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.

CA WRIT Application No.1077/2025

01. Amerasian (Private) Limited,
No.212, Dampe Road,
Piliyandala.

02. Global GIS (Private) Limited,
No.11A, 6th Lane,
Pagoda Road,
Nugegoda.

03. Suleco (Pvt) Ltd.,
No.44, Beddagana South,
Pitakotte.

04. CORSNET (Private) Ltd.,
No.44, Beddagana South,
Pitakotte.

PETITIONERS

Vs.

01. N.K.U. Rohana,
The Surveyor General,
Survey General's Office,
No.150, Bernad Soysa Road,
Narahenpita,
Colombo 05.

02. M. W.K.L. Dayalal,
Senior Superintendent of Survey
(Procurement and Supplies),
Procurement and Supply Branch,
Surveyor General's Office,
No.150, Bernad Soysa Road,

Narahenpita,
Colombo 05.

03. Chairman,
Department Procurement Committee,
Surveyor Department,
No.150, Bernad Soysa Road,
Narahenpita,
Colombo 05.

04.P. H.N.N. Nimalaweera,
Chairman,
Bid Evaluation Committee,
Survey Department,
No. 150, Bernad Soysa Road,
Narahenpita,
Colombo 05.

05. Isuru Karaliyadda,
Member,
Bid Evaluation Committee,
Survey Department,
No. 150, Bernad Soysa Road,
Narahenpita,
Colombo 05.

06. The Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
"Mihikatha Medura",
No.1200/6,
Rajamalwatta Road,
Battaramulla.

07. Minister of Agriculture, Livestock,
Land and Irrigation,
Ministry of Agriculture, Livestock,
Land and Irrigation,
"Mihikatha Medura",
No.1200/6,
Rajamalwatta Road,
Battaramulla.

08. Bhoomi Tech (Pvt) Ltd.,
184, Hill Street,
Dehiwela,
Mt. Lavinia.

09. Chairman,
National Procurement Commission,
No.44,
R. G. Senanayake Mawatha,
Colombo 07.

10.D. C. Siribaddana,
Secretary General,
National Procurement Commission,
No.44,
R. G. Senanayake Mawatha,
Colombo 07.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Shantha Jayawardena with Hiranya Damunupola and Thanuka Ranathunga for the Petitioners.

Mr. Peramunagama instructed by M.S.M. Ilyaz for the 8th Respondent.
Nayomi Kahawita, S.S.C. for the State.

Written Submissions: On behalf of the Petitioners – 08/12/2025
On behalf of the Respondents – 10/12/2025

Support on : **03/12/2025**

Order on : **16/12/2025**

Order on formal notices, limited objections, and interim reliefs

Dr. Sumudu Premachandra J.

1] The Petitioners prays for following reliefs from this court;

a) Issue notices on the respondents

b) Call for and examine the entire record pertaining to the procurement process impugned in this application including the following:

   i. Name of the Bid Evaluation Committee

   ii. Travel details of the Members of the Bid Evaluation Committee who travelled to India for Benchmark Testing

   iii. Names of the Departmental Procurement Committee

   iv. Report/decision/recommendation of the Bid Evaluation Committee

   v. Report/decision/recommendation of the Departmental Procurement Committee

   vi. Proceedings of the pre-bid meeting

c) Grant and issue an order in the nature of Writ of Certiorari quashing the decision/s taken by the 1st to 6th respondent/s in accepting the bid submitted by the 8th respondent, in response to the Bid Invitation marked P6, for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under 'id No. SD/IV/2025

d) Grant and issue an order in the nature of a Writ of Certiorari quashing the Formal Letter of Acceptance (if any) issued to the 8th Respondent by the 1st to 6th Respondent/s for the Establishment of 24 New Stations for the Sri Lanka continuously Operating Reference Station Network' under Bid No. SD/IV/2025

e) Grant and issue an order in the nature of Writ of Certiorari quashing any decision taken by the 1st to 6th respondent/s to award the Contract for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 to the 8th respondent

f) Grant and issue an order in the nature of a Writ of Certiorari quashing any recommendation given by the 3rd, 4th and 5th respondent/s to award the Contract for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 to the 8th respondent

g) Grant and issue an order in the nature of a Writ of Prohibition prohibiting the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents, from issuing Formal Letter of Acceptance to the 8th Respondent by the 1st to 6th respondent/s for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025

h) Grant and issue an order in the nature of Writ of Prohibition prohibiting the 4th and 5th respondent/s in recommending the award of the Contract for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 to the 8th respondent

i) Grant and issue an order in the nature of Writ of Prohibition prohibiting the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents, from entering/signing a Formal Contract Agreement with the 8th respondent for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025

j) Grant and issue an order in the nature of Writ of Prohibition prohibiting the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents, from evaluating the Bid submitted by the 8th respondent for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025

k) Grant and issue an order in the nature of Writ of Mandamus directing the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents, to reject the bid submitted by the 8th respondent under Clause 7.10 (a) of the Procurement Guidelines- 2024 on Goods, Works, and Non-Consulting Services marked as P5

l) Grant and issue an order in the nature of Writ of Mandamus directing the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents to cancel the entire tender process for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025

m) Grant and issue an order in the nature of Writ of Mandamus directing the 1st to 6th respondents and/or anyone or more of them and/or added or substituted respondents to reinvite the Bids/proposals as per clause 7.10 read with clause 7.11 of the Procurement Guidelines of 2024

n) Grant and issue an interim order suspending the tender process for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025, initiated by Bid Invitation marked P6, until the final hearing and determination of this application

o) Grant and issue an Interim Order restraining the 1st to 6th respondent/s and/or any one or more of them entering/signing a Formal Contract Agreement with the 8th respondent for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025, initiated by Bid Invitation marked P6, until the final hearing and determination of this application

p) Grant and issue an Interim Order restraining the 1st to 6th respondent/s and/or any one or more of them from issuing Formal Letter of Acceptance issued to the 8th respondent by the 1st to 6th respondent/s for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025, until the final hearing and determination of this application

q) Grant and issue an Interim Order restraining the 3rd, 4th and 5th respondent/s and/or substituted or added respondents in recommending the award of the contract for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 to the 8th respondent until the final hearing and determination of this application

r) Grant and issue an Interim Order restraining the 4th and 5th respondent/s and/or substituted or added respondents from evaluating the Bid submitted by the 8th respondent for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 until the final hearing and determination of this application

s) Grant and issue an Interim Order suspending the operation of any recommendation/decision to award the Contract for the Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network' under Bid No. SD/IV/2025 to the 8th respondent until the final hearing and determination of this application

t) Grant and issue an Interim Order directing the 1st to 6th respondents and/or any one or more of them to maintain the status quo (Status Quo being the 1st to 6th respondents and/or any one or more of them have not recommended and/or granted the award of the contract to the 8th respondent), until the final hearing and determination of this application

u) Grant costs

v) Grant such other and further reliefs that Your Lordships' Court shall seem meet.

2] The core dispute concerns the procurement process relating to the "Establishment of 24 New Stations for the Sri Lanka Continuously Operating Reference Station Network" under Bid No. SD/IV/2025. The Petitioners challenge the process on the grounds of procedural irregularity and non-compliance with the Procurement Guidelines – 2024 on Goods, Works, and Non-Consulting Services (annexed as P5), which came into effect on 01/01/2025. They seek to impugn the decision to award the contract to the 8th Respondent.

3] According to the Petitioners, the procurement was conducted through a Single Stage Two Envelope Bidding Procedure, but the Bid Document (P7) and associated technical specifications were allegedly framed in a manner that unduly favoured the 8th Respondent. They contend that this design contravened Clause 1.3 (Principles of Public Procurement) and Clause 5.23(c) (requirement for generic and unbiased specifications) of the Guidelines.

4] Furthermore, they highlight the initial omission of Section I, titled "Instructions to Bidders," in breach of Clause 5.5, which requires the inclusion of a comprehensive Bid Data Sheet. The 1st Petitioner had sought multiple clarifications on critical issues—such as evaluation criteria, benchmark testing requirements, and the marking scheme for the technical proposal—through letters marked P10, P12, P12(a), P12(c), and P12(d). However, a window of only one day was provided to submit such queries, in apparent violation of Clauses

5.10 and 5.11 of the Guidelines. At the time, the bid submission deadline remained fixed at 26/08/2025.

5] Subsequently, P14 was issued on 22/08/2025, extending the submission deadline first to 01/09/2025, and later—according to paragraph 31 to 09/09/2025. This Addendum also incorporated a separate Section I ("Instructions to Bidders") and extended the contract completion period from 75 to 90 days. The Petitioners maintain, however, that the Addendum did not adequately address all material clarifications they had raised, and that the extensions were not given proper public publicity as mandated by Clause 5.11(d).

6] They further point to a conflict of interest: the 5th Respondent, a member of the Bid Evaluation Committee, is a former employee of the 8th Respondent. The total contract price is stated to be Rs. 170 million (Rs. 170,000,000).

7] The Petitioners allege that serious irregularities permeated the entirety of the procurement process, rendering it neither transparent nor fair, and that it was effectively structured to favour the 8th Respondent, Bhoomi Tech (Pvt) Ltd.

8] They assert that the 1st to 4th Petitioners were prevented from submitting competitive bids due to the inadequacy of essential information, the defective structure of the tender, and the Respondents' failure to respond to crucial clarifications or to grant appropriate extensions. As a result, only a single bid—submitted by the 8th Respondent—was ultimately received. The Petitioners argue that this bid is not substantially responsive, its price of Rs. 330 million being nearly double the Total Cost Estimate (TCE) of Rs. 170 million, in contravention of the Procurement Guidelines and thereby depriving other bidders of a fair opportunity to participate.

9] The Petitioners further state that the Bid Document was incomplete and that the technical specifications for the main control software were allegedly tailored to the 8th Respondent's exclusive product line (Trimble USA), thereby inhibiting genuine competition. Central to the alleged bias is the conduct of the 5th Respondent, Isuru Karaliyadda, a key member of the Bid Evaluation

Committee who is said to have failed to disclose his prior employment with the 8th Respondent. The Petitioners claim that this constitutes a conflict of interest within the meaning of Clause 1.5(d) and Clause 1.5.4(h) of the Guidelines. They also allege that the 5th Respondent was instrumental in drafting technical specifications that aligned closely with the 8th Respondent's product line and that he played an active role in a pre-bid meeting at which this bias was apparent.

10] The technical evaluation procedure is also challenged. Instead of conducting the mandatory two-stage benchmark testing stipulated in the Bid Document (Addendum 1, P30), the 8th Respondent is alleged to have sponsored an overseas visit to India for three officers of the Survey Department—including the 5th Respondent—to inspect an existing CORS network. This visit, allegedly undertaken without required ministerial approval (P31 and P32), is said to have improperly replaced the stipulated technical demonstration.

11] In light of these alleged procedural violations, conflicts of interest, and substantive irregularities, the Petitioners seek Writs of Certiorari, Prohibition, and Mandamus against the 1st to 8th Respondents. They request that the Court quash the decision to accept the 8th Respondent's bid (P6), the issuance of the Letter of Acceptance, and any consequential recommendation or award.

12] As objections, the affidavit of Acting Surveyor General was filed along with R1 to R28. It was filed solely to resist the issuance of a notice and stay order. She says that the composition of the Bid Evaluation Committee, asserting that the 5th Respondent, a low-ranking member, cannot influence the decision and only provides technical facilitation.

13] Furthermore, the Affiant contests the Petitioners' Locus Standi as a preliminary objection, pointing out that none of the Petitioners had submitted Bid Documents; thus, they are not entitled to file this case.

14] The Respondents admit that a Pre-Bid Meeting was held, and the Minutes of the Pre-Bid Meeting (R10), letters sent to prospective bidders (R11-R21), the Procurement Committee Report (R24), and estimates for the SL CORSnet project (R25-R28) were filed. It is said that the consensus at the Pre-Bid Meeting for bidders to submit clarifications by a specific date and the procurement process was expected to be completed within a 75-day period. It is seen that the decision-making process concerning the total costs and price with the 8th Respondent is still underway, indicating that no final decision has been made by the Surveyor General's Department.

15] The Respondents raise that the Petitioners lack locus standi to maintain the application and have failed to establish a reciprocal legal duty or right to seek prerogative writs.

16] Further, the learned Senior State Counsel for the 1st to 10th Respondents (except 8th Respondent) stressed that the procurement process initiated by the Surveyor General’s Department for the establishment of 24 new stations under the Sri Lanka Continuously Operating Reference Station (SLCORS) Network, was done within the four corners of the Procurement Guidelines.

17] The Respondents say that the Petitioners have failed to satisfy the three legal tests applicable to the granting of a stay order or injunction as articulated in ***Duwearchi and another v. Perera and Others*** (1984) 2 SLR 94:

i) Whether the final order would be rendered nugatory?

ii) Where the balance of convenience lies?

iii) Whether irreparable mischief would be caused to either party?

18] The Respondents further state that the State will suffer irreparable injury if a stay order is granted. They highlight that the ongoing proceedings in the Court of Appeal have already halted the processing of the singular bid, thereby delaying a time-sensitive national project. Any further delay, they argue, risks the forfeiture of budgetary allocations earmarked for the current financial year, resulting in the wastage of public funds.

19] The answer for the Respondents was for conflict of interest involving the 5th Respondent, a member of the Bid Evaluation Committee, and the 8th

Respondent; say that this allegation as falling outside the stipulated evaluative criteria.

20] I now consider the merits of the application, whether to issue formal notices and the interim reliefs. The Petitioners challenge the awarding of the tender to the 8th Respondent, Bhoomi Tech (Pvt) Ltd. However, the 8th Respondent was the single bidder, but the Petitioners' contention was that they were prevented from bidding by the 1st Respondent, who did not provide details in response to their request for clarification. They say that the impugned tender process should be quashed on;

i) Breach of the rules of natural justice

ii) Violation of provisions in the Procurement Guidelines - 2024 on Goods, Works, and Non-Consulting Services

21] On the other hand, the Respondents say that the Petitioners as non-bidders have no *locus standi* to the action. The Respondent say that they do not owe any duty towards the Petitioners. Thus, the Petitioner cannot file this action in personal capacity nor public interest litigation. It is to be noted that a person can gain locus standi to bring infringement of rights in their personal capacity or as a common/public interest related to the violation of public rights.

22] I must consider the question of locus standi first. The learned Counsel for the Petitioners submitted that they can come under private, personal capacity and/or under public interest litigation. It is to be examined now.

23] In relation to *locus standi*, Indian Supreme Court in ***Vinoy Kumar vs State Of U.P. & Ors*** on 16 April, 2001, AIR 2001 SUPREME COURT 1739, 2001 (4) SCC 734, 2001 AIR SCW 1641 has given a broad interpretation. In that R.P. Sethi J, noted;

> *"Generally speaking,* ***a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or***

substantially invaded *nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases.* ***Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened*** *and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."* [Emphasis is added]

24] Further, in ***S. P. Gupta and others vs President of India and others,*** AIR 1982 Supreme Court 149 at 184, P.N. Bhagawati J has held as follows;

"The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born".

"The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. ***The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered*** *a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief".*

"But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court".

25] In the Sri Lankan context, in ***FORBES & WALKER TEA BROKERS v. MALIGASPE AND OTHERS*** [1998] 2 SLR 378(page 403), Gunawardena, J. held cited with approval of English rules as follows;

"Next, the question whether the petitioner has standing or locus standi to invoke the jurisdiction of this court by way of certiorari falls to be considered. When a question regarding status is raised in any given case, as has been done in this case, the traditional approach is to deal with it is as a threshold question. But the view that the requirement of locus standi cannot be divorced from consideration of the merits of the application has gained considerable acceptance of late and it is not wholly inappropriate, therefore, to have considered the merits before the question of standing is considered for several judgments contain statements to the effect that if serious or grave illegality existed standing (locus stands) would be accorded. In other words, the question of locus standi cannot be properly

considered in isolation of the relevant factual and statutory context. The English judgments contain a number of references to the need to view standing (locus standi) expansively, yet they (the older judgments), are balanced by caution lest the gates be thrown open too wide.

As Lord Denning had said: in administrative law the question of locus standi is the most vexed question of all. - Perhaps, he would have said so because the attitude of the courts on the question of locus standi does not appear to be all that uniform - at least, in the past. The relevant law obviously had been in a flux and still seems to be somewhat so.

The law relating to locus standi, as at present, seems to be somewhat in a transitional stage although the trend undoubtedly seems to be towards liberalisation of the rules (as to standing). In England, the rules of the court (which have now been incorporated into the Supreme Court Act of 1981) provided: The court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which application relates.

Since the adoption of the above rule there is discernible a vigorous judicial predilection which favours enlargement of the purview of the concept of locus standi. Lord Denning, MR has expressed the view, extra judicially, that the above rule (which has now been incorporated into the Supreme Court Act of 1981) lays down one simple test and confers standing on an ordinary citizen who comes asking that law should be declared and enforced. Now far and to what extent these changes and innovations in the principles governing the grant of writs ill English law will have a bearing in Sri Lanka remains to be seen; but there is no denying that Sri Lankan rules relating to standing, striking root in English principles and traditions, would not remain impervious to such changes in the direction of liberalization that have taken place in England.

The test or the criterion for deciding whether an applicant for judicial review has locus standi has been defined in English and local decisions by using varying phraseology although all the criteria or the tests seem to point one thing, that is, that redress through medium of certiorari can be *made available only to a person who has a genuine grievance as opposed to a busy body who would make a futile and frivolous application - although strictness in the rules as to standing has been, as pointed out above, considerably relaxed - in England since 1981 - in what may be called the new law of standing (locus standi) - although seemingly, there are no signs of relaxation, as such, in the local decisions nor any significant departure from the rule or the concept that a person (applicant for certiorari) does not answer to the character of a person aggrieved if he has only some grievance or even an injury in common with the rest of the public".*

26] Moreover, in relation to public interest litigation in the celebrated case ***BULANKULAMA AND OTHERS v. SECRETARY, MINISTRY OF INDUSTRIAL DEVELOPMENT AND OTHERS (EPPAWELA CASE***), [2000] 3 SLR 243, Amerasinghe, J . has to say this;

"Learned counsel for the 5th and 7th respondents submitted that, being an alleged "public interest litigation" matter, it should not be entertained under provisions of the Constitution and should be rejected. I must confess surprise, for the question of `public interest litigation' really involves questions of standing and not whether there is a certain kind of recognized cause of action. The Court is concerned in the instant case with the complaints of individual petitioners. On the question of standing, in my view, the petitioners, as individual citizens, have a Constitutional right given by Article 17 read with Articles 12 and 14 and Article 126 to be before this Court. They are not disqualified because it so happens that their rights are linked to the collective rights of the citizenry of Sri Lanka - rights they share with the people of Sri Lanka. Moreover, in the circumstances of the instant case, such collective rights provide the context in which the alleged infringement or imminent infringement of the petitioners' fundamental rights ought to be considered. It is in that connection that the confident expectation (trust) that the Executive will act in accordance with the law and accountably, in the best interests of the people of Sri Lanka, including the petitioners, and future generations of Sri Lankans, becomes relevant."

27] Further, in ***Premadasa vs. Wijewardena and others*** [1991] 1 SLR 333 at 343, Tambiah CJ has observed that;

> *"The law as to locus standi to apply for certiorari may be stated as follows: The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application."*

28] In the case in hand it is seen that all Petitioners attended pre bidding stage and R-11, 12, 14 clearly show that additional bidding document was forwarded to the Petitioners and it clearly shows that the Petitioners were intending to bid , therefore, it is clearly seen that they were affected and aggrieved parties, thus, they have *locus standi* under personal capacity. The contention that since they did not bid, they do not have standing, cannot be accepted according to the above case laws and rules adopted. On top of that, this impugned tender involves millions of public monies, thus, the Petitioners have dual capacity, private and public, in relation to *locus standi*.

29] For the aforesaid reasons, I reject the preliminary objection of the Respondent that the Petitioners have no right to maintain the instant application.

30] I now consider whether, this Court should be satisfied that the Petitioner has submitted a prima facie case which warrants this Court to issue formal notice of this application on the Respondents.

31] In this regard that the core argument of the Petitioners is a conflict of interest concerning the 5th Respondent, Isuru Karalliyadda, a member of the Bid Evaluation Committee. P27 and P28 show that the 5th Respondent, Isuru Karalliyadda is a former permanent employee of the 8th Respondent (from 2019 to 2022, as a Survey Engineer) and actively participated in the pre-bid meeting, clarified technical queries, and was involved in evaluating the bid. This fact proves from R1, that Isuru Karalliyadda was a member of the said Committee. R2 of the affidavit of Isuru Karalliyadda, and he was never partial to the 8th Respondent when he joined as a Government Surveyor. He said that he only trained one year at Bhoomi Tech (Pvt) Ltd. In that he further said he obtained a BSc (Hons) in Surveying Sciences from Kotelawala Defence University (KDU). But P27, indicates, he is a graduate of London Metropolitan University. In that, there is nothing mentioned about Kotelawala Defence University. Importantly, in that LinkedIn profile of 5th Respondent shows that he served 3 years 1 month at Bhoomi Tech as Survey Engineer. Thus, by R2, 5th Respondent lied to court or he has published false information in his LinkedIn profile. Thus, this court cannot accept the fact that the 5th Respondent was a mere trainee of 8th Respondent.

32] By Article 156B of the Constitution, National Procurement Commission was set up. This court is mindful of Article 156C. (1) of the Constitution the intention of the Parliament to set up National Procurement Commission. Article enacts;

> *"It shall be the function of the Commission to **formulate fair, equitable, transparent, competitive and cost-effective procedures and guidelines**, for the procurement of goods and services, works, consultancy services and information systems by government institutions and cause such guidelines to be published in the Gazette and within three months of such publications, to be placed before Parliament."* [Emphasis is added]

33] As stipulated by Article 156C, by gazette No. No. 2412/01 - Monday, November 25, 2024, Procurement Guidelines - 2024 on Goods, Works, and Non-Consulting Services was published. In that clause 1.5 introduces **"Ethics of Public Procurement"**. Clause 1.5 (d) speaks about the conflict of interest. It says;

> *"Public Officers involved in any Public Procurement **shall submit a declaration that they have no conflict of interest in connection** with such Public Procurement."*

34] Clause 1.5.1 talks about the **Confidentiality**; it says;

> *"All parties associated with procurement activities **shall maintain strict confidentiality throughout the Procurement Process**. No disclosure of*

confidential information should be made except when required in terms of any applicable law."

35] Clause 1.5.4 refers to the **Conflict of Interest** as follows;

"(a) "Conflict of Interest" is any situation where the personal or business interests of any person in a Public Procurement transaction would adversely affect the interests of a Procurement Entity in achieving VFM and adhering to Public Procurement Principles.

(b) ***Public officers and individuals involved in Public Procurement shall declare any conflict of interest to the relevant PE before the commencement of the relevant Procurement Process and <u>shall refrain from participating in such procurement</u>.***

(c) In this regard, Section 107 of the Anti-Corruption Act, No. 09 of 2023 shall be adhered to" [Emphasis is added]

36] Section 107 of the Anti-Corruption Act, No. 09 of 2023, is reproduced below for clarity; it says;

"107. (1) Where a public authority in which a public official is a member, director, or employee proposes to deal with a person, company, partnership or other undertaking in which that public official or a relative or associate of such public official has a direct or indirect interest which interest is within his knowledge of that public official shall forthwith disclose to that authority the nature of such interest in the manner as may be prescribed by regulations

(2) Where a public official or a relative or associate of such public official has a personal interest in a decision which a public authority is to take regarding a person, company, partnership or other undertaking, that public official shall not vote or take part in any proceedings of that public authority relating to such decision.

(3) Any public official who contravenes the provisions of subsection (1) or (2) commits an offence and shall on conviction by the High Court be liable

to a fine not exceeding one million rupees or to a term of rigorous imprisonment not exceeding seven years or to both such fine and imprisonment."

37] However, Conflict of Interest has not been interpreted by section 162 of the Anti-Corruption Act No. 09 of 2023. The Petitioners' grievance was that the 5th Respondent, being a member of the Bid Evaluation Committee, had tended to be biased as he was a former servant of the 8th Respondent. In ***Mohamed Mohideen Hassen et al Vs. N.S. Peiris et al***, [1982]1 SLR 195, the Court considered the allegation of bias on the part of adjudicating body and personal interest. In that SENEVIRATNE, J., cited dicta of Lord Denning, M.R. in ***Metropolitan Properties Co. (F.G.C.) Ltd. Vs. Lannon & others,*** (1968) 3 Weekly Reports, *694., and held;*

> *"In considering whether there was a real likelihood of bias, the Court does not look at the mind of the Justice himself or at the mind of the chairman or the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a likelihood that he would, or did, in fact favour one side at the expense of the other.* ***The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless, if right-minded persons would think, that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit.*** *And if he does sit, his decision cannot stand .... Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable men would think it likely or probable that the justice, or chairman, as the case may be, would or did favour one side unfairly at the expense of the other. The Court will not inquire whether he did, in fact, favour one side unfairly. Suffice, is that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: "The Judge was biased."*
>
> *Lord Dennig held that the decision of the Assessment Committee was voidable and should be avoided. The appeal was allowed and the case*

was remitted to another Rent Assessment Committee." [Emphasis is added]

38] Thus, in the above case the court looked for a probable conclusion that there was a real likelihood of bias on the part of the Rent Board and therefore the order of the Rent Board should be quashed.

39] Further, in ***R v Gough*** [1993] AC 646, [1993] UKHL 1., House of Lords case introduced that **"real danger of bias test"** for all cases of apparent bias, including those concerning jurors, magistrates, and arbitrators. In those cases the correct test to be applied in all cases of apparent bias is whether, having ascertained all the circumstances bearing on the suggestion of bias, the court concludes that there was a "real danger" that the decision-maker was biased. This was intended to be a single, objective standard, unifying previous differing tests, such as the "reasonable suspicion" test and the "real likelihood" test.

40] In ***Porter v Magill*** [2001] UKHL 67; [2002] 2 AC 357, it was held that under Article 6(1) of ECHR, the relevant test in cases of alleged bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

41] Moreover, in ***R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 2)*** (1999) 2 WLR 272 a new panel of judges, composed of Lord Browne-Wilkinson, Lord Goff, Lord Hope, Lord Hutton, Lord Saville, Lord Millett and Lord Phillips, set aside the first judgment (***R (Pinochet Ugarte) v Bow St Metropolitan Stipendiary Magistrate*** [2000] 1 AC 61) on the grounds that an appearance of bias had been created, following revelations that one of the judges, Lord Hoffmann, had failed to disclose personal ties to Amnesty International, an intervenor in the case against Pinochet.

42] In the case in hand, it is apparent that the 5th Respondent has some soft corner for his previous employer, the 8th Respondent, as a reasonable observer could foresee. The 5th Respondent was offered an unapproved "Benchmarking Testing" in India. The learned Senior State Counsel contended that according to R1, Bid Committee Member VIII, Nalin Prasad Nanayakkara Gunawardene, was a trainee of Suleco (Pvt) Ltd, the 3rd Petitioner and as the

5th Respondent, trained under the 8th Respondent. R3 has been given by Bid Committee Member VIII, Nalin Prasad Nanayakkara Gunawardene, confirming. However, the said Bid Committee Member VIII, Nalin Prasad Nanayakkara Gunawardene, was not selected for "Benchmarking Testing."

43] The relationship between the 5th and 8th Respondents was not disclosed and will go under if the Petitioner did not point it out. We hold that the lack of prior disclosure is sine qua non and if not it violates Clause 1.5 (d) and Clause 1.5.4 (b) of the Procurement Guidelines (P5), and Section 107 of the Anti-Corruption Act No. 09 of 2023, and the principles of natural justice, specifically the maxim nemo judex in causa sua (no one should be a judge in his own cause).

44] Apart from the above, the Petitioner contends that an illegal move was made to increase the Total Cost Estimate (TCE) to accommodate the 8th Respondent's "grossly excessive bid." The original TCE was Rs. 170 million. After the opening bids on 09/09/2025, only the 8th Respondent submitted a bid, estimated at Rs. 330 million (nearly twice the original TCE). Following this, a committee was appointed, and the 1st Respondent subsequently revised the TCE upward to approximately Rs. 271 million in an attempt to justify the substantially higher price quoted by the 8th Respondent. The Petitioners submit that this action is in violation of Clause 4.2.1 (a) of the Procurement Guidelines, which states that the approving authority shall refrain from revising the TCE during the Procurement Process after requesting bids/proposals. The clause says;

> *"4.2.1 (a) Wherever it is necessary to amend the TCE, the approval for the amended TCE shall be obtained from the respective authority. After requesting for bids/proposals, the approving authority* ***shall refrain from revising the TCE during the Procurement Process.****"*

45] The Petitioners say that there is no provision in the Procurement Manual to justify increasing the TCE after opening bids. The continuation of the procurement process based on a single, non-substantially responsive bid that is substantially higher than the TCE is argued to be a violation of Clause 7.10

of the Procurement Guidelines, which requires rejection of such bids. Said clause says;

> *"(a) Rejection of all received bids/proposals can be justified under exceptional circumstances which include;*
>
> > *i. All received bids/proposals are not substantially responsive;*
> >
> > *ii. ii. **When all bid/proposal prices received are substantially higher than the TCE**;*
> >
> > *iii. iii. Lack of effective competition.*
>
> *(b) However,*
>
> > *i. Lack of competition shall not be determined solely by the number of bids/proposals received.*
> >
> > *ii. Even when **only one bid**/proposal is received, after wide publicity has been given, the bidding process may still be considered valid**, if the quoted price is justifiable."*** [Emphasis is added]

46] Learned State Counsel argued that there are provisions to negotiate with the bidder, and the 8th Respondent's bid was a "responsive bid" and it could be considered under clause 7.10(b). It is to be noted that if the quoted price is justifiable, only, it could be considered. But the quoted price is too high, and to justify this, a committee was appointed, and the Total Cost Estimate (TCE) was enhanced to 271 million, which is unacceptable. Thus, I am of the view that a prima facie case is made out by the Petitioners and formal notices should be issued.

47] I now consider whether to issue interim reliefs. The Petitioners seek Interim Relief to restrain the award of the contract to the 8th Respondent and to prevent the 1st to 6th Respondents from signing a final contract.

48] In issuing interim reliefs in prerogative writs, there are plethora of judgements. In ***Duwearatchi v. Vincent Perera***, [1984] 2 SLR 94, SENEVIRATNE, J., held three tests to be applied in this regard; His Lordship notes;

> *"An interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court. The Court should be guided by the following principles: (i)* ***Will the final order be rendered nugatory if the petitioner is successful****? (ii)* ***Where does the balance of convenience lie?*** *(iii)* ***Will irreparable and irremediable mischief or injury be caused to either party****?"*[Emphasis is added]

49] In ***Billimoria V Minister of Lands, Land Development and Mahaweli Development and Two Others*** (1978-1979) 1 SLR 10, Neville Samarakone CJ held that:

> *"in considering the question of interim order, the Court must bear in mind that an interim order is made in the exercise of inherent or implied power of Court, in circumstances where the final order is, if the Petitioner is successful, be rendered nugatory and the aggrieved party will be left holding a decree worthless for all purposes."*

50] In ***People's Bank and seven others Vs Yasasiri Kasthuriarachchi*** [2010] 1 SLR 227, where her Ladyship Shiranee Tilakawardane, J, upheld the position that;

> *"it is permissible to grant interim relief which gave substantially the whole of the relief claimed in the action, especially as the facts in this case disclose plainly that there is a strong prima facie case is in favour of the party seeking relief."*

51] In this matter, the Respondents say that the entire process was halted due to this case. The Total Cost Estimate (TCE) was initially 170 million. The 9th Respondent bids for 330 Million, thereafter, the Total Cost Estimate (TCE) was enhanced to 271 Million. I do not understand why the total cost has not been properly calculated before by the experts if they have the technical knowhow. The 1st Respondent waited until August 2025 to call bids, and now they say the budgetary allocation should be re-sent to the Finance Ministry, and that it was a grave loss to the 1st Respondent and the public. If the project is needed, the bidding process should be started in the early quarter of 2025 without waiting for the last quarter of 2025. The tests to be considered are;

(i) Will the final order be rendered nugatory if the Petitioner is successful? As I noted above, the Petitioner has made out a strong prima facie case, and they were not allowed to bid due to non-clarification and a lower total cost estimate. I answer this affirmatively.

(ii) Where does the balance of convenience lie? The Respondent waited till the last quarter of the year, and now they cannot say that they will be prejudiced if any interim orders are given.

(iii) Will irreparable and irremediable mischief or injury be caused to either party? if bidding was not successful this year, the allocation should be revered to Ministry of Finance, the project could be done in early quarter of next year. There will not be anything or wastage of public money, and there will not be irreparable and irremediable mischief or injury caused to any party.

52] I must quote His Lordship Upali Gunawardena, J., notion upholding rule of law in ***FORBES & WALKER TEA BROKERS v. MALIGASPE AND OTHERS*** [Supra]

> *"I take it that Rule of Law means that no one is above the law and a necessary corollary of that proposition is that no one can flout the law with impunity. Prerogative writs, certiorari in particular are the means whereby allegations such as issuing licences contrary to and in disregard* ***of the provisions of the law can be brought to light in order to get the unlawful conduct stopped and so vindicate the rule of law****"* [Emphasis is added]

53] In the circumstances, I am of the view that without full consideration of the facts and circumstances, this case cannot be justified. Thus, we hold that there is a strong prima facie case to be adjudicated; thus, we issue formal notices on the Respondents.

53] For the reasons set out above and based on the tests applicable in issuing interim reliefs, this application would be rendered nugatory unless the bidding process is temporarily stayed. Therefore, Interim relief as prayed for in the prayers “n”, “o”, “p” “q” “r” “s” and “t” of the petition dated 06/11/2025 are issued.

54] Thus, the limited objections are refused, formal notices and interim reliefs are issued until the final determination of this case.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL