

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

Upali Ananda Gunasinghe,  
'Thushara',  
Bogoda,  
Thelijjawila.  
Petitioner

**CASE NO: CA/WRIT/455/2015**

Vs.

Board of Investment of Sri Lanka,  
Level 26,  
West Tower,  
World Trade Centre,  
Colombo 1.  
And 6 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Charaka Jayaratne for the Petitioner.  
S.A. Parathalingam, P.C., with Nishkan  
Parathalingam for the 1<sup>st</sup>-5<sup>th</sup> Respondents.  
Indula Ratnayake, S.C., for the 6<sup>th</sup> and 7<sup>th</sup>  
Respondents.

Decided on: 22.05.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash by writ of certiorari P12 whereby the 1<sup>st</sup> respondent (The Board of Investment of Sri Lanka) informed the petitioner that it would no longer act upon the decision made by P5. By P5 the 1<sup>st</sup> respondent informed the petitioner the decision of the former to grant the land relevant to this application on lease to the latter to construct and operate a cafeteria subject to conditions and subject to entering into a formal Agreement. The petitioner also seeks to compel the 1<sup>st</sup> respondent by writ of mandamus to enter into the said Lease Agreement; and to prevent the 1<sup>st</sup> respondent by writ of prohibition from obstructing the right of the petitioner to construct and operate a cafeteria in the land.

The petitioner rests his case on legitimate expectation.

To expect relief on legitimate expectation, the petitioner shall first prove that he acted legitimately. The act which he expects the respondent to perform on the said basis shall undoubtedly be a lawful act and not an unlawful act.

The respondents in their objections have convinced Court that P5 has not been issued following the established state procurement procedure, but done in an ad hoc manner in order to favour the petitioner. The respondents point out that no tenders were called and the petitioner was just handpicked exerting undue influence on the then Board. Thereafter the new Board has assigned that task of constructing and operating a cafeteria to another party following the proper procedure.

The petitioner has merely denied them in the counter affidavit.

I must stress that notwithstanding several dates were obtained, no written submissions were filed on behalf of the petitioner in pursuance of his application. It appears that the petitioner is not keen to pursue this application in the present circumstances.

In the facts and circumstances of this application, no public law remedies can be granted on legitimate expectation.

On the other hand, the subject matter of this application eminently falls within the sphere of private law and not public law. If the petitioner thinks that the 1<sup>st</sup> respondent violated P5 Agreement by P12, he shall seek relief under private law.

In *Jayaweera v. Wijeratne* [1985] 2 Sri LR 413 this Court held that:

*Where the relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice even if one of the parties is a public authority.*

In *Weligama Multi Co-operative Society v. Daluwatte* [1984] 1 Sri LR 195 at 199 a Full Bench of the Supreme Court stated:

*Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest. To be enforceable by Mandamus the duty to be performed must be of a public nature and not of merely private character.*

*The Writ will not issue for private purposes, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by Mandamus which is confined to public duties and is not granted where there are other adequate remedies.*

In *Gawarammana v. The Tea Research Board* [2003] 3 Sri LR 120 it was held that:

*Powers derived from contract are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power.*

Application of the petitioner is dismissed but without costs.

Judge of the Court of Appeal