

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

**In the matter of an Application for a mandate in the
nature of *Writ of Certiorari, Mandamus and Prohibition*
under article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka**

Ariyamuttu Sivapathan Rahulan,
Inpha Electric Company,
No. 332/2, Galle Road,
Colombo 03.

PETITIONER

C.A. Writ 361/2015

Vs,

1. Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.
2. A.M.C. Wickramasekara,
General Manager,
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.
3. M.P.H. Wijayawardena,
Deputy General Manager,
(Planning and Development)
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.

4. D.C.J. Seram,
Additional General Manager,
(Distribution Zone II)
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.

5. J. Nanda Kumara,
Deputy General Manager,
(Distribution Zone II)
No. 644, Jayawardena Rd,
Ethul Kotte.

6. P.K. Kulathunga,
Additional Finance Manager,
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.

7. H.A. Hewawansa,
Chief Engineer,
(Western Province-North)
Ceylon Electricity Board,
Kiribathgoda.

8. T. Gunathilaka,
Electrical Engineer,
(Zone II)
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.

9. H.A. Aruna,
Accountant,
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.
10. W.D.A.S. Wijayapala,
Chairman
11. B.N.I.F.A. Wickramasuriya,
Vice Chairman
12. N.K.G. Gunathilake,
13. Jeewani Kariyawasam
14. T.D.S.P Perera
15. J. Dadallage
16. R. Semasinghe,
The Vice Chairman and the Board of Directors,
Ceylon Electricity Board,
No. 50, Sir Cittampalam A. Gardiner Mw,
Colombo 02.
17. Novature Electrical and Digital System Pvt Ltd,
B-24, Phase II, Noida 201305,
Uttar Pradesh, India.

RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA)**

Counsel: Upul Jayasuriya with Sandamal Rajapakshe for Petitioner
Sumathi Darmawardane DSG, for 1st to 16th Respondents
L. Jayakumar for 17th Respondent

Inquiry on: 04.03.2016

Written Submissions on: 23.03.2016

Order on: 13.05.2016

Order

Vijith K. Malalgoda PC J

The Petitioner has invoked the Writ Jurisdiction of this court seeking inter alia,

- c) Issue a mandate in the nature of a *Writ of Certiorari* quashing the decision taken by the 1st to 16th Respondents to award the tender bearing No. DD2/ P&D/ ICB 2014/020/D to the 17th Respondent who has not fulfill the applicable standard specially the SLS standard.
- d) Issue a mandate in the nature of a *Writ of Certiorari* quashing the decision of the 4th Respondent as contained in the letter of award dated 27th July 2015 (P10);
- e) Issue a mandate in the nature of a *Writ of Mandamus* compelling the 1st to the 16th Respondents to purchase the MCBs in accordance with the applicable standards mentioned in the document marked (P5);
- f) Issue a mandate in the nature of a *Writ of Mandamus* compelling the 1st to the 16th Respondents to purchase the MCBs in accordance with the mandatory requirement mentioned in the document marked (P5);
- g) Issue a mandate in the nature of a *Writ of Prohibition* prohibiting the 1st to the 16th Respondents to purchase the MCBs in contravention of the CEB specifications mentioned in the document marked (P5);

Even though the Petitioner was an unsuccessful bidder to supply Miniature Circuit Breakers (MCB) to the 1st Respondent Ceylon Electricity Board, his complaint before this court was mainly based on Petitioner's duty to the Public as a Public Spirited Person to safe guard the safety of the General Public. The main complaint of the Petitioner before this court was that the 1st to 16th Respondents have awarded a tender to the 17th Respondent to supply 115000 Nos, of Miniature Circuit Breakers who has not fulfilled the applicable standards referred to in Ceylon Electricity Board Specifications 020:2013 which was produced marked P-5.

When this matter was supported *ex parte* before this court, this court observed that, "if substandard MCBs were imported as submitted by the Petitioner it will be a threat to the standards maintained by the 1st Respondent which will finally be passed to the ordinary citizen of the Country" and decided to issue interim relief prayed by the petitioner in paragraphs (h) and (i) in addition to issuing notices on the Respondents.

However when the Respondents appear before this court on notices, they objected to the extension of the stay order and submitted that there is concealment and misrepresentation of material facts by the Petitioner when supporting the matter before this court and moved that they be permitted to file limited objections with regard to the extension of the stay order.

After all the parties filed their pleadings the matter was taken up before this court for inquiry into the extension of the stay order and thereafter all the parties filed comprehensive written submissions before this court elaborating their cases.

As observed by this court the Petitioner has heavily relied on the document P-5 when he supported the matter before this court. In prayer (e) (f) and (g) to his petition the Petitioner had insisted the implementation of standards referred to in P-5.

As submitted by the Petitioner, P-5 refers to Ceylon Electricity Board specifications with regard to miniature Circuit Breakers (MCB) issued in 2013 in order to replace the specifications issued in the year 2007.

Under the said specifications applicable standards were referred to as follows;

4.0. Applicable Standards,

The equipment and components supplied shall be in accordance with the latest editions of the standards specified below and amendment there to

- (a) IEC 60898 –(2003) Electrical accessories
- (b) IEC 60529 Degree of protection provided by enclosures (IP code)
- (c) SLS 1175 : 2005 Circuit Breakers for over current protection for household and similar installation

However in the event of Discrepancy the order of Precedence shall be as follows;

1. CEB specification
2. SLS Standards
3. IEC standard

Whilst referring to the said standards applicable when supplying MCBs to the 1st Respondent, Petitioner had alleged that the selected supplier, i.e. the 17th Respondent has not fulfilled the applicable standard, specially the SLS standard and not obtained SLS standard certification for the MCBs to which the 1st Respondent had awarded the Tender.

During the inquiry before this court the 17th Respondent had challenged the above position taken up by the Petitioner and submitted that, the 17th Respondent who is having a largest market share for MCBs in India possesses all relevant specification including ISI (Indian Standard Institute) IEC (International Electro-technical Commission) and SLS (Sri Lanka Standard Institute).

Whilst referring to the allegation of the Petitioner that the 17th Respondent is not a SLS compliant, the 17th Respondent had submitted that the above assertion by the petitioner is false and stated that SLSI has duly granted Registration to the 17th Respondent under “Import Inspection Scheme”.

The 17th Respondent had produced marked X-2. The import inspection scheme issued by SLSI under which 5 categories were identified to obtain approval from the SLSI and submitted that the said Respondent had selected category 4 in order to obtain approval from SLSI. The said category 4 reads thus;

Category 4: Consignment of products carrying “**Product Certification Mark**” of the National Standards body of any country where the **Standard used for said certification is compatible with the corresponding Sri Lanka Standard Specification**. Such manufacturer should register for relevant products with the SLSI (refer Clause 2.3 of Annex 3 GL-II-07).

Benefits to the Importer:

- (a) If the product bears the **Product Certification Mark of Sri Lanka Standard institution (SLS mark)** the consignment will be released for sale or use without sampling. Samples will be drawn for random check **once in eight consignments** and after sampling the consignment will be approved. However, the SLSI will decide frequency of sampling based on the past performance of manufacturer and the importer.
- (b) If the product bears an acceptable **Product Certification Mark of other countries** the consignment will be approved for sale or use without sampling. Samples will be drawn for random check **one in five consignments** and after sampling the consignment will be approved. However, the SLSI will decide frequency of

sampling based on the past performance of manufacturer and the importer.
(emphasis added)

As submitted by the 17th Respondents, the said Respondent had opted to come under category 4 (b) where the product bears “an acceptable product certification mark of other countries” without having SLS mark under category 4 (a).

The 17th Respondent had produced marked X-3 the approval obtained under the above category for “INDO ASIAN” brand Miniature Circuit Breakers with the acceptable product certification mark (ISI).

Based on the above argument the 17th Respondent had submitted that he is fully compliant with SLSI standards and therefore denied the argument of the Petitioner.

The 17th Respondent had produced marked X-5 the Sri Lanka Standards 1175:2005 for circuit breakers for over current protection for house hold and similar installations. In the said standard under the heading “**National Foreword**” it is stated,

This standard was approved by the Sectoral Committee on Electrical Appliances and Accessories and was authorized for adoption and publication as a Sri Lanka Standard by the Council of the Sri Lanka Standard Institution on 2005.08.11.

This is the First revision of SLS 1175. This revision introduces Circuit-breakers with screw type terminals for external Aluminum conductors, Circuit- breakers with flat quick connect terminals and Circuit- breakers with screw less terminals with external Copper conductors, and the characteristic –Rated impulse withstand voltages for circuit- breakers.

This Sri Lanka Standard is identical with IEC 60898-1 : 2003 : Electrical Accessories, Circuit-Breakers for over current protection for household and similar installations Part 1 : Circuit-breakers for a.c operation, including Amd No. 1: 2002 and Amd No 2: 2003, published by the

International Electro-technical Commission (IEC) except for the deviations given in the National Appendix.

During the argument before this court the Petitioner did not challenged that the 17th Respondent is an IEC 60898-1 compliant but their main argument was that the 17th Respondent was not SLS 1175 compliant.

However when consider X-5 I see no difference between the two standards IEC 60898-1 and SLS 1175 when SLSI itself admits the two standards are identical.

During their argument before this court the 17th Respondent had further relied on the document produced marked P-5 in support of his contention. The 17th Respondent had brought to our notice the Ceylon Electricity Board specifications referred to in P-5. In the said Ceylon Electricity Board specifications conformity with IEC 60898-1 had been identified as follows.

6.0 Basic Features

6.1 Design –

The circuit breaker time current operating characteristics shall conform to type table 7 of *IEC 60898-1*

6.3 Terminals-

..... temperature rise for terminals and accessible parts shall conform to the table 6 of *IEC 60898-1*

6.4 Operating Mechanism-

The operating mechanism of all the poles shall be according to the clause 8.1.4.4 of *IEC 60898-1*

6.5 Contacts-

The contacts shall comply with clause 8.1.4.4 of *IEC 60898-1*, be of high current carrying capacity with good resistance property.

6.8 Mechanical and Electrical Endurance-

The mechanical and electrical endurance of the Miniature Circuit Breaker shall not be less than 4,000 operating cycles conforming to *IEC 60898-1*

8.0 Other Mandatory Requirements

8.1 Marking-

Each Miniature Circuit Breaker shall be marked in a durable manner with the following particulars conforming to *IEC 60898-1*...

9.0 Information to be supplied with the Offer

9.2 - Following Type Test Certificate conforming to *IEC 60898-1* shall provided with the offer

11.0 Inspection and Testing

11.1 Inspection

Routine test reports as per *IEC 60898-1* shall also be made for the observation of the inspector.

11.2 Acceptance/ sample Test

The following Acceptance/Sample Test as per annex I of *IEC 60898-1* shall be witnessed by the representative of the purchaser....”

When going through the said specification this court observes that the Ceylon Electricity Board specifications referred to in P-5 are wholly referable to *IEC 60898-1* standard but not referable to SLS specifications.

When considering the above arguments placed before this court by the 17th Respondent it is observed by this court that the 17th Respondent had placed material for this court to satisfy that the

- a) 17th Respondent is a SLS compliant.
- b) SLS 1175:2005 is identical with *IEC 60898-1* and the 17th Respondent is an IEC compliant too.
- c) Ceylon Electricity Board specifications referred to in P-5 are wholly referable to *IEC 60898-1* and not referable to SLS specifications.

During the arguments before this court the 1st to 16th Respondents have approved the argument raised by the 17th Respondent and submitted that the said tender to supply MCBs to the 1st Respondent was awarded to the 17th Respondent after following the proper tender procedure including obtaining necessary TEC approvals as well. As submitted by the said Respondents the said tenderer was awarded to the 17th Respondent, he being the lowest tender with the required standard to match the Ceylon Electricity Board specifications referred to in the relevant advertisement and the Ceylon Electricity Board specifications referred to in P-5.

When considering the arguments place before this court by the Respondents, it is clear that the 17th Respondent is a compliant with the standards referred to in the Ceylon Electricity Board specifications 020: 2013 which was produced marked P-5 by the Petitioner. Even though the Petitioner had taken up the position that the present application was filed by him on his duty to the public as a public spirited person, to safe guard the safety of the General Public, he being another competitor to supply MCBs to the 1st Respondent, he should know better the requirements for each standard referred to above.

When going through the material submitted by the parties including the material submitted by the Petitioner I find that the Petitioner had concealed material facts from this court when obtaining the stay orders.

In this regard this court bears in mind the useful reminder of that celebrated jurisprudence as propounded by Pathirana J in the case of *Alponso Appuhamy V. Hettiarachchi* 77 NLR 131 at 135 that a full and fair disclosure of all the material facts has to be placed before court when an application for a Writ of injunction is made and the process of court is invoked. A party applying for a prerogative writ is under a duty to the court to disclose all material facts within their knowledge, and this duty of disclosure is similar to the duty on a party applying for an injunction. This useful guideline is equally applicable to stay orders and since I find that the Petitioner has not kept to this duty this court is compelled to vacate the interim order that has been granted on 21.09.2015.

Under these circumstances I am not inclined to extend the interim order this court has already issued on 21.09.2015 and vacate the same.

PRESIDENT OF THE COURT OF APPEAL