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.

1. Slim Pharmaceuticals (PVT) Ltd,
   98/10, Namal Mawatha,
   Kahantota Road,
   Malabe.

CA Writ Application No:

CA/WRT/0201/2025

PETITIONER

vs

1. State Pharmaceuticals Corporation,
   16th Floor, "MEHEWARA PIYASA",
   No.41, Kirula road,
   Colombo 05

2. Dr. Manuj C Weerasinghe,
   Chairman,
   State Pharmaceuticals Corporation (SPC),
   16th Floor, "MEHEWARA PIYASA",
   No.41, Kirula road,
   Colombo 05

3. National Medicines Regulatory Authority
   State Engineering Corporation Building
   (2nd Floor),
   No 130, W. A. D. Ramanayaka Mawatha,
   Colombo 02.

4. Dr. Saveen Semage
   Director General/ Chief Executive Officer,
   Colombo 02.

National Medicines Regulatory Authority
State Engineering Corporation Building
(2nd Floor),
No 130, W. A. D. Ramanayaka Mawatha,
Colombo 02.

5. Director National Medicines Quality Assurance Laboratory (NMQAL)
   National Medicines Regulatory Authority
   State Engineering Corporation Building
   (2nd Floor),
   No 130, W. A. D. Ramanayaka Mawatha,
   Colombo 02.

6. B Braun Medical Industries Sdn, Bhd (Malaysia)
   Phase II, Bayan Lepas Free Industrial Zone,
   Penang, Malaysia.

   Represented in Sri Lanka by
   B. Braun Lanka (Pvt) Ltd
   No 14-02, 14th Floor, West Tower,
   World Trade Center, Echelon Square,
   Colombo 01.

7. B. Braun Lanka (Pvt) Ltd
   No 14-02, 14th Floor, West Tower,
   World Trade Center, Echelon Square,
   Colombo 01.

8. Dr. Anil Jayasinghe
   Secretary to Ministry of Health and Mass Media,
   Suwasiripaya, No 385, Rev. Baddegama
   Wimalawansa Thero Mawatha, Colombo 10.

9. Hon. Dr. Nalinda Jayatissa,
   Minister of Health and Mass Media,
   Ministry of Health,
   Suwasiripaya, No 385, Rev. Baddegama
   Wimalawansa Thero Mawatha, Colombo 10.

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

Counsel: Chamara Nananayakkarawasam, Ridma Senarath, Sampath Yalewatta and Apoorwa Nanayakkara for the Petitioner

Ganga Wakistha Arachchi, DSG with Rifana Mukthar SC for all the Respondents except 6th and 7th Respondents.

Nihal Fernando PC with Harshula Seneviratne instructed by Varners for the 6th and 7th Respondents

Argued on: 22.01.2026, 30.01.2026

Written Submission Tendered On: 09.02.2026 (6th - 7th Respondents)
10.02.2026 (Respondents except 6th - 7th Respondents)
13.02.2026 (Petitioners)

Decided On: 13.07.2026

JUDGMENT

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

The instant writ application pertains to a tender floated by the 1st Respondent – State Pharmaceuticals Corporation (hereinafter referred to as the SPC) on 22nd of October 2024 for the supply of a critical lifesaving medical product known as "Total Parenteral Nutrition" (hereinafter referred to as TPN). The Petitioner company was one of the entities which submitted a bid with regard to the aforesaid Tender bearing No. DHS/P/WW/419/25. The only other party which submitted a bid were the 6th and 7th Respondents which are the Manufacturer and its Local Representative respectively.

The Petitioner claims that it was the lowest responsive bidder and therefore the Tender ought to have been awarded to the Petitioner. The primary issue in this

matter is whether the decision to bypass the Petitioner's lower bid and award the Tender to the 6th and 7th Respondents is lawful, rational and procedurally fair.

According to the submissions of the parties before this court, TPN is a life sustaining intravenous liquid solution administered directly into the blood stream of critically ill patients such as those in Intensive Care Units, who are unable to digest food through gastrointestinal tract.

The Petitioner has *inter alia* prayed for the following reliefs;

(f) Call for and quash by way of an order in the nature of a Writ of Certiorari the decision of the 1st Respondent (SPC) to award Tender No. DHS/P/WW/419/25 to the 6th Respondent and/or the 7th Respondent;

(g) Grant and issue an order in the nature of Writ of Mandamus directing the 1st and 2nd Respondents to award the tender pertaining to the Tender No. DHS/P/WW/419/25 to the Petitioner:

(h) Without prejudice to above, and in the alternative to prayer (g) above, grant and issue an order in the nature of a Writ of Mandamus directing the 1st Respondent (SPC) and the 2nd Respondent to re-evaluate the tender bids for Tender No. DHS/P/WW/419/25 in terms of the law;

(i) Grant and issue an order in the nature of a Writ of Prohibition prohibiting the 1st Respondent (SPC) and its officers from taking any further steps pertaining to the Tender No. DHS/P/WW/419/25, until a lawful re-evaluation of the bids;

(j) Grant and issue an order in the nature of a Writ of Prohibition prohibiting the 1st to the 3rd Respondents from relying on the matters / concerns raised in P8 in tender processes involving the Petitioner, without a formal determination in respect of the same upon considering P9 and P10;

The Petitioner has contended that notwithstanding the fact that it was the lowest responsive bidder and the price variation between its bid and that of the 6th and 7th Respondents being approximately Rupees One Hundred Million (Rs. 100,000,000), it was not issued with the Letter of Award. The unit price of the Petitioner's product

was Rupees Eight Thousand Nine Hundred and Ninety-Five (Rs. 8,995) and the comparative unit price of the 6th and 7th Respondents was USD Forty-Six (USD 46)

The Petitioner is the local supplier of a TPN product under the brand name **TNA Peri**, while the product of the 6th and 7th Respondents is marketed under the brand name **Nutriflex Omega Peri novo.** The Petitioner represents a Japanese Company by the name of Otsuka Pharmaceutical Co. Ltd., which has a subsidiary to manufacture its product in India while the 6th Respondent is a German based Company (Mfg: B.Braun Melsungen AG-Germany) with a manufacturing facility of the aforesaid product situated in Malaysia. The Petitioner was incorporated in Sri Lanka in 2011 and has been in operation since then.

The relevant Tender advertisement was issued on 22nd October 2024 with a closing date of 03rd December 2024. The following is extracted from the said Tender Advertisement marked "P17"

SR No.	***Item Description/Specification***	***Quantity***	***Delivery***
00407201	***Total Parenteral Nutrition in 500ml -2000ml multiple component in collapsible bag (central or peripheral)*** *Total Parenteral Nutrition in 500ml -2000ml multiple component in collapsible bag (central or peripheral)* *Per pack should contain;* *-Glucose/Dextrose calories 300kCal-1000kCal* *- Nitrogen 4g-6g* *- Calories from Fat 300kCal-800kCal* *- Lipid source- SMOF 20% (Soyabean 30%, MCT 30%, Olive Oil 25%, Fish oil 15%) or 50% MCT+40% Soya bean +10% omega 3 or* *- Medium & long chain triglyceride (20% w/v)* *-pH5 to 6* *Note: 1. Each collapsible bag should be labeled accordingly*	*24,000 Bags*	*8,000 Bags./ January 2025* *8,000 Bags/ April 2025* *8,000 Bags/ August 2025*

The Petitioner emphasized the fact that as per the said Tender advertisement the lipid source should be one of the three specified therein and the product of the Petitioner falls under the third category i.e., Medium & long chain triglyceride (20% w/v). It is alleged by the Petitioner that its product, TNA Peri was registered on 27th of January 2022 whereas the product of the 6th and 7th Respondents was registered only on 28th November 2024.

It does appear that the 1st Respondent had maintained silence and had not issued a Letter of Award to the Petitioner who further states that in late February 2025 it was "informally appraised" of certain discussions which had taken place with a view of awarding the Tender to the 6th and 7th Respondents. Petitioner concedes that no formal notification was received by it regarding this and states further that the delay and the imminent threat of rejection of its bid compelled it to invoke the jurisdiction of this court by way of the instant writ application.

One of the salient differences between the products of the two competing parties is that the volume of the Petitioner's product is 1000ml whereas the competing product of the 6th and 7th Respondents contains 1250ml which admittedly is higher.

The Petitioner asserts that the rejection of its bid was improperly influenced by an isolated incident of a particular batch of "TNA Peri" being withheld by the authorities in September 2023. At that time, the NMRA withheld a batch of TNA Peri because a light brown discoloration was observed in two units out of 6,250 supplied under an emergency tender (DHS/RP/EP/177/2022), representing a negligible incidence rate of 0.00032%. The Petitioner submitted a prompt manufacturer's explanation on October 23, 2023, attributing the discoloration to minor oxidative changes or pinhole needling due an issue associated with logistics specially in the process of transportation that do not compromise safety. In response to the claim of the 6th and 7th Respondents that their product has been categorized as "Third Generation Product", Petitioner submitted that such superiority is not required in respect of the tender in issue. Since the NMRA did not issue a formal determination of quality failure, never withdrew the product from circulation, and never suspended or cancelled its five-year registration, the Petitioner reasonably assumed

that the explanation provided by it was accepted. Up to date no quality failure notification has been issued by the NMRA with regard to this particular batch.

Furthermore, the Petitioner points to a waiver by conduct on the part of the Respondents. Following the September 2023 incident, the SPC issued subsequent Letters of Intent to the Petitioner for the same product on October 13, 2023, and January 19, 2024 (*vide* documents marked as P11 and P12). Additionally, multiple government hospitals continued to issue local purchase orders and clinically utilize TNA Peri between April 2024 and February 2025 without any adverse consequences. The Petitioner disputes the validity of an internal TEC document compiled by two Consultant Nutritionists recommending the 6th Respondent's product, alleging procedural irregularities including the absence of official receipt stamps, lack of contemporaneous cross-referencing in post-evaluation procurement files, and the fact that the DPC (Departmental Procurement Committee) documents relied solely on the 2023 batch withholding rather than comparative clinical efficacy.

The Petitioner rejects claims that the 6th respondent's product is superior due to its larger volume (1250ml vs 1000ml) or the inclusion of Omega-3 fatty acids. Per-unit volume energy calculations demonstrate that both products are functionally equivalent (0.763Kcal/ml Vs 0.764Kcal/ml), and larger fluid volumes introduce risks of fluid overload in critically ill patients. Clinical guidelines treat both as supplemental nutrition, and systematic reviews indicate no statistically significant survival or clinical benefit of Omega-3 lipid emulsions over MCT-LCT emulsions. The Petitioner additionally notes that subsequent tenders (e.g., DHS/RP/1041/2023 closing May 14, 2025) omitted Omega-3 as a mandatory requirement, proving functional equivalence. The Petitioner labels assertions regarding country-of-origin superiority as unlawful unscientific discrimination, noting that Sri Lanka formally recognized the Indian Pharmacopoeia as an official book of standards in 2025/2026 and sources 85% of its medicines from India. The Petitioner denies market manipulation, stating its lower bid price reflects bulk government discounting for the public benefit, whereas local purchase orders confirm its product was consistently sold below the Maximum Retail Price (MRP).

In the written submissions of the Petitioner an assessment of the nutritional quality of the two competing products of TPN was submitted to court and is reproduced below.

Parameter	**Unit**	**Nutriflex Omega Peri Novo**	**TNA Peri**
Volume	mL	1250	1000
Amino Acids	gm	40	30
Nitrogen	gm	5.7	4.8
Carbohydrates	gm	80	80
Soybean Oil (LCT)	gm	20	17
Coconut Oil (MCT)	gm	25	17
Omega-3	gm	5	–
Total Energy	Kcal	955	763
Non-Protein Energy	Kcal	795	643
Osmolarity	mOsm/L	840	818
Route of Administration	–	Peripheral	Peripheral

It was submitted that both the products satisfy the tender specifications and both are equally efficacious. Neither product could be categorized as being superior. The Petitioner claims that their product falls under the third category of the lipid source specifications, i.e. *"Medium and Long Chain Triglycerides (20% w/v)", and is well within the parameters of the bid specification sheet including the required ranges for glucose/dextrose calories, nitrogen, calories from fat and pH*. (*vide* Written Submission of

the Petitioner dated 13th February 2026.) Furthermore, the Petitioner submitted that in the latest tender for the supply of TPN which closed on 14th May 2025 has not specified Omega-3 as a required lipid source for TPN. It should be noted that with regard to the tender in issue in the instant matter one component which is included in the product of the 6th and 7th Respondent and which is not available in the product of the Petitioner is lipid in the form of Omega-3.

In response, to the allegation that the unit price of the Petitioner's product has been quoted unrealistically low in order to secure the tender, the Petitioner asserts that the primary objective of competitive bidding is to enable the procuring agency to purchase the product at the most advantageous price and offering the product at a heavily discounted rate does not amount to market manipulation, but is beneficial to the state.

The 1st Respondent which is the State Pharmaceutical Corporation (SPC) in their oral and written submissions, submitted to court the procedure to be followed with regard to purchasing pharmaceutical products required by the State Health Sector, the specifications for any medical product required to be supplied is determined by an expert committee of the Medical Supplies Division (hereinafter referred to as MSD) known as the "Formulary Revision Committee" (hereinafter sometimes referred to as FRC). These specifications and requirements are constantly reviewed and upgraded to ensure quality and efficacy. Once the tender bids are opened the initial valuation would be conducted by the Technical Evaluation Committee (hereinafter referred to as TEC) of the SPC. Thereafter, it will be placed before the Department Procurement Committee of the SPC. As per the Written Submissions of the 1st to 5th, 8th and 9th Respondents (hereinafter referred to as the State Respondents) once the DPC of the SPC takes its final decision, the successful bidder will be awarded the tender.

The State Respondents in their oral and written submissions maintain that the public procurement process was carried out with strict adherence to administrative regulations, public interest considerations, and institutional responsibilities. The said Respondents detail that product specifications are within the sole statutory mandate of the FRC of the MSD, and the SPC merely executes tenders based on the formulas

provided to it. For the year 2025, the MSD forecasted a requirement of 24,000 bags of TPN to be delivered in three equal tranches of 8,000 bags across January, April, and August 2025, leading to Tender No.DHS/P/WW/419/2025.

The State Respondents confirm that upon the closure of bids, two offers were evaluated. While the Petitioner submitted the lowest nominal price bid at LKR 8,995 per unit for a 1000ml bag, the alternative bid from the 7 th Respondent offered a 1250ml bag at USD 46 per unit (negotiated down to USD 45.54). The state underlines that the Petitioner's bid price revealed an extreme and irregular variance from its official registered maximum retail price of LKR 14,581, raising concerns regarding potential market manipulation.

The State Respondents' chronology establishes that during the technical evaluation phase, the TEC was formally alerted for the first time to an unresolved quality failure concerning the Petitioner's prior supply of the identical TPN product. Under a previous emergency ministerial tender (DHS/RP/EP/177/2022), a batch of 6,250 bags supplied by the petitioner under Batch No. 224469 was identified as having a critical quality failure following complaints from the National Hospital Kandy, District General Hospital Trincomalee, District Base Hospital Dickoya, and Base Hospital Homagama. The National Medicines Quality Assurance Laboratory (hereinafter sometimes referred to as NMQAL) analysis confirmed that the samples failed to conform to the manufacturer's description and specifications due to defective physical discoloration. Consequently, on September 25, 2023, the NMRA issued a mandatory directive to the Petitioner to immediately withhold the batch across the entire private sector. The state highlights that the MSD failed to forward the defective samples for follow-up action to the NMQAL, leaving the formal investigation technically open and preventing the final clearance or destruction reports from being finalized. This administrative delay caused the entire withheld batch to expire, resulting in an unrecovered financial loss to the state exceeding LKR 87 million.

Faced with this information, the two subject specialists serving on the five-member TEC as Consultant Nutrition Physicians, compiled an independent expert report on December 27, 2024 (marked as 1R8). The specialists explicitly stated that because

TPN is a high-risk intravenous therapy, product safety must be absolute, and they could not clinically recommend a product with an unresolved quality failure issue. Additionally, the experts conducted a clinical cost-benefit analysis, noting that the petitioner's 1000ml bag failed to deliver the required single-pack thresholds of 1000kCal of energy and optimal protein. The necessity of administering two packs of the product of the Petitioner per day to match one 1250ml pack of the Respondents' product created an unacceptably high risk of catheter-related sepsis and doubled the logistical handling costs.

The findings of the aforesaid report marked 1R8 were fully integrated into the comprehensive TEC Report dated January 4, 2025 (1R6 and 1R7), which recommended bypassing the Petitioner's bid. On January 21, 2025, the DPC unanimously approved the award of the tender to the sixth and seventh respondents based on the combined factors of nutrition profile, long-term state cost-benefit, and the Petitioner's pending quality complaint. The State Respondents point out that the successful bidder had not yet been formally notified of the award when the Petitioner prematurely filed this writ application on 19th March 2025.

The State Respondents raise several legal and factual issues pertaining to the instant Writ application.

1. **Prematurity:** The Petitioner rushed to court based on an informal apprehension before any final administrative action or rejection notice was officially issued or served by the SPC.
2. **Non-joinder of Necessary Parties:** The Petitioner deliberately omitted vital parties, failing to name the two individual Consultant Nutrition Physicians who authored the report marked 1R8, the five individual members of the TEC, the members of the DPC, and the officers of the FRC and MSD who managed the procurement formulas and prior quality failure complaints.
3. **Suppression of Material Facts:** The petitioner actively concealed that the 2023 batch withholding was a multi-hospital quality failure that caused an unrecovered LKR 87 million state loss, and concealed that its NMRA registration certificate (P3) showed serious non-compliance, as the registration

date was back-dated to January 2022 but the mandatory statutory fees were not paid until September 2023.

Whilst the bid submitted by the Petitioner was being reviewed by the TEC, it became privy to the withdrawal of a previous batch of the product of the Petitioner.

In the aforesaid circumstances, two experts who were specialist members of the TEC scrutinized the bid of the Petitioners and thereafter submitted their report (1R8). Upon the consideration of the recommendations of the said experts report all members of the DPC unanimously decided to award the tender to the 6th and 7th Respondents (*vide* 1R9/A).

The State Respondents further submitted that, however, even as of the date on which the instant Writ application was filed, the relevant party was not officially informed of the tender being awarded to the 6th and 7th Respondents.

The State Respondents have primarily placed reliance on the document marked 1R8 in order to justify the decision of the DPC to award the tender in issue to the second lowest bidder (i.e the 6th and 7th Respondents). The said document is dated 27.12.2024 and has been compiled by two consultant nutrition physicians who were members of the technical evaluation committee of the DPC of the 1st Respondents/SPC. The entire document marked 1R8 is reproduced below.

27/12/2024

Dr. Manju C. Weerasinghe,

Chairman

State Pharmaceuticals Corporation of Sri Lanka

Dear Dr. Weerasinghe,

Tender No: DHS/P/WW/419/25

Item - Total Parenteral Nutrition in 500ml - 2000ml

Thank you very much for appointing us as members for the Technical Evaluation Committee of the above DPC.

We wish to rationalize our decision as given below.

2 companies have bidded for the said tender.

1. *Slim pharmaceuticals pvt(ltd) Sri Lanka – Manufacturer Otsuka pharmaceuticals India (pvt) ltd India – TNA Peri*
2. *B braun Medical Industries Sdn Bhd Malaysia – Nutriflex Omega Peri novo*

Comparison:

Product	***Volume***	***Energy (kcal)***	***Protein (g)***	***Fat - Type***
TNA Peri	*1000ml*	*763*	*30*	*MCT/LCT (2nd Generation lipid)*
Nutriflex Omega Peri novo	*1250ml*	*955*	*40*	*MCT/LCT/Omega 3/TG*

Nutrition considerations

- *When selecting a product, need to consider at least around 1000kcal with the maximum possible protein content should be delivered if a single pack was given to a patient.*
    - *When comparing the two products, if we select the pack with 763kcal, to achieve the target more than a pack per day will be needed. Using a second pack per day means, use of additional giving sets and multiple handling of the lines per day per person. All these will have additional costs.*

    - *Multiple handling per person per day will increase risk of catheter related blood stream infections, which will lead to poor outcome of patients and increase health related costs with sepsis treatment.*
- *Hospitalized patients' protein requirement is high. Therefore, when selecting a product, the product with the maximum protein per pack should be selected.*
- *Fat composition of packs – Omega 3 containing lipid emulsions has shown lesser inflammation and lesser chance for parenteral nutrition associated liver disease.*

Consideration on complaints

There was a complaint against the product TNA peri 1000ml. According the report given, it is said that the ***"Sample does not confirm to Manufacturer's specifications with respect to the description".*** *Additionally, we received the photo of sample (Attached herewith) which shows clear concerning evidences.*

Considering the fact that Intravenous products are with high risk for patients if the product safety is not assured, we can't recommend such a product until a thorough investigation is carried out and safety is confirmed. The above report was brought to notice to the college only through this file. Hospitals have been using it due to this reason and at the same time the higher generation products were not available until now.

Conclusion:

Considering above nutrition facts, cost-benefit and complaints, we recommend offering the bid for the B Braun product - Nutriflex Omega Peri novo.

Recommendation:

Please proceed with this as soon as possible as this essential parenteral nutrition products were not freely available during the past year and most hospitals had to local purchase to a higher cost as the need was essential. Proceeding with this tender and purchasing the products at the earliest possible will lead to the maximum patient benefit and reduction of health cost.

Thank you.

Yours Sincerely,

Dr. Thimathi Wickramasekara
Dr. Jayani Tennakoon Jayaweera

As evinced from 1R8 the two consultants considered different aspects of two competing products, a categorical recommendation was made to the effect that the tender be awarded to the 6th and 7th Respondents

Subsequently, the DPC of the SPC upon the consideration of 1R8 decided to award the tender to the second lowest bidder subject to price negotiation (*vide* 1R9/A).

The State Respondents in their written submissions have alleged that complaints were received by the health authorities with regard to the quality of the Petitioner's product which was part of the batch withheld from multiple state sector hospitals such as General Hospital Trincomalee, Base Hospital Dikoya and Base Hospital Homagama.

The State Respondents have drawn the attention of this court to a document marked P7 issued by the NMRA on 25.09.2023 addressed to Petitioner company. The said document which is self-explanatory is captioned **"Withholding of a batch due to quality defect"**, and pertains to the product of the Petitioner, i.e. TNA/Peri. The following instructions have been given to the Petitioner by NMRA.
"**As the market authorization holder, you must ensure that the batch is withheld in the entire private sector immediately."**

Furthermore, P7 contain the following:
"As such, you are hereby instructed to:
a. Withhold above batch from use immediately

b. Furnish consignment details of the above batch under the following headings. *Quality imported/ Batch no./ Date of Manufacture/ Date of expiry/ Quantity available/ Distributed*

c. Furnish explanation of the manufacturer within 28 days of receiving this letter **to D/NMQAL** with a copy to me."

It is regrettable to note that what follow up steps were taken by the NMRA with regard to the aforesaid batch withholding and the results of any tests carried out (if any) to ascertain the quality and efficacy of the withdrawn batch are not known. In the written submissions of the State Respondents, it has been disclosed that as a result of the said batch withdrawal a loss of Rs. 87.3 million was caused to the State. The learned Deputy Solicitor General appearing for the State Respondents further submitted that up to now no meaningful steps have been taken for the State to recover the aforesaid sum.

The 6th and 7th Respondents have strenuously contended that their product known as "Nutriflex Omega Peri novo" is a superior, third generation product which contains lipid in the form of Omega-3. Further elaborating on this aspect in the written submissions of the 6th and 7th Respondents, the following is stated:

"ix] *The product of the 6th and 7th Respondents is compliant of the tender specifications relating to 3rd generation TPN medication and contains* ***3rd generation OMEGA-3 fatty acids which TPN medicine is the latest and most advanced medicine in the global market****. The Petitioner's product is an outdated 2nd generation TPN medicine which lacks the necessary ingredients, standards and development required in the latest much improved TPN 3rd generation medicine available globally. It is only the 6th and 7th Respondents 3rd generation TPN medication product that meets the latest global standards in TPN medication which standard has been included in the subject tender conditions which has been set out by the medical experts. Thus, the Petitioner's 2nd generation TPN pharmaceutical product namely Combi Pack TNA Peri which does not contain OMEGA 3 cannot be compared with the TPN pharmaceutical product of the 6th and 7th Respondents namely*

Nutriflex Omega Peri and as such the prices also cannot be compared. The Petitioner's position in this case is as absurd as comparing the prices of a car manufactured in 2015 with a car manufactured in 2025.”

As per the written and oral submissions of the 6th and 7th Respondents, it is stated that the 6th Respondent is B. Braun Medical Industries Sdn Bhd (Malaysia), a subsidiary of B. Braun Germany, an international manufacturer of medical technology and pharmaceuticals established in 1839. The 7th Respondent is B. Braun Lanka (Pvt) Ltd, established in 2012 as the local subsidiary supplying Sri Lankan public and private hospitals for over 15 years without any product quality complaints from the SPC.

The 6th and 7th Respondents contend that the Petitioner is not entitled to discretionary relief due to the suppression and misrepresentation of vital facts. They assert that while the Petitioner portrayed itself as the lowest responsive bidder, it is merely the lowest bidder in nominal terms, whereas their product, "Nutriflex Omega Peri Novo," is the true lowest responsive bidder because it complies fully with the updated clinical specifications. They assert that the tender specifically called for an advanced, third-generation TPN medication containing Omega-3 fatty acids, or alternatively, a second-generation medication if no third-generation bids were received. The 7th Respondent's product is a registered third-generation TPN product containing Omega-3, whereas the petitioner's product is an outdated second-generation formulation that completely lacks Omega-3 and, as per its bid documents, fails to contain mandatory Nitrogen components, making it entirely non-compliant. The 6th and 7th Respondents dispute the petitioner's financial calculations, maintaining that awarding the tender to the petitioner would cause a net financial loss to the state of over LKR 109 million. They rely on the independent clinical evaluation of December 27, 2024, authored by two nutrition physicians (the Head of the Department of Nutrition and a consultant at the Kalubowila Hospital Medical Nutrition Unit), which was incorporated into the final TEC Report dated January 4, 2025, and the DPC decision of January 21, 2025. This expert evaluation

demonstrated that the petitioner's product contains 250ml less volume, 192 kCal less energy, and 10g less protein per packet than the seventh respondent's product. Consequently, to meet the basic metabolic requirement of an ICU patient (at least 1000kCal and maximum protein), a patient would require two packs of the Petitioner's product per day compared to only one pack of the Respondents' product.

Using the tender exchange rate, one pack of the 6th and 7th Respondents' product costs LKR 13,416 per day, whereas two packs of the Petitioner's product would cost LKR 17,992 per day, resulting in an extra LKR 4,576 per patient-day. Over the 24,000 units ordered, the petitioner's supply would provide only 12,000 patient-days of nutrition and would be depleted within six months, forcing hospitals to buy replacement stocks from the open market at the petitioner's high MRP of LKR 14,581. In contrast, the Respondents' supply provides a full 24,000 patient-days, lasting the intended full year and saving the state LKR 109,824,000. Clinically, the expert report confirmed that administering a second pack per day requires additional items required to administer it and multiple line interventions, heavily increasing the risk of catheter-related bloodstream infections, sepsis, and subsequent hospitalization costs.

Furthermore, these respondents contend that the petitioner has a documented history of supplying defective, substandard pharmaceuticals that it suppressed from the Court. They state that the petitioner's unreserved apology contained in the document marked P10 establishes its culpability for the failed 2023 TPN batch, which caused an estimated loss of LKR 87 million to the government as the entire expired batch had to be withheld. They also cite the petitioner's involvement as the 63rd Respondent in Supreme Court Fundamental Rights Application SCFR 99/2024 filed by Transparency International Sri Lanka, which links the petitioner to the supply of an unregistered, substandard anesthetic injection ("Zupivac-H") that resulted in at least two patient deaths.

Elaborating further on this aspect the 6th and 7th Respondents submitted the following:

"*In fact the Petitioner's name is also associated in the recent scandal and controversy involving the supply of an anaesthetic injection called Bupivaine imported and supplied by the Petitioner under the name Zupivac-H by the Petitioner resulting in two deaths which came to lights during the recent Human Immunoglobulin medicine case. This matter has been specifically set out in paragraph 75 of the Petition filed by Transparency International Sri Lanka in SCR 99/2024 in which the Petitioner is the 63rd Respondent and in paragraph 75 of the said Petitioner the above allegation against the Petitioner is clearly set out.*
This fact has been suppressed by the Petitioner in its Petition before Your Lordships' Court. Thus, clearly the Petitioner has not come to Court with clean hands and the conduct of the Petitioner disentitles it of any interim relief."

Paragraph 75 of the Petition in **SCFR 99/2024** reads thus:

"*Additionally, yet another anaesthetic injection, Bupivacaine, imported under the brand name Zupivac-H, has also caused adverse reactions in patients resulting in at least two deaths. It is learnt that the consignment of Bupivacaine was sourced from the Indian manufacturer Divine Laboratories (Pvt) Ltd which was imported to Sri Lanka by the local company Slim Pharmaceuticals Pvt Ltd on WoR issued by the NMRA*"

The said Respondents deny that their own NMRA registration was strategically delayed, producing documentation showing that the registration process for Nutriflex Omega Peri was initiated in August 2023, long before the tender advertisement.

The sixth and seventh respondents pray for the dismissal of the application, emphasizing that an interim stay would disrupt the supply of life-saving medicine to critically ill patients, creating a life-or-death crisis. They also request a judicial

directive for a formal investigation into the unrecovered LKR 87 million loss caused by the Petitioner's 2023 defective supply.

In the instant writ application, the principal contention of Petitioner is that it was the lowest Responsive bidder and as such the procuring entity (the 1st Respondent/State Pharmaceutical Corporation) ought to have awarded the tender to the Petitioner. It does appear that the contention of the Petitioner is that when the bids are evaluated the primary consideration ought to be the cost factor i.e. the bid price quoted by the bidder. The Petitioner has placed reliance on provisions of the "**Guidelines for Procurement of Pharmaceutical and Medical Devices of a Consumable Nature - 2022**" to substantiate its stance, the attention of court was drawn to Clause 6.3(c) of the said guidelines which reads thus:

"*c) A bid for a product that is deemed to be the lowest evaluated substantially responsive, shall not be rejected by the TEC, during bid evaluation, merely for the reason that another product is of a higher quality/standard, provided that such product meets the quality assurance criteria stipulated in 4.3.1(d). The specification of the product offered with the bid shall match with the tender.*"

As referred to previously in this judgement the 6th and 7th Respondents have strenuously argued that the submissions made on behalf of the Petitioners with regard to the comparatively lower cost of the Petitioner's product is misleading and is a fallacy. According to the said Respondents, in fact, the State would have to incur a much higher amount if the tender is awarded to the Petitioner. The Respondents submitted that upon careful consideration of the accurate data with regard to the quantity of TPN required to be administered to patients using the two competing products it is far more economical and cost effective to use the product of the said Respondents than using the product of the Petitioner.

As stated elsewhere in this judgment, the Petitioner has prayed for a writ of mandamus compelling the 1st and 2nd Respondents to award the relevant tender to

the Petitioner. In response the 6th and 7th Respondents have submitted that mandamus would not lie in the instant matter since the terms and conditions of a tender do not have "statutory flavor". The said Respondents have cited the decision in CA/WRT/866/2006 (CA minutes of 14.06.2006). In the aforesaid decision Sripavan J (as His Lordship was then) has held that "The terms and conditions of the tender do not have the status of "law" and non-compliance with them could not be enforced by mandamus". The Respondents have contended that the Petitioner in the instant matter is therefore not entitled to seek writ of mandamus for the purpose of re-evaluating the tender process which is now completed.

Similar observations have been made by Arjuna Obeysekera J in **Shah Jahan vs Additional Secretary Ministry of Housing and Construction and Other** (CA/WRT/373/2015 decided on 24.08.2020) in which Obeysekera J has cited with approval the aforesaid decision of Sripavan J (as His Lordship was then). The Respondents have cited the following passage from CA WRT/373/2015.

"Mandamus would lie to compel the second to seventh respondents to evaluate the tenders in compliance with the tender condition. The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by court for the performance of a public legal duty. It is granted to compel the performance of duties of a public nature and not merely of a private character, namely, for the enforcement of a private right stemming from the terms and conditions of the tender. The terms and conditions of the tender do not have the status of "law" and non-compliance with them could not be enforced by mandamus.

I therefore take the view that the Petitioner cannot seek a public law remedy to enforce a purported right of a private character. In any event, given the aforementioned conduct of the Petitioner relating to the manipulation of the tender process, I am of the view that in any event, this is not a fit matter where the discretion of this Court should be exercised in favour of the Petitioner"

I agree with the submissions of the Respondents and the aforecited dicta and hold that *mandamus* cannot be issued in the instant matter directing that the contract be awarded to the Petitioner.

In the instant matter, the role of the National Medicines Regulatory Authority (NMRA) which is the 3rd Respondent, is important. The said entity was established under and in terms of the National Medicines Regulatory Authority Act No. 5 of 2015. The objectives of the said entity are contained in Section 3 of the said Act.

Subsection (a) of the NMRA Act reads thus,

3(a)

"*ensure the availability of efficacious, safe and good quality medicines,* ***efficacious, safe and good quality*** *medical devices and efficacious, safe and good quality borderline products to the general public at affordable prices;* ". *(Emphasis Added)*

The plain reading of the aforesaid provision could give rise to the irresistible inference that the general public should be provided with medicine which are not only affordable but also which are efficacious, safe and of good quality. In my view, this reflects the legislative intent and must be taken cognizance of by the NMRA when awarding tenders for the supply of medicines and medical devices. In other words, it is clear that "affordable price" is just one criterion when ensuring the availability of medicine in addition to it being efficacious, safe and of good quality. It was not the intention of the legislature to make available the cheapest medical product disregarding the other three attributes as referred to in Section 3 (a). The realities of the market are such that, whether it be medicinal products or any other commodity, safe, efficacious and good quality products may not be the cheapest and may in fact be considerably costlier than the other products of lesser quality.

As I have held in ***Reckitt Benckiser (Lanka) Ltd V National Medicines Regulatory Authority and others*** *CA (Writ) Application No. 217/2025, decided on 24.11.2025,*

"In the guise of making available to the public cheaper products, the authorities should not completely exclude from the market any product which may be high in quality but also relatively higher in price. A balance will have to be struck, if not, there may arise a situation where the market is flooded with lower quality, but cheaper products. I am of the view that this was not the intention of the legislature when the NMRA Act was enacted."

The aforesaid aspect of striking a balance between cost and quality, assumes greater importance when it involves medicines, especially lifesaving drugs which are critical to the healthcare of the public. I am of the view that, the procuring entities of such products must pay due attention to procuring the best quality product available in the market at acceptable prices. Price alone must not be the determining factor where medicine is involved.

The *dicta* in several judgements of the Supreme Court and the Court of Appeal are in line with the aforesaid view. In **SmithKline Beecham Biologicals S.A. and Another v State Pharmaceutical Corporation of Sri Lanka and Others [1997] 3 Sri LR 20 (Supreme Court, S.C. (F.R.) No. 89/97)**, Dr. Amerasinghe, J. expressed a similar view. This was a fundamental rights application concerning a world-wide tender floated by the State Pharmaceutical Corporation for Rubella Viral Vaccine. The Tender Board had initially awarded the contract to the only registered, responsive bidder, but later diverted part of the award to a lower but unregistered (and therefore non-responsive) bidder, partly on the stated ground of cost savings. The Supreme Court held that this violated Article 12(1) of the Constitution. In doing so, Dr. Amerasinghe, J. directly addressed as to whether "least cost" could be treated as the decisive or sole criterion in a government tender. The court considered certain provisions contained in the procurement guidelines which were in effect at that time and made the following observations;

"Admittedly, 'The least cost and maximum benefit to the Government' is, as we have seen, placed by paragraph 2, Chapter 1, Part 1, of the Guidelines at the head of the list of what the 'tender procedure should ensure'. There is no evidence to support the view that the

arrangement was on a hierarchical basis. Moreover, 'the least cost' is not referred to as the ultimate or sole criterion: the criterion of 'least cost' is subject to the criterion of 'maximum benefit to the Government'. If 'maximum benefit to the government' meant 'maximum financial benefit' in the sense of saving rupees and cents, the reference to 'maximum benefit to the Government' is tautologous. It is not: 'Maximum benefit to the Government' refers to other, quite distinct, notions: obviously, the cheapest, as common experience shows, may not procure the best product."

With regard to the price vs. quality dilemma, Dr. Amerasinghe, J. made the following observations;

"On the other hand, affordability is always an important consideration, and, in relation to some matters, perhaps, having regard to our limited resources, it may be appropriate to settle for something less desirable: but when any authority is dealing with a product concerned with the lives of the people, including the unborn citizens of Sri Lanka – as in the case of Rubella Vaccine which, as we have seen, according to the Chairman of the Tender Board, is to be injected into pregnant women to immunize their babies – would the Government compromise, may it gamble? Can it afford to do with less than the best available in terms of efficacy?"

Upon the consideration of the factual matrix of the aforesaid case, the Court noted as a matter of fact that, in line with this reasoning, the Government appointed a Technical Evaluation Committee of four specialists (an epidemiologist, a virologist, a pharmacologist and a finance official) precisely so that quality and cost could both be properly weighed, and observed that the tender documents themselves listed multiple awarding criteria beyond price.

I also wish to cite the following passage of the said judgement which in no uncertain terms exemplify the views expressed by me with regard to striking a balance between price and quality;

"Instead of stating that the objective of the Guidelines was to procure the cheapest services, the President and Minister of Finance, in the Preface to the Guidelines said that the prescribed procedure was "To obtain financially the most advantageous and qualitatively the best services and supplies for the country." What the "Tender procedure should ensure" is, inter alia, stated in the Guidelines to be "optimum Economic Advantage to the nation": I understand this to mean that the procedure relating to Government procurements should ensure the most favorable conditions for the advancement of the People by obtaining "financially the most advantageous and qualitatively the best supplies for the country." What is "financially the most advantageous and qualitatively the best supplies for the country" is pre-eminently a matter of policy that the Government, which is accountable to the People, must decide. In order to assist it in making an informed decision in the best interests of the People, the Government has, through the Financial Regulations, Circulars, and the Guidelines of 1996, laid down procedures to be followed in the matter of Government procurements. Unless they are followed, the Government is liable to be misled in making its decisions."

The Court also rejected the notion that a Tender Board's discretion under the tender's privilege clause and Financial Regulation 697(2) was unfettered, holding that while a Tender Board has wide powers, "it does not have uncontrolled, and unrestricted powers," and cannot accept a bid that fails to conform substantially to the tender's specifications and conditions, reinforcing that a bid's compliance with quality and eligibility criteria is as material as its price.

The Supreme Court in **Sierra Construction Ltd vs. Road Development Authority and Others,** SC/FR/135/2023 (decided on 10.02.2025), expressed similar views. Samayawardhena, J. with S. Thurairaja, P.C., J. and Amarasekara, J. agreeing, held that under certain circumstances, the lowest bidder may not necessarily be the successful bidder. In the said case, an unsuccessful, lowest-priced bidder for a road rehabilitation contract challenged the award to a higher-priced but technically qualified bidder. Then the court made the following observations;

"I must state at this stage that, according to the National Procurement Guidelines and the Bidding Document, the bid price is not the sole determining factor in deciding whether a bid should be accepted. Both price and quality are crucial considerations. The tender process should aim to select suppliers who provide the most financially advantageous terms while also meeting the highest quality standards, thereby ensuring the best outcome for the country."

The Court then set out the tender's own award clause, which conditioned acceptance not on price alone but on three cumulative criteria, being the lowest evaluated bid, being substantially responsive to the bidding document, and the bidder being qualified to perform the contract satisfactorily, and dismissed the application because the petitioner had failed the qualification/experience criteria, notwithstanding its lower price.

Similar to the factual position in **SmithKline Beecham Biologicals S.A. and Another v State Pharmaceutical Corporation of Sri Lanka and Others (*Supra*)** in the aforesaid **Sierra Construction Ltd (*Supra*)** case, it was observed that, a court reviewing a tender award should differ to a properly constituted Technical Evaluation Committee's findings on technical matters, due to the reason that court may lack competence on such matters.

I have also considered the *dicta* in **Hettigoda Industries (Pvt) Ltd v Airport and Aviation Services (Sri Lanka) Ltd and Others** CA/Writ/423/2017, decided on 27.08.2020 by Samayawardhena, J. with Arjuna Obeyesekere, J. agreeing. In this case, a tender for the operation of an Ayurvedic products shop at Bandaranaike International Airport was awarded to the higher bidder (i.e. party offering a higher lease rental to the state), in breach of a disqualification clause which the Technical Evaluation Committee had overlooked.

The Court of Appeal quashed the award and held thus;

"As seen from 1R2, the main concern of the Technical Evaluation Committee was to award the tender to the highest bidder... If the grand total of the bid is the decisive factor, disqualifications need not be set out. Clauses such as 7(iii) of P16A are incorporated into tender documents to minimise monopoly and maximise consumer protection. After all, the 1st Respondent is not a private enterprise, but a fully government-owned company."

In effect, what the court held in the aforesaid case is that, even in respect of tenders of this nature where generally maximizing revenue of the state may be an important consideration, there could be other overriding factors capable of relegating "profit maximization" to a secondary position.

Although this case concerned a disqualification/eligibility clause rather than a quality assessment as such, its reasoning is the same in substance: a procuring entity (particularly a State or government-owned entity) cannot treat the bid amount as automatically decisive where the tender document itself prescribes other mandatory criteria that the price factor does not capture. The logic transposes directly into a quality assessment, which is, if price alone was decisive, there would be no need for the tender document to prescribe quality, compliance, or technical criteria at all.

In this regard, it would be pertinent to consider the Primary Principles of Public Procurement as stated in the **Government Procurement Guidelines** - 2024, No.2412/01 published in the Gazette Extraordinary of 25.11.2024. As per clause 1.3.1;

"Primary Principles of Public Procurement mainly emphasize Value for Money (VFM). VFM is the achievement of the desired outcomes of the procurement at the most optimum price, not necessarily the lowest price based on a balanced judgment of financial and non-financial factors relevant to the procurement."

Furthermore, VFM includes the concept of "**Economy"**, which is defined in the following manner;

"Economy is spending less, considering the necessity to handle public funds with care and due diligence to ensure that the prices paid for Goods, Works and Services are fair and reasonable with appropriate quality and provide excellent value for the public funds used to procure them in order to meet the functional requirement. ***Economy does not necessarily mean the lowest cost/price.****" (Emphasis Added)*

Clause 1.3.2 of the aforesaid Procurement Guidelines, deals with Other Principles of Public Procurement. Under this heading, the concept of "**Cost-Effectiveness**" is defined in (e) of clause 1.3.2 in the following manner;

"Cost-effectiveness is the use of resources to achieve the intended outcome. Cost-effective procurement is the process of obtaining Goods, Works, or Services in the most efficient and economical way"

The Court has also considered the clauses contained in Guidelines for procurement of pharmaceuticals and medical devices of a consumable nature (2022). As per clause 2 which deals with general principles the following is stated,

"All Pharmaceuticals and Medical Devices of a consumable nature to be procured must fulfill Quality, Safety and Efficacy criteria. All Medical Devices procured should satisfy Quality, safety, performance, Effectiveness and Efficacy criteria relevant to the healthcare needs of the public."

It is quite evident from the aforesaid clause that primacy has been placed on quality, safety and efficacy. Furthermore, with regard to the scope of this Guidelines, Clause 1 reads thus,

"To ensure the attainment of the strategic objectives of the procurement of Pharmaceuticals and Medical Devices of a consumable nature, with the aim of improving the delivery of efficacious, safe and goods quality Products to the public at affordable prices."

The instant matter revolves around two medical products which are marketed by the Petitioner and the 6th and 7th Respondents. Both these parties have dealt exhaustively in their written submissions as well as oral submissions, the qualitative and efficacy aspects of these two products. The Court wishes to observe that these facts which were placed before court are highly technical in nature and only a qualified medical practitioner would be capable of accurately and scientifically analyse those facts in order to decide which of the two products is superior. I must, without any hesitation, concede the fact that this Court lacks competence and the required level of expertise to determine the aforesaid aspect. If the Court were to engage in such an exercise, it would be futile and a waste of judicial time. With regard to this aspect, the Court will have to defer to the opinion expressed by the relevant experts as reflected in the document marked "**1R8**" based on which the Procurement Committee of the SPC took the impugned decision as reflected in the document marked "**1R9-A**". Under these circumstances, I am of the view that the Court has no option but to defer to the opinion of the Consultant Nutrition Physicians who have authored "**1R8**".

The concept of "deference" is not alien to administrative law. A number of judicial and other authorities have discussed this aspect extensively. In many instances Courts were not reluctant to hold that notwithstanding the conformant of jurisdiction of judicial review of administrative decisions when dealing with matters which require technical or specialized knowledge to take decisions. It is best to entrust such matters to the competent experts.

While Courts possess the authority to ensure that statutory powers are exercised within legal limits, they do not ordinarily possess the competence and technical knowledge required to resolve, at first instance, disputes that depend upon detailed technical evaluation. It is for this reason that legislatures entrust the primary responsibility to specialized administrative authorities and, where necessary, provide mechanisms through which expert determination may be sought.

In **T & J Pharma Imports (Pvt) Ltd vs. Director General of Customs and Others CA/WRT/210/2018 decided on 16th November 2020,** the Court of Appeal observed that it is not inclined, in the exercise of writ jurisdiction, to undertake the task of deciding the "correct" HS Code (Harmonized System), particularly where such determination demands technical expertise and familiarity with the interpretative practices of customs administration. That recognition is not an abdication of responsibility; it is an acknowledgment of institutional competence.

In the aforesaid judgment, Obeyesekere J has expressed the following views.

"I must say that this Court does not have the expertise to engage in the classification of a good imported to the country, nor would it attempt to do so in the exercise of its Writ jurisdiction. That expertise lies with Sri Lanka Customs, and its Nomenclature Committee, as well as with the World Customs Organisation. In instances where Courts lack such expertise, Courts would defer to the views of such expert bodies."

In the aforementioned case, the Court made the following observations;

"In instances where Courts lack such expertise, Courts would defer to the views of such expert bodies... Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers..."

In this regard, I have also considered the *dicta* of Samayawardhena J in **Hayleys Lifesciences (Pvt) Limited v Deputy Director General/Director, Division of Biomedical Engineering Services and Others, SC/Appeal/248/2025 (CA/Writ/717/2024)** decided on 28.01.2026. The aforesaid case pertains to a tender for a medical device (a Lithotripsy System) for the National Hospital of Kandy was challenged before the Court of Appeal by the unsuccessful, higher-cost bidder, on the ground that the successful bidder's NMRA registration did not cover the exact model quoted. The Court of Appeal issued notice and granted interim relief

suspending the award. On appeal, the Supreme Court held that the question of whether a registration certificate covered a particular device model was a matter of specialised technical expertise that neither the court nor counsel were equipped to resolve independently. The Court held thus;

"The question as to whether the NMRA certificate tendered by the appellant relates to the same model as that offered by the appellant in its bid is a matter that falls squarely within the domain of technical expertise. The most competent and appropriate authority to answer that question is the National Medicines Regulatory Authority itself. Neither the court nor counsel possess the specialised technical expertise required to make such a determination independently."

The judgment then surveys the doctrine of judicial restraint in technical/tender matters at some length, expressly holding that *"the limits of judicial review in matters involving specialised technical expertise have been consistently recognised,"* and adopting, with approval, the following judicial pronouncements.

"...It is not the function of a Judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinized by the non-expert Judge."
Tata Cellular v Union of India, 1996 AIR 11 at 28, cited with approval in Hayleys Lifesciences at p. 12

"...it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence."
Uflex Ltd v Government of Tamil Nadu and Others [2021] 7 SCR 571 at 579–580, cited with approval in Hayleys Lifesciences at pp. 12–13

"...judicial interference with the administration cannot be meticulous... The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded... This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure."

Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others v Union of India and Others (1981) 1 SCC 568 at 584, cited with approval in Hayleys Lifesciences at p. 13

Most significantly for the purposes of the instant matter, the Supreme Court then relied on its own recent Sri Lankan precedent directly stating the same principle in a tender/technical-evaluation context:

"The petitioner did not file any report expressing expert opinion to the contrary. Neither the Court nor the petitioner possesses the requisite expertise, resources and capacity to challenge through a fundamental rights application the accuracy of the findings in the several reports filed by the Technical Evaluation Committee, the Ministry Procurement Committee, and the Expert Committee appointed by the Court. Based on the facts and circumstances of the case, the findings in those reports are not perverse and are prima facie acceptable to the Court. In such cases, in exercising its writ or fundamental rights jurisdiction, this Court must exercise caution in revisiting decisions that are highly technical in nature. This restraint is necessitated by the Court's institutional limitations."

Sierra Construction Ltd v Road Development Authority and Others, SC/FR/135/2023, SC Minutes of 10.02.2025 at pp. 10–11, quoted in full in Hayleys Lifesciences at p. 13

The Court also endorsed the views contained in **De Smith's Judicial Review, 8th Edition, at p. 206 (cited in Hayley's Lifesciences at p. 14)**:

"...while no public power is inherently immune from judicial review, courts are constrained both by their constitutional role and institutional capacity. One such institutional limitation

is the lack of relative expertise, particularly in matters best resolved by specialist bodies possessing technical knowledge."

Applying this framework, the Supreme Court held that the Court of Appeal ought not to have proceeded to trivialize the Technical Evaluation Committee's own conclusion (later confirmed directly by the NMRA itself) on a matter of device registration, and that the writ application should, in any event, have failed on grounds independent of the technical merits, namely, the petitioner's suppression of a material document (the attachment to the registration certificate) and its consequent breach of the duty of uberrima fides owed by a party invoking the discretionary writ jurisdiction. On the technical question, the Court was emphatic that the correct course was to accept the position confirmed by the specialist regulator itself, the National Medicines Regulatory Authority, rather than for the court to adjudicate the scientific/registration question on the merits.

As per 1R8 it is clear that the type of lipid contained in the two competing products are different. TNA Peri contained MTC/LCT (2nd Generation Lipid) while the product of the 6th Respondents contained lipid in the form of MCT/LCT/Omega 3/TG. It is clear that the product of the 6th and 7th Respondent is described as a 3rd generation product while the other product is 2nd generation.

The two consultant nutrition physicians (who were also members of the technical evaluation committee of the DPC of the SPC) who compiled 1R8 have given reasons as to why the product of the 6th and 7th Respondents is referred over that of the Petitioner in terms of the cost factor and have explained the additional expenditure which may have to be incurred if the Petitioner's product is administered to the patients due to the reason that two packs of TNA Peri may sometimes be required due to its lower volume (1000ml in comparison to 1250ml of the product of the 6th and 7th Respondents). They also highlighted the risk factor involved in multiple handling of per person per day due to catheter related blood stream infection "*which will lead to poor outcome of increased health related cost with sepsis treatment.*"

The two experts have also opined that lipid source as Omega 3 is far more beneficial than the type of lipid contained in the product of the Petitioner.

Upon the consideration of the relevant technical details as reflected in 1R8, the DPC of the SPC decided to award the tender to the 6th and 7th Respondents.

It is my view that the role of a Writ Court in matters of this nature is not to make pronouncements with regard to the desirability or otherwise of the decisions of a public authority which was authorized to take that decision. In other words, it need not be considered as to whether the decision is "good or bad". What needs to be done is to ascertain as to whether the proper procedure has been followed and the governing general principles of Administrative Law has been adhered to.

In this regard I am guided by the *dicta* in **Courtaulds Trading Company v Ranasinghe and Another** CA/Writ/196/2022 decided on 29.07.2022. In the said matter Sobitha Rajakaruna J. has cited with approval the following passage from **M. P. Jain and S. N. Jain, Principles of Administrative Law, 9th Edition, [2022], Lexis Nexis, Volume 2, at p. 2042**.

"*The writ court does not sit as an appellate court to scrutinize the decision of the lower authority on merits. The writ court does not substitute its own decision for that of the authority concerned in which the statute has vested discretion. Discretion means that more than one choice is available to the authority. The authority has the right to choose between more than one possible course of action and there may be difference of opinion among reasonable persons as to which option to follow. So, the court gives freedom of choice to the authority having discretion. Only when the exercise of discretion is flawed by a vitiating factor, the court would quash the decision. Judicial review is concerned with the legality of a decision and not its merits. The courts often assert that it is not their function as review courts to substitute their wisdom and discretion for that of the persons to whose judgement the matter in question is entrusted by law. The principle has been stated firmly by the House of Lords in Chief Constable of the North Wales Police vs. Evans (1982) 1 WLR 1155, that*

judicial review is concerned not with the decision, as such, but with the process of decision making."

Upon the consideration of the aforesaid legal principle, it is my view that in the instant matter, decision contained in 1R9-A was taken not arbitrarily or capriciously but upon the consideration of 1R8 prepared by the two experts. It also appears that the decision contained in 1R9-A was never communicated to any of the parties and Petitioner invoked the jurisdiction of this court prior to the decision being intimated to any party.
Respondents have under these circumstances submitted that the instant matter is a premature writ application.

The material before Court further reveals circumstances suggestive of an attempt to manipulate the tender process. In such circumstances, this is not a fit and proper case in which this Court should exercise its discretionary jurisdiction in favour of the Petitioner.

This Court has also taken into cognizance the well-considered and detailed observations placed before Court by the relevant State body in respect of the evaluation of tenders. Those observations demonstrate that the tender evaluation process has been undertaken with due consideration to the relevant criteria and surrounding circumstances.

Further, this Court cannot be oblivious to the wider implications that may arise from granting the relief sought, including the inconvenience, disruption, and substantial financial loss that may be caused to the Government and the public interest.

In all the circumstances of the instant matter, I am of the view that the Petitioner has failed to establish any ground warranting the grant of writ by this Court.

Accordingly, this application is dismissed. No order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.
I agree.

JUDGE OF THE COURT OF APPEAL