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

In the matter of an application for mandates in the nature of Writs of *Mandamus* and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application
No: 0625 / 2024

1. MICD Associates (Private) Limited
   (formerly known as 'ATS Consultants (Private) Limited')
   No.56/1, Pujya Sri Dhammarathna Mawatha, Madiwela, Kotte.

PETITIONERS

Vs

1. H.K.K.A Jayasundara
   The Commissioner General of Labour,
   Labour Secretariat,
   Narahenpita,
   Colombo 05.

2. R.G.J.B. Gunathilaka
   Deputy Commissioner of Labour,
   Colombo West District Labour Office,
   Department of Labour,
   Narahenpita, Colombo 05.

3. P. B. Chandi Premabandu
   Deputy Commissioner of Labour,
   Colmbo West District Labour Office,
   Department of Labour,
   Narahenpita, Colombo 05.

4. D. C. Priyadharshani
   Labour Officer - Colombo West District Labour Office,
   Department of Labour Narahenpita,
   Colombo 05.

5. Weerasekera Arachchilage Upali Weerasekera
   Labour Officer - Colombo West District Labour Office,
   Department of Labour,
   Narahenpita, Colombo 05.

6. Maggonage Manoj Darshaka
   No.111/05, Pore,
   Athurugiriya.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Jivan Goonetilleke with Natalee Fernando instructed by
D.L & F De Saram for the Petitioner.

Prabhashanee Jayasekera, S.C for the 1st - 5th Respondents.

Yasas De Silva with Kaushali Samaratunge instructed by Muddith Dissanayake for the 6th Respondent.

Supported on : 19.09.2025.

Decided on : 07.11.2025.

Adithya Patabendige, J.

The Petitioner, **MICD Associates (Private) Limited**, (hereinafter referred to as the Petitioner), invoked the writ jurisdiction of this Court seeking, *inter alia*, the following reliefs;

(a). A mandate in the nature of a *writ of certiorari* to quash the impugned notice/order issued by the 5th Respondent marked as P 17,

(b). A mandate in the nature of a *writ of prohibition* preventing the 1st to 4th and/or 5th Respondents from taking further steps based on P 17,

(c). A mandate in the nature of a *writ of prohibition* preventing the 1st to 4th and/or 5th Respondents from taking further steps in relation to case No. 36328/24, based on P17, together with other incidental reliefs as to this Court shall seem meet.

When this case was taken up for support for the issuance of formal notice and for interim relief, the learned Counsel for the Petitioner and the Respondents made their respective submissions. The learned State Counsel who appeared for the 1st to 5th Respondents, submitted as a preliminary objection that the instant application is not maintainable due to a misrepresentation and the suppression of material facts. The learned counsel who appeared for the 6th Respondent aligned with the submissions of the learned State Counsel.

The Petitioner is a Private Limited Liability Company engaged in the architecture and construction industry. The 6th Respondent was employed by the Petitioner as a Draftsman. According to the petition, the Petitioner directed all its employees to work online with effect from March 2020, due to the Covid -19 outbreak, and simultaneously decided to reduce the wages of the employees including that of the 6th Respondent. The Petitioner avers that none of the employees, including 6th Respondent, objected to this decision, considering the prevailing situation of the country.

In the meantime, the 6th Respondent informed the Petitioner that he was suffering from a heart disease and requested a salary increment to cover his medical expenses. The Petitioner accordingly decided to grant him Rs.10,000 as an increment and further permitted him to work from home.

By letter dated 21st October 2021, marked P6, the Petitioner informed all employees to report back to the office for work with effect from 1st of November 2021, thereby ending the work from home arrangement.

However, the 6th Respondent failed to comply with the said direction. Consequently, after several written reminders, vacation of post letter was issued to him. Thereafter, the 6th Respondent had lodged a complaint with the Colombo West District Labour Office on 17th August 2023.

Pursuant to that complaint, the Petitioner was notified of several inquiry dates before the 4th Respondent, namely 16th October 2023, 8th November 2023, 30th November 2023,14th December 2023,15th March 2024 and 29th April 2024. According to the Petitioner, the 5th Respondent conducted the inquiry on 15th March 2024, during which the Petitioner was informed that the reduction of wages of the 6th Respondent was illegal.

The Petitioner contends that, without affording an opportunity to file detailed written submissions, the 5th Respondent directed the Petitioner to pay Rs.90,000 as unpaid wages for the period of July 2020 to February 2021. Thereafter, the Petitioner was issued with a notice /order in terms of Section 53(3) of the *Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954*, marked P17, which is sought to be quashed in this application.

The document marked 6R1 filed by the 6th Respondent is highly relevant for a fair determination of this application. 6 R1 contains the proceedings dated 29th April 2024 before the 5th Respondent and it is abundantly clear that the representatives who appeared on behalf of the Petitioner agreed to pay the unpaid wages of the 6th Respondent for the period of July 2020 to February 2021, and placed their signatures on the said record of proceedings. Furthermore, the parties agreed to appear and comply with the settlement on 13th May 2024. Thereafter, the 5th Respondent issued P17 on 15th May 2024.

Accordingly, the central issue for determination is whether the Petitioner and the 6th Respondent reached an agreement to settle the matter by the payment of Rs.90,000, or whether the 5th Respondent unilaterally directed the Petitioner to pay that amount without affording an opportunity to file written submissions. The Petitioner maintains the latter position in invoking the writ jurisdiction of this Court.

While the representatives of the Petitioner had agreed to pay the said amount, the Petitioner has suppressed this material fact, which by itself is sufficient to warrant the dismissal of the application without considering the merits.

However, the above position of the Petitioner clearly contradicts the document 6R1. It is also significant that document 6R1 demonstrates that the impugned notice P17 was not a unilateral Order, but rather a notice issued pursuant to a consensual settlement recorded before 5th Respondent in terms of Section 53(3) of the *Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954*. The legal effect of such a recorded settlement is materially different from that of a unilateral directive.

Therefore, it is my considered view that the Petitioner's failure to disclose this fact, misled this Court as to the true nature of the impugned decision contained in P17.

It is trite law that a party, invoking the extraordinary discretionary jurisdiction of this Court must do so with utmost honesty and good faith. In the exercise of such equitable jurisdiction, even a single instance of suppression of a material fact disentitles a party from obtaining relief.

In **Fonseka *v Lt. General Jagath Jayasuriya and Five Others (2011) 2 SLR* 372 Justice Salam** observed the importance of approaching the Court with clean hands when invoking its writ jurisdiction. His Lordship, after considering several foreign authorities, stated that this equitable maxim, long embedded in our legal system, guides Courts to refrain from entertaining claims tainted by non-disclosure of material facts.

His Lordship further observed that our Courts have consistently held, following English authorities such as ***Rex v. Kensington Income Tax Commissioner (1917) 1 KB 486 and Bank Mellat v. Nikpour (1985) FSR 87 CA,*** that a litigant who seeks discretionary relief must make a full and fair disclosure of material facts. Failure to do so amounts to a breach of the duty of candour and disentitles the applicant to any relief in equity.

In the case of W. S. Alphonso Appuhamy v L Hettiarachchi77 NLR 131, Justice Pathirana held that,

"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the ***King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns.*** Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

Similarly, in ***Blanca Diamonds (Pvt) Ltd v Wilfred Van Else & Others(9), Jayasuriya, J.*** emphasized the duty a party owes to Court for a full and frank disclosure when initiating writ proceedings in the following manner-

"In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose uberrima fides and disclose all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in *Alponso Appuhamy v. Hettiarachchi (7)* Justice Pathirana, in an erudite judgment, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle that when a party is seeking discretionary relief from the Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose uberrima fides . and disclose all material facts fully and frankly to this Court...."

Having considered the facts of this application and the above authorities, my considered view is that the Petitioner has failed to approach this Court with clean hands and is guilty of suppression of material fact.

Accordingly, this Court declines to issue formal notice on the Respondents and proceeds to dismiss the instant application.

Considering the conduct of the Petitioner, I order the Petitioner to pay a sum of. Rs. 25,000 as to costs to the 6th Respondent.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL