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

In an application seeking Writs of Certiorari and mandamus under and in terms of Article 140 of the Constitution.

CA / WRIT / 657 / 2025

Alnitak Global (Pvt) Ltd,
"Hatch Accelerator", Level 1,
No. 14, Sir Baron Jayathilake Mawatha,
Colombo 01,
Sri Lanka.

Petitioner

-Vs-

1. Lanka Electricity Company (Private) Limited,
   No. 411, Galle Road,
   Colombo 03, Sri Lanka.

2. Eng. Janaka Aluthge,
   Chairman,
   Lanka Electricity Company (Private) Limited,
   No. 411, Galle Road,
   Colombo 03, Sri Lanka.

3. Dr. P. S. N. De Silva,
   General Manager,
   Head of Engineering,
   Lanka Electricity Company (Private) Limited,

No. 411, Galle Road,
Colombo 03, Sri Lanka.

4. Chairman,
   Department Procurement Committee,
   Lanka Electricity Company (Private) Limited,
   No. 411, Galle Road,
   Colombo 03, Sri Lanka.

5. Chairman,
   Department Procurement Appeal Committee,
   Lanka Electricity Company (Private) Limited,
   No. 411, Galle Road,
   Colombo 03, Sri Lanka.

6. M/s PNC Technologies Co. Ltd
   31 – 14, Hyeoksinsandan 7-gil, Wanggok-myeon, Naju-si, Jeollananm-do, Republic of Korea (58296)

7. Wenzhou Rockwell Electric Co. Ltd.
   Wengyang Industrial Zone, Wenzhou City,
   Zhejiang Province, China.

8. INTER Electric Co. Ltd
   No. 302 Nadajie Street, Beibaixiang Town,
   Yuequing City, Zhejiang, China.

9. Inael Electrical
   C. Rio Jarama, 7, 45007 Toledo, Spain.

Respondents

Before	:	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Ruwantha Cooray with Kesara Hewaissa instructed by N & S Associates for the Petitioner. Rajin Gooneratne, SC for the 1st – 5th Respondents.
Written Submissions on	:	08.06.2026 for the 1st – 5th Respondents. 09.06.2026 for the Petitioner
Supported on	:	27.03.2026
Decided on	:	14.07.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner Company (Alnitak Global [Pvt] Ltd) has instituted the present application on 13.06.2025, seeking a Writ of *Certiorari* to quash the 1st Respondent's (Lanka Electricity Company [Pvt] Ltd.) decision to reject their bid and recommend the award of tender number LECO/25/ICB/GD3/001 to the 6th Respondent (M/s PNC Technologies Co. Ltd.).

2. This application was taken up for support on several dates and during the course of the submissions, it was transpired that the Petitioner's Bid Security pertaining to the bid in dispute has already lapsed and no steps have been taken to extend it.

3. **The Petitioner argued that** their bid, valued at Rs. 64,935,664.43, was the second lowest out of five bidders and was approximately Rs. 17 million (or 20%) lower than the bid submitted by the 6th Respondent. The awarding the tender to the 6th Respondent would cause an unnecessary and unavoidable increase in the expenditure of public funds. It was further stated that when the application was initially supported on 18th June 2025, the 1st Respondent gave an undertaking to maintain the status quo, which remained intact up to the date of the submissions.

4. The Petitioner further argued that their bid was wrongfully rejected on two technical grounds: an alleged failure to meet a 15KV surge immunity level for an isolation transformer, and the submission of a purportedly questionable performance certificate lacking reference details. In response, the Petitioner averred that their bid was fully compliant with all technical specifications and that the 1st Respondent improperly relied on a supplementary, subject-to-change manual to reach its conclusion.

5. Furthermore, it was contended that the submitted performance certificates, which were issued outside the country of manufacture as mandated, contained all necessary correspondence details for verification, including the company name, address, telephone number, and fax; the 1st Respondent violated Clause 7.7.2 of the Procurement Guidelines 2024 and Clause 3.12 of the bidding document by failing to seek clarifications before rejecting the bid. It was further argued that had the Procuring Entity exhausted the available clarification mechanism, the Petitioner would have satisfactorily resolved these technical concerns, preventing the procedurally unfair rejection of a highly financially advantageous bid. It was additionally stated that the Respondents failed and neglected to determine the Petitioner's subsequent appeal, which had been lodged within the prescribed standstill period with detailed explanations.

6. **Regarding the expiration of the bid bond,** the Petitioner contended that a valid bid bond was in place at the time of bid submission, throughout the tender evaluation, at the time the appeal was preferred, and at the time of the institution of the present legal proceedings. The Petitioner averred that the bid bond lapsed on 24.09.2025, strictly because the 1st Respondent failed and neglected to respond to or facilitate the Petitioner's formal request for an extension.

7. The Petitioner further argued that the rights of the parties must be determined as at the date of the institution of the action. Therefore, the Petitioner contended that the subsequent expiry of the bid bond during the pendency of the litigation cannot retrospectively extinguish their

accrued rights or divest the Court of its writ jurisdiction under Article 140 of the Constitution. The Petitioner stated that the continued validity of a bid bond does not constitute a jurisdictional prerequisite for maintaining a judicial review application.

8. Finally, relying on the "wrongdoer principle" the Petitioner stated that the Respondents cannot be permitted to profit or benefit from their own wrongful omission and therefore cannot rely upon the lapse of the bid bond, a circumstance which arose directly as a consequence of their own failure to facilitate the extension to defeat the present application.

9. In conclusion, the Petitioner asserted that they have demonstrated a strong case for the issuance of notice and that the application warrants the granting of interim reliefs to maintain the status quo between the parties, without being dismissed on the preliminary ground of the lapsed bid bond.

10. It is seen that the bid opening has been carried out in the presence of the bidder's representatives immediately after the closing of the bids in accordance with the procurement guidelines 2024 marked as R1. The bid submission of the Petitioner has been acknowledged and compliance with the requirements of the bid has been assessed by the Bid Evaluation Committee. As per the Technical Evaluation Committee report (R2) the Petitioner's bid was found to be non-compliant.

11. Thereafter, a Major Department Procurement Committee (DPC) meeting has been held on 03.04.2025, following all necessary steps including the intention to award, debriefing process and the appeal process duly carried out. (vide minutes of the meeting of the DPC dated 03.04.2025 marked R3)

12. During the support stages on 16.03.2026, 23.03.2026, and 27.03.2026, the learned State Counsel apprised the Court that the Petitioner's Bid Security pertaining to the bid in dispute had already lapsed and that no steps had been taken by the Petitioner to extend the same, thereby rendering the instant application nugatory.

13. Following the conclusion of these submissions, the Court directed the parties to file a synopsis of the submissions made at the stage of support, with specific reference to the status of the Petitioner's lapsed Bid Security.

14. The Respondents contended that the Petitioner's application is entirely futile and untenable in law by virtue of its failure to extend the Bid Security. It is common ground that the Bid Security furnished by the Petitioner in relation to the subject matter of the tender lapsed on 24.09.2025. The respondents submitted that the Petitioner failed to take any steps whatsoever to extend it, rendering the instant application futile.

15. Specifically, the attention of the Court was drawn to the pertinent excerpts of Bid Guarantee No. LG5195425000033 for a sum of Rs. 2,135,000.00, issued to Inhegrid Co. Ltd by the Bank of China Colombo Branch, dated 03/10/2025 (marked as X1), which explicitly stipulated that notwithstanding anything to the contrary therein contained, the presents shall be valid only up to and including the 24th of September 2025, and shall not thereafter be of any force or avail in law except in respect of any demand received before 2:00 P.M. on the said 24th September, 2025, provided that the bank had not extended the period of validity prior to that deadline.

16. The Respondents argued that although the Petitioner's counsel strenuously submitted that there was an impediment caused in extending the bid security from the bank that originally provided the guarantee, it is cogent from the guarantee letter itself that provisions were set out to extend the guarantee upon a stipulated demand, which the Petitioner failed to execute at the time of expiry.

17. The Respondents further highlighted that the Petitioner, via a letter dated 31.07.2025 addressed to the Chairman of the 1st Respondent (marked as X2), had explicitly brought to the attention of the said Respondent the importance of facilitating the extension of the guarantee and acknowledged that a refusal by the 1st Respondent to accommodate the extension would render the instant application filed before the Court nugatory.

18. **The Respondents submitted that,** taking into consideration the contents of the Petitioner's letter, the 1st Respondent sent an email dated 04.09.2025 annexing an even letter addressed to the Managing Director of the Petitioner (marked as X3 and X4), informing them that since the

Bid Security issued by the Bank of China, Colombo Branch was due to expire on 24.09.2025, the Petitioner must extend the validity of the said Bid Security until 31.12.2025.

19. The Respondents noted that the email extract marked X4 contains the response received by the Petitioner dated 04.09.2025 acknowledging the correspondence of the 1st Respondent. The Petitioner has not communicated with the 1st Respondent prior to the expiry of the Bid Security regarding any alleged impediment to extending the bid with the original bank.

20. Furthermore, it was revealed that up until the matter was supported and submissions were made, specifically until the Respondents apprised the Court of the lapse on 23.03.2026 the Petitioner had failed to disclose this lapse to the Court.

21. The Respondents drew attention to Clause 3.7 of the Bid Document provided to the bidders (marked P3, page 10), which requires the Bid Security to be in the form of a Bank Draft or Bank Guarantee issued by a commercial bank operating in Sri Lanka approved by the Central Bank of Sri Lanka, or a bank based outside Sri Lanka but "confirmed" by a commercial bank operating in Sri Lanka and payable to Lanka Electricity Company (Private) Limited. It was noted that the signatories to the Bank Guarantee (X1) were Sri Lankans and the branch was based in Colombo, and that the bond emphatically required a demand for extension prior to expiry, which the Petitioner failed to do.

22. Therefore, the Respondents argued that the Petitioner's arguments regarding a foreign-based bank impediment and a lack of response from the 1st Respondent constitute a complete misrepresentation of facts wholly unsubstantiated by documentary evidence, and that the profound failure to extend the bid security renders the application untenable in law.

23. **It is apparent that the Petitioner had no impediment in extending the Bid Security and failed to bring any obstacle to the notice of either the 1st Respondent or the Court.** Instead, the Petitioner has wholly suppressed the lapse of the Bid Security after 24th September 2025 until the matter was exposed by the Respondents during submissions. As submitted by the Respondents, this amounts to unmeritorious conduct which warrants a dismissal of the application *in limine* on account of the said conduct itself.

24. The Respondents cited several legal authorities supporting this position. First, they cited *Wickremasinghe v. Ceylon Electricity Board and another* (1982 2 Sri L. R. 607), which held that *certiorari* is a discretionary remedy that the Court has the power to withhold in the case of an unmeritorious petitioner, even where there is a clear violation of natural justice.

25. Second, they cited CA/Writ/256/2013 (decided on 26.05.2020, Janak De Silva J), which held that under Article 140 of the Constitution, the Court must act "according to law," meaning English common law principles apply when deciding whether to grant discretionary writ relief, as seen in *Sirisena Cooray v. Tissa Dias Bandaranayake and two others* (1999 1 Sri. L. R. 1 at 14-15). The Respondents noted that in CA/Writ/256/2013, English precedents like *Dorot Properties Ltd. v. London Borough of Brent* (1990 C.O.D. 378), *Windsor and Maidenhead Royal BC v. Brandrose Investments Ltd.* (1983 1 W.L.R. 509), and *R. v. Secretary of State for Education and Science ex. P. Birmingham City Council* (1985 83 L.G.R. 79) established that applicants who engage in unjustifiable withholding, pointless litigation, or rely on their own procedural errors are denied relief.

26. The Respondents further highlighted the court's finding in CA/Writ/256/2013 where the petitioner sought a deferment of outstanding excise duty via document R11 but unbecomingly challenged the recovery after a concession was granted, thereby constituting unmeritorious conduct justifying the denial of discretionary relief.

27. Third, the Respondents cited CA/Writ/562/2021 (decided on 23.03.2022, Sobhitha Rajakaruna J), which adopted the holding of Justice A.H.M.D. Nawaz in *Y.P.K. Ranasinghe vs. South Eastern University of Sri Lanka and others* (CA/Writ/258/2019 decided on 24.09.2020), stating that rules of natural justice have no application where it is manifest that the petitioner's very own conduct caused the consequences.

28. Fourth, the Respondents referenced *Administrative Law* by Wade and Forsyth (11th Edition) at page 598, which states that an applicant may lose a claim to relief because their own conduct has been unmeritorious or unreasonable.

29. Based on these legal reasonings, the Petitioner's unmeritorious conduct was depicted by its failure to extend the security prior to 24.09.2025, its severe suppression of this fact, and its

unsubstantiated misrepresentations, which render the application fatal and nugatory from 24.09.2025, requiring dismissal *in limine* without an inquiry into a *prima facie* case.

30. **With regard to the factual matrix of the procurement process, the Respondents stated** that the bid opening was executed in the presence of the bidders' representatives immediately after the closing of bids, strictly in accordance with Procurement Guideline 2024 (marked R1). The Petitioner's bid submission was acknowledged, but upon assessment by the Bid Evaluation Committee, it was formally found to be non-compliant (marked Technical Evaluation Committee report R2).

31. The Respondents contended that a Major Department Procurement Committee (DPC) meeting was held on 03.04.2025 (marked R3), ensuring all necessary steps were duly carried out. Subsequently, the intention to award the subject tender was issued on 04.04.2025, and the standstill period ended on 21.04.2025. The Petitioner’s appeal (marked P9) was forwarded to the Department Procurement Appeal Committee (DPAC) on 22.04.2025.

32. The Respondents stated that although Section 8.5.4.C of the Procurement Manual requires the DPAC to submit its report within ten working days from the closing date of the appeal (making the due date 06.05.2025), the DPAC submitted its report on 28.04.2025 (marked R4) for the consideration of the 3rd Respondent (General Manager, Head of Engineering, Lanka Electricity Company Pvt Ltd). The 3rd Respondent, who is responsible for taking the final decision under the guidelines, duly made the award decision on 06.05.2025, meaning the Petitioner's position of receiving no response in relation to the appeal holds no merit.

33. Furthermore, it was revealed to the Court that a meeting has been held on 14.05.2025 with officials of the Procurement Entity, during which the decision on the appeal was formally communicated and explained in detail to the Petitioner. During this meeting, the debriefing has been explained in detail, and the Petitioner has not raised any further objections or seek additional clarifications; rather, the meeting has been concluded with the Petitioner acknowledging the discussion and indicating they would take steps to avoid such issues in future procurement processes. The contract has been formally awarded to the 6th Respondent on that same day, 14.05.2025.

34. The Respondents noted that while the Petitioner acknowledged this meeting in document P11 and requested reconsideration on 19.05.2025, there is no provision under the applicable procurement guidelines for the reconsideration of an appeal decision, as all decisions has been made in compliance with the relevant procurement regulations.

35. The Respondents have shown that the Petitioner's bid contained major technical deviations and documentation deficiencies that mandated its rejection. The Respondents stated that document P12, which refers to a 4kV rating, constitutes a major deviation from the required technical criteria specified in Section 2.4.5 of the technical specification, rendering the bid non-compliant despite the Petitioner's use of the term "complied." The Technical Evaluation Committee (TEC) identified that one of the submitted performance certificates lacked the essential elements and integrity required to be considered a valid performance certificate.

36. It was pointed out that document P12 is relevant to assessing the submitted technical parameters and that the evaluation was carried out based on the documents submitted with the bid, while document P13 (referring to clause 2.4.5) considered the clearly referred 4kV figure as the mentioned documentation reference in the absence of any other material. It was submitted that because all relevant technical documents provided by the Petitioner were complete and clear, Section 7.6 of the Procurement Manual dictated that there was no requirement to seek further clarifications.

37. The Respondents have explained that an impulse withstand voltage of 15kV was specified as a critical requirement for the operation of the Load Break Switches (LBS) because control panels are often susceptible to damage from lightning and surge conditions during normal operations, and the Petitioner's bid has failed to satisfy this requirement. Although the Petitioner seeks to clarify or disregard a value that was clearly stated as 4kV in their bid submission, it is not the role of the Evaluation Committee to reinterpret or alter fundamental figures explicitly provided by a bidder. Introducing a different value through a clarification would be highly inappropriate and contrary to procurement principles, as it would effectively allow the bidder to modify their original bid post-submission. This is not permissible, would violate the core principles of competitive procurement, and could rightfully trigger objections from other bidders, thereby undermining the fairness and integrity of the process.

38. The Respondents contended that the Petitioner's attempt to clarify and accept a revised impulse withstand voltage value constitutes an abuse of the post-submission clarification process, which is intended solely to enhance the clarity of the original submission and not to permit bidders to amend or improve their offers subsequent to the deadline.

39. It was further shown that the Petitioner's submitted performance certificate (vide page 781) lacks several essential elements anticipated in a valid and credible document. Specifically, it was revealed that the letterhead does not include any contact information such as a telephone number, email address, official postal address, registration number, or any other verifiable reference.

40. The Respondents enumerated several concerning deficiencies within the content of the certificate:

(i) the signature appears to be a low-resolution image rather than a verified digital or authorized signature, raising questions about its authenticity;

(ii) the designation of the signatory is not mentioned, and there is no indication of their authority or accountability within the issuing organization;

(iii) the content of the letter raises suspicion due to the use of the term "America" instead of the standard formal term "United States of America," which is typically used in official communications;

(iv) the letter makes reference to "engineers of electricity board," a term that is not used by electric utilities in the United States of America, and it fails to name any specific utility or provide identifying details, relying instead on a vague and unrecognized term;

(v) the DPAC observed that in the Petitioner's document pertaining to contact details relating to the performance certificates marked as P17 (page 778), the contract values mentioned appear to be rounded-off figures which seem unrealistic, although the DPAC was not in a position to consider this submission formally; and

(vi) the contact details provided for the supplier, namely Omega Electrical Products, include a contact number from Venezuela, which is inconsistent with the stated location of the supplier in the United States, and the number was found to be non-responsive.

41. In the circumstances, it is revealed to this Court that these deficiencies collectively undermine the credibility and integrity of the performance certificate and raise serious concerns about its validity.

42. The Respondents have submitted that the appeal process, intended to ensure transparency and fair treatment, has been misused by the Petitioner to introduce additional documents and submissions in an attempt to rectify the technical shortcomings of the original bid, alter the competitive landscape subsequent to the deadline, and gain an undue advantage. It was stressed that the appeal and procurement processes are designed to serve the public interest, not to protect or favor an individual bidder who has failed to demonstrate genuine compliance and failed to tender documents in accordance with the Procurement Manual and Procurement Guidelines.

43. For the foregoing reasons, I am inclined to uphold the Preliminary Objection. Accordingly, this application is dismissed without costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal