

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

*In the matter of an application for the
grant of Writs of Mandamus, Certiorari,
and Prohibition under and in terms of
Article 140 of the Constitution.*

CA (Writ) Application No. 174/2024

E-W Information System Limited
No. 70/1/6,
1st Floor,
Luck Plaza Building,
Saint Anthony's Road,
Colombo 03.

PETITIONER

Vs.

1. Susil Premajayantha
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

1A. Harini Amarasuriya
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

1A ADDED RESPONDENT

2. Wasantha Perera
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

2A. J. M. Thilaka Jayasundara
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

2A ADDED RESPONDENT

3. Devika Liyanage
Additional Secretary (Procurement and
Construction)
Ministry of Education
Isurupaya, Battaramulla.

4. Dr. K. P. Munagama
Additional Secretary (Information
Technology and Digital Education)
Ministry of Education
Isurupaya, Battaramulla.

5. A. M. P. M. B. Atapattu
Project Director,
Ministry of Education
Isurupaya, Battaramulla.

6. Hon. Attorney General
Hon. Attorney General's Department
Colombo 12.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Dilrukshi Dias Wickremasinghe, PC with
Dilumi De Alwis instructed by Amila Kumara
for the Petitioner.

Chaya Sri Nammuni, DSG for the State.

Written Submissions on : 30.09.2025 for the Petitioner.
08.09.2026 for the Respondents.

Supported on : 27.08.2025

Decided on : 10.09.2026

K. Priyantha Fernando, J. (CA)

1. This matter stems from the decision of the Ministry of Education to readvertise for the supply of 850 computers (with UPS units) and 425 laptops, having already awarded the same tender to the Petitioner in 2022. The agreements between the Petitioner and the 1st Respondent were terminated and subsequently awarded to a foreign enterprise for the goods to be imported. However, as a result of the economic crisis and effect of the Covid-19 pandemic, a ban on import goods was imposed. Given the circumstances, the contracts with the Petitioner were revisited at a revised price and with an upgraded version of the laptops. The Petitioner submitted that on 16.01.2024 the agreements entered into were unlawfully terminated after the Respondent's supposed acquiescence to the Petitioner's request. The instant writ application was filed on the basis of the alleged *ultra vires*, arbitrary and unlawful conduct of the Respondents in terminating the said agreements.
2. This Order is in relation to the purported "preliminary objections" raised by the Petitioner against the Statement of Objections and corresponding Affidavit filed by the Respondents.

3. At the outset I find it necessary to highlight that as per Clause 37 of the Contract between the parties, they have agreed that in the event of a dispute, the dispute would be governed by arbitration. It is common ground and agreed upon fact that the arbitration has already commenced.
4. I will now address the objections raised by the Petitioner. The Petitioner attacked the validity of the Statement of Objections and Affidavit on three main grounds and they are as follows:

- i. **The Statement of Objections is not supported by a due Affidavit (which follows Rule 3(1)(a) and 3(7) of the Court of Appeal (Appellate Procedure) Rules 1990)**

The Affidavit tendered by the Respondent is dated 19.02.2025, while the Statement of Objections itself bears the date 21.02.2025. The Petitioner cited and relied upon the dicta laid down in M.H.M Riyaaz v Institute of Engineers (CA/WRT/0424/2022 decided on 04.04.2024) wherein it was held that an Affidavit preceding the Petition cannot be considered in line with Rule 3(1)(a) of the Court of Appeal Rules. As such, the Petitioner is of the view that the Statement of Objections and its corresponding Affidavit ought to be dismissed *in limine*.

- ii. **The Affidavit of the 2A Respondent contains false averments**

The Petitioner contended that the 2A Respondent, being the successor to the 2nd Respondent does not have “personal knowledge” of the subject matter of this case as is stipulated in Section 181 of the Civil Procedure Code. The Petitioner contended that since the 2A Respondent only assumed office on 19.11.2024, which was after the impugned series of events and terminations.

The Petitioner specifically submitted that paragraph 4 of the Affidavit stated that the 2A Respondent himself had directed the 3rd Respondent to carry out certain acts. However, the impugned acts took place prior to the appointment of the 2A Respondent to the role of Secretary to the Minister.

The Petitioner further cited Section 183B of the Civil Procedure Code which provides that an individual who makes false statements via an affidavit is liable to

be proceeded against under and in terms of Section 2 of the Contempt of a Court, Tribunal or Institution Act No. 8 of 2024.

iii. Suppression and misrepresentation of material facts

The Petitioner submitted that the document labelled and submitted as 1R20 is an incomplete minute and only contains two of the many entries contained in the full document. The Petitioner draws attention of this Court to the case bearing No. CA/WRT/0381/2024 wherein which the full document was submitted. Additionally, the Petitioner contended that the Respondents have misrepresented the facts to this Court in relation to the purported extension of time requested by the Petitioner during the final stages of the agreement and prior to its eventual termination. The Petitioner further alleged that the Respondents had suppressed and misrepresented facts in the District Court as well.

5. The Respondents, in response to the “preliminary objections” of the Petitioner and raising preliminary objections of their own, contended as follows:
 - a. The Petitioner is not able to raise objections (preliminary or otherwise). It is the Respondent who may raise objections and in the even the Petitioner sought to raise anything against the Statement of Objections a Counter Affidavit would be necessary.
 - b. The matter being one which relates to the termination of contracts, is not amenable to the writ jurisdiction of this Court; Jayawardena Vs. Peoples Bank decided on 22.10.2001.
 - c. The dispute deals with disputed facts and as such this Court cannot determine the matter via a writ application.

The Respondents highlighted that the specific facts in dispute are in relation to the new criteria advertised for the new tender which were allegedly altered to adversely affect the Petitioner. Additionally, whether or not the time period should run from 23.01.2024 or 14 weeks from signing the addendum (based on the supposed extended date of

delivery as argued by the Petitioner and heavily contended by the Respondent) is a factual dispute.

6. In relation to the ‘contemporaneous’ affidavit, it was the contention of the Respondents that the accompanying affidavit and its statement of objections need not bear the same date as evidenced by the Roylin Fernando v. W.A. Christian Gamini Fernando, SC Appeal No. 18A/09, decided on 04.03.2016 case and Nagananda Kodithuwakku v. Chandana Sooriyabandara and others, CA WRT 137/2022, decided on 07.08.2023 case. Finally, addressing the matter of whether or not the affidavit was given from the personal knowledge of the 2A Respondent, the State argued that the 2A Respondent is not able to absolve himself of liability by stating that he was not present at the occasion on which the events took place.
7. In the instant case, the Affidavit is dated 19th February 2025 and the Statement of Objections is dated 21.02.2025. The date of the affidavit precedes the date of the objections by 2 days. On this difference of mere 2 days, the Petitioner contends it is not contemporaneous. It is pertinent to note that the Rule 3(7) only states that “*A statement of objections containing any averments of fact shall be supported by an affidavit in support of such averments.*”. The rule does not state that they have to be contemporaneous nor that they have to be filed on the same day. Therefore, there is no necessity or requirement under law that an affidavit to bear the same date as the statement of objections.
8. In M.H.M. Riyaaz vs. Institution of Engineers Sri Lanka and others CA/WRT/0424/2022 decided on 04.04.2024, the Court has looked at the validity of the affidavit but considered why affidavits are filed. That is to support the averments and facts in the petition. The other case referred in the Riyaz case is Nagananda Kodithuwakku where the affidavits were dated almost one year before the date of the statement of objections. In setting aside the affidavits, the court’s rationale was that the affirmant/deponent could not have possibly known that the facts existed one year or two years before the statement of objections are filed.
9. In the present case, although the affidavit is affirmed on 19.02.2025, the statement is filed by the registered attorney thereafter on 21.02.2025. In Riyaz’s case the Court has not analysed these facts and therefore facts are distinguished. In fact, in SC/Appeal/0067/2014, S.C.M. 29.04.2026, the court held that, “*This Court must give the provision its plain and natural meaning. Where the legislature has chosen not to restrict the identity of the deponent, Courts*

should not engraft such a restriction by construction". Therefore, when the rule does not say that the affidavit must be filed on the same day or say it must be contemporaneous. (the date of the affidavit and the objections), then court should not read more rules and restrictions in applying the rule". On these reasons, I overrule the 1st objection of the Petitioner.

IS THE AFFIDAVIT OF THE 2A RESPONDENT A FALSE ONE?

10. The objection is that the 2A Respondent took office on 19.11.2024 and that he is affirming to acts between the dates of March 2022 and March 2024 and therefore, he cannot have 'personal knowledge' of these matters. Upon perusal of the affidavit, it states that the 2A Respondent is affirming the statement 'from his personal knowledge and the documents that are made available to him'. Therefore, reliance is not only of his personal knowledge but from the documents he peruses. The acts, the calling of bids, rejections, reasons, and extensions given are all documented and can be perused. This is exactly what the Court also does as the Court has no first-hand knowledge of any occurrences which are being agitated before Court.
11. Furthermore, the 2A Respondent being the Secretary to the Ministry of Education, when he takes office has to bear all burdens and liabilities of the particular post/office. He cannot absolve himself of any liability by stating that he was not present at that occasion. Thus, the knowledge comes from his observations, reading documents and perusing files and speaking to others. As he is not affirming to personal facts and situations that can only be observed by a person in charge of a unit, he can affirm to the facts upon perusal of documents and gaining 'knowledge' and views of others who were involved. If this argument is taken to a logical conclusion, no other person can affirm to an affidavit even though documents available relating to transaction when those responsible persons have left office or retired. In the circumstances, I overrule this argument.

ARE THERE FALSE STATEMENTS IN THE AFFIDAVIT?

12. In the affidavit, the 2A Respondent has stated that 'she acted under the instructions given by me'. This Court recollects that when this matter was submitted in open courts, the learned

Deputy Solicitor General categorically stated that this was a drafting error caused due to the fact that it was the previous secretary that was in office when the objections were being drafted but when it came to the signing the affidavit, it was the current secretary. The learned DSG accepted that it was purely her fault that the particular line has not been changed. Further, she submitted that, if necessary, she will provide a sworn affidavit affirming 2A respondent should not bear any liability. The Petitioner has not been able to show any other ‘falsity’ in the affidavit. Under these circumstances, the Court is of the view that this being a mistake admitted by the learned DSG, and who is willing to affirm on oath that it is a mistake, that should not be construed as a false affidavit in the absence of any other false averments.

IS THERE SUPPRESSION OF MATERIAL FACTS BY THE RESPONDENTS?

13. The Petitioner contended that Mr. Munugama on 11/1 has recommended that 14 weeks should be given from 17.10.2023 until 23.01.2024 to make the delivery. The Petitioner accuses the Respondent of not disclosing the pages X(xiv) and disclosing it only in the connected application writ 381/2024. However, document 1R20 which was the minute of the secretary has been filed in this case to show that the 3rd Respondent was acting in her official capacity and the secretary has approved all her actions and decisions to terminate etc. The Court is of the view that there is no suppression because: (i) the document necessary for this case is only the minute by the secretary to show that she approved of the termination and no extension granted; (ii) the same respondents have filed the documents in the other case; if they wanted to suppress it, they could have done so; these are internal minutes; (iii) these were filed in 381/24 for a different reason because the meeting with the minister has been referred to.
14. In any event, it is seen that the recommendation by Mr. Munugama is only that “A RECOMMENDATION” made on 11/1 whereas the minutes thereafter by his superiors such as the secretary on 12/1, 22/1 as evidenced in 1R20 on 22/1, the Secretary has confirmed that the termination should be proceeded with. There was no recommendation for extension upheld by the final authority and this cannot be considered as suppression. In any event, this a disputed fact.

15. Furthermore, the Petitioner referred to a meeting evidenced in 1R20 and a verbal conversation had with the minister where the recalling of letter of termination had been discussed. However, it is revealed by the documents and minutes annexed to the objections of Petitioner that the Minister had revoked that decision and instructed them to proceed with the usual course of termination and calling for performance bonds. It is the view of this Court that an interim decision which has not been carried out has no legal effect and there is no burden on the Respondents to disclose such act. Thus, it does not amount to suppression. In any event, since the Petitioners have withdrawn the District Court action now, this is of no consequence.

SHOULD THE INTERIM ORDER BE VARIED/SET ASIDE? OR SHOULD THE WHOLE ACTION BE DISMISSED?

16. The interim relief granted in this case has prevented the Respondents from processing a new tender. It is revealed that while this case in place, the petitioner did not proceed with the DSP matter filed to prevent the encashment of the Performance Bond, without filing written submissions for over a year, until that matter was fixed for order. Finally, only two days before the order was due, the Petitioner has come before this Court filing INJ 0006/2025 to stay the order being given (indirectly) by seeking an injunction to stop the execution of the performance bond.

17. This Court ordered to initiate arbitration within three months and to stay/stop encashment until then. It is common ground that now the arbitration has begun. Thus, it appears to the Court that while the same subject matter is being agitated before the arbitration tribunal, the Petitioner has attempted to strike out the objections of the respondents on technicalities.

18. The main contention in this application is the *certiorari* to quash the retender which had commenced and where the Petitioner also has submitted a bid. There is also a *certiorari* sought to quash the termination. The arbitration is on the encashment of the performance bond and to stop the termination. The reliefs sought are essentially the same. Now, the Petitioner is benefitting from the advantage of the tender having been stopped whilst the matter is before an arbitration tribunal and this Court by way of a writ application.

19. This amounts to abuse of process, the definition of which was considered in case bearing No. CA/WRT/0405/2018 decided on 07.08.2020 and reads as follows:

“It is important that this Court does not allow multiple proceedings before different fora on the same or a related issue. It is equally important that this Court does not allow forum shopping by litigants. A discussion on this matter would not be complete without considering the power of this Court to strike down applications of this nature and prevent an abuse of the process of Court. The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to re-litigate a claim which the court has already determined.⁸ The following passage from Walton vs Gardiner sums up the above position:

“[Abuse of process] extends to all those categories of cases in which the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness... Proceedings before a court should be stayed as an abuse of process if, notwithstanding that the circumstances do not give rise to an estoppel, their continuance would be unjustifiably vexatious and oppressive for the reason that it is sought to litigate anew a case which has already been disposed of by earlier proceedings.””

20. Whilst there isn't necessarily multiplicity of judicial proceedings in the instant case, the Petitioner, even whilst arbitration proceedings have commenced, has wasted the time and resources of this Court by making baseless and highly technical objections. The Petitioner invoked the jurisdiction of this Court in pursuit of a discretionary remedy, and has wasted its time by making such objections.

21. The termination of these contracts should be determined by arbitration as per clause 37 of the contract, which has now commenced. I find it pertinent to refer to Section 5 of the Arbitration Act No. 11 of 1995 which reads as follows,

*“5. Where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the **Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.**”*

22. Justice Mahinda Samayawhardena, J. in Delegation of The European Union to Sri Lanka and The Maldives Vs. President of The Labour Tribunal and Others [2019] 3 Sri L. R. 42 considered and laid down as *obiter dicta* the effect of Section 5 of the Arbitration Act. The judgment reads as follows:

“When there is such an arbitration clause, in terms of section 5 of the Arbitration Act, No. 11 of 1995, “the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.” That means, irrespective of an arbitration clause, the Court shall have jurisdiction, provided the other party does not object to it. It is only if the other party objects, that the jurisdiction of the Court is ousted.

23. Seeing as the Respondent did in fact raise this as an issue, the Court has the authority to use its discretionary power so as to determine whether a case should be dismissed or its proceedings stayed owing to the arbitration clause between the parties.

24. Justice Samayawardhena further identified in [2019] 3 Sri L. R. 42 the trend of authority in such contexts, and held that the trend was emulated by the judgment delivered in the case of Elgitread Lanka (Private) Limited Vs. Bino Tyres (Private) Limited and others SC/Appeal/106/2008 decided on 27.10.2010, in which full effect to the arbitration was given. Furthermore, in the *Elgitread* case it was held that Section 5 empowers the Court with a

discretion to decide whether or not an action ought to be stayed or dismissed. The decision reads as follows:

“In this context, it is necessary to refer once again to Section 5 of the Arbitration Act of 1995, which provides that where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, “the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.” It is important to note that Section 5 does not expressly provide that, in that situation, the action shall be dismissed or alternatively that proceedings shall be stayed. Learned Counsel for the Appellant has sought to contrast Section 5 of our Act with Article II paragraph 3 of the New York Convention and Article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration, which he submits, contemplated the stay or laying by of the action or proceedings until the conclusion of the arbitration.

...

When interpreting a statutory provision, a court is entitled to take into consideration the law that existed prior to the enactment of such statutory provision. Section 5 of the Arbitration Act does not contain any words that manifest an intention to take away the discretion the court had prior to the enactment of that section. On the contrary, the words used in Section 5 are neutral and are in line with Article 8 of the UNCITRAL Model Law and consistent with the provisions of the New York Convention. I therefore hold that the Commercial High Court had the power to dismiss the action or stay proceedings, for the purpose of giving effect to Section 5 of the Arbitration Act.”

25. In the instant case, the Petitioner has not supplied any goods. Thus, this case is different to the other case, CA/WRT/381/2024. Furthermore, for this procurement of 850 desktops and 425 laptops, it is revealed by the Respondents that there is admittedly a foreign funded project ending in September 30th. OPEC has said that there will be no further extensions given. The first extension was given in 2024. It is undisputed that this procurement was pending from 2023. It was revealed by the Respondents that if the funding ends, the Ministry will have to spend a large amount of money and cannot make the procurement work.

26. Therefore, taking into consideration the above circumstances, I dismiss this application without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J. (P/CA)

I agree.

President of the Court of Appeal