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

Hayleys Lifesciences (Pvt) Limited,
No. 25, Foster Lane, Colombo 10.
Petitioner

SC/APPEAL/248/2025
CA/WRIT/717/2024

Vs.

1. Deputy Director General/Director,
   Division of Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

2. Chairman,
   Divisional Procurement Committee,
   Division of Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

3. Member,
   Divisional Procurement Committee,
   Division of Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

4. Member,
   Divisional Procurement Committee,
   Division of Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

5. Member,
   Divisional Procurement Committee,
   Division of Biomedical Engineering
   Services,
   No. 27, De Seram Place, Colombo 10.

6. Member,
   Divisional Procurement Committee,
   Division of Biomedical Engineering
   Services,
   No. 27, De Seram Place, Colombo 10.

7. Chairman,
   Technical Evaluation Committee for
   Tender Bearing No.
   BES/PE/Plan/2024/06
   Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

8. Member,
   Technical Evaluation Committee for
   Tender Bearing No.
   BES/PE/Plan/2024/06
   Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

9. Member,
   Technical Evaluation Committee for
   Tender Bearing No.
   BES/PE/Plan/2024/06
   Biomedical Engineering Services,
   No. 27, De Seram Place, Colombo 10.

10. Member,
Technical Evaluation Committee for
Tender Bearing No.
BES/PE/Plan/2024/06
Biomedical Engineering Services,
No. 27, De Seram Place, Colombo 10.

11. Member,
Technical Evaluation Committee for
Tender Bearing No.
BES/PE/Plan/2024/06
Biomedical Engineering Services,
No. 27, De Seram Place, Colombo 10.

12. Chairman,
Ministry Procurement Committee “A”
2nd Floor, Medihouse Building,
Sri Sangaraja Mawatha, Colombo 10.

13. Member,
Ministry Procurement Committee “A”
2nd Floor, Medihouse Building,
Sri Sangaraja Mawatha, Colombo 10.

14. Member,
Ministry Procurement Committee “A”
2nd Floor, Medihouse Building,
Sri Sangaraja Mawatha, Colombo 10.

15. Member,
Ministry Procurement Committee “A”
2nd Floor, Medihouse Building,

Sri Sangaraja Mawatha, Colombo 10.

16. Member,
Ministry Procurement Committee “A”
2nd Floor, Medihouse Building,
Sri Sangaraja Mawatha, Colombo 10.

17. Additional Secretary (Procurement),
Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.

18. Secretary,
Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.

19. Hon. Minister of Health,
Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.

20. Mervynsons Pvt Ltd
No. 98, Norris Canal Road, Colombo 10.
Respondents

AND NOW BETWEEN

Mervynsons Pvt Ltd
No. 98, Norris Canal Road, Colombo 10.
20th Respondent-Appellant

Vs.

Hayleys Lifesciences (Pvt) Limited
No. 25, Foster Lane, Colombo 10.
Petitioner-Respondent

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   Division of Biomedical Engineering
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Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.

18. Secretary,
Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.

19. Hon. Minister of Health,
Ministry of Health,
No. 385, Ven. Beddagama Wimalawansa
Thero Mawatha, Colombo 10.
Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Menaka Wijesundera
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Amaranath Fernando with Shenal Fernando and Thisura Hewawasam for the 20th Respondent-Appellant.
Sehan Soyza, S.S.C., for the 1st -19th Respondent-Respondents.
Nishan Sydney Premathiratne with Shenali Dias and Manith Dasanayaka for the Petitioner-Respondent.

Argued on: 16.01.2026

Written submissions:

By the 20th Respondent-Appellant on 24.11.2025.
By the 1st-19th Respondent-Respondents on 24.11.2025.
By the Petitioner-Respondent on 24.11.2025.

Decided on: 28.01.2026

Samayawardhena, J.

The Ministry of Health called for tenders for the supply, installation, commissioning, and maintenance of one unit of an *Extracorporeal Shock Wave Lithotripsy System* for the treatment of ureteral and kidney stones at the National Hospital of Kandy. The petitioner-respondent (the respondent) and the 20th respondent-appellant (the appellant) submitted bids in response to the said tender.

Upon the completion of the prescribed tender procedure, including the evaluation of bids by the Technical Evaluation Committee and the Ministry Procurement Committee, the tender was awarded to the appellant. The respondent's bid was rejected, *inter alia*, on the basis that it was priced higher than that of the appellant and that it deviated from the mandatory technical specifications.

The appeal preferred by the respondent to the Board of Appeal was also rejected. The respondent did not challenge that decision before court. Instead, the respondent invoked the writ jurisdiction of the Court of Appeal, challenging the decision to award the tender to the appellant.

In terms of the Bidding Data Sheet, a bidder was required, *inter alia*, to possess a valid National Medicines Regulatory Authority registration certificate (NMRA certificate) for the offered model of the device at the time of submission of the bid.

The respondent challenged before the Court of Appeal the decision to award the tender to the appellant solely on the basis that, at the time of bid closure, the appellant did not possess a valid NMRA certificate for the quoted model, namely *"Modulith SLK inline."* In support of this contention, the respondent produced and marked P9, a copy of the appellant's NMRA certificate, in which the term *"Modulith"* appears under *"Brand name"* and

"SLK" appears under *"Model,"* but the expression *"SLK inline"* does not appear as a single description.

Against the description of the device, the NMRA certificate states: *"Lithotripter system with standard accessories and spare parts (Attachment 32 Pages)"*. It is not the case of the respondent that it was wholly unaware of the said 32-page attachment to the certificate. On the contrary, the respondent was aware of the attachment and had even discussed its contents with the Chief Executive Officer of the National Medicines Regulatory Authority, as is evident from the affidavits dated 28.02.2025 filed by a director and another employee of the respondent.

The respondent acknowledges that the 32-page attachment constitutes an integral and inseparable part of the NMRA certificate and that the device is described in several places therein as *"Modulith SLK inline."* Nevertheless, the respondent contends that the attachment relates only to spare parts and not to the machine itself, seemingly on the basis that the description of the device states, *"Lithotripter system with standard accessories and spare parts (Attachment 32 Pages)"*.

This contention is without foundation. The phrase *"Attachment 32 Pages"* does not refer solely to "spare parts".

In any event, once the respondent accepts that the 32-page attachment forms an integral and inseparable part of the NMRA certificate, it was incumbent upon the respondent to place that attachment before court together with the certificate, if it wished the court to determine whether the attachment related only to spare parts or extended to the machine itself. The respondent failed to do so. Nor did the respondent make any specific reference in the petition to the existence or contents of the said attachment. Instead, the respondent produced only the bare certificate, devoid of the attachment, along with the petition.

In my view, this omission amounts to a suppression of a material fact. The respondent was fully aware of the contents of the attachment and of its relevance to the issue placed before the Court of Appeal. The failure to produce the attachment was therefore deliberate. Had it been produced, it would have demonstrated that the NMRA registration covered the offered model of the device, thereby undermining the very foundation of the respondent's challenge. I take the view that the suppression was calculated to secure an interim order restraining the commissioning of the system at the National Hospital of Kandy.

The question as to whether the NMRA certificate tendered by the appellant relates to the same model as that offered by the appellant in its bid is a matter that falls squarely within the domain of technical expertise. The most competent and appropriate authority to answer that question is the National Medicines Regulatory Authority itself. Neither the court nor counsel possess the specialised technical expertise required to make such a determination independently. Significantly, the respondent did not make the National Medicines Regulatory Authority a party to the writ application. This omission cannot be overlooked. This conduct falls short of the standard of *uberrima fide* expected of a litigant invoking the extraordinary and discretionary jurisdiction of the writ court.

The limits of judicial review in matters involving specialised technical expertise have been consistently recognised.

In *Tata Cellular v. Union of India* 1996 AIR 11 at 28, the Supreme Court of India observed:

> *In Chief Justice Neely's words, "I have very few illusions about my own limitations as a Judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1,262 cases a year*

> *with five Judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect Judges intelligently to review a 5,000 page record addressing the intricacies of public utility operation." It is not the function of a Judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.*
>
> *The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinized by the non-expert Judge. The alternative is for the court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a court were to review fully the decision of a body such as State Board of Medical Examiners, "it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the Pharmacopoeia". Such a situation as a State Court expressed it many years ago, "is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question."*

In *Uflex Ltd. v. Government of Tamil Nadu and Others* [2021] 7 SCR 571, which involved a challenge to a tender process on the basis of alleged unfair conditions, the Supreme Court of India reaffirmed the limited scope of judicial review in technical and contractual matters. At pages 579–580, the court stated:

> *The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fide. The purpose is to*

> *check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.*
>
> *We cannot lose sight of the fact that a tenderer or contractor with a grievance can always seek damages in a civil court and thus, "attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted" (Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517).*

Similarly, in *Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others v. Union of India and Others* (1981) 1 SCC 568 at 584, the Supreme Court of India cautioned:

> *We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the Court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.*

This court has also acknowledged the need for judicial restraint when called upon to review decisions that are highly technical in nature. In *Sierra*

Construction Ltd. v. Road Development Authority and Others (SC/FR/135/2023, SC Minutes of 10.02.2025 at pages 10–11), this court held:

> *The petitioner did not file any report expressing expert opinion to the contrary. Neither the Court nor the petitioner possesses the requisite expertise, resources and capacity to challenge through a fundamental rights application the accuracy of the findings in the several reports filed by the Technical Evaluation Committee, the Ministry Procurement Committee, and the Expert Committee appointed by the Court. Based on the facts and circumstances of the case, the findings in those reports are not perverse and are prima facie acceptable to the Court. In such cases, in exercising its writ or fundamental rights jurisdiction, this Court must exercise caution in revisiting decisions that are highly technical in nature. This restraint is necessitated by the Court's institutional limitations.*

The same principle is reflected in *De Smith's Judicial Review*, 8th Edition, at page 206, which notes that while no public power is inherently immune from judicial review, courts are constrained both by their constitutional role and institutional capacity. One such institutional limitation is the lack of relative expertise, particularly in matters best resolved by specialist bodies possessing technical knowledge.

Against this background, learned Senior State Counsel appearing for the respondent members of the Technical Evaluation Committee and the Ministry Procurement Committee tendered a letter dated 10.02.2025 issued by the Chief Executive Officer of the National Medicines Regulatory Authority, confirming that the model "*Modulith SLK inline*" is included in the attachment to the certificate of registration and is covered by the said certificate.

It must be emphasised that this was not a matter newly discovered in the course of these proceedings. Both the Technical Evaluation Committee and the Ministry Procurement Committee had arrived at the same conclusion during the process of bid evaluation, prior to the decision to award the tender to the appellant.

All these matters were before the Court of Appeal. The application was presented as an urgent matter, on the basis that patients were suffering and awaiting treatment. According to the journal entries of the Court of Appeal, the case was called in open court on nine occasions. Limited objections together with documents had been filed, and learned counsel for the respondent and the appellant, as well as learned Senior State Counsel, had made extensive oral submissions on several dates. This was notwithstanding the fact that the matter was being taken up only for the limited purpose of supporting the application for formal notices and interim relief on the basis of urgency, and not for final determination. Ultimately, the learned Judge of the Court of Appeal reserved order and proceeded to make the following order, which is impugned before us.

> *The Court heard the oral submissions of the learned Counsel for both parties and pursue (sic) the documents tendered to Court. Having heard the oral submission of the learned Counsel and pursuing (sic) the documents, Court decides that this is a fit case to issue formal notices on the Respondents. Therefore, upon tendering issue formal notices on the Respondents. Furthermore, it decides to grant the interim reliefs sought in the prayer (f) to the Petition.*

By granting prayer (f) of the petition, the Court of Appeal suspended all decisions taken to award the tender to the appellant until the final determination of the application.

Being dissatisfied with this order, the appellant invoked the jurisdiction of this court by way of a leave to appeal application. The application was vigorously supported by the State.

A previous Bench of this court granted leave to appeal against the said order on the following questions of law.

(a) Did the Court of Appeal err in law in failing to give reasons for issuing both the formal notice and the interim stay order?
(b) If this court were to dispose of the matter on the basis of submissions as on a final appeal, should a writ of certiorari be issued to quash the award of the tender?

The discussion thus far sufficiently addresses both questions. Nevertheless, I consider it appropriate to add the following observations as well.

Where extensive written objections have been tendered and submissions made over several dates on the questions whether formal notice should be issued and interim relief granted, the learned Judge of the Court of Appeal is duty bound to give reasons, albeit not with the detail expected of a final judgment, for rejecting the arguments advanced by the 20th respondent and the Ministry of Health, including the objections based on the suppression of material facts and the failure to name necessary parties. The Court of Appeal is not the final court, and where an order made at that stage is challenged before this court, this court must know the basis upon which the learned Judge arrived at the impugned decision.

The duty to give reasons is inherent in the administration of justice and is an essential incident of the rule of law. The absence of an express statutory requirement affords no justification for dispensing with reasons. Justice is not done unless it is apparent to the parties why one has succeeded and the other has failed. The articulation of reasons promotes transparency,

enhances public confidence in judicial decision-making, and guards against arbitrariness.

An aggrieved party is entitled, as of right, to know the reasons for the decision, at least for the purpose of considering whether to pursue appellate remedies. The giving of reasons is therefore not a matter of grace or concession, but a fundamental obligation inherent in the exercise of judicial power.

I have already adverted to the manner in which the respondent acted without *uberrima fides* and suppressed material facts. It is settled law that lack of *uberrima fides*, suppression or misrepresentation of material facts, and the overall conduct of the petitioner are matters of relevance when the writ jurisdiction of the Court of Appeal is invoked, as writ is a discretionary remedy. It is settled law that any suppression or misrepresentation of material facts by a petitioner entitles the court to dismiss the application *in limine*, without going into the merits.

Not every suppression or misrepresentation of fact is fatal. The fact suppressed or misrepresented must be a material fact. The test of materiality is whether disclosure of the fact could have influenced the decision of the court. It is not necessary to establish conclusively that the decision would certainly have been different had the suppressed fact been disclosed. It suffices to demonstrate that its disclosure had the potential to affect the court's determination.

This principle is deeply rooted in equity and has long been recognised across jurisdictions.

In *R. Vishwanatha Pillai v. State of Kerala and Others* 2004 (2) SCC 105, the Supreme Court of India stated:

> *A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner.*

In *Ramjas Foundation v. Union of India* (2010) 14 SCC 38, the court emphasised that this rule applies universally across judicial forums and is not confined to writ proceedings alone. Courts are duty-bound to protect themselves from litigants who seek to pollute the stream of justice by the suppression or misstatement of facts bearing on adjudication.

The rationale underlying this principle was authoritatively explained in *The King v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington; Ex parte Princess Edmond de Polignac* [1917] 1 KB 486. Viscount Reading C.J. held that where an applicant fails to candidly and fairly disclose material facts and thereby misleads the court, the court ought, for its own protection and to prevent abuse of its process, to refuse to proceed further with the merits. The Court of Appeal affirmed this approach, emphasising that in *ex parte* applications *uberrima fides* is indispensable, and any deception practised on the court disentitles the applicant to be heard. Lord Cozens-Hardy M.R. further stated at page 505:

> *That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an ex-parte application uberrima fides is required, and unless that can be established, if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say "We will not listen to your application because of what you have done."*

As stated by Scrutton L.J., the obligation is to disclose facts, not law, and the penalty for the breach of that obligation is that the court will set aside

any advantage obtained through imperfect disclosure, irrespective of whether the applicant might otherwise have succeeded on the merits.

In *K.D. Sharma v. Steel Authorities of India Ltd* [2008] 10 SCR 454, 472, the Supreme Court of India stated that suppression of material facts not only warrants dismissal of the application *in limine* but also attracts dealing with the defaulting party for contempt of court.

Our own courts have consistently applied this principle. In *Walker Sons & Co Ltd v. Wijayasena* [1997] 1 Sri LR 293, it was held that once suppression or misrepresentation is established, a party cannot later plead inadvertence or ignorance of the importance of the omitted facts.

In *Alphonso Appuhamy v. Hettiarachchi* (1973) 77 NLR 131 and *Moosajees Ltd. v. Eksath Engineru Saha Samanya Kamkaru Samithiya* (1976) 79 NLR 285, this court affirmed that full and truthful disclosure of all material facts is a condition precedent to the grant of prerogative relief.

In *Namunukula Plantations Limited v. Minister of Lands and Others* [2012] 1 Sri LR 365, this court reiterated that a litigant invoking discretionary jurisdiction owes a duty of utmost good faith to the court, and that failure to discharge that duty obliges the court to deny relief. The court further emphasised that where a party attempts to pollute the stream of justice, the court not only has the right, but the duty, to refuse relief.

In *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els and Two Others* [1997] 1 Sri LR 360, *Mowbray Hotels Ltd. v. D.M. Jayaratne* [2004] BLR 51, *Fernando v. Commissioner General of Labour* [2009] BLR 74, *Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya* [1986] 1 Sri LR 275, *Fonseka v. Lt. General Jagath Jayasuriya* [2011] 2 Sri LR 372, *Abee Kuhafa v. The Director General of Customs* [2011] 2 BLR 459, *Sri Lanka Standards Institution v. Commissioner General of Labour and Others* [2020] 3 Sri LR 38, *Werage Sunil Jayasekara and Others v. B.A.P. Ariyaratne and Others*

(SC/FR/64/2014, SC Minutes of 05.04.2022), *Premalal and Others v. Commissioner of Examinations and Others* (SC/FR/502/2010, SC Minutes of 05.03.2019) and *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [2011] 2 Sri LR 372 similar conclusions were reached.

On the merits of the instant case, the appellant is entitled to succeed. The tender procedure has been duly followed and the contention of the respondent that the appellant did not have a valid NMRA certificate at the time of the closure of the tender is devoid of merit.

In any event, and even without consideration of the merits, the application filed by the respondent before the Court of Appeal ought to have been dismissed *in limine* on account of the lack of *uberrima fides* and the suppression of material facts.

I therefore answer both questions of law on which leave to appeal was granted in the negative.

The Court of Appeal could not, in law, have quashed by way of certiorari the decision to award the tender to the appellant. Accordingly, the writ application filed before the Court of Appeal stands dismissed.

Having regard to the manner in which the writ jurisdiction of the Court of Appeal was invoked, the suppression of material facts, and the serious consequences that ensued from the interim orders obtained, I am of the view that this is a fit case for the imposition of punitive costs. Accordingly, I order that the petitioner-respondent shall pay a sum of Rs. 1,000,000 (one million) to the 20th respondent and a further sum of Rs. 100,000 (one hundred thousand) as State costs, within one month from the date of this judgment.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court