away on 7th April 2025, had been the sole proprietor of the business operating under the name “Coolman Ice Factory”. The Petitioners claim that the rights and interests of the said business devolved upon them as heirs by operation of law.

The Deceased, the 24th Respondent Company, and the 25th Respondent Company had been eligible to submit bids in respect of the tender to supply ice to the Peliyagoda Fish Market Complex for the period of two

years from 2024 to 2026. Out of the above, the Deceased and the 25th Respondent had selected as the successful bidders, and the tender had been awarded to them. After the lapse of five months from the awarding of the tender and while the supply was in process, the 24th Respondent had instituted the Writ application bearing No. CA/WRIT/647/24 before this Court, seeking *inter alia* an order to quash the decision to award the said tender to the Deceased and an order appointing the said Respondent as a supplier of ice. The basis of the said application had been that the said Deceased failed to submit financial statements certified by a chartered accountant as required by the tender conditions in submitting his bid. Upon hearing the parties, formal notices and an order to maintain the status quo had been issued in the said application. At the time the status quo order was issued, the Deceased had been supplying ice to the Fish Market.

While the matters remained as such, the 2nd Respondent has sent the letter dated 06th February 2025 (X4) to the Deceased informing that the said ice supply by the Deceased has been suspended with effect from 07th February 2025 in terms of the Order made by the Court of Appeal and awarding the 25th Respondent the tender to supply ice. The Petitioners state that the Court of Appeal had at no time made any order suspending or cancelling the award made to the Deceased, and further, the 2nd Respondent had no power or authority or jurisdiction to suspend the contract of the Petitioner. Accordingly, on the grounds mentioned above, the Petitioners seek the reliefs prayed for in the Petition.

When this application was taken up for support on 16th and 29th July 2025, the Respondents raised several preliminary objections, including the lack of *locus standi* of the Petitioners to maintain the application.

It is on the common grounds that the Salpadoruge Asiri Dimuthu Perera, the Deceased, was the sole proprietor of the business operating under the name “Coolman Ice Factory” to which the tender was awarded. The position of the Petitioners is that upon the death of the said Salpadoruge Asiri Dimuthu Perera, the said sole proprietorship devolved on his heirs (the Petitioners) by operation of law.

However, the Respondents argue that once a sole proprietor dies, the business does not continue and cannot be inherited by heirs in law, as such a proprietorship lacks a separate legal personality from its owner. Therefore, the impugned tender awarded to the Deceased under the name of “Coolman Ice Factory” ceases to have any effect and ends with the death of said Salpadoruge Asiri Dimuthu Perera.

A sole proprietor is a person who owns a business single-handedly, and thereby any liability arising out of it will be construed as their liability without having a perpetual succession. **Dr Wickrema Weerasooriya**, in his **‘A Textbook of Commercial Law (Business Law)’** at page 142, states that *‘The death of a sole trader will generally mean the end of the business. One will have to look at the last will of the sole trader to find out what he has said about the continuation of the business.’* However, in the instant application, the Petitioners have not placed any such document which could be construed as a last will before this Court. The Petitioners state that the format of the agreement to be entered into between parties [marked X3 page 40] specifically provided that the contractual obligations would bind the heirs of the contractor. However, the draft agreement [marked as P9 in X3 (page 113)] specifies that only the Coolman Ice Company (not the heirs) would be bound by such an agreement. Hence, this Court cannot rely on inconclusive evidence such as a mere format of an agreement to be entered into between parties or an agreement yet to be entered into, to determine the rights of the parties.

The Petitioners submit that the tender was awarded in favour of Coolman Ice Factory and not personally to the Deceased. In ***Mahawaduge Priyanga Lakshitha Prasad Perera Vs. China National Technical Import and Export Corporation, SC Appeal No: 25/2021, H.C. (Civil) Case No: CHC/745/2018/MR***, decided on: 29th February 2024, **Priyantha Jayawardena PC, J** observed the principles of law applicable to the sole proprietorship as follows:

“..A sole proprietorship is the simplest form of business that is owned and managed by one person. Further, a sole proprietorship has no separate legal personality of its own, and thus, in law, the business and its owner are viewed as a single

entity. Hence, it is not possible for a sole proprietor to sue and to be sued by his business registration name. Thus, all actions filed by or against a sole proprietorship should be in the personal name of the sole proprietor carrying on business under the name of the sole proprietorship. Further, a Sole Proprietorship cannot have successors and liquidators.”

Therefore, in the case of a sole proprietorship, the death of the sole proprietor shall have significant implications. Contractual rights associated with the business do not devolve on the heirs because a sole proprietorship does not have a separate legal identity distinct from its owner. Instead, the assets and liabilities of the sole proprietorship become part of the estate of the proprietor.

Further, the Petitioner attempts to distinguish between the rights or duties of a purely personal character and those contractual rights and duties that do not possess a purely personal character. To this effect, the petitioner quotes an extract from **“The Law of Contract”** by **Justice C.G. Weeramanthry**.

“In certain limited classes of contracts, death brings about a termination of contractual rights and obligations by operation of law. These are contracts involving rights or duties of a purely personal character, and in these cases, death operates as a mode of involuntary assignment of rights and obligations. In all other cases, all contractual rights and duties pass upon death to the representatives of the deceased person, and the obligation is therefore not extinguished, but survives in favour of or against the representative of the state of the disease.”

However, this Court observes that within the bid conditions (marked as X3-P3), a special condition (2.16.5 at page 8) specifies that the bidder requires precise expertise in the process of carrying out the obligations under the contract. Hence, the rights and obligations under the contract cannot be concluded to be of a purely personal character, and thus these contractual rights and duties do not pass upon the death of a sole proprietor to the heirs of the Deceased person.

Consequently, I hold the view that the attempt of the Petitioners to establish themselves as the heirs of the deceased's sole proprietorship is not legally valid. In the circumstances, the effort of the Petitioners to replace themselves as the heirs of the Deceased's sole proprietorship cannot be upheld under the law. A person can seek relief through Writ Jurisdiction, if their legal rights have been directly or significantly infringed by an administrative act. In the instant application, the Petitioners have failed to satisfy the Court that they have sufficient interest to invoke the Writ Jurisdiction of this Court. The Court may dismiss a judicial review application, if it is submitted by someone who does not have *locus standi* to do so. Therefore, considering the above, the Court is not inclined to issue formal notices on the Respondents. Accordingly, I proceed to dismiss the application.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal