

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

In the matter of an application under and
in terms of Articles 17 & 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

SC. FR. Application No. 73/2012

Natasha Dulmi Hewagama,
'Vikumsiri',
Gurukanda,
Kathaluwa,
Ahangama.

Petitioner

Vs.

1. Secretary,
Ministry of Higher Education,
No. 18, Ward Place,
Colombo 07.
2. Chairman,
University Grants Commission,
No. 20, Ward Place,
Colombo 07.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

* * * * *

Before : **Mohan Pieris, PC. C.J.**
Priyasath Dep, PC.J. . &
Eva Wanasundera, PC,J.

Counsel : Ravindranath Dabare for the Petitioner.

Ms. Indika Demuni de Silva DSG., for the Respondents.

Argued On : **27-01-2014 & 17-02-2014**

Decided On : **03-10-2014**

* * * * *

Eva Wanasundera, PC.J.

Leave to proceed was granted in this matter for the alleged infringement of Article 12(1) of the Constitution on 25.05.2012. The matter was argued on 27.01.2014 and 17.02.2014. Written submissions as directed by this Court have been filed by both parties.

The Petitioner was a student of Southlands Balika Vidyalaya, Galle who sat for the G.C.E. Advanced Level Examination in 2010 in the Biology Stream. She had obtained 2As and 1B and an Z score of 1.9375. She was in the 99th position from the Galle District and her Island-Rank was 901.

She claims that she should have been taken into the 'Medicine' stream or the 'Dental' stream for the year 2010/2011 and the Respondents have violated and are in continuous violation of her fundamental rights by not having done so.

Even though the 2nd Respondent pleaded preliminary objections to this application namely that it was time barred and not in conformity with the SC. Rules, no arguments with regard to the said objections were considered by this Court since this Court preferred to hear this application only on merits.

It was common ground that the policy on admission to National Universities is decided from time to time by the University Grants Commission with the concurrence of the Government.

The criteria analysed by the Petitioner was based on the document 'me3' filed with the Petition, which is the hand book issued by the University Grants Commission for the year 2010/2011. It is the same as 2R1 filed by the 2nd Respondent. The Petitioner submitted that selection of students should have been done according to the hand book which the 2nd Respondent failed to do and it amounts to a violation of her fundamental rights and her legitimate expectations to enter the University to do Medicine or Dental Surgery. The Petitioner and her father had filed applications in this regard before the Human Rights Commission and the Human Rights Commission had recommended to the Respondents that the Petitioner be admitted to the 'Medicine' stream.

Admission criteria was contained in Section 3.1 of the hand book and applicable criteria for medicine and Dental Surgery was contained in 3.2.3.2. The vacancies for students selected island wide for Medicine was 1165 and 80 for Dental Surgery. The Petitioner's Island-basis rank was 901 and District basis rank was 99. The Petitioner claims that according to the District rank 99, she should be selected for Medicine or Dental Surgery.

The Respondent's submissions were made to the effect that the results obtained by the Petitioner at the G.C.E. (A.L.) Examination held in 2010 were inadequate for her to be selected for a course of study in either Medicine or Dental Surgery.

The focal point in this matter is **Section 3.2.3.2** in the hand book 'me3' = 2R1. May I reproduce the same below for a clear picture of the analysis.

Section 3.2.3.2:

*Admission to **all courses other than the courses stated in 3.2.3.1 above** will be made on dual criteria, namely:*

- *All Island Merit*
- *Merit on District basis*

Under All Island Merit criteria:

- (i) *Up to 40% of the available places will be filled in order of Z Scores ranked on an all island basis.*

Under District Merit Criteria:

- (i) *Up to 55% of the available places in each course of study will be allocated to the 25 administrative districts in proportion to the total population, that is, on the ratio of the population of the district concerned to the total population of the country.*
- (ii) *A special allocation up to 5% of the available places in each course of study will be allocated to the under-mentioned 16 educationally disadvantaged districts in proportion to the population, that is, on the ratio of the population of each such districts to the total population of the 16 districts;*

- | | | |
|-----------------|------------------|-----------------|
| 1. Nuwara Eliya | 7. Vavuniya | 13. Polonnaruwa |
| 2. Hambantota | 8. Trincomalee | 14. Badulla |
| 3. Jaffna | 9. Batticaloa | 15. Monaragala |
| 4. Kilinochchi | 10. Ampara | 16. Rathnapura |
| 5. Mannar | 11. Puttalam | |
| 6. Mullaitivu | 12. Anuradhapura | |

The number of places allocated on the district merit quota given in (i) and (ii) above will be filled in order of Z Scores ranked on the district basis.

Note 1

In selecting students for a given course of study, it will be ensured that the quota allocated to any district under (i) and (ii) above will not be below the quota in the base Academic year, namely 1993/94.

Note 2

It should be noted that the actual numbers selected could vary from the proposed figures mentioned in the paragraph 2.1 above, because of practical problems encountered in allocating students to Universities and other unavoidable factors. The approximate distribution of the above numbers among different universities is given in

Section 3.3:

A limited number of students will also be admitted on special grounds as specified in Paragraph 18 (a), (b), (c), (d), (e) and paragraph 19 in PART TWO of this Handbook, subject to the Conditions set out therein.

Petitioner has calculated 40% of the students under the all-island basis to be 466 [1165 x 40% = 466] , 55% from the said number to be 641 [1165 x 55% = 640.71] and 5% of the said number to be 58 [1165 x 5% = 58.25]. The Petitioner states that population ratio of the Galle District is 0.052406322 and when it is multiplied by 1165 the answer

is 33.64 and therefore 34 students should be admitted to the Medical faculty from Galle District under the District Merit System.

It is to be noted that under the District merit criteria “**up to 55%** of the available places in each course of study had to be allocated to the 25 Administrative Districts. It is not to be understood as being an equivalent to 55% of the available places”. In addition to this criteria there are two Notes emphasized in italics and colour under 3.2.3.2 of the hand book. Furthermore 3.3 states that a limited number of students will also be admitted on special grounds as specified in paragraphs 18(a), (b), (c), (d) and (e) and in paragraph 19 in Part II of the hand book. The Petitioner has been oblivious to these Notes 1 and 2 of Section 3.2.3.2 and 3.3 of the hand book in all the calculations she has given in the Petition.

It is this Court’s view that the contention of the Petitioner that “the intake for the course of study in medicine for the academic year 2010/2011 should be based solely on the all Island merit and District merit criteria” is erroneous. It is only after the consideration of 3.2.3.2, Note1 and Note 2 and 3.3 of the hand book, namely, (a) the all Island merit ,(b) District merit, (c) the intake which was set apart for the Foreign, Defence and Sports Quota, (d) the quota allocation in the base academic years 1993/1994 and 2002/2003 and (e) the practical difficulties which arose due to clustering of students on the same marks, that the number of students to follow the course of study in Medicine under the different criteria in the hand book could be determined. The proper numbers therefore are as follows:-

(1) All Island merit	-	456
(2) District Merit	-	691
(3) Special grounds	-	<u>18</u>
		1165
		=====

Out of this intake, the all Island merit quota for Galle District is 61 places and District merit quota for Galle District is 33 places resulting in 94 students being admitted for

Medicine from Galle District. Accordingly in Dental Surgery 80 students were selected under the following categories.

(1) All Island Merit	28
(2) District Merit	49
(3) Special grounds	<u>03</u>
	80
	==

Under 'All Island Merit' criterion, no students were taken for Dental surgery but 2 places were allocated under the District Merit criterion. Altogether $94+2= 96$ students from Galle District were admitted to Medicine and Dental surgery.

The Petitioner was ranked 99 in the Galle District. Neither the rank 97th student nor the rank 98th student were admitted to Medicine or Dental Surgery.

The calculations are vividly explained in the documents filed by the 2nd Respondent and I observe that there are no hypothetical figures taken into account at any stage of the calculations.

I observe that when the Human Rights Commission called for a reply from the University Grants Commission, the whole gamut of explanation regarding the calculations had been sent to the Human Rights Commission which unfortunately has not been considered by the Human Rights Commission. I find that the Human Rights Commission had not come to the correct decision as consideration had neither been given to the wording "up to _% " nor to the Notes 1 and 2 and other considerations as mentioned in Section 3.3 of the hand book.

The Petitioner appears not to have appreciated the contents in Section 3.2.3.2 which was meant to be read as a whole with the Notes 1 and 2 therein. I hold that the expectations of the Petitioner was founded on wrong assessment and wrong understanding of the criteria mentioned in the hand book. The provisions made out in the hand book as criteria for selection of students for Medicine and Dental Surgery is no

easy task to be practically put into effect but I am satisfied with the detailed explanations given by the 2nd Respondent in the affidavit of Objections, that mathematically the method is correct and in compliance with the material placed in the Sinhalese and English copies of the hand book. No prejudice has been caused to the Petitioner in the method of calculations and the subject matter taken into account in reaching the final decision.

I hold that there is no infringement of fundamental rights of the Petitioner under Article 12(1) of the Constitution. This application is dismissed without costs.

Judge of the Supreme Court

Mohan Peiris, PC. CJ.

I agree.

Chief Justice

Priyasath Dep, PC.

I agree.

Judge of the Supreme Court

