

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

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

Ashek Achinthana Samarakoon,
No.2422, III Stage,
Anuradhapura

PETITIONER

CA WRIT APPLICATION
NO. CA /WRT /603 /2026

Vs

1.Dr. Pubudu Ranaweera,
Deputy Director,
Teaching Hospital,
Anuradhapura.

2. Dr. W.M.S.K.W DeAlwis,
Consultant Dietitian.

3. P.M. Sarath Kumara,
Chief Accountant.

4. A. Smarawickrama,
Administrative Officer.

5. K.C.R.B. Jayawardena,
Public Health Inspector.

All are Members of the Technical Evaluation
Committee,
Anuradhapura Teaching Hospital,
Anuradhapura

6. Dr. N.C.D Ariyaratne,
Director,
Teaching Hospital,
Anuradhapura
Chairman of the Regional Procurement
Committee

7. D.A.R.P.R Amarajeewa,
Accountant,
Teaching Hospital,
Anuradhapura.

8. J.M.J.K. Rajakaruna,
Accountant,
District Secretariate Office,
Anuradhapura.

Members of the Regional Procurement
Committee,
Anuradhapura Teaching Hospital,
Anuradhapura

9. Dr. Nalinda Jayatissa,
Minister of Health and Mass Media,
Ministry of Health,
Suwasiripaya, No. 385,
Rev.Baddegama Wimalawansa Thero
Mawatha, Colombo10

10. Dr. Anil Jasinghe,
Secretary,
Ministry of Health, Suwasiripaya, No. 385,

Rev.Baddegama Wimalawansa Thero
Mawatha, Colombo10

11. H. P. N. K. Ariyaratne,
No.719/1, Kiri Ammala Kanda, Talduwa,
Avissawella.

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

RESPONDENTS

Before: Hon. Justice B. Sasi Mahendran
Hon. Justice Adithya Patabendige

Counsel: Razik Zarook, PC, with Chanayakya Liyanage for the Petitioner.

Supported: 07.08.2026

On

Order On: 07.09.2026

ORDER

B. Sasi Mahendran, J.

The Petitioner seeks, *inter alia*, ***Writs of Certiorari*** quashing the decision to award the contract to the 11th Respondent and the decision not to extend the Petitioner's contract, communicated by letter dated 30th July 2026, marked "P6", which also directed the Petitioner to hand over the canteen premises. The Petitioner further seeks a ***Writ of Mandamus*** directing the 1st to 8th Respondents to inquire into the award of the contract to the 11th Respondent, taking into consideration the objections raised by the Petitioner and the other bidders.

The Petitioner also seeks an *interim and/or stay order* restraining the implementation of "P6", including the direction to hand over the canteen premises, and directing the Respondents to maintain the *status quo* pending the final determination of this application.

The following facts are relevant to this application.

The Petitioner states that he was awarded the contract to operate the Main Canteen of the Teaching Hospital, Anuradhapura for the year 2024/2025 by agreement dated 29th June 2024 entered into with the Director of Teaching Hospital, Anuradhapura (hereinafter referred to as the '6th Respondent'). The said contract was subsequently extended from time to time to ensure the uninterrupted provision of food to the staff and patients of the Hospital. The contract was initially extended from 01st May 2026 to 30th April 2026 by letter dated 26th March 2026, which is marked as **"P2"**, and thereafter further extended until 30th July 2026 by letter dated 20th July 2026 marked as **"P3"**. The Petitioner states that, pursuant to the said extensions, he continued to operate the Main Canteen of the hospital.

In the meantime, the 6th Respondent invited open bids by advertisement dated 24th June 2026 for the operation of the Main Canteen for a period of two years. The Petitioner, being the existing contractor and having satisfied the stipulated specifications, submitted a bid. By letter dated 27th July 2026, marked **"P5"**, the Petitioner was informed that the Regional Procurement Committee had approved the award of the contract to the 11th Respondent, who was the second-highest bidder, on the basis that the highest bidder had been disqualified for failing to maintain the required bank balance. The Petitioner states that objections to the said award were invited.

Thereafter, notwithstanding the previous extension of the Petitioner's contract until 30th July 2026 and the agreement entered into on 28th July 2026, the Petitioner was informed by letter dated 30th July 2026, marked **"P6"**, that his contract would not be further extended and that he was required to hand over the canteen premises within seven days though he satisfactorily operated the main canteen for proceeding 2 years.

Thereafter, notwithstanding the previous extension of the Petitioner's contract until 30th July 2026 and the agreement entered into on 28th July 2026, the Petitioner was informed by letter dated 30th July 2026, marked **"P6"**, that his contract would not be further extended and that he was required to hand over possession of the canteen premises within seven days. According to the Petition, this was notwithstanding the fact that the Petitioner had satisfactorily operated the Main Canteen for a period of nearly two years.

Being aggrieved by the decision to award the contract to the 11th Respondent, the Petitioner submitted objections by letter dated 03rd August 2026, marked **"P7"**.

In support of this contention, the Petitioner refers, *inter alia*, to several previously issued procurement notices, alleging that the tender requirements relating to working capital, monthly rental, and experience had been repeatedly altered. He further alleges that the current procurement notice contained inconsistent requirements concerning the amount of security deposit payable by bidders. He also

complains that the pre-bid meeting scheduled for 9th July 2026 was cancelled without prior notice, thereby depriving bidders of an opportunity to obtain clarification regarding the tender requirements.

The Petitioner further alleges that the evaluation process placed undue emphasis on the monthly rental offered, rather than the prices of food items, thereby creating an opportunity for a bidder offering a higher rental to obtain the contract. The Petitioner also states that he was reliably informed that the same bank account had been furnished by the highest bidder and the 11th Respondent, and that the rejection of the highest bidder on the ground of insufficient bank balance therefore gave rise to suspicion regarding the award of the contract to the 11th Respondent.

The Petitioner maintains that, having successfully operated the Main Canteen for approximately two years, he possesses the necessary experience, infrastructure, utensils and trained staff and had supplied food to the hospital staff and patients at reasonable and affordable prices. Accordingly, the Petitioner contends that the decision of the 1st to 8th Respondents to award the contract to the 11th Respondent and to discontinue the Petitioner's contract was biased and contrary to the principles of natural justice.

Being aggrieved by the said action, the Petitioner has invoked the writ jurisdiction of this Court.

When the matter was taken up for support, the principal ground urged by the Petitioner was that the Respondents were biased in favour of the 11th Respondent in approving the award of the contract to the 11th Respondent. The question that therefore arises for consideration is whether the Petitioner has placed sufficient material before this Court to establish, at least *prima facie*, an allegation of bias so as to warrant the issuance of notice on the Respondents.

Seneviratne J. in **Mohamed Mohideen Hassen et al. v. N. S. Peiris et al.** [1982] 1 SLR 195 at pages 197–198, explained how the English authorities have approached the issue of bias.

"The reasons adduced by the Petitioners to obtain this Writ of Certiorari show that an allegation of bias has been made against the Rent Board of which the second respondent was the Chairman. The According to English authorities "Bias" is a ground on which the proceedings of a judicial or quasi judicial body can be quashed. The nature of the bias which the petitioner in an instance like this should prove on grounds of probability is a "Real likelihood of bias or reasonable suspicion of bias." A "real likelihood of bias" means at least a substantial possibility of bias." The Court, it has been said, will judge of the matter "as a reasonable man would judge of any matter in the conduct of his own business." The test of real likelihood of bias , is based on the reasonable apprehensions of a reasonable man fully apprised of the facts However, the pendulum has now swung towards a test of reasonable suspicion, founded on the apprehensions of a reasonable man who had taken reasonable steps to inform himself of the material facts. "Reasonable suspicion" tests look

mainly to outward appearances; "Real likelihood" tests focus on the court's own evaluation of the probabilities; but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result."

Further, Seneviratne J. referred to the decision in **Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others** [1968] 3 W.L.R. 694, in which Lord Denning discussed the principles applicable to the question of apparent bias and the circumstances in which the impartiality of a decision-maker may be challenged.

"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 man 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."

The dictum of Lord Denning was considered by Jayasuriya J. in **Shell Gas Company v. All Ceylon Commercial and Industrial Workers Union** [1998] 1 SLR 118 at pages 126–127.

"That the criterion is objective and not subjective is put beyond all doubt by Justice T. S. Fernando in re Ratnagopal (13) when His Lordship observed: "The proper test to be applied is, in my opinion, an objective one and I would formulate it somewhat on the following lines: Would a reasonable man in all the circumstance of the case believe that there was a real likelihood of the Commissioner being biased against him? I agree with the respondent's counsel that the burden on a person seeking to show reasonable cause is to satisfy this objective test on a balance of probability." Though Justice T. S. Fernando was dealing with a case where a person had been called upon to show cause for his refusal to be sworn as a witness under Section 12 (1) of the Commissions of Inquiry Act, yet the principle enunciated would be applicable to the present situation where the petitioner-company is complaining of bias on the part of a person acting in a quasi-judicial capacity.

The reasonable man in the application of the objective test would certainly consider the incidents, implications and the import of the process of conciliation embarked upon by the second respondent-arbitrator, in determining the issue of the likelihood of bias."

In considering the allegation of bias, it is necessary to examine the circumstances relied upon by the Petitioner and determine whether those circumstances, viewed objectively, are sufficient to give rise to a reasonable apprehension that the Respondents were predisposed in favour of the 11th Respondent.

The allegations made by the Petitioner are that changes were made to the tender requirements contained in the previous procurement notices, the pre-bid meeting was cancelled, greater emphasis was allegedly placed on the monthly rental offered by the bidders, there was an alleged inconsistency regarding the security deposit, and the same bank account had allegedly been furnished by the highest bidder and the 11th Respondent.

However, the Petitioner has himself admitted in his Petition that the Respondents had already informed him that new conditions would be imposed when calling for tenders by the Procurement Committee. Thereafter, the tender was advertised in the newspapers. I am mindful that the Respondents are entitled to impose such conditions as they consider appropriate and beneficial to their institution, provided that such conditions are imposed lawfully and are applicable to all prospective bidders. Further, by the letter marked “P5”, the Respondents have set out the reasons for awarding the contract to the 11th Respondent. It should be noted that the Petitioner has failed to establish that he maintained a sufficient balance in his bank account at the time it was required. Accordingly, the Petitioner has failed to demonstrate that the Respondent’s findings in respect of the bank balance are erroneous.

In those circumstances, having considered the allegations in their entirety and the material placed before the Court, I am of the view that the Petitioner has failed to establish sufficient circumstances from which a real likelihood or reasonable suspicion of bias could properly be inferred. The allegation of bias is therefore not established.

In the circumstances, I take the view that the Petitioner has failed to make out a *prima facie* or arguable case warranting this Court in issuing formal notices to the Respondents. Accordingly, this Court decides to refuse issuance of notice on the Respondents in this application.

Hence, the application is dismissed.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I AGREE

JUDGE OF THE COURT OF APPEAL