

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application under Article 140
of the Constitution for mandates in the nature of
Writs of *Certiorari and Mandamus*.

M/s Just in Time Technologies (Pvt) Limited
4th Floor, No 370, Galle Road
Colombo 3.

PETITIONER

Court of Appeal Writ
Application No:

CA/WRT/610/2025

vs

1. Airport and Aviation Services (Sri Lanka)
(Pvt) (Ltd)
Bandaranaike International Airport,
Katunayake.
2. Air Chief Marshal (Rtd)
H. D. Abeywickrema,
Chairman,
Airport and Aviation Services (Sri Lanka)
(Pvt) (Ltd)
Bandaranaike International Airport,
Katunayake.

AND 17 OTHERS

RESPONDENTS

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

Hon. Justice K. P. Fernando

Counsel: Upul Kumarapperuma, PC with Radha Kuruwitabandara, K. H. Dilrukshi and Kosala Dissanayaka for the Petitioner instructed by Dharshika Nayomi.

Chaya Sri Nammuni, D. S. G. for the Respondents.

Supported On: 15/07/2025

Decided On: 28/08/2025

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

The facts of this case briefly are as follows,

The first Respondent, Airport and Aviation Services Sri Lanka (Pvt) (Ltd) called for tenders for the supply, installation, testing, commissioning and maintenance of Automated Border Control Gates System (*hereinafter sometimes referred to as the eGates*) at the Bandaranaike International Airport Katunayake. The contract was awarded to the Petitioner following the usual procurement process in order to complete the project. The Petitioner had business collaboration with an entity by the name of Thales DIS (Singapore) PTE Ltd. The said entity (*hereinafter sometimes refer to as Thales*) was the principal manufacturer of the goods to be supplied under the contract. The Petitioner has functioned as the local agent of Thales. The relevant bidding document for the project is marked P3.

Subsequently the two parties i.e. the first Respondent and the Petitioner entered into a contractual agreement on 8th of June 2023. The said contract agreement is marked as P7. It is apparent on the face of P7, that the contracting parties were the Petitioner and the first Respondent. No other parties were involved. As per P7, there was a specific provision with regard to the completion period (Clause 11 of P7) which reads thus,

*“Supply, installation, testing and commissioning of the automated border control gate systems shall be completed within eight (08) months (hereinafter referred to as the **completion date**” from the date of signing of this agreement.*

After sometime the project had encountered delays and finally the first Respondent has decided to terminate the contract. The notice of default dated 21st of October 2024 and letter of termination dated 21st of November 2024

were issued by the first Respondent to the Petitioner. The said documents are marked as P11 and P18 (i).

As per Clause 12 of the contract, the end user is the Department of Immigration and Emigration. The aforesaid petitioner in his writ application has prayed for *inter alia* the following;

- a. Grant a mandate in the nature of a writ of *Certiorari* quashing the decision of the first and/ or second Respondent to terminate the contract as embodied in the notice of default marked P11;
- b. Grant a mandate in the nature of writ of *Certiorari* quashing the decision of the first and/ or second Respondent to terminate the contract as embodied in the Letter of Termination marked P18(i);
- c. Grant a mandate in the nature of a writ of *Mandamus* directing the 1st , 2nd, 3rd, 5th, 6th, 7th, 8th 9th, 10th and 11th Respondents to reinstate and/or resume the operation of the agreement marked P7;
- d. Grant a mandate in the nature of a writ of *Mandamus* directing 1st to 11th Respondents to make extension to the Letter of Credit marked P15 or open a new Letter of Credit;

It should also be noted that the equipment to be installed were manufactured by Thales but these were never supplied to the first Respondent due to various issues. The Petitioner alleges that the goods which were manufactured to the specifications, as per the contract, are still with the manufacturer i.e. Thales.

The Petitioner in the interim has sought extension of the date of completion. Several such extensions were granted by the first Respondent; finally it was decided by the first Respondent to terminate the contract. The Petitioner has contended that the decision to terminate the contract is irrational, arbitrary and void in law. The Petitioner has also argued that the Petitioner was not sufficiently consulted and therefore it occasioned a transgression of the rules of natural justice.

Counsel for the Petitioner has endeavored to explain to Court the circumstances which in his view eventually resulted in the contract been terminated which according to him were beyond his control. The principal submissions of the Petitioner could be summarized as below,

- I. The first Respondent delayed in issuing the purchase order (PO) which was issued only on 10th October 2023.
- II. The delay on the part of the 12th Respondent in participating in the procedure known as “Factory Acceptance Test” (FAT) which is an

important stage of the process of the supply of the goods which is the subject matter of the instant writ application.

- III. The delay caused by the Respondent (Primarily the 12th Respondent) to procure the requisite middleware which was necessary for the installation and commissioning of the automated border control gates.

The Respondents have not specifically denied the delays which had occurred with regard to the 1st and 2nd aspects alluded to above. However, the Respondents' contention is that commensurate to the delays, the Petitioner was given extensions of time for completion of the contract as and when requested for and it was only the latest request for extension of time which was refused due to the fact that in the opinion of the 1st Respondent granting of further time was not warranted and it was apparent that the Petitioner was incapable of adhering to the terms and conditions of the contract.

The 3rd aspect i.e. the failure on the part of the Respondents to procure the necessary middleware to run the automated border control gates system warrant careful consideration.

The Counsel for Petitioner strenuously argued that the contract agreement at P7 was not only for supply and installation of the automated border control gate system but also *testing, commissioning, and maintenance* of the same. According to the Petitioner for the purpose of testing and commissioning the eGates, the availability of the middleware which was to be supplied by the 12th Respondent was required. However in the contract of agreement marked P7, there is no specific reference to middleware. In this regard the Petitioner has relied on clause 2.5 of the document titled "specification" marked P3(viii) . This is a document which pertains to the invitation for bids for the supply of the eGates. The said clause 2.5 is reproduced as follows,

"the Gates must be integrated with central DIE border control system and should not operate either on offline mode or based on a standalone border system"

The court observes that there seems to be an error in the aforementioned clause and it should be read as "Standalone border *control* system"

The Respondents have not specifically denied the non-availability of the middleware up until the contract was terminated. However, it is the view of the Respondents that the non-availability of the middleware cannot be advanced as an excuse for not fulfilling the terms of the agreement at P7. They submitted that in order to "supply" the eGates which they claim is the primary obligation of the Petitioner, such software is not required. It is the contention of the

Respondents that if at all it would only affect the operation of the said equipment. The Respondents submitted that if this was a major concern of the Petitioner they ought to have drawn the attention of the 1st Respondent to it prior to the notice of default and letter of termination.

As referred to elsewhere in this order, the Petitioner requested for and was given extensions of the date of completion of the contract. The copies of the letters of request for extensions submitted by the Petitioner to the 1st Respondent have been marked P9(i), P9(iv) and P9(vi). This Court observes that in none of these documents specific reference had been made to the non-availability of the necessary middleware as a reason for requesting for extension of date of completion of the contract. The Petitioner has merely referred to the delay in issuing the Purchase Order and delay in completing the Factory Acceptance Test as been the reasons for the request of such extensions.

If in fact the non-availability of the middleware was an important issue, the Petitioner ought to have drawn the attention of the first Respondent in order to prevent possible breaches of contract from occurring. In fact, upon the consideration of the documents marked and produced by the Petitioner, it seems that the first instance in which the Petitioner has drawn the attention of the authorities regarding the middleware and backend issue is in the document marked P10. The said document is addressed to the Secretary to the Minister of Port, Shipping and Aviation by the Petitioner dated 11th October 2024.

The Respondents in their oral and written submissions have raised two issues for the consideration of court which are given below.

- i. Delay.
- ii. The matters in contention in the instant writ application arise primarily from contractual obligations that are not amenable to review.

With regard to the aspect of delay it should be noted that in the instant writ application has been filed on the 4th of June 2025. However the notice of default and the Letter of termination have been issued by the Respondents in October and November 2024 respectively. The Petitioner has not cogently explained the delay in an acceptable manner. However, the Petitioner's argued that in cases such as **Biso Menika vs. Cyril de Alwis and Others**¹ which is a judgment of the Supreme Court, it had been held that under certain

¹ 1982 1 SLR Pg 368

circumstances that the delay on the part of the Petitioner maybe disregarded. In support of this argument, the following passage of the said judgment has been cited,

“Unlike in English Law or in our Law there is no statutory time limit within which a petition for the issue of a Writ must be filed. But a rule of practice has grown which insists upon such petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays, where denial of Writ to the Petitioner is likely to cause great injustice. The Court may therefore in its discretion entertain the application in spite of the fact that a Petitioner comes to Court late, especially where the Order challenged is a nullity for absolute want of jurisdiction in the authority making the order”

I am of the view that the aspect of *delay* would depend on the facts of each case but in general, unexplained delay would be detrimental to the Petitioner.

In **Jayaweera vs. Assistant Commissioner of Agrarian Services Ratnapura and Another**², His Lordship F. N. D. Jayasuriya expressed the following views,

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”

The Respondents strenuously advanced the proposition that the contract entered into between the Petitioner and the first respondent is purely commercial in nature and therefore not subject to review by a Superior Court, it is the view of the Respondents that in contrast to the procedure to be followed with regard to calling for bids and awarding of the contract. The matters in contention in the instant writ application primarily arising from the clauses in the document titled “Contract Agreement” marked P7 and the specifications contained in the document marked P3(viii).

The Respondents contend that in fact the said contract agreement contains specific provisions with regard to dispute resolution and governing law in clause 17. The said clause is reproduced below,

“Parties hereto shall agree to endeavor to settle all disputes arising out of this contract amicably. In the event of failure of amicable settlement, parties reserve the right to resort to litigation to a competent court of jurisdiction in Sri Lanka.

² [1996] 2 Sri L.R. Pg 70

Parties further agree that, this Contract Agreement shall be governed by the Laws of Sri Lanka”

The submissions of the Respondents is that the dispute which is the subject matter of the instance writ application arises from a commercial contract and therefore “competent court of jurisdiction in Sri Lanka as alluded to in clause 17 of the Contract Agreement is referable to the Commercial High Court and not the Court of Appeal exercising Writ Jurisdiction under Article 140 of the Constitution”

In **Jayawardena vs. The People’s Bank**³, it was held thus,

- 1) There is a distinction between public duties arising from statutes which are enforceable by mandamus and contractual duties enforceable as matters of private law by ordinary contractual remedies such as damages, injunctions, etc.
- 2) Since mandamus now belongs essentially to public law, its applicability cannot be extended to an area where relief is available under private law.

In the aforesaid judgment, it considered the following passage from Wade 10th edition at page 607,

“Within the field of public law the scope of mandamus is still wide and the Court may use it freely to prevent breach of duty and injustice: Instead of being astute to discover reasons for not applying this greater constitutional remedy for error and misgovernment we think it is our duty to be vigilant to apply it in every case to which by any reasonable construction it can be made applicable”

In the aforesaid judgment, His Lordship Justice Jayasuriya made the following observations,

*“There can never be any doubt regarding the application of the above formula. Courts will always be ready and willing to apply the constitutional remedy of mandamus in the appropriate case. The appropriate case **must necessarily be a situation where there is a public duty.**’ In the absence of public duty an intrusion by this Court by way of mandamus into an area where remedial measures are available in private law would be to redefine the availability of a prerogative writ. The words error and misgovernment referred to above must be understood in the context of a prerogative remedy. Error and misgovernment*

³ [2002] 3 Sri L.R. Page 17

must necessarily stem from public duty. As Wade observed “mandamus now belongs essentially to public law.” (607)

I also wish to cite with approval, the following passage from the same judgment which clearly draws a distinction between contractual duties enforceable under Private Law and Public duties arising from statutes,

*“It is also necessary to have in mind the distinction between public duties arising from, statutes which are enforceable by mandamus and contractual duties enforceable as matters of private law by ordinary contractual remedies such as damages injunctions, etc. “Since mandamus now belongs essentially to public law” as observed by Wade its applicability cannot be extended to an area where relief is available under private law. **Sharvananda, J. in Weligama Multipurpose Co-operative Society v. Daluwatte**⁴ at 199 observed that writ will not issue for private purpose, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunctions. They are not enforceable by mandamus which is confined to public duties and is not granted where there are other adequate remedies”*

In **J. W. De Alwis vs. V. C. de Silva**⁵ it was held that:

“A writ of mandamus could not be issued because no statutory duty of a public nature was owed by the respondent to the Petitioner to forward the aforesaid petition to their respective addresses. Moreover, mandamus was not available to the Petitioner for the reason that the duty which arose under the regulation was not owed to him but to the Crown.”

The same view was expressed by **Dr. Ranaraja J** in **Wickramasinghe vs. Ceylon Electricity Board and Another**,⁶ who held thus,

“The general rules of mandamus are that its function is to compel a public authority to do its duty. It is a command issued by a superior court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature and not merely of a private character that is to say for the enforcement of a private right stemming from contract of the parties”

⁴ (1984) 1 Sri LR 195

⁵ (1967) 71 NLR 108

⁶ (1997) 2 SLR 377

It would also be pertinent to consider the observation of **Sharvananda, J. in Ratnayake and Others v. C. D. Perera and Others**⁷,

“ . . . today the chief function of the writ is to compel the performance of public duties prescribed by statute though it lies as well for the enforcement of a common law public duty.”

The ratio of the aforementioned judgments is to the effect that the Court does not issue a writ of mandamus in a case in which the right which the Petitioner wants to enforce is based on a contract. Contractual duties are enforceable as a matter of private law by ordinary contractual remedies such as damages, injunction and specific performance. Duties enforceable by mandamus are those imposed by law.

In the instant matter, the Petitioner has also prayed for a writ of mandamus. Furthermore it is my view that the observations of court in the judicial authorities cited elsewhere in this order, though pertaining to writ of mandamus, are equally applicable to writ of certiorari in situations where the decision of a state body to be quashed amounts to breach of contract and as such not amenable to judicial review in writ applications.

Wade and Forsyth, in their book “*ADMINISTRATIVE LAW*” 10th edition has expressed the opinion that contractual obligation are not enforceable by judicial review unless the question is whether the contracting authority has exceeded its powers.

In the aforesaid circumstances, I am of the view that the Petitioner has failed to establish a prima facie case for the issuance of notices on the Respondents.

Notice Refused.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL

⁷ (1982) 2 Sri LR 451