

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

CA WRIT APPLICATION No:- 61/2013

Hainan Lanka Company (Private) Limited
No.279/3, Waikiyawatte,
Atthurugiriya Road, Koratota,
Kaduwela.

Petitioner

Vs.

01. Victor Samaraweera,
Secretary of Ministry of Private Transport Services,
No.34, Narahenpita Road,
Nawala.
02. Roshan Gunawardane,
Chairman
National Transport Commission,
No. 241, Park Road,
Colombo 05.
03. Ms. P. C. Denagama,
Ministry of Private Transport Services,
No.34, Narahenpita Road,
Nawala.
04. Mrs. Vijitha Weerasinghe,
National Transport Commission,
No. 241, Park Road,
Colombo 05.
05. National Transport Commission,
No. 241, Park Road,
Colombo 05.
06. Mr. H. W. Vipulasena,
Director (Planning),
National Transport Commission,
No. 241, Park Road,
Colombo 05.

07. Mr. B. A. W. R. Padmashantha,
Assistant Director (Sarna Section),
Ministry of Education, Isurupaya,
Battaramulla.
08. Mr. Namiz Musthapa,
Country Manager Practical Action,
No.5, Lionel Edirisinghe Mawatha,
Colombo 05.
09. Mr. B. H. B. Karunathilake,
Development Assistant,
Ministry of Private Transport Services,
No.34, Narahenpita Road,
Nawala.
10. Mr. R. A. J. A. Ranatunga,
Executive Officer,
National Transport Commission,
No. 241, Park Road,
Colombo 05.
11. Abdul Rahim Marrikar Mohamed Najibdeen
12. Mohamed Najibdeen Mohamudu Miflal
13. Mohamed Najibdeed Mohamed Nafeel

(11th to 13th Respondent carrying on business in partnership under the name style and firm of City Cycle Industries at No.119, Dam Street, Colombo 12)

14. Hon. Attorney General,
Attorney General's Department,
Colombo - 12

Respondents

C.A.(Writ)Application No.61/2013

BEFORE : S. SRISKANDARAJAH, J. (P/CA)
COUNSEL : I.S. de Silva with Deeptha Perera for the
petitioner.
M.Jayasinghe S.C. for the 1st to 10th and
14th Respondents.
Kalinga Indatissa P.C. with Mahesh
Somaratne and Anusha de Soyza for the
9th to 13th respondents.

ARGUED AND

DECIDED ON : 18th March, 2013.

S. SRISKANDARAJAH, J. (P/CA)

Learned Counsel for the petitioner submits that the petitioner is a duly incorporated Company in Sri Lanka and it has engaged in the business of supplying bicycles. In the course of its business it submitted tender bids to the 2nd respondent. The said tender was advertised in the newspapers on 12th December 2012 and by the said bids the petitioner offered 750 boys bicycle and 750 girls bicycles, the bid document is marked as P5. The said bid document in item 18 states that the distribution of bicycles should be within 21 days after they awarded the tender. The petitioner submitted that in respect of clause 18 they have

informed the respective respondents that the delivery period to be negotiated as redesign and painting takes time. Learned State Counsel who is appearing for the 1st to 10th and 14th respondents submits that clause 18 is a condition that cannot be subjected to any negotiation and that reason itself is sufficient for the rejection of the petitioner's tender and hence the petitioner's tender was rejected on that basis as well. Learned President's Counsel who is appearing for the 11th to 13th respondents submits that the said transaction is a contractual transaction and therefore no writ will lie and at the same time the tender had been awarded to the 11th to 13th respondents and the supplies are being made therefore this application is futile.

Learned Counsel for the petitioner relied on the provisions of the guide lines for tender procedure laid down by the Department of Public Finance in circular No.4/32 and submitted that the said procedure has a statutory flavour and therefore this tender procedure could be challenged by way of a writ of certiorari.

On the face of the tender document the petitioner in fact not submitted the tender documents in compliance with the requirements of the tender documents. He has sought negotiation

for the purpose of re-designing and painting the said bicycles and that he has submitted "take time". This was averred in paragraph 11 of his petition. As this is the main reason for not awarding his tender even though he has ^{secured} ~~squatted~~ the lowest tender. In the same document the petitioner admitted that the tender need not be given to a lowest tenderer if other conditions are not fulfilled. In these circumstances the petitioner has not established ^a ~~the~~ prima facie case for this Court to issue notice and therefore this Court refuses to issue notice.

Notice refused.

PRESIDENT OF THE COURT OF APPEAL

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