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

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Super Neat Technology (Private) Limited,
No. 478, Kandy Road,
Kelaniya.

**PETITIONER**

**C.A. Case No. WRT/0273/19**

**Vs.**

1. Hon. P. Harrison,
   Minister of Agriculture, Rural Economic Affairs, Livestock Development, Irrigation and Fisheries and Aquatic Resources Development,
   No. 288,
   Sri Jayawardenapura Mawatha,
   Rajagiriya.

1A. Hon. Chamal Rajapakse,
   Minister of Mahaweli, Agriculture, Irrigation and Rural Development,
   No. 288,
   Sri Jayawardenapura Mawatha,
   Rajagiriya.

1B. Hon. K.D. Lalkantha,
Minister of Agriculture, Livestock, Land and Irrigation,
Ministry of Agriculture, Livestock, Land and Irrigation,
80/5, "Govijana Mandiraya",
Rajamalwatta Lane, Battaramulla.

2. K.D.S. Ruwanchandra,
Secretary to the Ministry of Agriculture, Rural Economic Affairs, Livestock Development, Irrigation and Fisheries and Aquatic Resources Development,
No. 288,
Sri Jayawardenapura Mawatha,
Rajagiriya.

2A. Neil Bandara Hapuhinna,
Secretary to the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development,
85/5, Govijana Mandiraya,
1st Floor, Rajamalwatta Lane,
Battaramulla.

2B. K.W. Ivan De Silva,
Secretary to the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development,
58/5, Govijana Mandiraya,
1st Floor, Rajamalwatta Lane,
Battaramulla.

2C.D.P. Wickremasinghe,
Secretary to the Ministry of Agriculture,
Livestock, Land and Irrigation,
80/5, “Govijana Mandiraya”,
Rajamalwatta Lane, Battaramulla.

3. Milco (Private) Limited,
No. 45, Nawala Road,
Narahenpita, Colombo 05.

4. Keerthi Mihiripenna,
Chairman,
Milco (Private) Limited,
No. 45, Nawala Road,
Narahenpita, Colombo 05.

4A.Lasantha Biyanka Wickramasinghe
Chairman,
Milco (Private) Limited,
No. 45, Nawala Road,
Narahenpita, Colombo 05.

4B.Renuka Dushyantha Perera,
Chairman,
Milco (Private) Limited,
No. 45, Nawala Road,
Narahenpita, Colombo 05.

4C.G.V.H. Gotabhaya,
Chairman,
Milco (Private) Limited,
No. 45, Nawala Road,
Narahenpita, Colombo 05.

5. P. Thirukeswaran,
   Manager Purchasing,
   Milco (Private) Limited,
   No. 45, Nawala Road,
   Narahenpita, Colombo 05.

6. Central Engineering Consultancy Bureau,
   No. 415,
   Bauddhaloka Mawatha,
   Colombo 07.

**RESPONDENTS**

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

**COUNSEL :** Sanjeewa Jayawardena, P.C., with Farman Cassim, P.C., with Charaka Jayaratne, instructed by D. Priyadarshani, for the Petitioner.

Uditha Egalahewa, P.C., with Miyuru Egalahewa, instructed by B. K. U. B. Rodrigo, for the 3rd – 5th Respondent.

Pulina Jayasuriya, S.C., for the 1st, 2nd, 6th, 7th, and 8th Respondents.

**ARGUED ON** : 03.07.2025

**WRITTEN SUBMISSIONS ON :** 07.08.2025 and 14.08.2025

**DECIDED ON** : 18.11.2025

**JUDGEMENT**

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

1. The petitioner, by this application is, *inter alia*, seeking the following substantive relief:

    a. *a mandate in the nature of writ of certiorari quashing the purported decision contained in the said letter marked "P-27", whereby the petitioner was informed that the Board of Directors of the 3rd Respondent has decided to suspend the tender awarded to the petitioner;*

    b. *a mandate in the nature of writ of prohibition, preventing any one or more of the 1st to 5th respondents and/or their servants and agents from cancelling and/or revoking and/or from preventing and/or obstructing the petitioner's right to duly perform the conditions stipulated in the Agreement marked P-8, the Letter of Award marked P-6 and the bidding document marked P-4;*

    c. *a mandate in the nature of writ of mandamus, directing the 1st to 5th respondents and/or any one or more of them to duly forthwith execute the terms agreed in the agreement marked P-8. The Letter of Award marked P-6 and the bidding document marked P-4 and to duly and forthwith make the stipulated 50% advance that has been outstanding for such a long time to the 3rd respondent; and*

    d. *a mandate in the nature of a writ of prohibition, restraining the 3rd respondent and its agents and/or servants from granting or awarding the said tender to another bidder and/or any third party, and restraining the 3rd respondent and its agent and/or servants from calling for a fresh tender for the supply of the UPS items forming the subject matter of this application;*

## Background.

2. The petitioner, Super Neat Technology (Private) Limited, is a limited liability company duly incorporated under the Companies Act No. 7 of 2007. The 1st respondent and 2nd respondent are the Minister and Secretary to the Minister of the line ministry, the Ministry of Agriculture, Rural Economic Affairs, Livestock Development, Irrigation and Fisheries and Aquatic Resources Development, respectively, under whose authority the 3rd respondent company functions. The 3rd respondent is a fully State Owned Enterprise duly incorporated under

the Companies Act No. 7 of 2007, of which the 4th respondent is the Chairman and the 5th respondent is the Purchasing Manager.

3. The 3rd respondent called for bids for the *"Supply and Installation of an Uninterruptible Power Supply (UPS) system for the Spray Dried Milk Factory of Milco (Pvt) Ltd at Ambewela"* (*vide* P-2). The petitioner, being the successful bidder, was issued with the Letter of Award, dated 27.11.2018, by the 3rd respondent on the following terms and conditions:
    a. the total tender value was Rs. 94,906,281.25 inclusive of applicable taxes;
    b. the applicable taxes comprising 2% NBT and 15% VAT;
    c. the requirement for the petitioner to immediately submit a performance bond equal to 5% of the total inclusive tender price, with a validity period of 150 days, commencing from the date of execution of the agreement;
    d. immediate commencement of the contracted work; and
    e. payment terms and conditions regarding completion of the contracted work in strict conformity with the tender stipulations.

4. The petitioner in compliance thereof provided the required performance bond on 06.12.2018. Then, the petitioner entered into the agreement dated 12.12.2018 (P-8), which was signed by the General Manager on behalf of the 3rd respondent company. The petitioner company then proceeded to perform the contract. As it was so proceeding, the petitioner was informed by letter dated 04.04.2019 (P-27) that the tender awarded was suspended, pending an investigation by the line ministry. The petitioner, being aggrieved by this decision, preferred this application on 25.06.2019.

5. The basis and reasons for the said suspension, according to the 3rd respondent, is that the aforementioned General Manager executed the said agreement P-8 without board approval, thus *ultra vires* his

conferred authority. Then also, specifying and providing for a 50% advance payment in the said contract is not legally permissible, as it contravenes the legally prescribed maximum allowable advance payment of 20%. It is the position of the 3rd respondent that the said *ultra vires* and fraudulent nature of the agreement remained unknown and was discovered subsequently.

6. The 3rd respondent claims that upon considering the tender awarded to the petitioner, it was found that further investigations into the agreement and certain non-compliances were required to be conducted by the 3rd respondent as well as the line ministry (the 1st and 2nd respondents). As such, the awarded tender had been suspended by P-27 dated 04.04.2019. These matters have then been so deliberated at the board meeting held on 07.06.2019, and the 3rd respondent claims to have found the following non-compliances and deficiencies, which the TEC is alleged to have not observed:
    a. failure by the petitioner company to provide a valid board resolution;
    b. omission of comprehensive manufacturer warranties from both the UPS manufacturer (Socomec) and battery manufacturer (Hoppecke);
    c. non-fulfilment by the petitioner of essential qualifying criteria regarding prior work experience;
    d. non-compliance by the petitioner in providing requisite documented experience from the UPS and battery manufacturers, as specifically mandated under clauses 2.2.1 and 2.2.2 of the tender documents;
    e. lack of documentation evidencing the provision of after-sales service and maintenance by the petitioner;
    f. failure to submit documentation verifying the adequacy of stocks and spare parts as explicitly required under clause 2.2.3 of the tender documents; and

g. non-submission of a power of Attorney from the local agent, authenticating the petitioner's accreditation by both the UPS and battery manufacturers.

Accordingly, the 3rd respondent's assertion is that the aforesaid lack of authority and the deficiencies are the reasons to justify the suspension made by P-27.

**Suspension.**

7. It is common ground that the tender awarded was suspended by letter P-27. The said suspension is alleged to have been so made in view of a decision taken by the Board of Directors of the 3rd respondent company on 03.04.2019. This is purportedly on the basis of a pending investigation as claimed. The complaint of the petitioner is that the said letter P-27 was issued 128 days after the issuance of the Letter of Award and 113 days after the formal execution of the agreement P-8. The petitioner submits that upon the Letter of Award being issued, the petitioner company has made necessary arrangements and commenced the process to ensure the timely delivery of the UPS units and batteries as per the tender awarded. As per the agreement, the period of completion was 150 days, and the petitioner alleges that the suspension made after 128 days upon the commencement of the awarding of the tender has caused serious prejudice to the petitioner as the UPS and the batteries have, by then, been manufactured in accordance with the unique specifications as required by the 3rd respondent company. On the other hand, the petitioner also complains that there was no intimation or opportunity granted to the petitioner to be heard prior to the suspension of the award by the 3rd respondent. Accordingly, the petitioner alleges that the said decision P-27 is arbitrary, unreasonable, irrational and violates the legitimate expectation of the petitioner company.

8. The next complaint of the petitioner is that the said decision is *mala fide*, as the Board Minutes of 03.04.2019 were not made available nor provided with the statement of objections. The petitioner's challenge of P-27 is on the basis that it was mala fide and for an extraneous consideration. Broadly, the grounds advanced by the 3rd respondent to justify the decision to suspend are firstly, the lack of authority of the General Manager, and then, the other alleged deficiencies and non-compliances. I will now proceed to consider the veracity of these allegations and submissions.

9. Since the decision to suspend was taken at the said Board Meeting on 03.04.2019, the production of the said minutes is of primary importance to establish and justify the said decision. The said minutes have not been made available to the petitioner, nor produced with the objections. The only document that was tendered along with the objections is 3R-10, the minutes of the Board Meeting held on 07.06.2019. At the said Board Meeting, the Board has purported to rectify certain omissions and make some additions to the Board Minutes of 03.04.2019. Therefore, it is apparent that there had been certain alterations and significant additions made to the original minute of 03.04.2019. What is significant is that these alterations and amendments have been made several months after the suspension. The said additions and alterations are in respect of and in the nature of providing *ex post facto* justifications for the suspension.

10. The fact of the existence of two sets of Board Minutes of the Board Meeting held on 03.04.2019 in fact came to light through an audit report. The said Audit Report dated 31.07.2019 was marked and produced by the petitioner as X-2, along with the counter-affidavit. According to X-2, it has clearly and explicitly, in the form of a Schedule, highlighted the differences between the two versions of the Board Minutes. According to the Internal Audit Division of the Ministry, one of the said minutes had been forwarded to the Secretary of the relevant

Ministry, and the other submitted to the auditors for the purposes of auditing. It appears that the Internal Audit Division of the Ministry had obtained these two during the audit.

The said differences as observed are as follows:

| | අමාත්‍යාංශ ලේකම්වරයා වෙත යොමු කර තිබූ අංක 01 - 04/2019 හා 2019.04.03 දිනැති අධ්‍යක්ෂක මණ්ඩල පත්‍රිකාව | විගණනය වෙත ඉදිරිපත් කරන ලද අංක 01-04/2019 හා 2019.04.03 දිනැති අධ්‍යක්ෂ මණ්ඩල පත්‍රිකාව |
|---|---|---|
| 01 | "Ms Biyanka Gamage stated that company should send a letter Attorney General stating that tender is suspended and seeks legal advice from them." | "Ms Biyanka Gamage proposed to obtain an opinion from the Attorney General stating that the tender Should be suspended. **She further stated that as per the Treasury Guidelines, payment of advances can be made only up to 25% Therefore the General Manager has no power to agree an paying 50% advance."** |
| 02 | "Deputy Chairman, Mr Fazal mentioned to call for explanations from TEC members how they pass this tender without seeing all above flows *[sic] flaws*." | **"The Deputy Chairman, Mr Fazal instructed to call for explanations from TEC members as to how they approved the tender without observing all above faults. Further he stated that he had several discussions with CECB on this matter and observed several defects as follows.**<br><br>**1. There was no Agreement between the principal the local Agent**<br>**2. There was no request from the General Manager on such requirement of UPS**<br>**3. Without any decision from the management, the matter was Submitted to the TEC and proceeded**<br>**4. The General Manager had signed the Agreement without proper Board approval.** |

| | | |
|---|---|---|
| | | **5. There was no proper legal document on the appointment**<br>**6. Option of UPS Battery manufacture should be given in the guide line. TEC has not taken in to consideration on these matters.**<br>**7. There should be an authorized person. It is not necessary to go to the manufacturer."** |
| 03 | | **"It was further informed that the 2nd highest bidder has lodged a complaint in the Bribery Commission"** |
| 04 | | **"When inquiring the status of the Tender it was informed that the Tender has been already awarded and however no payment was released yet."** |

11. The Internal Audit Division of the Ministry has made the following observations:

> "ඉහත වගුව අනුව රේඛීය අමාත්‍යාංශ ලේකම්වරයා වෙත ඉදිරිපත් කරන ලද අංක 01-04/2019 හා 2019.04.03 දිනැති අධ්‍යක්ෂ මණ්ඩල පත්‍රිකාවේ සඳහන් නොවන කරුණු 04 ක් පසුව එම අධ්‍යක්ෂ මණ්ඩල පත්‍රිකාවට ඇතුළත් කර ඇති බවත් ඒ අනුව මිල්කෝ ආයතනයේ සභාපතිවරයාගේ 2019.04.09 දිනැති ලිපිය මගින් රේඛීය අමාත්‍යාංශ ලේකම්වරයා නියමිත පරිදි දැනුවත් කර නොමැති බවත් මෙය කරුණු වසන් කිරීමක් හෝ නොමග යැවීමක් විය හැකි බවත් විගණනයේ අදහස වේ."

According to which, the Internal Audit Division of the Ministry has observed the view that certain fresh material has been inserted into the minutes forwarded to the auditors, which, in their view, would be misleading.

12. I will now consider the effect and import of such interpolations and alterations. The subsequent addition and reference made to the advance payment not being in accordance with the guidelines is significant. If the said basis was in fact one of the primary concerns of the suspension, surely, one would expect that to be so mentioned in the

original minutes. It was not so. Then, 7 defects of the Tender Evaluation Committee ("TEC") decision has been subsequently itemised. No doubt, originally there is a reference impeaching the findings of the TEC; however, no mention is made of any specific defect. Then, an addition is made of a complaint being lodged by another unsuccessful bidder to the Bribery Commission. These are all matters which, if they were the primary considerations in making the decision, ought to have been discussed and so stated and included in the minutes of 03.04.2019. In this context, the observation of the Internal Audit Division of the Ministry that these have been subsequently interpolated stands to reason. As I observe, this subsequent interpolation, when considered in conjunction with the sequence of events, the suspension towards the end of the performance period savours of an attempt to determine or disrupt this Award of the tender and to cancel the same for some extraneous reason or consideration.

13. As borne out by P-27, the suspension was made in view of or to facilitate an inquiry by the line ministry. If that be so, the Secretary of the relevant Ministry should necessarily have been informed of the said non-compliances and irregularities. The minutes sent to the Minister do not contain the same. That being so, the 1st and the 2nd respondents, being the relevant Minister and the Secretary, did not file objections but informed this Court by motion dated 02.09.2025 that the 1st, 2nd, and 6th respondents do not object to P-8, P-6, and P-4 being given effect. These are the award, the bidding document, and the agreement pertaining to this tender. This intimation, once again, when considered in context and the totality of the material placed before this Court, leads to the inference that the suspension made by P-27 is *mala fide,* and material to support the same has been subsequently collated or assimilated, and is an afterthought, so to say.

14. The 3rd respondent makes out that the suspension is in view of an investigation by the line ministry. However, almost 6 years hence, the

3rd respondent has failed to inform this Court of the progress or the outcome of the investigation by the line ministry. That being so, the 1st and the 2nd respondents, the Minister and the Secretary of the line ministry, have, by motion dated 02.09.2025, with notice to the 3rd respondent, informed this Court as follows:

> *"AND WHEREAS, the documents marked as "P27" sought to be quashed at prayer (b) of the Petition is a letter communicating a decision taken by the Board of Directors of the 3rd Respondent.*
>
> *AND WHEREAS, the relief sought at paragraphs (c) and (d) of the Petition are in respect of the agreement between the Petitioner and the 3rd Respondent marked as "P8" and the letter of Award and Bidding document issued by the 3rd Respondent marked respectively as "P6" and "P4."*
>
> *AND WHEREAS, the relief sought at paragraph (e), (f), and (g) of the Petition are sought against the 3rd Respondent.*
>
> *AND WHEREAS, 1st, 2nd and 6th Respondents do not object to the terms of the Agreement between the Petitioner and the 3rd Respondent marked as "P8" and the letter of award marked "P6" and bidding document marked "P4" issued by the 3rd Respondent being given effect to."*

This Court specifically brought this to the notice of the parties and afforded time to respond or state their respective positions. The 3rd respondent stated nothing.

15. Accordingly, the 1st, 2nd, and the 6th respondents have clearly and unambiguously intimated and informed this Court that the said respondents have no objection to the agreement between the petitioner and the 3rd respondent, marked P-8, as awarded by letter P-6, in accordance with the bidding document P-4 being given effect to.

16. Accordingly, the resulting position is that the said respondents have no objection to the quashing of P-27 as prayed for. The 3rd respondent's legal basis for the suspension is, firstly, that the General Manager has executed and entered into the agreement P-8 without the sanction or

authorisation of the Board of Directors, and secondly, that the payment of a 50% advance is contrary to the procurement guidelines. The 3rd respondent has awarded the tender and instructed the petitioner company to proceed with the same (*vide* the Letter of Award). It is thereafter that the agreement was signed with the petitioner on 12.12.2018. The General Manager of Milco (Pvt) Ltd has signed this contract on behalf of Milco (Pvt) Ltd. It is also relevant to note that the Legal Officer of the 3rd respondent, Milco (Pvt) Ltd, is one of the witnesses to the execution of P-8. Having entered into the said agreement, the 3rd respondent permitted the petitioner to perform a great part of its obligation for the supply of the UPS as tendered for. Then, in April 2019, the 3rd respondent suddenly appears to have realised that Board authorisation had not been granted to the General Manager to sign the said agreement as done. The authorisation by the Board is an internal matter of the 3rd respondent company. Upon so holding out, and the General Manager executing the agreement P-8 considered in the circumstances of the present application, the 3rd respondent cannot now deny the authorisation and the authority of the General Manager to so act.

17. In this context, the 3rd respondent attempts to deny any knowledge of the execution of P-8 as well as its contents, especially the inclusion of a 50% advance payment. On a perusal of the pleadings, it is apparent that the petitioner company has, in fact, submitted an advance payment guarantee (*vide* P-18). This is specifically issued in view of the agreed advance payment on P-8. The said bond covers 50% of the contract price. Apart from that, I also observe that the General Manager – Projects and Operations of the 3rd respondent company has also issued a letter, dated 24.01.2019, referring to the agreement between the parties. The physical work had in fact progressed, and certain modifications of civil work had also commenced. In these circumstances, it is apparent that the 3rd respondent had certainly been aware and had notice as to the execution and the existence of the

agreement P-8. In these circumstances, it necessarily has to be so, and that is the only inference. There is no intimation of any specific action taken against the General Manager if he had acted without the necessary authorisation. Thus, it is apparent that he at least had ostensible authorisation to so enter into P-8. In these circumstances, it is apparent that the 3rd respondent is now attempting to take advantage of a technical absence of a board resolution to justify the unreasonable and *mala fide* suspension of the awarding of the tender to the petitioner.

18. Then, several months after the said signing of agreement P-8, the 3rd respondent cannot be heard to take up the position that the General Manager acted *ultra vires* his authority. Even if it be so, the initial approval of the award, acceptance of the advance payment guarantee, and the failure to advert to the lack of authority in the first minute show that the 3rd respondent was aware and had tacitly approved the signing of the contract. This is buttressed, as no intimation is made of any positive action was taken against the said General Manager up until today. In this regard, the mere absence of a board resolution, if at all, is an oversight or error or wrong on the part of the 3rd respondent. I consider it pertinent to advert to the long-standing principle that no party may be permitted to take advantage of its own wrongdoing (*commodum ex injuria sua nemo habere debet*). In ***Tennekoon vs. Somawathie Perera*** (1986) 1 Sri L.R. 90, Sharvananda C.J. cited with approval the dictum of Fletcher Moulton L.J. in ***Kish vs. Taylor*** (1911) 1 K.B. 625 at 634, reproducing Maxwell on Interpretation of Statutes (12th Ed., p. 212):

> *"A man may not take advantage of his own wrong. He may not plead in his own interest a self-created necessity."*

19. This principle has also been recognised in Sri Lankan jurisprudence. His Lordship Sisira de Abrew, J., in ***Wickrema Pathiranage Mahesh Ruwan Pathirana vs. Ginthota Sarukkale Vitharange Hemalatha***

***Piyathilaka Ginthota*** (SC Appeal 218/2014, SC Minutes 15.02.2017), reaffirmed that:

> *"It is an accepted principle in law that the wrongdoer is not permitted to take advantage of his own wrongful acts. This principle is applicable to a case of breach of contract."*

His Lordship further reiterated this principle in ***D. B. D. Rajapakshe vs. Y. Abdul Majeed, Director General of Irrigation and Others*** (SC FR 418/2015, decided on 12.02.2021), holding that *"It is an accepted principle in law that no man is permitted to take advantage of his own mistake,"* citing with approval Sansoni, J.'s statement in ***Kanapathipillai vs. Meerasaibo*** 58 NLR 41, that "*no man is allowed to take advantage of his wrong.*" These authorities collectively underscore that a party cannot rely on its own internal lapse, omission, or wrongful conduct to invalidate or escape from a contractual or legal obligation it has deliberately undertaken. To permit the 3rd respondent company to now disown its own contract on such a basis would be to allow it to "profit from its own wrong", a proposition the law categorically rejects.

20. It is also submitted on behalf of the 3rd respondent that the irregularities in P-8 warranted an investigation and a comprehensive evaluation by the 3rd respondent and the line ministry. As observed hereinabove, there is no intimation of any meaningful inquiry or investigation so conducted either by the 3rd respondent or the line ministry up until today. On the contrary, the line ministry has now categorically informed this Court that they have no objection to the agreement and the awarded tender proceedings in its present form as signed. The 3rd respondent being afforded an opportunity by this Court on 11.11.2025, did not respond to the same either. That being so, the discrepancies apparent on the purported minutes of the Board meeting held on 03.04.2019 now becomes extremely relevant and significant. It appears that the 3rd respondent has, for some extraneous reason, embarked upon a course of action to suddenly terminate and suspend

the award of the tender granted to the petitioner. The observations in the audit report are damning and remain unexplained, especially as to why and how two sets of minutes different from each other came into existence, and also as to why the advance payment guarantee was accepted.

21. The sum total is that several matters not referred to or contained in the original Board Minutes forwarded to the Secretary of the line ministry has subsequently been incorporated and surreptitiously inserted to the board paper at a subsequent point of time. This clearly establishes extreme *mala fides* and acting for some extraneous reason in order to maliciously suspend and terminate the awarded tender to the petitioner. In this backdrop, the position taken up that the General Manager had no authority appears to be an *ex post facto* and cunning ground created in order to invalidate the same.

22. It is a fact that the 3rd respondent, acting on the recommendation of the Procurement Committee decision dated 13.11.2018, awarded the tender. This decision has certainly been approved by the 3rd respondent company. The letter of award P-6 thus has been issued with the approval of the Board of the 3rd respondent company. In these circumstances, it is implicit that the decision and award should necessarily be followed by a formal agreement. Entering into the formal agreement is part and parcel and a necessary consequence of awarding the tender. The board approval is thus, if at all, a technical requirement. In this backdrop, the 3rd respondent cannot be heard to take advantage of an internal matter of this nature to suspend or invalidate the agreement P-8.

**Is the decision to suspend amenable to writ?**

23. Of course, a writ will not issue for a private purpose, so to say, for the enforcement of a mere private duty arising out of a contract or otherwise. Contractual duties require to be enforced and enforceable by ordinary civil remedies, such as damages, specific performance, or injunctions.

They are not amenable to or enforceable by *mandamus* which is confined to public duties and not granted where there are other adequate remedies. The above principle was reiterated in ***Perera vs. Municipal Council of Colombo*** 48 NLR 66. I am mindful that the said principle, by and large, stands good even as at today. The *mandamus* sought in this case by prayers *(c)* and *(d)* are against the 1st - 5th respondents, directing them to award the tender and duly enforce the agreement marked P-8 and the letter of award marked P-6, read with the bidding document P-4.

24. That being so, it was argued on behalf of the 3rd respondent that a writ of *mandamus*, being an equitable and discretionary remedy, is not available unless a clear legal right to the relief claimed and a corresponding public duty on the part of the respondents are established. In short, his submission is that the petitioner has no right in public law to obtain a writ of *mandamus*.

25. Of course, the 3rd respondent company, Milco (Pvt) Ltd, is a company established under the Companies Act. However, the 3rd respondent company is subject to the jurisdiction of the Internal Audit Division of the Ministry, required to follow the procurement guidelines, and subject to the directives of the relevant line ministry. It is in this context that the 3rd respondent company caused this matter to be forwarded to the relevant Minister for an inquiry and awaited the outcome (*vide* P-27). It is also common ground that the 3rd respondent is 100% State-owned and is subject to the direct supervision of the Minister of the line ministry. It is also common ground that the 3rd respondent company, is an institution gazetted to come within the said Ministry, and an institution under such Ministry. In these circumstances, the 3rd respondent company is subject to and also required to follow the instructions of the relevant line minister as to the awarding and continuing with the awarded tender and the agreement. On the face of letter P-27, the 3rd respondent concedes the position that this matter

requires to and be considered by the relevant line minister. It is implicit that the line minister accordingly is empowered to investigate or look into the same and make the necessary orders or give instructions to the 3rd respondent. Therefore, to that extent, it is conceded that the relevant line minister is empowered and required to instruct and direct the 3rd respondent as to the acceptance, proceeding with the award of the tender, and matters connected therewith. The awarding of the tender is an administrative decision in this context.

26. In the above circumstances and premises, primarily, the awarding of the tender, in that context, is amenable to writ. In the current context, it is the said awarding of the tender that was purported to be suspended. It is not the violation of a condition of the contract or *per se* enforcement of a contract. To that extent, the impugned suspension is amenable to writ. Consequently thereto, with the quashing of P-27, it is apparent that the line minister's directive is also required. To that extent, a writ of *mandamus* may issue to the 1st, 2nd, and 3rd respondents in the present application. In the decision of ***Captain Channa D. L. Abeygunewardena vs. Sri Lanka Ports Authority*** (SC/FR Application No. 57/2016, decided on 20.01.2017), Prasanna Jayawardena, P.C., J., held as follows:

> *"In the recent decision of* ***WIJEWARDHANA vs. KURUNEGALA PLANTATIONS LTD*** *[SC/FR 24/2013 decided on 03.09.2014], it was not disputed by the parties and accepted by the Court that, a duly incorporated limited liability Company which was subject to ministerial control, was to be regarded as being an agency or instrumentality of the State. Drawing from the aforesaid decisions of this Court and Indian decisions, some of the identifying characteristics which show a corporate body to be an agency or instrumentality of the State, may be collated as follows:*
>
> ***i. The State, either directly or indirectly, having ownership of the corporate body or a substantial stake in the ownership of the corporate body;***
>
> *ii. The corporate body performing functions of public importance which are closely related to Governmental functions;*

iii. *The corporate body having taken over the functions of a Department of the State;*

***iv. The State having deep and pervasive control of the corporate body;***

***v. The State having the power to appoint Directors and Officers of the corporate body;***

vi. *The State providing a substantial amount of financial assistance to the corporate body;*

***vii. The corporate body transferring its profits to the State;***

viii. *The State deriving benefits from the operation of the corporate body;*

ix. *The State providing benefits, concessions or assistance to the corporate body which are usually granted to organs of the State ;*

***x. The Accounts of the corporate body being subject to audit by the Auditor General or having to be submitted to the State or an official of the State;***

xi. *The State having conferred a monopoly or near monopoly in its field of business to the corporate body or the State protecting such a monopoly or near monopoly;*

xii. *Officers of the corporate body enjoying immunity from suit for acts done in their official capacity.*

*It should be added that, as pointed out in* ***RAJASTHAN STATE ELECTRICITY BOARD vs. MOHAN LAL*** *[AIR 1967 SC 1857], "the conferring of power on a corporate body to make rules, regulations or directions with the power to enforce them, is strong evidence that, the corporate body exercises an aspect of 'sovereign power' and is, accordingly, an organ of the State."* [emphasis added].

27. The 3rd respondent company have several of the characteristics referred to above. They are, (i), (iv), (v), (vii), and (x). To that extent, the 3rd respondent company is amenable to the writ jurisdiction of this Court, so far as it relates to and in respect of the matters and decisions pertaining to the award of the tender. However, no writ will lie to remedy any breach of contract or to enforce any other contractual duty, for which the parties will have to resort to the ordinary civil remedies, such as damages, specific performance, or injunctions. The suspension of the awarding of the tender and entering into the contract upon the

award of such tender is certainly of an administrative nature and is amenable to the writ jurisdiction of this Court, including *mandamus*.

28. Whilst the Minister can be directed by a *mandamus,* as the 3rd respondent is required to give effect to and implement the award of the contract, to my mind, the 3rd respondent too is amenable to a writ as a necessary and consequential remedy. Merely quashing an illegal decision may not suffice in this instance, especially where the order or decision quashed is patently malicious and *mala fide*. Upon so quashing such decision, it may be necessary to issue a *mandamus* to ensure that the quashing by the *certiorari* is effective and meaningful and not rendered nugatory. To my mind, this may be a reason and also a rationale for the recognition of '***certiorarified mandamus***'. In Wade and Forsyth's 'Administrative Law' (11th Ed., at page 527), the prospect of a certiorarified *mandamus* is explained as follows:

> *"Defective decisions are frequently quashed by a quashing order without any accompanying mandatory order. Once the decision has thus been annulled, the deciding authority will recognise that it must begin again and in practice there will be no need for a mandatory order. If on the other hand a mandatory order is granted without a quashing order, the necessary implication is that the defective decision is a nullity, for it is only on this assumption that a mandatory order can operate. A simple mandatory order therefore does the work of a quashing order automatically."*

Justice A. H. M. D. Nawaz in ***Dr. Lokuge vs Dr. Dayasiri Fernando and Others*** (CA Writ Application 160/2013, decided on 16.10.2015), considering the decision of Vythialingam, J., in ***Rasammah vs. Manamperi*** 77 NLR 313, opined as follows:

> *"I must observe that the question of issuing a certiorarified mandamus was not raised by the Petitioner but the Court deems it appropriate to discuss this relief as it has become a universal phenomenon in administrative justice. In fact mandamus has done the work of certiorari in many a jurisdiction and many moons ago our courts have been cognizant of this remedy in the past rather than being dismissive of it. When mandamus is issued to quash an invalid exercise of power whilst the same writ at the same time*

*commands the statutory functionary to retake the decision in accordance with law, it has been classified as certiorarified mandamus. The question before this Court is whether this Court can grant such a certiorarified mandamus on the facts and circumstances of this case."*

29. In the current context, the 1st and the 2nd respondents *qua* Minister and Secretary of the line ministry are amenable to the *mandamus*, to the extent of directing the acceptance of the tender and giving effect to the agreement. However, it is the 3rd respondent who will be required upon such directive or instruction by the Minister to implement and give effect accordingly. In these circumstances, I am of the view that the 3rd respondent, in this context, is amenable to a writ of *mandamus*.

30. Independent to the aforesaid basis of amenability to *mandamus*, considering the nature of the 3rd respondent being a 100% State Owned Enterprise, subject to audit by an authority of the State or a State official, a gazetted institution under the Ministry, and subject to the directives of such Minister, the 3rd petitioner is also *per se* amenable to a writ of *mandamus* in the context of this application, so far as it is in respect of the administrative decision of awarding the tender and matters connected therewith.

31. Now it is necessary to consider whether the relief sought is an attempt to enforce a purely contractual obligation, which ordinarily would not attract the discretionary writ jurisdiction of this Court. The impugned suspension was not an act arising from a private commercial dispute but from the exercise of power by a public authority in respect of awarding a tender subject to the procurement framework, governed by procurement guidelines, and subject to ministerial supervision. Admittedly, the said impugned decision is subject to a pending inquiry by the line ministry. The character of this decision is, therefore, indelibly public, and administrative in nature. What this Court is called

upon to review is the legality of a decision to suspend and award of the tender, and not the enforcement of an agreement or contract *per se*.

32. When such decision to suspend is found to be illegal and is quashed, the logical and necessary consequence in public law is that the authority must give effect to the tender so awarded, unless there exists some lawful ground to the contrary. Merely quashing the suspension and leaving it there would render the relief nugatory if the 3rd respondent does not proceed with the tender as awarded. To avoid such futility, it now becomes necessary to compel the continuation of the awarded project, which is a public duty that flows from the award of the tender. In this context, the issuance of a *mandamus* against the 3rd respondent is lawful, justified, and necessary.

33. In these circumstances, I hold that the petitioner has satisfied this Court that the petitioner is entitled to the relief as prayed for by prayers *(b)* and *(d)*. Accordingly, the said writs prayed for are granted as follows:

a. a writ of *certiorari*, prayed for by prayer *(b),* is hereby granted, quashing the decision to suspend the tender awarded to the petitioner by the 3rd respondent contained in the said letter marked P-27;
b. a writ of *mandamus,* prayed for by prayer *(d)*, is hereby granted directing the 1st and 2nd respondents to direct the 3rd and 4th respondents to duly and forthwith proceed with the agreement marked P-8 and the Letter of Award marked P-6, as awarded on the bidding document marked P-4; and
c. a writ of *mandamus* is also hereby granted directing the 3rd and 4th respondents to duly and forthwith proceed with the agreement marked P-8 and the Letter of Award marked P-6, as awarded on the bidding document marked P-4.

34. This application is accordingly allowed to that extent, subject to costs as follows. In determining costs, I have considered the extreme malicious nature of the conduct of the 3rd respondent in suspending the awarded tender. This fact, when considered with the intimation made by the 1st and 2nd respondents by motion, confirms that the conduct of the 3rd respondent was without any rational reason. The petitioner was compelled to endure a long drawn-out litigation over five years to obtain relief. In these circumstances, I order that the 3rd respondent pay a sum of Rs. 350,000.00 as costs to the petitioner. This, I would consider, to be exemplary in nature.

Application allowed.

**JUDGE OF THE COURT OF APPEAL**