

**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*

1. Avant Garde Maritime Services (Pvt) Limited,  
613, Bangalawa Junction, Kotte
  
2. Rear Admiral L. D. Dharmapriya (Retd)  
No.10, Araliya Mawatha,  
Sirimal uyana, Rathmalana.

Court of Appeal Writ  
Application No:

**CA/WRT/1127/2025**

**CA/WRT/1128/2025**

**And 42 others**

**PETITIONERS**

**vs**

1. Hon. Attorney General  
Attorney General's Department,  
Colombo 12

**And 06 Others.**

**RESPONDENTS**

Before: Hon. Justice N. R. Abeysuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Sanjeewa Jayawardena, PC for the Petitioner (CA/WRT/1127/25)

Kuvera De Zoysa PC with Shantha Jayawardhena, AAL and Sajana De Zoysa, AAL for the Petitioner instructed by M. J. S. Fonseka (CA/WRT/1128/25)

Vikum De Abrew, PC, ASG with Shanil Kularatne, PC, ASG , Manohara Jayasinghe, DSG and Abigail Jayakody, SC for the 1<sup>st</sup> - 4<sup>th</sup> Respondents.

Supported On: 15.12.2025 and 16.12.2025

Decided On: 25.02.2026

**N. R. Abeysuriya, PC, J. (P/CA),**

### **ORDER**

The Petitioner in CA/WRT/1127/25 (Avant Garde Maritime Services (PVT) Limited) (hereinafter sometimes referred to as AGMS) is a privately owned business entity specializing in providing international maritime security services. It has entered into a Joint Venture agreement with a fully state-owned company by the name of Rakna Arakshaka Lanka Limited (hereinafter sometimes referred to as RALL) for the specific purpose of providing such maritime security services to merchant vessels navigating through high-risk sea routes.

The Petitioner submitted that for the said business operations to be feasible having an approved armory facility is a *sine qua non*. The Joint Venture (hereinafter sometimes referred to as JV) was provided with such armory facility by the Sri Lanka Navy in order to conduct its business operations for a limited period of time. This aspect of the temporary granting of a facility would be considered elsewhere in this order.

According to the Petitioner, the aforesaid business activities of the JV were carried out without interruptions for some time. However on 13.08.2025, His Excellency, the President issued an extraordinary gazette notification bearing number 2449/27 by virtue of which the Navy was also authorized to conduct maritime security operations. The Sinhala and English versions of the said gazette notification, which contain only one paragraph, are marked as P60. The paragraph in the said gazette notification is reproduced below,

*“BY virtue of the powers vested in me by subsection (1) of Section 21 of the Navy Act (Chapter 358), I, Anura Kumara Dissanayake, President of the Democratic Socialist Republic of Sri Lanka, having considered necessary in the national interest, do hereby order the members of the Sri Lanka Navy, to maintain a maritime security operation project to provide services and facilities to foreign private maritime security companies providing security services to merchant vessels; to carry out the operational, administrative and financial activities of the said project as appropriate under the supervision of the Ministry of Defence to store such firearms, ammunition and other equipment belonging to foreign private maritime security companies in the armouries of the Sri Lanka Navy and to transport firearms, ammunition and other equipment belonging to foreign private maritime security companies as required by operational requirements using vehicles or vessels provided by local representatives of foreign private maritime security companies under the supervision and security of the Sri Lanka Navy, and to perform all the matters connected therewith or incidental thereto as non naval duties.”*

Few days thereafter on 28.08.2025, the Secretary of Ministry of Defence gave written instructions to the JV to vacate the four naval armoury premises which have been released to the said JV in order to carry out the maritime security operations. The aforesaid letter which is self-explanatory marked as P61 is reproduced below due to the reason that it is one of the impugned documents in the instant matter.

**“REALLOCATION OF ARMOURY PREMISES OF THE SRI LANKA NAVY**

1. Reference is made to the letter of the Secretary, Ministry of Defence No. MOD/CIS/O4/15/02 dated 10<sup>th</sup> September 2021, by which certain armory facilities of the Sri Lanka Navy (SLN) had been temporarily allocated to the Joint Venture between Rakna Arakshaka Lanka Limited and Avant Garde Maritime Services (Private) Limited (RALL-AGMS JV), on the instructions of the then Secretary, Ministry of Defence. Accordingly, the following naval armory premises had been released for the temporary use of the RALL-AGMS JV

- a. Armoury Complex, Pettigalawatta, Galle
- b. Naval Armoury, SLNS Rangalla, Colombo
- c. Naval Armoury, SLNS Kawanthissa, Hambantota
- d. Naval Armoury, SLNS Mahaweli, Trincomalee

2. The SLN has submitted a written request to this Ministry for the return of the aforesaid naval armory premises, which have been in the use of the RALL-AGMS JV under a temporary allocation since 15<sup>th</sup> September 2021.

3. Accordingly, you are hereby informed to take immediate steps to remove all equipment, stores, materials, records, and any other belongings of the RALL-AGMS JV from the above-mentioned premises, and to duly hand over the said premises to the Sri Lanka Navy in good order and free of encumbrances within a period of three (03) months from the date of this letter.

4. Forwarded for necessary action and your cooperation in this regard is highly appreciated.”

Subsequent to the issuance of the aforesaid P61, several letters were sent by the Petitioner to the Ministry of Defence with regard to the matters arising from P61. The culmination of this exchange of correspondence was P79 which is a letter sent to the JV by Defense Secretary dated 10.11.2025. By this letter the Defense Secretary has reiterated the contents of P61. I wish to allude to the 4<sup>th</sup> Paragraph of P79 which reads thus,

*“Therefore, it is hereby reiterated and informed to take necessary steps to comply with the instructions outlined in the letter at above reference ‘A’, on or before 28th November 2025, which marks the conclusion of the three month period specified therein.”*

Being aggrieved by the documents marked P61 and P79, the Petitioner has filed the instant writ application seeking *inter alia* the following reliefs,

*c) Grant and issue a mandate in the nature of a Writ of Certiorari quashing and annulling, the decision of the 3rd Respondent, dated 28th August 2025 marked as P61 to direct the Petitioner to vacate and handover the armoury facilities;*

*d) Grant and issue a mandate in the nature of a Writ of Certiorari quashing and annulling, the said directive of the 3rd Respondent, dated 28th August 2025, marked as P-61, directing the Petitioner to vacate and handover the armoury facilities, both per se and simpliciter;*

*e) Grant and issue and mandate in the nature of Writ of Certiorari, quashing the decision of the 3rd Respondent, dated 10th November 2025, marked as P79, re-iterating and directing the Petitioner to vacate and hand-over the armoury facilities' on or before 28th November 2025;*

*f) Grant and issue mandates in the nature of Writs of Certiorari, quashing the letters of the 3rd Respondent, dated 28th August 2025 marked as P61, and dated 10th November 2025 marked as P79, both per se and simpliciter;*

The Petitioner contends that the effect of the aforementioned gazette marked as P60 is only to the extent of permitting the Sri Lanka Navy also to conduct maritime security operation. It does not preclude, prohibit or suspend any other entity from conducting business operations of maritime security. In fact the Petitioner in its written submissions has taken up the position that it has no objection whatsoever for the Navy carrying out such operations

alongside the Petitioner and, for that reason, does not wish to impugn the gazette extraordinary number 2449/27 dated 13.08.2025.

According to the said written submissions, the Petitioner's gravamen lies in the deliberate failure to allocate any alternative location in breach of the directive contained in the document marked P56 (the said document marked P56 has been considered elsewhere in this order).

The principal submissions of the Petitioner maybe summarized in the following manner as reflected in the oral and written submissions of the Petitioner.

- a) The impugned directives contained in P61 amount to a breach of the Petitioners' legitimate expectation. Further elaborating on this aspect, the Petitioner submits that the expectation was that the Petitioner would be permitted to continue to use the authorized armoury facilities provided by the Sri Lankan Navy until suitable alternative location is provided.
- b) There was breach of natural justice due to the reason that the Petitioner was not afforded an opportunity of placing its stance before the relevant authorities prior to the impugned decisions contained in P61 were taken.
- c) Citing the legal maxim *lex non cogit ad impossibilia*, Petitioner contends that if it were to comply with the directives contained in P61, it would necessarily expose the Petitioner to criminal liability since over 2000 unlicensed automatic firearms would have to be shifted to some other location which may contravene provisions of the Firearms Ordinance.
- d) The arrangements made to facilitate the maritime security operations of the JV by providing armoury facilities of the Navy was not for a "*few days*" or on a temporary basis. It was a considered decision of the Ministry of Defence and the Sri Lanka Navy to permit the JV to conduct maritime security operations on a permanent basis utilizing the existing armoury facilities of the Navy. The contention of the

Petitioner is that if Navy requires exclusive use of the armoury, the Navy must provide an alternative site to the Petitioner.

The version of the Respondents as reflected in the oral and written submissions made by the learned ASG was primarily focused on the aspect of futility of reliefs prayed for and its legal effects. It is not in dispute the fact that the Government of Sri Lanka took a decision in the year 2021 to entrust maritime security services to the joint venture entered into between the Petitioner Company (AGMS) and the 6<sup>th</sup> Respondent (RALL). These services were hitherto provided by the Sri Lanka Navy. The joint venture agreement was entered into on 17.06.2021.

It was strenuously argued by the Respondents that due to the reasons adduced by them in Court; the said joint venture is no longer viable and as such even assuming without conceding that writ be issued as prayed for by the Petitioner, the implementation of such an order would be rendered futile or nugatory on account of the fact that the said joint venture no longer exists, in practical terms.

The Respondents have placed heavy reliance on the Clauses contained in the Joint Venture Agreement marked P48 and its addendum marked P49.

It appears that the addendum has set out certain reasons for entrusting maritime security operations to the Joint Venture. I wish to refer to the following three paragraphs of the addendum.

*WHEREAS the Hon. Attorney General by letter bearing reference AG 18/2021 dated 28th July 2021 has recommended that the business venture between RALL and AGMS be restored and based on such recommendation the Cabinet of Ministers have by letter bearing reference 408/21/1435/303/115 dated 18th August 2021 approved the restoration of the commercial venture between RALL and AGMS as before.*

*WHEREAS the Secretary, Ministry of Defence has decreed the operation and business of transaction of weapons of MCs be restored to the Joint Venture*

*due to the drop in business and revenue since the Sri Lanka Navy had taken over the said operations.*

*WHEREAS the Sri Lanka Navy has also by letter bearing reference SLN.014 dated 28th June 2021 stated that they are unable to develop the businesses under the commercial venture and therefore the parties agree that the operations envisaged under this agreement are to be handed over to a suitable party.*

When the aforementioned paragraphs are scrutinized carefully, it is apparent that the relevant authorities intended to handover maritime security service-related activities **to the Joint Venture** (JV) and not to any one of the two parties to the Joint Venture Agreement. In context, the existence of the JV is a *sine qua non* for the implementation of the Joint Venture Agreement at P48.

The parties to the aforementioned JV agreement marked P48 are Rakna Arakshaka Lanka Limited (RALL) and Avant Garde Maritime Services (Pvt) Ltd (AGMS). I wish to highlight certain clauses of the said agreement which are relevant to the matters in dispute in the instant matter.

- 1.1. The Joint Venture will obtain a suitable facility for the establishment of a secure armoury henceforth known as RAMS or RALL Armoury for Maritime Security, within the Galle Harbour from the Sri Lanka Ports Authority and make use of it for storage of weapons, ammunition and other related accessories belonging to foreign PMSCs.*
- 1.2. All expenses in relation to the obtaining and maintaining of the armoury will be borne by AGMS*
- 1.3. RALL together with the Navy shall ensure that all security measures are in place and be responsible for the issue to and receipt from PMSCs weapons, ammunition and related accessories from the said*

*armoury and a naval representative is present whenever those weapons, ammunition and related accessories are moved between RAMS and commercial vessels on land as well as sea. This includes but is not limited to the maintenance of logs of serial number of weapons issued/received, all movements and related approvals*

- 1.4. Whilst the Navy is responsible for the safe custody of weapons within RAMS, RALL shall be accountable in terms of inventory, maintenance and periodical inspections by the Director/Deputy Director Maritime of RALL of the weapons ammunition and related accessories that are stored at the Armory.*
- 1.5. The Joint Venture shall be responsible to ensure that relevant approvals from relevant authorities are obtained in respect of all weapons, ammunition and related accessories that are brought into the RAMS via this Joint Venture, though however, the initial stock of weapons, ammunition and related accessories transferred from the Navy will be accepted as already authenticated.*
- 1.6. The Joint Venture shall ensure that the said armoury is fully geared to carry out the said operation by establishing and sharing proper and reliable communication between RALL and AGMS*
- 1.7. The Joint Venture shall agree to the suitability and number of personnel to be deployed at the armoury to honour obligations of the Parties and all other expenses of these personnel shall be borne by AGMS. However, salaries of RALL employees will be borne by AGMS only until the outstanding dues from AGMS to RALL are fully settled in terms of 2.1 and 2.2. below.*
- 1.8. RALL shall coordinate with the Sri Lanka Navy to ensure that a Navy representative and a RALL representative will be present in any boat used for the operation of embarking or disembarking of sea*

*marshals along with weapons, ammunition and related accessories throughout its movement between Galle Harbor and the Commercial Vessel.*

*1.9. AGMS shall be responsible for marketing, business promotion, expansion of business, invoicing and revenue collection from foreign PMSCs and/or their agents*

As evinced from the aforesaid, the important responsibilities to be fulfilled with regard to maritime security operation have been entrusted to the JV or RALL and not to the Petitioner-Company. If the JV is not in existence *de facto* due to disputes and disagreements arisen between the signatory parties, the contention of the Respondents is that it would be futile to issue a writ in favor of the Petitioner.

In fact, the Respondents highlighted the fact that there is direct reference to the Petitioner-company only in clause 1.9 of the JV agreement which refers to marketing, business promotion, and expansion of business, invoicing and revenue collection from foreign PMSCs (Private Maritime Security Company) and/or their agents.

The Respondents have referred to a cabinet decision dated 18.08.2021 which is titled **“Implementation of the recommendation made by the committee appointed by the secretary to the Ministry of Defense for the purpose of evaluating maritime security operation”**. The Petitioner has marked the said document as P53.

In the said cabinet decision (P53), the following passage warrants consideration,

*“.....After discussion, it was decided to grant approval to restore the commercial venture of providing maritime security services to Rakna*

*Arakshaka Lanka Limited (RALL) and Avant Garde Maritime Services (Pvt.) Ltd. (AGMS) as a joint venture, subject to.....”*

The Respondents have contended that even in the aforesaid cabinet decision emphasis have been placed on the JV and not to the two individual entities concerned (i.e. RALL and AGMS). The Respondents have furthermore highlighted the following matters.

- a) In clause 1.1 the JV was required to obtain secure armory facility within the premises of the Galle Harbour from the **Sri Lanka Ports Authority**. (The said clause does not directly refer to the Sri Lanka Navy)
- b) On 09.09.2021 a meeting was convened at the Ministry of Defense with the participation of *inter alia* Defence Secretary, Commander of the Navy and Chairman - AGMS. The minutes pertaining to the said meeting is marked P55. The following paragraph was highlighted by the Respondents.

උග. විදේශීය සමුද්‍රාරක්ෂක සමාගම්වලට අයත් අවි, උණ්ඩ හා උපාංග ගබඩා කිරීම සඳහා රක්ෂා ආරක්ෂක ලංකා සමාගම සමග ගාල්ල වරාය තුළ ස්ථාපනය කිරීමට බලාපොරොත්තු වන ආයුධාගාරය පිළිබඳව අදහස් දක්වමින් ඇවන්ට් ගාඩ් සභාපතිවරයා ප්‍රකාශකර සිටියේ, වරාය අධිකාරිය මගින් නිසි ක්‍රමවේදය අනුගමනය කරමින් මෙම ආයුධාගාරය ස්ථාපනය කිරීම සඳහා අවශ්‍ය අනුමැතිය ලබාදීමේ කටයුතු සඳහා තව දින කිහිපයක් ගතවිය හැකි බවත්, අදාළ අනුමැතිය ලද පසු දින කිහිපයක් තුළ එම ආයුධාගාරය තුලින් අවි නිකුත් කිරීම හා ආයුධාගාරය වෙත අවි ලබා ගැනීම ආරම්භ කළ හැකි බවත් ප්‍රකාශ කරන ලදී. එම කටයුතු එසේ ආරම්භ කරන තෙක් නාවික හමුදාව මෙහෙයුම් කටයුතු සිදුකරන පරිශ්‍රය තුළම නම සමාගමට හා රක්ෂා ආරක්ෂක ලංකා සමාගමට මෙහෙයුම් කටයුතු සිදු කිරීම සඳහා අවශ්‍ය කටයුතු සලසා දෙන මෙන් ඉල්ලා සිටින ලදී.

එ. එහිදී ඇවන්ට් ගාඩ් සභාපතිවරයා පවසා සිටින ලද්දේ මෙහෙයුම් කටයුතු සම්බන්ධීකරණය සඳහා විශ්‍රාමික නාවික හමුදා නිලධාරීන් වන රියර් අද්මිරල් මුදිත ගමගේ, කපිතාන් සංජය දහනායක හා කොමාන්ඩර් අනුර ආරියරත්න ඇතුළු විශ්‍රාමික හමුදා නිලධාරීන් පමණක් මෙම වකවානුව තුළදී නාවික හමුදා පරිශ්‍රය කුලට ඇතුළු වීමට කටයුතු කරන බවයි.

ඒ. මෙහිදී ආරක්ෂක ලේකම්තුමන් විසින් ඇවන්ට් ගාඩ් සභාපතිවරයාගෙන් රක්තා ලංකා හා ඇවන්ට් ගාඩ් ආයතන එක්ව එම අවිගාරය ස්ථාපනය කිරීමට කටයුතු කරනු ලබන ස්ථානය පිළිබඳව විමසා සිටින ලදී. එය පිහිටුවනු ලබන්නේ ගාල්ල වරාය පරිශ්‍රයේ Cloven Berg ඡැටිය ආසන්නයේ බව එයට පිළිතුරු ලබා දෙමින් ඇවන්ට් ගාඩ් සභාපතිවරයා පවසා සිටින ලදී. ආරක්ෂක ලේකම්තුමන් ඉන් අනතුරුව විමසා සිටින ලද්දේ මෙම මෙහෙයුම් කටයුතු සිදු කිරීමේදී අවි ආයුධ භූමිය හරහා ප්‍රවාහනයක් සිදුවන්නේද යන්න පිළිබඳවයි. එයට ප්‍රතිචාර දක්වමින්, ගාලු වරාය පරිශ්‍රය තුළ ආයුධාගාරය ස්ථාපනය කරන තෙක් සඳහා පමණක් එසේ ප්‍රවාහනයක් සිදුවන බවත්, වර්තමානයේ නාවික හමුදාව විසින් මෙහෙයුම් කටයුතු සිදු කරනු ලබන්නේ ද එම ආකාරයටම බවත් ඇවන්ට් සභාපතිවරයා විසින් පවසා සිටින ලදී. එහිදී ඔහු වැඩිදුරටත් පවසා සිටියේ එසේ භූමිය හරහා අවි ප්‍රවාහනයක් සිදු කිරීමේදී නාවික හමුදා ආරක්ෂාව යටතේ එය සිදුවන බවත්, අවශ්‍ය වන්නේ නම් පොලිස් ආරක්ෂාව ද ඒ සඳහා ලබාගත හැකි බවත් ය. නාවික හමුදා ආරක්ෂාව මේ සඳහා ප්‍රමාණවත් බව මෙහිදී නාවික හමුදාපතිවරයා විසින් ප්‍රකාශකර සිටින ලදී.

The Respondents contended that as per the aforesaid paragraph the Chairman of AGMS has stated at the said meeting that steps would be taken to establish armory of the JV within the premises of the port of Galle by the Sri Lanka Ports Authority. He has further stated that since this process would require a time period of “few more days” until such time the said facility to be provided by the Sri Lanka Ports Authority is available, has

sought the assistance of the Sri Lanka Navy for facilities “on a temporary basis”.

The Respondents contended that the aforesaid document marked P55 too bears testimony to the contention that facilities belonging to Sri Lankan Navy were to be utilized by the JV only for a very limited period of time.

- c) Letters issued by Ministry of Defence marked P56, P57 and P58 dated 10.09.2021 reflect the decision to make available to the JV on a temporary basis facilities of the Sri Lanka Navy until such time permanent storage facilities are provided to the JV.

The Respondent’s contention is that the aforementioned three letters marked P56, P57 and P58 should not be considered in the abstract but must be construed and understood in the context of P55 which are the minutes of the meeting held at the Ministry of Defence dated 09.09.2021.

I am of the view that the said contention is valid due to the reason that both P56 and P58 contain a paragraph which refer directly to the meeting held at the Ministry of Defense on 09.09.2021. The following is the 1<sup>st</sup> paragraph in both P56 and P58,

**“Reference:** Meeting held at Ministry of Defence on 09<sup>th</sup> September 2021 regarding the captioned matter”

Both P56 and P58 are captioned “RESTORATION OF THE BUSINESS OF PROVIDING MARITIME SECURITY”

Furthermore, Paragraph 3 of the letter marked P56 reads as follows,

*“On behalf of the Joint Venture, Rakna Arakshaka Lanka Ltd will operate independent armouries in Colombo harbour and Galle harbour designated as Rakna Arakshaka Lanka Ltd Armoury for Maritime Security (RAMS), Colombo and Galle respectively. Since establishing such independent armouries **will take some time**, please arrange for the Joint Venture to continue operations*

*in the same premises within the respective Navy establishments **as of now** as agreed by the Commander of the Navy at the referred meeting.” (Emphasis added)*

Similarly, paragraph 3 of P58 reads thus,

*“On behalf of the JV, RALL will operate independent armouries in Colombo harbour and Galle harbour designated as RALL Armoury for Maritime Security (RAMS), Colombo and Galle respectively. Since establishing such independent armouries **will take some time**, the Navy has been directed to make arrangements for the JV to continue operations in the same premises within the respective Navy establishments **as of now** as agreed by the Commander of the Navy at the meeting. This Ministry will initiate action to formally inform all PMSCs about the transition.” (Emphasis added)*

I am of the view that when the two aforementioned paragraphs are considered in the context of the matters stated in the minutes of the meeting held on 09.09.2021 at the Ministry of Defence, the contention of the Respondents with regard to the temporary nature of the provision of armoury facilities by the Navy to the JV becomes apparent. What was envisaged was temporary provision of armoury facilities to the JV by the Navy for a short period of time.

It was merely to facilitate the business operation of the JV only until independent armouries are established by the JV. The said meeting at the Ministry of Defense was held in 2021. The Petitioners have failed to explain to the satisfaction of Court what steps were taken till now by the JV to establish such independent armories. The Court is of the view that the contents of P56 and P58 cannot be construed so as to mean that the state authorities in particular Sri Lanka Navy had agreed to provide armory facilities to the JV for an indefinite period of time.

In addition to the aforesaid paragraph 3 in P56 and P58 all the other paragraphs in these documents specifically allude to the “Joint Venture”. It is apparent from these documents that the continuation of the maritime

security operation referred to in these documents would depend on the existence of the JV.

In response to the submissions of the Petitioners with regard to the generation of a legitimate expectation with regard to the permanent armory facilities to be provided by the Sri Lanka Navy to the JV, the Respondents contend that circumstances do not exist in the instant matter for such a legitimate expectation to have been generated.

Furthermore, citing the **Vavuniya Solar Power vs. Ceylon Electricity Board**<sup>1</sup> the Respondents contend that to generate a legitimate expectation the following grounds must exist;

- a) A clear and unambiguous promise
- b) Given by a person with proper authority
- c) One which the person to whom the promise was made has demonstrably placed reliance upon

In the instant matter, there appears to be no “*clear and unambiguous promise*” made by the Respondents to the Petitioner with regard to the provision of permanent armory facilities to the JV.

None of the documents marked and produced by the Petitioner contain such a provision which would give rise to a legitimate expectation as alluded to by the Petitioners. The Respondents contend that even assuming without conceding that the generation of such expectation was justified, it would have been the JV which could have claimed that there was such a legitimate expectation and not the Petitioner in this writ application.

In their written submissions the Respondents have also raised the issue of national security considerations with regard to the continuation of maritime security services by AGMS which is a private entity. This aspect would be a significant factor warranting careful consideration in the light of RALL which is fully owned by the State and under the purview of the Ministry of Defense indicating it’s unwillingness to continue with the collaboration with AGMS

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<sup>1</sup> SCFR 172/2017 decided on 20<sup>th</sup> September 2023

as per the JV agreement. Reference has been made to the observation of Court in **CA Writ 114/2005** decided on 22.10.2007. The Respondents have cited the following paragraph from the said judgment,

*“In Zamorra [1916] 2 AC 77 at 107 Lord Parker of Waddington observed those who are responsible for the national security must be the sole judges of what the national security requires.”*

The stance of the Respondents is that with regard to matters pertaining to national security the relevant state organizations must be permitted to take decisions according primacy to the greater interests of the state.

As stated elsewhere in this order, the Respondents have strenuously contended that due to severe disagreements between the two parties to the JV agreements, it may be assumed for all intents and purposes that the said JV no longer exist and therefore the instant writ application is futile. In support of this contention the Respondents have drawn the attention of Court to several documents which are annexures to the Petition. The letter marked P67 is one such document. It is a letter written on 02.10.2025 address to Brigadier Jude Fernando (Rtd), Chairman/CEO RALL by Major Nissanka Senadhipathi (Rtd), Chairman AGMS (PVT) Ltd. The heading of the letter is as follows,

**“UNEQUIVOCAL OBJECTION AND SEVERE DISSATISFACTION REGARDING RAKNA ARAKSHAKA LANKA LTD.'S (RALL) UNILATERAL COMMUNICATION TO RALL-AVANT GARDE MARITIME SERVICES (PVT) LTD. (AGMS) JOINT VENTURE CLIENTS (PMCS'S)”**

The Respondent drew the attention of Court to the following paragraph of the said letter,

*“Strictly without prejudice to the above legal position that we have raised and reiterated in the said letters, we acknowledge the operational necessity arising from the government's recent decision to allow Sri Lanka Navy to independently carry out armory operations. However, your decision to unilaterally send and circulate an e-mail concerning the Joint Venture's*

operations directly to our shared clients, before consulting AGMS, **is an unprecedented breach of partnership trust that we unequivocally denounce**".

We register our severe dissatisfaction that AGMS, being the joint venture partner in this enterprise, was forced to learn regarding your unilateral communication to the clients of our joint venture and the impacts on our clients from the recent decisions of the Government only after our clients forwarded your e-mail to us. This action demonstrates a profound disregard for the collaborative structure of the Joint Venture

Your attempt to manage client expectations through a unilateral statement is actively detrimental. It creates confusion, maximizes instability, and destroys the professional, unified front that we rely on. We must remind you that our **customers are the key to the continuity and viability of this Joint Venture** and your approach has already begun to discourage the customers by alarming them unnecessarily.

This action is demonstrably **not in the best interest of the Joint Venture**, and it clearly does not appear to be in furtherance of our shared commercial objectives. The lack of consultation on the most sensitive aspect client management is a shocking display of poor judgment.

Be advised that AGMS formally reserves the right to issue its own communication to clients of the joint venture. Clarifying our position and providing a coherent path forward, as we cannot allow RALL's unilateral actions to further erode the relationships that we have jointly built."

The response of RALL to the aforesaid letter is marked as P68. It is dated 16.10.2025 and sent by Chairman RALL to Chairman AGMS (PVT) Ltd. It contained the following paragraph

"If there is any loss of trust in this partnership, it is entirely due to AGMS's repeated unilateral decisions, especially the multiple reductions of the prize

*value over the past two months carried out without informing or consulting RALL. These actions not only violated the principles of mutual respect and cooperation fundamental to our Joint Venture but have also caused significant operational and financial harm to RALL. Such disregard for joint decision making undermines the trust and spirit of partnership far more than any transparent communication from our side.”*

Another document highlighted by the Respondents is the annexure to the Petition marked P73 dated 27.10.2025 the said letter is addressed to Chairman RALL by Chairman AGMS (PVT) Ltd. Attention of Court was drawn to the following paragraphs of P73,

*“Your conduct demonstrates a clear intent to sabotage the commercial viability of the JV which clearly demonstrates a breach of your fiduciary duty to act in the best interest of the JV and mala fides on the part of RALL. We must therefore formally draw your attention to the fundamental clauses of the Agreement which RALL appears to have completely disregarded, resulting in a course of action that is totally detrimental to the JV.*

*Your insistence on compliance with the Ministry of Defence (MOD) letter dated 28<sup>th</sup> August 2025 and subsequent demand for AGMS to vacate the premises is under discussion with the MOD without prejudice to the rights of AGMS.”*

**“Finally, your claim that RALL must comply with the MOD letter and state it mandates removal and vacating the premises** *is indefensible under our contract as you are also personally responsible to communicate and to seek for suitable premises to locate the Rakna Arakshaka Lanka Ltd. Armory for Maritime Security (RAMS) which by name suggests that it should be spearheaded by you as the JV partner which is a wholly owned company of the state coming under the purview of the MOD” (Emphasis Added)*

*“.....AGMS hereby gives notice that RALL’s actions constitute a material breach of the Joint Venture Agreement, including but not limited to Clauses 1.9,1.12, 3.1, 5.1, and 11.1.....”*

I wish to highlight the fact that according to the aforesaid letter marked P73 there is specific reference to the fact that RALL is of the view that the instructions of the Ministry of Defense contained in the impugned letter dated 28.08.2025 (marked P61) to the effect that the JV must vacate the Navy facilities must be fully complied with. This position is completely contradictory to the stance of the Petitioner who is the other party to the JV. These two positions cannot be reconciled in any manner whatsoever. If as stated by RALL, instructions contained in P61 are to be fully complied with, it is axiomatic that the purpose of filing the instant writ application would become nugatory/futile.

This insistence on compliance with P61 has brought into sharp focus the obvious breakdown of the JV agreement and the futility of the instant writ application. Documents marked P67 and P68 too provide ample corroboration of this fact. The Court observes that the Petitioner in the instant matter is not the Joint Venture but only one party to it whilst the other party is a Respondent. Although, RALL has been named as a Respondent, it was unrepresented before this Court giving rise to the inference that RALL is no longer intending to continue with the JV. In these circumstances, it is incumbent on this Court to consider the legal aspects of futility and *locus standi* of the Petitioner.

At this stage, I also wish to advert to two other salient aspects in the instant matter.

- a) All the documents the Respondents are relying on in order to establish futility and raise concerns pertaining to *locus standi* are in fact documents marked and produced by the Petitioner Company itself.
- b) It seems that the Petitioner has not made any submissions whatsoever with regard to the current status of the JV, particularly in the light of the irreconcilable divergence of the stance of the two parties of the JV.

The factual matrix of the instant matter has been made even more complicated by the fact that RALL is a state-owned entity established by the Ministry of Defence and it is the Secretary of the very same Ministry who has issued the impugned directives marked P61 and subsequently reaffirmed by P79.

Furthermore, at the time the documents marked P56 and P58 were issued by the Ministry of Defence, Sri Lanka Navy was not engaged in the business of providing maritime security related services. This situation has now changed consequent to the promulgation of the Gazette marked P60, Navy and the JV are now competitors. If the stance of the Petitioner is accepted it may lead to a situation where one competitor is obliged to provide certain facilities to the other competitor which in my view is not a practically viable proposition in practical sense.

### **Futility of reliefs prayed for by the Petitioners**

Dr. Sunil F. A. Coorey in his monumental work titled **Principles of Administrative Law in Sri Lanka**<sup>2</sup> has expressed the view that “*certiorari will not be issued to quash a particular exercise of power if it be futile to do so because it is no longer operational or it has had its effect.*”

It was further reflected in the aforementioned publication by Dr. Sunil F. A. Coorey<sup>3</sup> that;

*“The court will have regard to the special circumstances of the case before it before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality.”*

Similar views were expressed by Soza J in **Siddek v. Jacolyn Seneviratne**<sup>4</sup> citing Wade, **Administrative Law**<sup>5</sup> and S. A. De Smith’s **Judicial Review of**

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<sup>2</sup> 4<sup>th</sup> Edition Volume III (Pg 1172)

<sup>3</sup> (4<sup>th</sup> Ed) Volume II Pg 1174

<sup>4</sup> (1984) 1 SLR 83,90

<sup>5</sup> 5<sup>th</sup> Edition pp 546,591

**Administrative Action.**<sup>6</sup> Said decision by Soza J was followed by Marsoof J in **Ratnasiri vs Ellawala.**<sup>7</sup>

I have considered a catena of judicial authorities where we considered the aspect of futility and its effect on writ application.

In **Divithotawela Konara Mudiyanseelage Dammika Nayanakantha vs. National Housing Development Authority and Others**<sup>8</sup>, Justice S. U. B. Karaliyadde citing several other judicial authorities<sup>9</sup> made the following observation.

*“This Court repeatedly held that writs would not be issued where it would be vexatious or futile.”*

See, **RS. Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board**<sup>10</sup> and **Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd**<sup>11</sup>.

In **Samastha Lanka Nidahas Grama Niladhari Sangamaya Vs Dissanayake**<sup>12</sup> Saleem Marsoof J. held that;

*“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”*

The Respondents have drawn the attention of Court to two other judgments,

Marsoof, PC. J (P/CA as he was then) in the case of **Ratnasiri and others Vs Ellawala and others**<sup>13</sup> held thus;

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<sup>6</sup> 4th Ed pp 404

<sup>7</sup> (2004) 2 SLR 180, 208

<sup>8</sup> CA/WRT/431/2019 CA Minutes 11.01.2024 at 04

<sup>9</sup> See, **RS. Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board**

<sup>10</sup> [1958] 61 NLR 491

<sup>11</sup> [2005] 1 Sri LR 89.

<sup>12</sup> [2013] BLR 68.

<sup>13</sup> [2004] 2 SLR 180.

*"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ... will not issue where it would be vexatious or futile."*

In **Selvamani vs. Dr. Kumaravelupillai and Other**<sup>14</sup> Sripavan J (as he was then) cited a series of judicial authorities on futility of reliefs prayed, decided that,

*"...issuing a writ of mandamus in this case would be futile. In the case of **Sethu Ramasamy Vs. Moregodda**<sup>15</sup> Gunasekara J. Observed that **"A mandamus will not be granted when it appears that it would be futile"**. In the case of **Shamsudeen Vs Minister of Defence and External Affairs**<sup>16</sup>, L. B. de Silva J too remarked that **"A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served"**. In the case of **Gunasinghe Vs. Mayor of Colombo**<sup>17</sup>De Kretser J. stated that **"A mandamus will not be issued when it appears that it would be futile in its result"**. In the case of **Eksath Engineru Saha Samanya Kamkaru Samithiya Vs. S. C. S. de Silva**<sup>18</sup> mandamus was sought to compel three respondents, the members of an Industrial Court, to function as an Industrial Court. By the time the application was heard by the Court all three members had ceased to hold office as members of the Court. **The writ was refused because parties obviously cannot be ordered to do what they are not qualified to do and are therefore unable to do.**" [Emphasis Added]*

*The petitioner by this application also moves for a writ of mandamus on the first respondent directing that the petitioner be restored to his earlier position i.e. to the post of Project Operator. Even if this application of the petitioner is granted, he is not entitled to resume his earlier office in view of the order of*

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<sup>14</sup> [2005] 1 SLR 99 at 103

<sup>15</sup> [1961] 63 NLR 115

<sup>16</sup> (1961) 63 NLR 430

<sup>17</sup> (1944) 46 NLR 85

<sup>18</sup>(1969) 73 NLR 260

vacation of post (3R9A). Therefore, issuing a writ of mandamus in this case would be futile. In the case of **Sethu Ramasamy Vs. Moregoda**<sup>19</sup> Gunasekara J. Observed that “A mandamus will not be granted when it appears that it would be futile”. In the case of **Shamsudeen Vs Minister of Defence and External Affairs**<sup>20</sup> L. B. de Silva J too remarked that “A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served”. In the case of **Gunasinghe Vs. Mayor of Colombo**<sup>21</sup> De Kretser J. stated that “A mandamus will not be issued when it appears that it would be futile in its result”. In the case of **Eksath Engineru Saha Samanya Kamkaru Samithiya Vs. S. C. S. de Silva**<sup>22</sup> mandamus was sought to compel three respondents, the members of an Industrial Court, to function as an Industrial Court. By the time the application was heard by the Court all three members had ceased to hold office as members of the Court. The writ was refused because parties obviously cannot be ordered to do what they are not qualified to do and are therefore unable to do.

*Applying the legal principles stated in the aforesaid decisions, I hold that the mandamus will not be granted when it appears that it would be futile.”*

Justice Gihan Kulathunge in the case of **Henry Nelson Rathnayake vs Divisional Secretariat Thihagoda**<sup>23</sup> has also considered the aspect of futility and expressed the following views,

*“Since the issue of futility may determine this application, it is prudent to consider the same at the outset. A court exercising discretionary jurisdiction has the discretion to refuse relief where the Order sought is likely to be futile. This is so when the Order sought is likely to lack practical effect, have no real consequences or cannot be enforced. Courts may refuse to make such Orders. The rationale, as I see it, is judicial economy so to say and doing so may have*

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<sup>19</sup> supra

<sup>20</sup> supra

<sup>21</sup> supra

<sup>22</sup> supra

<sup>23</sup> CA/WRT/391/2021 decided on 30.07.2025

*the propensity of undermining the respect for the legal system and the administration of justice. Thus, **when a court is called upon to exercise the discretionary writ jurisdiction, it will deny and refuse such an application which evidently has no practical utility and is futile.***"

Soza J in **Siddeek v. Jacolyn Senevirathna and three others**<sup>24</sup> expressed the following views (Sharvananda CJ, Rodrigo J agreeing)

*"Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality."*

Justice Gihan Kulathunga cited the above case with approval in **DCP Kaluarachchi vs. Administrative Appeals Tribunal**.<sup>25</sup>

In **Shanthany Sirisena and another vs. Condominium Management Authority and Others**<sup>26</sup> Justice Gopallawa made the following observations.

*"Another judgment which considered the concept of futility succinctly is **Kumarasinghe v. Dayananda Dissanayake**<sup>27</sup>. J. A. N de Silva J (as he then was) held thus;*

*The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds (vide Harding Public Duties and Public Law Chapt. 3). "Mandamus" literally means "we command." It differs from writ of prohibition or certiorari inasmuch as (if granted) it will require some positive act on the part of the body or person to whom it is addressed rather than prohibiting some step (Stephen's Commentaries 20th Edition Vol. 1 Page 59)." Mandamus commands the person to whom it is addressed to perform public or quasi-public legal duty which he has refused to perform and the performance of which cannot be*

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<sup>24</sup>(1984) 1 SLR 83

<sup>25</sup> CA/WRT/750/2023 decided on 05.08.2025

<sup>26</sup> CA/WRT/126/2024 decided on 08.12.2025

<sup>27</sup> (2001) 2 SLR 252 at 256.

*enforced by any other adequate legal remedy..... where any tribunal, inferior Court or body of persons charged with the performance of a public duty do not discharge the duty, mandamus lies to compel him to do it." (Short and Mellor, Brown Practice 2nd Edition Page 197)."*

In the same case, Gopallawa J has further elaborated as follows,

*It is also a well-established principle that a Court would refuse to grant a writ of mandamus when it is futile or when it is practically impossible to perform. As cited by the Respondents, in **Mohamed Sahibu and Others v. Ariyaratne and Others**<sup>28</sup>, observed that "where there is no practical possibility of enforcing obedience to an order to perform a duty a Writ of Mandamus will generally be refused" (per Seneviratne, J, P/CA). In similar vein, the Supreme Court in **Wannigama v. Incorporated Council For Legal Education**<sup>29</sup>, citing with approval the observation of Justice Soertsz in **Mahanayake Thero Malwatta Vihare v Registrar General and Others**<sup>30</sup> has been observed as follows (per Dr. Shirani Bandaranayake, J (as she then was);*

*In **Maha Nayake Thero, Malwatte Vihare** (supra), Soertsz, J. had stated that, "... the writ may be refused not only upon the merits, but also by reason of the special circumstances of the case. The court will take a liberal view in determining whether or not the writ will issue." This position has been considered by many other authorities. For instance, in Halsbury's Laws of England (4th Edition, Vol.1, page 125, page 134), it is clearly stated that the writ of mandamus will not be issued when it appears that it is impossible of performance, by reason of the circumstances and the writ will normally be refused' if the party against whom it is prayed does not, for some other reason, possess the power to obey'.*

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<sup>28</sup> (1985) 1 SLR 146

<sup>29</sup> (2007) 2 SLR 281

<sup>30</sup> (1937) 39 NLR 186

The aforementioned **Maha Nayake Thero case** is of particular relevance since as contended by the Respondents in the instant matter, where the functioning of the Joint Venture is contingent upon RALL's discharge of its duties and obligations and in the instance where such duties and obligations cannot be performed by RALL and where RALL shows an apparent readiness to vacate the Navy armoury premises, the reliefs sought by the Petitioner cannot achieve any meaningful and legally enforceable outcome. Furthermore, it is the contention of the Respondents that any order compelling performance in these circumstances would be therefore devoid of practical utility and be futile.

Upon the consideration of all the aforementioned judicial authorities, it is translucently clear that a writ Court would not be inclined to grant prerogative writ if such order cannot be given effect to and in which situation it would lead to futility. The Petitioner has completely relied on the clauses in the JV agreement in order to justify the instant writ application. However as strenuously contended by the Respondents, the said JV is currently confined to a document only with RALL expressing the view that the directives contained in P61 should be fully complied with. This stance of RALL is evidenced by the documents marked and produced by the Petitioner.

In the aforesaid circumstances, the other crucial issue which warrants consideration is what could be categorized as a "joint venture". The Respondents have by way of an annexure to their written submissions submitted to court for consideration the Judgment in **Jetwing Zinc Journeys Lanka (Pvt) Ltd vs Commissioner General of Inland Revenue**<sup>31</sup>. In the said judgment Sampath K. B. Wijeratne J. has comprehensively dealt with the characteristics and form of a "joint venture".

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<sup>31</sup> CA/TAX/0001/2023 decided on 14.06.2024

Citing certain clauses of the “Sri Lanka Accounting Standards”<sup>32</sup> Wijeratne J has defined a joint venture in the following terms.

*“A contractual arrangement whereby two or parties undertake an economic activity that is subject to joint control”*

I wish to cite the following passages from the aforementioned judgement of Wijeratne J.

- 1. The general definition of a joint venture is that Business entity created by two or more firms through an agreement that typically includes shared governance, resources, profits, losses and expenses for a particular project. It is a strategic partnership where two or more companies develop a new entity in order to collaborate on a specific project or venture. This agreement allows each company to pool their resources expertise and capital to achieve of a common objective and share the risk and rewards.*

*Black’s Law Dictionary*<sup>33</sup> defines a term joint venture as follows; ‘A business undertaking by two or more persons engaged in a single defined project. The necessary elements are (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) share profits and losses; and (4) each member’s equal voice in controlling the project’.

*The Oxfords Advanced Learner’s Dictionary*<sup>34</sup> defines joint venture as follows; ‘A business project or activity that is begun by two or more companies, etc., which remain separate organizations.’ A corporate joint venture is established when two or more entities form a corporation. The partners become shareholders in the joint venture incorporated.

*The Appellant cited the judgment in the case of the Northern Ireland Court of Appeal Sweeney v. Lagan Development limited and others*<sup>35</sup> wherein it was

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<sup>32</sup> LKAS 31 of the Sri Lanka Accounting Standards

<sup>33</sup> B. A. Garner, Black’s Law Dictionary, Eleventh Edition, at p. 431.

<sup>34</sup> Oxford Advanced Learner’s Dictionary, Ninth Edition, at p. 846.

<sup>35</sup> 2007 [NICA] 11

observed that ‘joint ventures may take the form of a partnership, contractual alliance or a corporate joint venture.’

The Appellant also cited the following extract from the judgement of Girvan L.J. in the above case,

‘As Hewitt’s ‘Joint Venture’ 3rd Ed at para 1.11 makes clear it refers to a range of collaborative business arrangements, the fundamental characteristic of a joint venture being collaboration between the participants involving a significant degree of integration between the joint venturers. **The key element to be considered and agreed by the joint venturers is the degree and nature of that collaboration. Joint ventures may take the form of a contractual alliance, a partnership, or a corporate joint venture (...)** There are clear legal differences between running a joint venture as a company and running it as a loose contractual alliance. These include the management framework, the decision-making arrangements, the funding arrangements and the financial powers of the entity (a company, for example, having powers to raise money by way of floating charges). Clearly there will be different exist strategies and issued relating to the division of profits.’  
(Emphasis added)

There are two known types of joint ventures. One is agreeing to co-operate with another business in a limited and specific way. The two partners could agree to a contract setting out the terms and conditions how the business would work. Alternatively, a separate joint venture business, like in this instance, could be set up. The above options are alternatives to having a formal business partnership or merge the two businesses. In this instance, it is a newly incorporated company designated to manage a specific business endeavor. Each partner owns shares in the company and agreed how the company should be managed by entering into a joint venture agreement.

No further citation of authorities with regard to this aspect would be required since in the instant matter, the fact that there was a joint venture

agreement between the AGMS and RALL at the time documents marked P56 and P58 referred to previously were issued, is not in dispute.

However, what is in issue currently is as to whether the two parties to the joint venture agreement are functioning as partners of the joint venture or separately. I have previously in this order adverted to grounds which would give rise to drawing the irresistible conclusion that these two entities are not collaborating with each other but on the contrary, embarked on a confrontational course.

In the aforesaid circumstances, this Court is required to consider as to whether writ could be granted to only one party to a joint venture agreement when the other party is not collaborating.

I am of the view that upon the consideration of the clauses in the JV Agreement, in the instant matter which have been referred to elsewhere in this order, the business venture in issue could function only to the extent of effective existence of the JV agreement and active participation of RALL with regard to matters pertaining to the armouries.

In **FRIGI Engineering Services (Pvt) Ltd vs. Secretary Ministry of Food Security**<sup>36</sup>, the Supreme Court considered the status of one constituent entity of a joint venture *vis-à-vis* submission of a bid for a tender procurement.

The Supreme Court categorically held that one party to a joint venture cannot submit a bid on behalf of such a joint venture.

I wish to cite the following observations of the Supreme Court in the aforementioned case.

*“... Furthermore, it is observed that the Bid form submitted was not on behalf of the Joint Venture, but it was only on behalf of one of the partners of the*

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<sup>36</sup> S.C.[FR] No.337/2015 decided on 02.03.2018

*Joint Venture, namely M/s FRIGI Engineering (Pvt.) Ltd. Also, the Bid Form did not carry any indication to show that it is from the Joint Ventures of M/s. FRIGI Engineering and Dunham Bush Joint Venture Industries. Therefore, it is seen that there are ample reasons for not awarding the tender to the Petitioner joint venture....”*

*“In the circumstances, it is clear that with such infirmities, the Petitioner cannot **legitimately expect** that it would get the tender referred to in the advertisement marked X4, awarded in his favour.”*

*(Emphasis Added)*

From the aforesaid, the view of the Supreme Court was that a legitimate expectation cannot arise in such an instance, in particular when one party has acted alone with regard to a matter concerning the JV by filing the instant writ application without the apparent cognizance and acquiescence of the other party.

These judicial pronouncements are very relevant to the instant matter.

At this juncture, it would be pertinent to allude to the fact that the Petitioner made copious submissions with regard to legitimate expectation. In the course of submissions made on behalf of the Petitioner, repetitive references were made to the landmark judgment of Kodagoda J in **Vavuniya Solar Power vs. Ceylon Electricity Board**.<sup>37</sup>

It is the view of this Court that due to the reasons I have adverted to in this order previously, it is not necessary to consider the aspect of legitimate expectation in detail since even if there was such an expectation it would have been generated in respect of the JV and not with regard to the Petitioner Company. Even in the event of having an expectation, when the reliefs prayed for are futile, the scope and ambit of judicial discretion is

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<sup>37</sup> SCFR 172/2017 decided on 20<sup>th</sup> September 2023

limited and therefore, such expectation would neither be coherent nor be legitimate regardless.

The Respondents have cited the very same judgment in the **Vavuniya Solar Power case** in order to counter the stance of the Petitioner with regard to legitimate expectation. The attention of Court was drawn by the Respondents, to the following two paragraphs of the said case for consideration.

*“In order to successfully claim relief on the basis of a legitimate expectation that has been frustrated, the claimant must establish that the representation made by the public authority or **its past conduct generated an ‘expectation’ which is justiciable in the eyes of the law.**”*

*(Emphasis Added)*

As recognized in **Desmond Perera and Others v. Karunaratne, Commissioner of National Housing and Others**<sup>38</sup>, it was observed by the Court of Appeal that establishing that the claimant entertained a ‘hope’ or ‘reasonable hope’ was insufficient to successfully claim relief through the doctrine of legitimate expectation. I find myself in agreement with that view. **The claimant must establish that he entertained or was entitled to entertain a well-founded expectation justiciable in law.**

*(Emphasis Added)*

It is my view that upon the careful consideration of the documentation filed by the Petitioner in the instant matter, there’s no justification to the contention that Petitioner legitimately expected the armoury facilities of the Navy to be placed at the disposal of the joint venture indefinitely in contrast to a temporary arrangement.

As evinced from the series of correspondence between AGMS and RALL to which I have referred to previously, the stance of the latter seems to be that

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<sup>38</sup> [(1994) 3 Sri L.R. 316]

the JV must comply with the directives of the Secretary. Ministry of Defence and vacate all the Navy armouries. According to the Petitioner, in such an eventuality the commercial operations of the JV will have to be halted. If RALL which is a fully state-owned company were to withdraw from the JV, AGMS would not be able to act as per the clauses of the JV agreement which requires active participation of RALL in all matters pertaining to the armouries and any writ issued in favor of the Petitioner would be unenforceable and futile.

The Petitioner Company has admitted that there are over 2000 unlicensed automatic weapons stored in the Navy armouries at the disposal of the JV. Without supervision, collaboration and participation of the Ministry of Defence, Sri Lanka Navy and RALL which is under the purview of the Ministry of Defence, a private entity ought not to be entrusted with such a considerable stock of automatic weapons which would lead to serious national security implications.

The marked documents I have alluded to in this order are those tendered in WRT/1127/2025. However, since the major facts in issue in WRT/1128/2025 are identical but pertain to different petitioners, at the stage of support both these matters were consolidated and heard together. In that context, the order in the instant matter is applicable to WRT/1128/2025.

Taking into consideration the foregoing matters, I am of the view that the Petitioner has failed to establish sufficient grounds warranting the issuance of formal notices on the Respondents.

*Applications Dismissed.*

*No Costs.*

**PRESIDENT OF THE COURT OF APPEAL**

**K. P. Fernando, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**