

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

In the matter of an Application for a mandate in the nature of Writs of *Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution

**SC Appeal 163/2015**

**SC SPL LA 261/2014**

**CA Writ Application No.181/2014**

1. Amal I. Senevirathne  
No. 45, Sarvodaya Road, Gaminipura.
2. W. L. Gayana Sewwandi Mali  
Susiri Niwasa, Navimana South, Matara.
3. Shashini Tharanga Kariyawasam  
No. 30, Gangarama Road, Megalle, Galle.
4. B. V. Rasika Dilanthi Bolukandura  
No.72, Sri Rahula Mawatha, Maho.
5. Janaka Jayalath Munasinghe  
No.202/2, Ranasinghe goda, Katuwana.
6. W. A. U. Warunamala Wijesooriya  
No.229/2, Megoda Kalugamuwa, Peradeniya.
7. R. M. Sajith Niroshan  
V. Temple Road, Kahatawila, Pothuwatavana.
8. Sheik Abdul Cader Adil Ahamed  
No. 111/92, Abdul Hameed Street, Colombo 12.
9. G. A. Chamila Nilanthi Kumari  
No. 481, Siri Niwasa Mawatha, Mulleriyawa.
10. N. G. Ruvini Champika Weerasekara  
No. 110, Supermarket, Kandy Road, Kiribathgoda.
11. K. M. Inoka Nilmini Kulathunga  
No.310/C, Kandy Road, Kadawatha.

12. Chaminda Samarawickrama Lokuhetty  
No. 75/21, 1<sup>st</sup> Lane,  
Sirinanda Jothikarama Road, Lalalgoda, Pannipitiya.
13. K. A. Achala Dinashi  
No. 132/2A, Moragahalanda Road,  
Erawwala, Pannipitiya.
14. Isuru Madhushanka Ranagala  
B49 G2, N.H.S. Colombo 10.
15. K. M. Asanka Wijewardana  
No. 240, Kadurugahamadiththa,  
Ranjanagama, Kurunegala.
16. W. Joseph Tiroshan Sanjay de. Silva  
No. 95/3, New Galle Road, Moratuwa.
17. P. Rashmi Tharika Fernando  
No. 146, Pethiyagoda, Gampaha.
18. M. R. Dishanthi Maldeniya  
No. 155/B Ihalagama, Gampaha.
19. M. A. D. Ashani Koshila  
No. 978/7, Dawatagahawatta Road, Thalangama  
Road, Thalangama South, Baththaramulla.
20. Ashani Apeksha Aabeysekara,  
No. 3/8, Wekumagoda Road, Galle.
21. Sembu Kuttige Sanjeewa Sampath  
No. 143/A, Mahawatta, Batapola.
22. W. A. Nirosch Wasansa  
No. 103, Thissa Road, Ranna.
23. Abdul Ghany Muhammed Naflan  
No. 719/5A, Galle Road, Kalutara South.
24. G. Kalpa Suresh Pathirana  
No. 13, Narangoda Road, Hedeniya, Werellagama.

25. Liyanage Leonard Amal Perera  
No. 274/3, Jayanthi Mawatha,  
Mulleriyawa New Town.
26. M. A. Mahesh Kumara Manthriathna  
No. 524, Punchi Mandawala, Mandawala.
27. Y. M. W. Sarath Samarakoon Bandara  
Sarasavi Uyana, Rassandeniya, Denuwara.
28. J. A. P. H. Sandaamil Jayawaedana  
“Samanala,” Ihala Barube, Nikadalupotha.
29. H. M. A. Samadhi Wanninayake  
Walpaluwatta, Ehatuwana.
30. Madhuri Chantha Withanagama  
No. 136/1/1, Bathalawaththa Road,  
Thalahena, Malabe.
31. D. Nipuni Devindi Peiris  
No. 289/B, Center Road, Aligomulla, Panadura.
32. I. M. Maheshwari Mithrapali Rathwita  
Pethangalla, Gokarella.

### **Petitioners**

#### **Vs.**

1. The Incorporated Council of Legal Education  
No. 244. Hulftsdrop Street, Colombo 12
2. Dr. Jayatissa De Costa,  
Principal, Sri Lanka Law College,  
No. 244. Hulftsdrop Street, Colombo 12
3. Hon. Rauf Hakeem  
Minister of Justice, Ministry of Justice, Colombo 12.
4. The Commissioner General of Examinations  
Department of Examination,  
Isurupaya, Battaramulla.

5. Hon. Attorney General,  
Attorney General's Department, Colombo 12.

## **Respondents**

### **Now Between**

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1. Maduri Chaintha Wlthanagama  
No. 136/1/1, Bathalawaththe Road, Thaladena,  
Malabe.
2. W. L. Gayana Sewwandi Mali  
Susiri Niwasa, Navimana South, Matara.
3. Shashini Tharanga Kariyawasam  
No. 30, Gangarama Road, Megalle, Galle.
4. B. V. Rasika Dilanthi Bolukandura  
No.72, Sri Rahula Mawatha, Maho.
5. Janaka Jayalath Munasinghe  
No.202/2, Ranasinghe goda, Katuwana.
6. W. A. U. Warunamala Wijesooriya  
No.229/2, Megoda Kalugamuwa, Peradeniya.
7. R. M. Sajith Niroshan  
V. Temple Road, Kahatawila, Pothuwatavana.
8. Sheik Abdul Cader Adil Ahamed  
No. 111/92, Abdul Hameed Street, Colombo 12.
9. G. A. Chamila Nilanthi Kumari  
No. 481, Siri Niwasa Mawatha, Mulleriyawa.
10. N. G. Ruvini Champika Weerasekara  
No. 110, Supermarket, Kandy Road, Kiribathgoda.
11. K. M. Inoka Nilmini Kulathunga  
No.310/C, Kandy Road, Kadawatha.

12. K. A. Achala Dinashi  
No. 132/2A, Moragahalanda Road,  
Erawwala, Pannipitiya.
13. Isuru Madhushanka Ranagala  
B49 G2, N.H.S. Colombo 10.
14. K. M. Asanka Wijewardana  
No. 240, Kadurugahamadiththa,  
Ranjanagama, Kurunegala.
15. W. Joseph Tiroshan Sanjay de. Silva  
No. 95/3, New Galle Road, Moratuwa.
16. M. R. Dishanthi Maldeniya  
No. 155/B Ihalagama, Gampaha.
17. M. A. D. Ashani Koshila  
No. 978/7, Dawatagahawatta Road, Thalangama  
Road, Thalangama South, Baththaramulla.
18. Ashani Apeksha Aabeysekara,  
No. 3/8, Wekumagoda Road, Galle.
19. W. A. Nirosh Wasansa  
No. 103, Thissa Road, Ranna.
20. Y. M. W. Sarath Samarakoon Bandara  
Sarasavi Uyana, Rassandeniya, Denuwara.
21. D. Nipuni Devindi Peiris  
No. 289/B, Center Road, Aligomulla, Panadura.

**Petitioners' Petitioners**

**Vs.**

1. The Incorporated Council of Legal Education  
No. 244. Hulftsdrop Street, Colombo 12

2. Mrs. Indra Samarasinghe  
Principal, Sri Lanka Law College,  
No. 244. Hulftsdrop Street, Colombo 12
3. Hon. Thalatha Athukorala  
Minister of Justice, Ministry of Justice, Colombo 12.
4. Mr. Sanath Poojitha  
The Commissioner General of Examinations  
Department of Examination,  
Isurupaya, Battaramulla.
5. Hon. Attorney General,  
Attorney General's Department, Colombo 12.

### **Respondents- Respondents**

**Before:** Justice Vijith K. Malalgoda, PC  
Justice Murdu N. B. Fernando PC  
Justice S. Thurairaja PC

**Counsel:** Anura Gunaratne for the Petitioners'-Petitioners  
M. Gopallawa, DSG, with Ms. Sureka Ahmed SC for the Respondents-Respondents

Argued on: 07.09.2020

**Judgment on: 01.04.2021**

Vijith K. Malalgoda PC J

Petitioners-Petitioners before this court (hereinafter referred to as Petitioners) initially went before the Court of Appeal, seeking the grant of mandates in the nature of Certiorari quashing the decision of the Council of Legal Education (hereinafter referred to as the 1<sup>st</sup> Respondent) to admit only 177 students to the Sri Lanka Law College for the academic year 2014 and *Mandamus* on the 1<sup>st</sup>

Respondent and/or the 2<sup>nd</sup> Respondent Principal, Sri Lanka Law College and/or the 3<sup>rd</sup> Respondent Minister of Justice to increase the intake up to 225 students to the Sri Lanka Law College for the academic year 2014.

The Court of Appeal by its order dated 17.11.2014, refused to issue notice on the Respondents and dismissed the Petitioners application.

Being aggrieved by the said order of the Court of Appeal, the Petitioners sought special leave from the Supreme Court. This Court on 28.09.2015 granted Special Leave, on the following questions of Law;

1. Was the Court of Appeal in error by holding that the Petitioners' legitimate expectation was based solely upon the number of students selected on previous years irrespective of merit based on their performance at the Entrance Examination?
2. Was the Court of Appeal in error in holding that "the paramount consideration be given to the performance of the candidate than the number of vacancies that exist" when the Petitioners have obtained 64 and 65 marks which is far above the 40% by Rule 23 (2) (VII)?
3. Was the Court of Appeal in error by not giving sufficient weight to the number of vacancies that exist or to be decided as a relevant factor when concluding that the Petitioners had no legitimate expectation?
4. In any event, was the Court of Appeal in error by holding that the Petitioner had no legitimate expectation?
5. Whether a Writ of *Mandamus* will lie when a discretion is available to the Public Authority?

As submitted by the Petitioners, they responded to an advertisement published on 05.05.2013 calling for applications for the Entrance Examination to admit students to the Sri Lanka Law

College, for the academic year 2014. Accordingly, all of them had sat for the said examination on 06.10.2013, which was conducted by the Commissioner General of Examination.

According to the Petitioners, the results of the said examination was not available until the 1<sup>st</sup> Respondent displayed a list of 177 candidates on 25<sup>th</sup> January 2014, who obtained more than 66 marks at the said examination, as the students who had been selected for the academic year 2014. However, the results of the said examination were published in the internet on 30<sup>th</sup> January 2014.

The Petitioners who had not scored more than 66 marks but scored 64 or 65 marks at the said examination, complained against the said decision of the 1<sup>st</sup> Respondent to declare the cut-off point for the academic year at 66 marks as an arbitrary decision taken based on factors unsupported with justifiable reasons.

In this regard the Petitioners have further claimed that there was an average intake of 225 students annually, to the Sri Lanka Law College, and therefore restricting the intake to 177 in the academic year 2014, was against their legitimate expectation.

Petitioners submitted that the intake for the year 2014 was the lowest intake to the Sri Lanka Law College since 1981 and in the said circumstances argued that the 1<sup>st</sup> Respondent's decision to deviate its policy by restricting the intake to 177 students without a valid reason, is unfair and unreasonable.

In support of their contention the Petitioners mainly relied on the statistics with regard to the intake of students to Sri Lanka Law College for the period 1981-2012, (P-6 and F) and performance Report published by the Ministry of Justice for the year 2012. (P-10 and L)

As revealed before this court, in terms of Section 7 (1) of the Council of Legal Education Ordinance No. 2 of 1900(as amended) (hereinafter referred to as the Ordinance), it shall be lawful for the 1<sup>st</sup> Respondent, Incorporated Council of Legal Education, with the concurrence of the Minister, to make such by-laws, rules and orders as to it shall seem necessary for defined purposes.

Rule 23 (2) (VII) of the Rules of the 1<sup>st</sup> Respondent, made under Section 7 of the Ordinance provided for the selection criteria to the Sri Lanka Law College as;

“Candidates shall be selected for admission to the Sri Lanka Law College in the order of merit based on their performance at the Entrance Examination and the number of vacancies are determined by the council. Provided no candidate who has obtained less than 40 per-centum of the maximum marks shall be selected for admission.”

When considering Rule 23 (2) (VII) referred to above it is clear that the 1<sup>st</sup> Respondent Council is vested with the discretion of determining the number of vacancies for each academic year, who seek admission to the Sri Lanka Law College. Under the above Rule the only limitation to the above discretion is the restriction on admitting students who obtain less than 40 per-centum of the maximum mark.

The Petitioners who heavily relied on the documents they produced marked ‘F’ and ‘L’, argued that as a practice the 1<sup>st</sup> Respondent selected 225 students to Sri Lanka Law College each year and the Ministry of Justice had also acknowledged the same by including the said number in their Annual Performance Report for the year 2012 as the annual intake.

Even if this court considers the statistics provided by the Petitioners with regard to the intake of students to the Sri Lanka Law College for the period 1981-2012 as accurate, in the absence of any challenge to the above from the Respondents, it appears that an exact number of 225 students were

never selected to the Sri Lanka Law College during these 30 years. As observed by this court it has varied from 208 students to 701 students, and the said number was decided by the 1<sup>st</sup> Respondent using its discretion.

During the arguments before us, the Respondents took up the position that the 1<sup>st</sup> Respondent is compelled to consider,

- a) Number of students that could be facilitated during the relevant academic year
- b) Marks obtained by candidate at the Entrance Examination

when using its discretion in deciding the cut-off mark and the number of students admitted to an academic year.

Since the competition at this examination is very high, the eligible candidates will have a significant increase even within one mark. In support of their argument, the Petitioners relied upon a decision by the 1<sup>st</sup> Respondent with regard to the student intake for the year 2008. Even though the Petitioners relied on the said decision to establish that there were instances where the 1<sup>st</sup> Respondent had taken more students providing additional facilities, the said decision of the 1<sup>st</sup> Respondent had further established;

- a) Changing one mark of the cut-off point can increase the student intake by nearly 70 (in the said instance between 81-82) marks.
- b) The maximum student intake cannot go beyond 225
- c) If the above limit is exceeded, additional facilities such as lectures in two sessions by recruiting additional lecturers as well, will have to be arranged.

The Petitioners who had scored 64 and 65 marks at the Entrance Examination for the academic year 2014 complains against the decision of the 1<sup>st</sup> Respondent to limit of the cut-off mark at 66 and

thereby restricting the student intake to 177. However, they are silent whether the 32 Petitioners before this court are the only eligible group, if the cut-off mark is brought down by two marks, and if the intake goes beyond 225 by reducing the cut-off mark by two marks as claimed by the Petitioners, whether the 1<sup>st</sup> Respondent was in a position to provide additional facilities for the academic year 2014.

As observed by this court, those are the matters that should have been considered by the 1<sup>st</sup> Respondent when deciding the cut-off mark and the number of students admitted to the Sri Lanka Law College for the particular academic year and as further observed by this court, taking that decision is within the discretion vested with the 1<sup>st</sup> Respondent by Rule 23 (2) (VII).

In these circumstances, I will now consider whether the impugned decision to restrict the student intake to 177 by deciding the cut-off mark as 66 for the academic year 2014 was in violation of the legitimate expectation of the Petitioners and/or the said decision was an unreasonable decision by the 1<sup>st</sup> Respondent.

When considering the argument that the said decision was in violation of the legitimate expectations of the Petitioners, I am reminded of the following passage from the book titled, *Administrative Law* by *Wade and Forsyth* to the effect, that

“It is not enough that an expectation should exist; it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy of law.

But some points are relatively clear. First of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation.”

[Administrative Law H.W.R. WADE and C.F. FORSYTH 10<sup>th</sup> Edition page 449]

As observed by this court the Petitioners main contention before us was to establish that there was a practice by the 1<sup>st</sup> Respondent to admit 225 students to Sri Lanka Law College annually. In the above context they relied on three documents, the statistics, performance report for the year 2012 and a decision by the 1<sup>st</sup> Respondent in the year 2008.

However as already observed in this judgment, 225 students (exact number) were never selected in a particular year but it was varied from 208-701 during the 30 years period the Petitioners relied upon, but one thing is clear from the council decision in 2008, that the maximum number of students that can be entertained as a single batch is 225.

The fact that the performance report of the Ministry of Justice for the year 2012 gives the annual intake to the Sri Lanka Law College as 225 is also a matter that has to be looked into seriously by this court. Does this indicate the practice or does it give a promise that every year 225 students will be taken to the Sri Lanka Law College. There is no dispute before this court that Sri Lanka Law College is an Institute established through an Act of Parliament as well as an institute comes under the Ministry of Justice. Even though the Secretary to the Ministry is represented in the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent is governed by the Ordinance under which it was established and the Rules made thereunder. In these circumstances, a decision taken by the 1<sup>st</sup> Respondent under a specific rule cannot be superseded by a mere statement and/or a document made in the pretext of a performance report.

Even if the contents in the said document is considered as correct, that only gives the performance for the year 2012 and doesn't go beyond, but it clearly contradicts with the statistics provided, since the student intake for the year 2011 and 2012 are 238 and 551 respectively.

In the case of ***Ram Pravesh Singh V. State of Bihar (2206) 8 SCC 381*** the doctrine of legitimate expectation was discussed as follows;

“A legitimate expectation even when made out, does not always entitle the expectant to a relief. Public Interest, change in policy, conduct of expectant or another valid or *bona fide* reasons given by the decision maker, may be sufficient to negate the ‘legitimate expectation.’ The doctrine of legitimate expectation based on established practice (as contrast form legitimate expectation based on promise) can be invoked only by someone who has dealings or transactions or negotiations with an authority on which such established practice has a bearing or by someone who has a recognized legal relationship with the authority and who has not entered into any transaction or negotiation with the authority , cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.”

There is no dispute that the Petitioners before this court were applicants to sit as candidates for an examination conducted by the Department of Education to select students for Sri Lanka Law College for the academic year 2014.

The advertisement calling for applications form suitable candidates were called not by the Department of Examination but by the 1<sup>st</sup> Respondent. In this context it can be argued that the petitioners had entered in to a transaction with the 1<sup>st</sup> Respondent.

But can that transaction alone create a legitimate expectation among the applicants to the said examination when they fail to fulfil the requirements identified in the rules.

In this regard this court is mindful of two issues raised on behalf of the Respondents.

Firstly, the Respondents relied on a declaration made by each of the applicant in the application itself and argued that due to the declaration made, the Petitioners are not entitled to claim legitimate expectation with regard to the number of places decided by the 1<sup>st</sup> Respondent. Petitioners when submitting their applications, had declared that;

“I am fully aware that if any information given by me herein is found to be incorrect, false or intended to mislead the Council of Legal Education, I am liable to be disqualified from sitting the Entrance Examination, and if such information is discovered after admission, I am liable to be expelled from the college, and **I am also aware that my registration as a student will depend on the results of the Entrance Examination as approved by the Council of Legal Education and the number of places available for that year.**” (emphasis added)

Secondly the Respondents relied on the decision by the Court of Appeal in the case of ***Vasana V. Incorporated Council of Legal Education and Others (2004) 1 Sri LR 154*** where *Amaratunga (J)* observed;

“When the basic ingredient necessary for the formation of a Legitimate Expectation is marks over and above the cut-off point is lacking, the Petitioner cannot rely on document which contains a provisional decision which has been subsequently found to be a decision based on erroneous factual data submitted to the Law College due to an inadvertent error committed by an examiner.”

In the said case the Court of Appeal held;

- I. The legitimate expectation of any candidate sitting for the Law College Entrance Examination is that if at the examination he scores the minimum mark necessary to gain admission to the Law College, he would be admitted; accordingly earning the necessary minimum mark is the foundation on which the legitimate expectation of a candidate rests.
- II. If he fails to get the necessary minimum mark, the legitimate expectation cannot exist any longer

The Petitioners never challenged making a declaration as referred to above but took up the position that it was arbitrary and unreasonable to restrict the intake to 177 students by fixing the cut-off mark at 66 against the long-standing practice of taking 225 students to the Sri Lanka Law College.

However as already observed by me, there isn't a single batch for the 30 years as referred to by the Petitioner, which had 225 students but it was varied from 208 to 702.

In these circumstances, it is clear that the 1<sup>st</sup> Respondent is vested with a wide discretion to decide the size of the batch and the cut-off mark. The Petitioner making the declaration referred to above had admitted the wide discretion of the 1<sup>st</sup> Respondent to decide the number of students to be admitted to the academic year 2014 by deciding the cut-off mark, which is the "foundation to the legitimate expectation" as held in ***Vasana V. Council of Legal Education (supra)***.

Whilst challenging the 1<sup>st</sup> Respondent's decision to decide the cut-off mark as 66 and restricting the intake for the year 2014 for 177 without going for 225 students as per the practice for the last 30 years, Petitioners further argued that they too have scored 65 and 64 marks at the Entrance Examination which is far above the minimum threshold identified by rules; i. e. 40 marks and

therefore the Petitioners are entitled to be selected to the Sri Lanka Law College on their merit, alone, but I see no basis for the above argument, since rule 23 (2) (VII) had given the 1<sup>st</sup> Respondent the discretion to decide the cut-off mark in order to decide the number of students admitted to the Sri Lanka Law College in a particular academic year. If the competition is high, the cut-off mark can rise up and on the other hand if the competition is low, the cut-off mark too will come down but, it cannot lower beyond 40 per centum of the total mark.

In these circumstances, any candidate who has not obtained the cut-off mark decided by the 1<sup>st</sup> Respondent whether it is 66 or 81, is disqualified to gain admission to the Sri Lanka Law College on his merits and therefore he or she is not entitled to claim his/her right to gain admission on merit. This court shall now consider whether the impugned decision of the 1<sup>st</sup> Respondent, when taken together with all relevant material that was placed before this court, is unreasonable. In considering so court shall bear in mind the following two passages from Administrative Law by Wade and Forsyth;

“The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the Public authority .....

Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits.”

[H.W.R. Wade C.F. Forsyth Administrative Law 11<sup>th</sup> Edition page 302]

and the test routinely applied for this purpose, set out in ***Associated Provincial Picture Houses Limited V. Wednesbury Corporation [1948] 1 KB 223***. Accordingly, the criteria for review to be applied would be whether the person vested with the discretion:

- a) Misdirected himself
- b) Failed to take relevant considerations into account
- c) Failed to exclude irrelevant considerations

Lord Green in *Associated Provincial Picture House Limited V. Wednesbury Corporation* (*supra*) defined unreasonableness as “something so absurd that no sensible person could ever dream that it lay within the powers of the authority.”

However, the Petitioners before this court could only show that the intake of students for the academic year 2014 was 177 as against the student intake within the last 30 years which was between 208 to 702 and in the performance report of the Ministry of Justice for the year 2012, the student intake for the Sri Lanka Law College was indicated as 225 which I have considered separately in my Judgment.

Except for the above reference in the performance report there is no indication of 225 as the student intake to the Sri Lanka Law College, in any other document submitted before this Court. But Rule 23 (2) (VII) of the Rules made under Section 7 of the Ordinance says “number of vacancies are determined by the council”

In the said circumstances, it is clear that the impugned decision to select 177 students for the academic year 2014 by deciding the cut off mark as 66 was within the discretion given to the 1<sup>st</sup> Respondent by Rule 23 (VII) of the Rules made under Section 7 of the Ordinance.

Petitioners failed to establish that the said decision violates the legitimate expectation of them and/or it was an arbitrary/unreasonable decision of the 1<sup>st</sup> Respondent.

For the reasons given in my judgment I answer the 1<sup>st</sup> to the 4<sup>th</sup> questions of law raised before this court, in favour of the Respondents and dismiss this appeal. The merits of the case does not warrant answering the 5<sup>th</sup> question of Law that was raised by this court when granting leave in the instant case. Therefore, I refrain from answering the 5<sup>th</sup> question raised before this court.

The Appeal is dismissed, No Costs.

Judge of the Supreme Court

Justice Murdu N. B. Fernando PC

I agree,

Judge of the Supreme Court

Justice S. Thuraiaraja PC

I agree,

Judge of the Supreme Court