

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

In the matter of an application under Article
17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Don Prasanna Mervyn Thusharaka
Jayamanna of
No. 3A, Horton Terrace, Colombo 07
Carrying on the business in the name
and style of

“D. P. J. Holdings”
at DPJ House, Jesmin Park,
Narahenpita Road,
Nawala.

S. C. (FR) Application No. 10/2012

Petitioner

V.

1. Prof. Nimal de Silva,
Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

01A. Pro. Prishantha
Gunawardana
Former Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

01B. Prof. Gamini Adhikari
Former Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

01C. Gamini Ranasinghe
Former Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

01D. Nilan Cooray
Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

2. Sarath Wijesekara Pathirana
Director (Finance)
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

02A. Mr. A. G. Ariyaratna
Former Director General
(Finance),
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

02B. A. L. D. Gunarathna,
Former Director (Finance),
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

02C. A. D. Abeywickrama,
Director (Finance),
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

3. Mrs. P. Gamage,
Additional Secretary
Ministry of Culture and Arts,
8th Floor, Sethsiripaya,
Battaramulla.

03A. Mrs. Anoja P. Guruge
Additional Secretary
(Admin/ Cultural Center
Admin/Foreign),
Ministry of Buddhasasana,
Religious and Cultural Affairs
No. 135, Sirimath Anagarika
Dharmapala Mawatha,
Colombo 00700.

4. Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha,
Colombo 7.

5. Wilson Films Creations,
No. 214 - D2,

Park Road,
Colombo 05.

6. Attorney General,
Attorney General's Department,
Colombo 12.

7. Gamini Adikari
Acting Director General,
Central Cultural Fund,
No. 212/1, Bauddhaloka
Mawatha, Colombo 7.

8. K. Ranjith Perera Partner,
Wilson Film Creations,
No. 215 B 2, Park Road,
Colombo 05.

9. M. K. P. Kulawardana
Partner,
Wilson Film Creations,
No. 215 B 2, Park Road,
Colombo 05.

10. Nanila Publication
No. 168/3A, Jayasundara
Mawatha, Nawala Road,
Nugegoda.

11. Sera Idea
No. 44/16, Obahena Road,
Madiwela, Kotte.
Now:
306/38B,
Bird Park,
Sri Jayawardenepura, Kotte.

12. Vision Production House
No. 222, Leo House,
Cotta Road,
Borella.
Now:
695/3 C1, Moraketiya Road,
Arawwala Road,
Pannipitiya.

Respondents

BEFORE : S. THURAIRAJA, PC, J
K. KUMUDINI WICKREMASINGHE, J.
M. SAMPATH K. B. WIJERATNE, J.

COUNSEL : Manohara de Silva, PC with Hirosha Munasinghe,
Kaveesha Gamage, Dilmini De Silva and Sashini Guruge
instructed by Anusha Perusinghe for the Petitioner.
Saliya Pieris, PC with Thanuka Nandasiri instructed by
Manjula Balasooriya for the 1st - 2nd Respondents.
Lakdew Unamboowe instructed by Chitra Jayasinghe for the
2nd respondent.
Wasantha Sandaruwan instructed by Athula de Silva for the
5th Respondent.
Ms. Hashini Opatha, SSC instructed by Rizni Firdous, SSA
for the Hon. Attorney General.

WRITTEN SUBMISSIONS : By the Petitioners on 25.10.2022 and
26.06.2025
By the 2nd Respondent on 30.06.2025
1st, 3rd, 4th, 5th Respondents not
tendered written submissions

ARGUED ON : 25.03.2025 and 29.05.2025

DECIDED ON : 13.02.2026

K. KUMUDINI WICKREMASINGHE, J.

This is a fundamental rights application filed under Article 126(1) of the Constitution by the petitioners seeking inter alia, a declaration that their fundamental rights to equality before the law and equal protection of the law guaranteed under Article 12(1) of the Constitution of Sri Lanka has been violated due to actions of the Central Cultural Fund.

FACTUAL MATRIX :

The application has arisen out of a tender called by the Central Cultural Fund (CCF) for the printing of tourist entrance tickets for Sigiriya, Polonnaruwa, and Anuradhapura. On 16.09.2011, the CCF published an advertisement (**P6 – newspaper advertisement**) in the Daily News calling for quotations, setting out requirements such as the design of attractive tourist tickets, preparation of a mini documentary DVD of at least three minutes for each site in three languages, and the introduction of a barcode system. Approximately 200,000 tickets were required annually, and quotations were to be submitted by 30.09.2011. Pursuant to this notice, the Petitioner, who carries on business under the name of D.P.J. Holdings (DPJH), submitted a quotation (**P7 – quotation**) dated 30.09.2011 which contained two pricing options Rs. 3.90 and Rs. 4.90 per ticket, and a DVD cost of Rs. 60. A bid bond of Rs. 5,000 was also duly paid to the CCF as required by the advertisement. The Petitioner emphasizes that DPJH is an established business with experience in barcode systems, printing, and process automation, having undertaken many government and private contracts previously, and is therefore well qualified to undertake this work.

At the opening of the tenders, five quotations were submitted including those of DPJH and the 5th Respondent, Wilson Film Creations. The Assistant Sales Manager of DPJH was present at the opening, and it was revealed that DPJH's quotation was the lowest in price at Rs. 63.90 per ticket including the DVD, while other bidders quoted significantly higher rates. In particular, the 5th Respondent quoted Rs. 140 plus taxes per ticket. Documents marked (**P8 – summary of quotations; P8A – affidavit of DPJH Assistant Sales Manager**) contain the details of the quotations noted at the opening of bids, along with an affidavit by DPJH's Assistant

Sales Manager. Thereafter, by letter dated 14.10.2011, the 1st Respondent informed all bidders that they were permitted to submit sample entrance tickets and CDs until 28.10.2011. This was later corrected by the 2nd Respondent by letter dated 24.10.2011 to specify that the samples should be DVDs and not CDs (**P9, P10 – letters**). Acting in compliance, on 19.10.2011 DPJH submitted a sample entrance ticket and DVD for Sigiriya, accompanied by a letter seeking comments from the CCF so that further improvements could be made and the samples for Polonnaruwa and Anuradhapura could be developed accordingly (**P11 – DPJH letter**). On 28.10.2011, (**P12 – DPJH letter**) in view of the extension given by the CCF, DPJH withdrew the earlier sample and submitted new samples covering all three sites along with tickets under Option 1. These DVDs were in Sinhala, English, French, and German, ranging from 6–12 minutes in length, well above the minimum three-minute requirement. The entrance tickets and DVDs submitted are annexed as **P13A–C and P14A–D**. By letter dated 17.11.2011, the 2nd Respondent called upon DPJH to demonstrate these samples before the Tender Board at the CCF headquarters, showing that the samples were under active consideration. (**P15 – letter**).

However, on 14.12.2011, the 1st Respondent informed DPJH by letter (**P16 – letter**) that the Tender Board had awarded the contract to another contractor. On inquiry, the Petitioner discovered that the award had been made in favour of the 5th Respondent, Wilson Film Creations, notwithstanding that DPJH's quotation was the lowest and most responsive. On 12.12.2011, DPJH through its Attorney-at-Law had already sent a letter of demand to the 1st Respondent demanding cancellation of the tender award to any bidder other than the lowest responsive bidder, warning that legal action would be instituted (**P17 – letter of demand**). The 1st to 3rd Respondents replied on 20.12.2011 stating that the decision of the Tender Board was a collective one based on the merits and demerits of the bids (**P18 – reply letter**). The Petitioner contends that this decision is arbitrary and unreasonable. According to the quotations, DPJH could have supplied the 200,000 tickets at a cost of approximately Rs. 12.78 million plus taxes, whereas the 5th Respondent's bid would cost approximately Rs. 28 million plus taxes, thereby causing the CCF to incur a loss of over Rs. 15 million. In addition, DPJH had

invested over Rs. 400,000 in producing the high-quality DVDs which fully satisfied the requirements, while the 5th Respondent is alleged to have no printing or barcoding facilities, meaning such work would have to be outsourced, creating a serious security risk for tickets used to access important heritage sites.

In these circumstances, the Petitioner maintains that the award of the tender to the 5th Respondent is arbitrary, unreasonable, and violative of his fundamental rights under Article 12(1) of the Constitution, which guarantees equality before the law. He seeks declarations that his fundamental rights have been violated, that the decision of the Tender Board and CCF to award the contract to the 5th Respondent is null and void, and that the tender should instead be awarded to DPJH as the lowest and most responsive bidder. He further seeks an interim order suspending the award until final determination, compensation for the violation of his fundamental rights, costs, and such other relief as the Court may deem fit.

The 5th Respondent first objects that the Petition cannot be maintained because the Petitioner has failed to name all necessary parties. According to the Petition itself (para 14), several other bidders submitted bids, but they have not been made respondents, and therefore the application should be dismissed for non-joinder. The 5th Respondent also argues that it is a partnership, not a legal entity capable of being sued in its own name, making the Petition defective on this ground as well. It further states that it complied fully with the tender requirements submitting samples and DVDs through letters **5R1, 5R2 and 5R3** and demonstrated technologically superior tickets when requested (supported by **5R5, 5R6 and 5R7**), while the Petitioner's own samples showed shortcomings. The 5th Respondent denies the Petitioner's allegation that it lacks barcoding or printing capability, noting that the tender did not require the bidder to personally own such facilities and that it had already arranged these services through agreements such as **5R10**. On these grounds non-joinder, improper parties, compliance with tender requirements, and lack of factual basis the 5th Respondent requests dismissal of the Petition at the threshold.

I begin by dealing with the preliminary objections raised by the 5th respondent in limine, namely, non-joinder of relevant parties, that the 5th respondent, being a partnership, cannot properly be sued as such, and that the petition is time-barred. Each objection was raised in the 5th respondent's affidavit and in their written objections; the petitioner answered those points in the written submission filed on their behalf and by reference to the documentary material (P-series).

1. "Necessary parties are not before Court"

The 5th Respondent has raised a preliminary objection that the Petition must fail for non-joinder, on the basis that other bidders who participated in the procurement process, as well as certain officers involved in the tender process, have not been made Respondents. I am unable to uphold this objection.

In *Centre for Environmental Justice v. Mahinda Rajapaksa and Others* S.C. (F.R.) No. 109/2021, the Supreme Court held that non-joinder of parties is not, in itself, fatal to a fundamental rights application, particularly where the matter raises serious issues of public law and the rule of law. The Court emphasized that procedural defects such as non-joinder should not be permitted to defeat the Court's constitutional duty to inquire into alleged violations of fundamental rights, especially where the omission is bona fide and does not impede the effective adjudication of the dispute.

In the present case, the gravamen of the Petition concerns the legality, fairness, and transparency of the decision-making process adopted by the Respondents in the evaluation and award of the tender. The challenge is directed at the institutional decision of the Central Cultural Fund, a public body, and the exercise of statutory and administrative power by those responsible for that decision. The Petitioner has accordingly named the Central Cultural Fund as the 4th Respondent, together with the Director General and the relevant members of the Tender Board as the 1st to 3rd Respondents.

The reliefs sought are not in the nature of a personal cause of action against other bidders or unidentified individual officers, nor is any specific relief claimed against them. The participation of other bidders, or additional officers who were not named, is not necessary for the effective determination of the public law issues raised. The 5th Respondent has not demonstrated that any such omitted party is essential for the just adjudication of the matters in issue.

In these circumstances, I hold that the non-joinder of other bidders or officers does not render the Petition defective. Accordingly, the preliminary objection raised by the 5th Respondent on the ground of non-joinder is overruled.

2. “The 5th Respondent is a partnership business and cannot be named”

This factor is technical rather than substantive. The purpose of naming the 5th respondent as “Winson Films Creations” is for identification of the tenderer and to ensure that the party who received the award is aware of, and can respond to, this challenge. The partners themselves have participated by affidavit and objection. While this Court has not granted leave to proceed against the 5th respondent, and the alleged violations attributed to the 5th respondent are not dealt with, their preliminary objections are addressed here as the 5th respondent is nonetheless a party to the application. The naming is purely for technical purposes, and since the 5th respondent’s alleged violations are not being dealt with. The objection is therefore rejected.

3. “The application is time-barred”

The final preliminary objection relates to delay. In terms of Article 126(2) of the Constitution, an application invoking the fundamental rights jurisdiction of this Court must be filed within one month of the Petitioner becoming aware of the alleged infringement. This requirement represents the general rule governing access to this Court and has been consistently recognised as integral to the proper exercise of its constitutional

jurisdiction, as observed in *Gunawardena v. Senanayake* (FRD Vol. 1 p. 177).

The 5th respondent contends that the Petitioner became aware of the award on or before 12 December 2011 and that the present application, filed on 13 January 2012, is therefore time-barred. The Petitioner's position, as pleaded in the petition and advanced in argument, is otherwise. The Petitioner maintains that it was neither notified of the rejection of its bid nor informed that another contractor had been selected. It is asserted that the Petitioner became aware of the award only after making inquiries and upon the matter entering the public domain. The first formal communication received from the Central Cultural Fund in relation to the award is letter **P16** dated 14.12.2011.

While Article 126(2) prescribes a strict time limit, this Court has repeatedly held that the requirement is not absolute. The Court retains a discretion to entertain an application which is ex facie filed outside the one-month period, provided that the Petitioner has placed before Court an adequate and reasonable explanation for the delay. This principle was affirmed in *Edirisuriya v. Navaratnam* (1985) 1 Sri LR 100 at 106, where it was recognised that exceptional circumstances preventing timely filing may justify the exercise of this discretion. The rationale underlying this approach is encapsulated in the maxim *lex non cogit ad impossibilia*—the law does not compel a person to do the impossible.

For the reasons already stated, I accept the Petitioner's submission that time should properly run from the date on which the Petitioner acquired knowledge of the challenged decision. Where a public authority fails to notify an affected tenderer of an adverse decision, it would be an unjust and unrealistic result to deny access to justice on the basis that the authority itself kept the claimant in ignorance. In such circumstances, the delay cannot be attributed to acquiescence, negligence, or indifference on the part of the Petitioner, but rather to factors beyond its control.

Having regard to the factual record before Court, and taking letters **P16** and **P17** together, I am satisfied that the delay has been reasonably explained and justified in accordance with the established principles governing Article 126(2). The discretion of this Court is therefore properly

engaged. Accordingly, in the interests of justice, the preliminary objection based on delay is overruled, and this Court will proceed to examine the alleged infringement.

Having dealt with the preliminary objections, I turn to the substance. The petitioner complains that the Central Cultural Fund, by the tender board, acted arbitrarily and in breach of Article 12(1) when it awarded the printing contract to the 5th respondent and rejected the petitioner's bid. The core of the petitioner's case rests upon three related strands: first, that the decision was taken without proper, impartial evaluation; second, that the petitioner was not informed or given reasons for rejection; and third, that the process was used to rubber-stamp a pre-determined selection of the 5th respondent. The respondents, particularly in the written submission of the 2nd respondent and the statement of objections of the 1st, 3rd and 4th respondents, have emphasised that the tender board acted on technical and qualitative grounds. They rely on the **technical evaluation report (P16(b)/Technical Report)**, the demonstration of samples, and the experience and documentary ownership claimed by the 5th respondent. The 2nd respondent's written submission goes through the tender procedure in detail and contends that price was not the dominant factor; quality, language compatibility, content ownership and feasibility were legitimate qualities to favour the 5th respondent.

In deciding whether Article 12(1) has been violated the court must consider whether CCF gave the petitioner an equal opportunity and treat their bid with fair and transparent consideration, or did the process and the outcome amount to arbitrariness and unequal treatment? In examining the scope of Article 12(1), it is necessary to note the classical approach adopted by this Court in earlier decisions. In *Perera v Jayawickrama* [1985] 1 SLR 285, a Full Bench of this Court held that Article 12(1) is violated where there is unequal treatment of persons who are similarly circumstanced, and that differentiation is permissible only where it is founded upon a rational and reasonable basis relevant to the subject matter. Sharvananda, C.J. observed that the guarantee of equality does not prohibit classification as such, but only discrimination that is arbitrary or prejudicial when compared with the treatment of others in similar circumstances. This approach was reiterated in *C.W. Mackie and Company*

Ltd v Hugh Molagoda, Commissioner General of Inland Revenue and Others [1986] 1 SLR 300, where it was held that, in order to sustain a plea of discrimination under Article 12(1), a petitioner must ordinarily establish that he has been treated differently from others who are similarly circumstanced, and that such differential treatment lacked any reasonable basis.

However, as will be discussed later in this judgment, this Court has also recognised that a rigid or mechanical application of this test may, in certain circumstances, undermine the substantive protection afforded by Article 12(1), particularly where arbitrariness, procedural unfairness, or the denial of reasons itself impairs the equal protection of the law.

However, as will be discussed later in this judgment, this Court has also recognised that a rigid or mechanical application of this test may, in certain circumstances, undermine the substantive protection afforded by Article 12(1), particularly where arbitrariness, procedural unfairness, or the failure to provide reasons itself impairs the equal protection of the law.

This Court is mindful that the evaluation of tenders necessarily involves technical and specialist judgment, and that it is not the function of this Court, in the exercise of its jurisdiction under Article 126, to substitute its own views for that of the Tender Board or to sit in appeal over the merits of competing bids. Nevertheless, such judicial restraint does not absolve a public authority of its constitutional obligation to act fairly, transparently, and without arbitrariness. Where prescribed criteria are not properly applied, or where relevant departures are left unexplained, this Court is entitled and indeed duty bound to intervene in order to safeguard the guarantee of equal protection of the law under Article 12(1) of the Constitution.

In *Lakshmini Printers v. Dharmaratne and Others* (2003) 1 SLR10, this Court held that the failure of a public authority to apply relevant standards fairly, or to provide reasons for denying a benefit expressly recognised by law, amounted to conduct that was arbitrary, unreasonable, and in violation of Article 12(1). The absence of reasons was itself treated as a factor giving rise to unequal treatment. This principle directly informs the present inquiry, as the essence of the Petitioner's complaint is not that its bid was

wholly disregarded, but that it was not subjected to the same standard of due, fair, and equal consideration as that accorded to other competing tenders.

In the present case, it is evident from the Tender Evaluation Reports marked **P16A and P16B** that the technical evaluation gives rise to serious concern. According to **P16B**, the date of evaluation is recorded as 06.10.2011. This chronology demonstrates that the technical evaluation was conducted prior to the Petitioner submitting its tickets and samples, which were furnished only by 28.10.2011. In these circumstances, a legitimate question arises as to whether the Petitioner's samples were taken into consideration at all by the Technical Evaluation Committee.

If they were so considered, such consideration could only have been based on samples other than those properly submitted by the Petitioner on 28.10.2011 in respect of the three locations. This conclusion is further reinforced by paragraph 7.1 of the Technical Evaluation Report, which states as

“The design proposal has suggested a single ticket format for Anuradhapura, Polonnaru and Sigiriya. However, the design requirement for the tender is for a separate ticket for each of the archaeological sites. Therefore, the design proposal is considered to be non-confirming with the required design specifications of the tender.”

This observation clearly indicates that the evaluation was carried out on the basis of an earlier design proposal, and not on the revised designs and samples subsequently submitted by the Petitioner in compliance with the tender requirements. Consequently, the Petitioner's tender was not placed before the Technical Evaluation Committee for proper and meaningful evaluation. This undermines the fairness and transparency of the process and lends substantial support to the Petitioner's contention that its tender was not afforded due and equal consideration, in violation of Article 12(1) of the Constitution.

Viewed against those principles, there are features of this case which weigh heavily in favour of the petitioner. First, the petitioner's claim that

they were not informed of the rejection until they made inquiries is borne out by the documents. There is no contemporary record before this Court that the petitioner was given written reasons explaining why their bid was not preferred. **P16** the letter dated 14.12.2011 which the respondents say informed the petitioner that another contractor had been selected does not set out the evaluative reasoning nor does it explain how a higher-priced bidder was preferred to the lowest tender. The petitioner's letter of demand marked **P17** of 12.12.2011 shows that they had already become concerned about a possible irregularity and had sought reconsideration. The Board failed to in due course set out the reasons in writing for the award. It is plain from the material that the CCF had in its possession the technical evaluation and the minutes of the tender board; it was not beyond the CCF to furnish a concise rationale for the decision when inquired by a bidder or when the matter came to court by way of a fundamental rights petition.

Second, the absence of reasons in decision-making carries a distinct and serious consequence for the rule of law in public procurement. The jurisprudence referred to before this Court emphasizes that reasons are not a mere formality; they are indispensable where public funds are involved and where the decision has a direct impact on individual rights. In *Karunadasa v. Unique Gemstones Ltd* 1997(1) SLR 256, this Court considered the importance of providing reasons in decision-making concerning public or private rights. The Court identified two fundamental aspects of the right to receive reasons. The first is the right of the individual affected by a decision to know why an adverse determination has been made, thereby enabling the person to challenge the decision if justified. The second is the right of the Court to be informed of the reasons, so that meaningful judicial review can take place. Where a party is denied the reasons for a decision, such omission constitutes a breach of the rules of natural justice. Similarly, if the Court is not given reasons, the decision may be set aside on the ground that it is arbitrary or unreasonable. Here, the petitioner claims neither was done. Neither the petitioner nor this Court has been provided with a clear explanation of how subjective factors such as "attractiveness" or "creativity" were measured, how the language-compatibility requirement was tested, or why ownership doubts (raised at 16.10.2011 by the technical committee in relation to the 5th respondent's CD) were not treated as disqualifying. These evaluative criteria, though

relied upon to justify the award, were neither defined in advance nor applied in a manner that is demonstrably transparent or objectively verifiable. Further the technical evaluation at one point commented that the 5th respondent's CD should be rejected **(the Technical Evaluation paragraph 7.4)** but the Board nevertheless awarded the contract to that bidder raises obvious questions which the CCF has not answered in terms that would permit proper review.

Third, there also shows certain procedural irregularities that point to unequal treatment. The tender notice required sample tickets and DVDs to be submitted by a specified date. There was an extension **(letters P9 and P10)** and the petitioner submits that they complied with the extended terms and submitted separate tickets for the three sites **(P13 series)** on 28.10.2011 the petitioner's affidavit and the attached material assert that those samples were not considered by the Board. That assertion is contested by the respondents, but they do not produce the evaluative notes or a clear, signed technical report from the tender board that addresses each submission in detail. The technical evaluation committee's report dated 6.10.2011 had recommended certain bidders and had indicated that the petitioner's single-format ticket submission was non-conforming, the petitioner insists that they later submitted the corrected and separate ticket designs in accordance with the extension. Without a clear record to show that the late-submitted designs were in fact considered or rejected for subjective reasons, the petitioner is left in the dark and deprived of the ability to challenge the claimed deficiencies.

It is true, as the 2nd respondent argues in their written submissions, that courts must be careful not to substitute their view for an expert or technical committee's assessment of quality. If the technical reports and minutes contained a reasoned evaluation which addressed (with evidence) the petitioner's submissions, and if that evaluation demonstrated that the petitioner's DVD lacked language-select technology, that their documentary ownership was not proved, or that their pricing was unrealistically low and therefore infeasible, then a different conclusion might follow. Indeed, the respondents highlight the difference between the petitioner's quoted price and the market prices for blank DVDs **(2R3)**, as well as the petitioner's own later bid **(2R7)** at a significantly higher price.

If proven, this would support the respondents' argument that the petitioner's original price was not realistic and that the tender board could properly consider feasibility when assessing responsiveness.

But those counter-arguments founded upon the earlier point, the respondents have not furnished the Court with a coherent explanation tying the evaluation criteria to the facts of each bid so as to demonstrate that the petitioner was treated in the same way as other bidders. The tendering authority sat in judgment of competing bids which included a bidder whose technical report suggested a deficiency in its CD content **(SERA IDEA- P16B)**. If the Board nonetheless accepted that bidder it was necessary upon the Board to explain what remedial assurances, ownership proof, or technical fixes were relied upon and to explain why the petitioner's post-deadline submission, if indeed late, was treated as non-responsive while other bidders were allowed liberty. Transparency is not achieved through post assertions made in court; it requires contemporary reasons and a record demonstrating that the evaluation criteria were applied fairly. This Court has consistently held that Article 12(1) is not confined to cases of overt discrimination alone. In *Wickremasinghe v Ceylon Petroleum Corporation* [2001] 2 SLR 409, Sarath N. Silva CJ observed that a rigid insistence on proof of comparative discrimination would render the constitutional guarantee ineffective, and that the essence of Article 12(1) lies in preventing arbitrary and unreasonable administrative action.

The unexplained rejection of the Petitioner's tender, coupled with the failure to inform the Petitioner and the failure to justify the decision even before Court, clearly falls within the category of arbitrary administrative action prohibited by Article 12(1).

The Respondents have also argued that the award was justified because quality, rather than price, was treated as the main consideration. In principle, this is not improper. A procuring authority is entitled to give priority to quality, provided it clearly states in advance that quality will prevail over price. However, where such an approach is adopted, the authority must be able to explain how quality was assessed and why the selected bid was considered superior.

In the present case, the Respondents have failed to provide such an explanation. The Petitioner has repeatedly stated, and has supported this claim with documentary evidence, that the Board nominated the 5th Respondent even before the tender notice was published, as shown in the Board paper marked P9. It is also alleged, and has not been adequately explained, that the same Board later made an award which increased the number of tickets to be printed from 200,000 to 500,000, well beyond what was stated in the call for tenders. These facts support the Petitioner's concern that the tender process may not have been genuinely competitive. While these matters might not have been decisive if proper reasons had been given, the absence of any explanation allows an inference of unfairness.

It is also important to note, as already discussed earlier in this judgment, that the technical evaluation report was prepared before the Petitioner submitted its samples. In such circumstances, the Respondents cannot reasonably claim that the decision was based on quality, when the relevant samples had not been properly considered. This further weakens the Respondents' justification and strengthens the Petitioner's complaint that the evaluation process lacked transparency and fairness.

Faced with these competing narratives, the legal question is whether the absence of reasons and the absence of meaningful disclosure to either the petitioner or the Court is by itself sufficient to establish a breach of Article 12(1). In *Jayasinghe v Attorney General* [1994] 2 SLR 74, Mark Fernando J. held that the Court is entitled to take judicial notice of the fact that fundamental requirements of justice and fair play ordinarily demand disclosure of reasons. His Lordship cautioned against treating earlier decisions as laying down inflexible rules and stressed that the facts of each case must be examined to determine whether the conduct complained of offends constitutional guarantees. Applying this principle to the present case, the failure to notify, the failure to give reasons, and the failure to account to the Court together establish a denial of fairness sufficient to attract the protection of Article 12(1). In *Karunadasa v. Unique Gemstones Ltd* 1997(1) SLR 256 at page 263 paragraph 3 it is stated clearly that natural justice requires more than simply hearing and recording a party's

evidence or submissions; it demands that the case be given reasoned and proper consideration. In this context, the Court in the cited case observed

“To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submission must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are entitled to be told the reason for the decision, if they are withheld, once judicial review commences, the decision may be condemned as arbitrary and unreasonable. Certainly, court cannot be asked to presume that there were valid reasons.”

Further in *Kegalle Plantation V Silva and Others* 1996(2) SLR 180 at page 190 it was held that

“The trend now appears to be reasons to be a “sui quanon” for a fair hearing and to be within the ambit of natural justice. In view of the above circumstance, I am of the view, unless the party can discover the reasoning behind the decision he may be unable to say whether it is reviewable or not so he may be deprived of the protection of law...”

Taken together, these authorities establish that when an administrative decision affecting private rights, or the competitive allocation of public contracts, is made without reasons, it breaches both natural justice and the principle of equality before the law, and justifies the inference that the decision may have been arbitrary or unreasonable.

Applying those principles, I find that the CCF failed in two connected duties. First, it failed to provide the petitioner with reasons for the adverse decision, thus denying the petitioner the opportunity to understand and, if justified, to challenge the decision. Second, it failed to provide this Court with a clear, valid explanation which would have enabled meaningful judicial review and justify their actions. The subjected failures go to core requirements of equality and procedural fairness under Article 12(1). In short, even if the Board was entitled to prefer quality to price, that entitlement could not be exercised in secret or without giving reasons that

show how the criteria were applied and why the petitioner's bid failed to qualify.

I therefore hold that the Fundamental Rights of the Petitioner, as guaranteed under Article 12(1) of the Constitution, have been infringed by the 1st, 2nd, 3rd and 4th Respondents, being the officers and authority responsible for the tender process of the Central Cultural Fund. The breach is not the result of a single omission, but arises from the cumulative effect of procedural irregularities, including the failure to notify the Petitioner, the failure to provide reasons either to the Petitioner or to this Court, and the arbitrary and irrational manner in which the tender process was conducted. These failures deprived the Petitioner of due and equal consideration, violated the principles of equality, transparency, and procedural fairness, and gave rise to a reasonable suspicion that the Board's discretion was not exercised in a fair and transparent way.

That said, the finding of a breach on these grounds does not require this Court to substitute its view regarding the technical merits or superiority of competing products. The Court makes no determination as to which DVD or ticket is objectively better. It is sufficient to hold that, given the public interest and the substantial expenditure at stake, the CCF was obliged to act in a manner that could be publicly justified — a duty it failed to discharge.

This Court notes that its decisions have consistently held that when the State or its agencies engage in public procurement, they must act fairly and transparently and strictly follow the procedures governing tenders. The discretion given to tender boards is not unlimited and must be exercised in a manner that can be objectively justified. In the present case, the Respondents' failure to provide reasons, to keep a clear record of the evaluation, and to properly explain their decision to this Court or to the petitioner represents a serious departure from these established standards.

Having regard to the fact that the tender in question has already been implemented and that the Petitioner has sought compensation in lieu of annulment of the award, I am of the view that the appropriate relief in this case is an award of compensation. Accordingly, I direct that the 4th

Respondent shall pay the Petitioner a sum of Rs. 200,000/- as compensation for the infringement of their Fundamental Rights under Article 12(1), together with a sum of Rs. 50,000/- as costs.

I further direct that the 1st to 4th Respondents take due note of this judgment and ensure that future tender processes conducted by the Central Cultural Fund strictly adhere to the requirements of fairness, transparency, reasoned decision-making and equal treatment mandated by the Constitution and by law.

Application allowed.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC., J,
I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J,
I agree

JUDGE OF THE SUPREME COURT