

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

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

S.C.F.R. Applications

No: 149/2019, 145/2019

1. Meragal Pelige Dinuka Namalee Dissanayake,  
No.24/A, Vajira Road,  
Bambalapitiya.
2. Jamuni Nipuni Nisansala Wimalarathna,  
No.16, Rathuwila Watta,  
Athurugiriya.
3. Niluka Viroshini Marasinghe,  
“Wimalasiri”,  
Pahala Walahapitiya,  
Natandiya.
4. Haputhanthrige Kalani Haputhanthri,  
No. 127, Balummahara,  
Mudungoda.
5. Ameer Hamza Mohamed Haares,  
No. 35B, Kurunduwatta,  
Chilaw.

6. Lorensu Hewage Sathishka Eranda,  
No.3, Kotuwa Road,  
Trincomalee.
7. Praveena Vianini Mary Andrew,  
No 103/18, Paramananda Vihara Mawatha,  
Colombo 13.
8. Annakkarage Lahiru Dulanja Peiris,  
No. 866/1, Station Road, Hunupitiya,  
Wattala.
9. Alahapperuma Arachchige Jayathri,  
“Amara Niwasa”,  
Pattiyawela, Nihiluwa,  
Beliatta.
10. Semasingha Mudiyansekage Sanjula Yashodara  
Semasingha,  
No. 825, Thammennapura, Thabuttegama,  
Anuradhapura.
11. Bandaranayaka Mudiyansele Thilak Senarath  
Bandara,  
No. 19, Kukuloya Road,  
Narampanawa.
12. Ranmuni Chamila Indumali de Zoyza,  
No. 91, Elpitiya Road,  
Wathugedara.
13. Fairoos Mohamed Faizul Ihsan,  
No 174, “Jahan Manzil”, Kalpitiya Road,  
Puttalam.

14. Ponrasa Mauran,  
No. 56, Thirugnana Sampanther Street,  
Trincomalee.
15. Vivekanathan Renukanth,  
“Shirirangam”, Velupillai Street,  
Thirukovil (EP).
16. Samarakkodi Arachchige Dilini Priyangika Perera,  
No. 17, Samudragama, Bendiwewa,  
Polonnawara.
17. Lekamge Chalodya Thilini,  
Daladagama,  
Maho.
18. Ariyanagam Dikson,  
No. 145/4, Galle Road, Wellawatta,  
Colombo 06.
19. A.M.W.S.H.B. Karunarathna,  
No.79/4, Nagolla Road,  
Mihindu Mawatha,  
Matale.
20. Kankanam Kapuge Lakshika,  
“Yamunani”, Uluwitike,  
Galle.
21. P. Jebarasan,  
No.G-35, Torrington Flats, Torrington Avenue,  
Colombo 05.

22. Ramathas Nishnathan,  
Upatissa Road,  
Colombo 04.

**PETITIONERS (SC/FR/149/2019)**

1. Subasinghe Arachchilage Appuhamy Isuru  
Dinuwan,  
No.58, Palangathure West, Kochchikade.
2. U.P.K Dissanayke.  
No.1297/7, 'Ruchira', Eksath Mawatha,  
Moragahakanda, Pannipitiya.

**PETITIONERS (SC/FR/145/2019)**

**Vs**

1. Sri Lanka Medical Council,  
No.31, Norris Canal Road,  
Colombo10.
2. Hon. Dr. Rajitha Senarathne,  
Minister of Health, Nutrition and Indigenous  
Medicine,  
Ministry of Health, Nutrition and Indigenous  
Medicine, Suwasiripaya, No. 385, Rev.  
Baddegama Wimalawansa Thero Mawatha,  
Colombo 10.
3. Dr. Anil Jayasinghe,  
Director General of Health Services,  
Ministry of Health, Nutrition and Indigenous  
Medicine,

Suwasiripaya,  
No. 385, Rev. Baddegama Wimalawansa Thero  
Mawatha,  
Colombo 10.

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

### **RESPONDENTS**

**Before:** Prasanna Jayawardena, PC, J.  
L.T.B.Dehiddeniya, J.  
Murdu Fernando PC, J.

**Counsel:** Upul Jayasuriya, PC, with Sujith Perera and Laknath Seneviratne for the  
Petitioners.  
Canishka Vitharana for the 1<sup>st</sup> Respondent, Suren Gnanaraj, SSC, for the  
2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

**Argued on:** 18.06.2019

**Decided on:** 09.08.2019

### **L.T.B.Dehiddeniya, J.**

This judgement is related to the cases SC/FR/149/2019 and SC/FR/145/2019.

The Petitioners invoked the fundamental rights jurisdiction of this court, challenging the wilful refusal or/ neglect or/ omission of the 1<sup>st</sup> Respondent to grant the Petitioners admission to complete the remaining part/ parts of VIVA examination of the Examination for Registration to Practise Medicine (hereinafter sometimes called as 'ERPM'), which is conducted by the 1<sup>st</sup> Respondent. As per the Petitioners, they have received the due approval from the 1<sup>st</sup> Respondent, and completed a significant portion of the ERPM. The Petitioners further state that, the 1<sup>st</sup>

Respondent's decision to exclude the former from admission to the remaining part/ parts of the ERPM amounts to a wilful refusal or/ neglect or/ omission of the latter which is ultra vires, grossly indefensible, unreasonable, arbitrary, capricious, mala fide, unfair and in violation of the principles of legitimate expectation, natural justice and reasonableness and amounts to an infringement or an imminent infringement of the Petitioners' fundamental right to equality and equal protection of the law guaranteed by Article 12 (1) and the fundamental right to engage in any lawful occupation or profession guaranteed by Article 14(1)(g) of the constitution. The Petitioners plead that, the conduct of the 1<sup>st</sup> Respondent has caused a severe personal difficulty and hampered the future career prospects of the Petitioners, which is in violation of the basic principles of natural justice and due process.

The 1<sup>st</sup> Respondent's contention in this regard is that, it has the sole authority and power to decide on the criteria for the recognition of universities or medical schools while considering the standard of medical education or medical school. If further elaborated, the 1<sup>st</sup> Respondent emphasizes, that its authority includes the power to introduce changes to criteria and subjecting previously imposed criteria to additional qualifications. Thus, the 1<sup>st</sup> Respondent seeks to justify imposing a retrospective pre entry requirement stating that, the Medical students admitted to the medical schools should have had not less than thirteen years of formal education, and three passes in Biology, Chemistry and Physics/ Mathematics with at least two credit passes in those subjects at the GCE Advanced Level (Sri Lanka) or equivalent examination approved by the Sri Lanka Medical Council prior to entry to the medical school.

When considering the facts of the present case, it is apt to consider the facts and the decision of *S.F. Zamrath v. Sri Lanka Medical Council* (SC.FR 119/2019). The main issue which had to be decided by this court in that case was a complaint by the Petitioner, who was a foreign medical graduate subsequently deprived of the provisional registration in terms of the Section 29(2) of the Medical Ordinance. The 1<sup>st</sup> Respondent had retrospectively imposed a pre entry requirement, which barred the Petitioner from obtaining the provisional registration. The court held that, the 1<sup>st</sup> Respondent acted arbitrarily when it imposed that pre entry requirement, which violated the legitimate expectation of the Petitioner. It was discussed in this case that, the Supreme Court being the apex court of the country has a supportive function in encouraging the flexibility and the adaptability of the administrative authorities in the point of making policies and taking decisions. But, the court insisted on the fact that, the conduct of such authorities should not be unfair and arbitrary. Further, it was accepted that, the function of this court to strike a balance between the power of an administrative authority to change the policies and to prevent such

changes in policies to affect the legitimate expectations of the public. The doctrine of legitimate expectation is aimed at the prevention of administrative authorities from abusing discretionary powers against the legitimate expectations of the individuals. In the present case, the Petitioners are deprived of their admission to sit for part/parts of the ERPM by the 1<sup>st</sup> Respondent, imposing a pre entry requirement after the completion of the degree, which is manifestly an arbitrary act of the 1<sup>st</sup> Respondent, in violation of the legitimate expectations of the Petitioners. In *S.F. Zamrath v. Sri Lanka Medical Council (Supra)*, the Petitioner was deprived of provisional registration as a medical practitioner, whereas the Petitioners in the present case are deprived of sitting the ERPM. The court sees no difference between the incidents of the two cases. In the former case, the court held that, the Petitioner had a legitimate and a protectable expectation. The admission to sit for the ERPM also amounts to a protectable expectation.

The court has insisted on the predominance of the ordinary law of the land and specifically upheld that, a law which was passed by the Parliament as the supreme legislative organ cannot be overridden by a regulation which has been arbitrarily imposed by a subordinate authority. There, it has quoted the statement of Thomas Hardiman, a judge in the United States as ‘In the legislative branch, you make the laws... and our role as judges is to interpret the law, not to inject our own policy preferences. So, our task is to give an honest construction to what laws are passed by the legislature’.

That case has elaborated on the perception of medical education. It has clearly been stated that, the purpose of medical education is not merely the increase of knowledge and skills but also to enable the application of that knowledge for the betterment of the field. Depriving the medical graduates from provisional registration was considered as depriving them the opportunity to put their talents, capacity and knowledge into practice. In the present case, the situation is same. The Petitioners have been deprived of the admission to sit for the ERPM, which is a severe violation of their future prospects of professional life and the legitimate expectation which has a legal certainty.

This, being the apex court of the country, is the last resort of the people at an instance of grievance. Thus, unlike in a case where the private parties are involved, a public related case has significant gravity in the context of society. The public officials are obliged to play a major role in the court’s process of dispensation of justice. Thus, the public officials are expected to obey the decisions of the court as they are bound by the rule of law to protect the public order of the country. This is a

duty with high imperativeness which cannot be denied by any public official as their main focus should be positioned on the protection of the public interest.

Further, this court considers a statement which has been made by a member of the 1<sup>st</sup> Respondent, at a public meeting which is mentioned in the counter affidavit marked X1, produced in this court by the Petitioners. It has been stated that, ‘irrespective whether there is a court order mandating the registration of SAIMT medical graduates, even if members of the SLMC have to go to jail, they will not register the SAIMT students’. It should be kept in mind by the 1<sup>st</sup> Respondent that, the final expectation of this court is the dispensation of justice and to ascertain the fact that, the rightful person has gained what he deserved justly. It does not involve in pursuing and punishing people. The ‘contempt of court’ is a discipline. I hereby quote, Brown L.J, in *Hellemore v. Smith* (2) (1986), L.R.35C.D 455, where his Lordship stated that,

*‘The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the judge, but to prevent undue interference with the administration of justice.’*

The court’s main focus is on the proper administration of justice, and to most straightforwardly stand against the interference with the justice and make sure that, no impediment is imposed on lawfulness and justice of a court decision. Thus, the 1<sup>st</sup> Respondent must consider the fact that, the court is prioritizing the justice which must be dispensed to the Petitioners as they have undergone a grave personal difficulty in life. All the Petitioners have equally sacrificed their time, resources in order to complete the medical education with the prospect of becoming medical practitioners. The court has a duty to do justice to them. As his Lordship the Justice Hardwicke stated in ‘Case of Printer of St. James’s Evening Post ‘(1742) 2 Atk, 471,

*‘There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.’*

Further, the stay order issued by this court on 03/04/2019 which had the effect of suspending the 1<sup>st</sup> Respondent from releasing the results in respect of the foreign medical graduates who have sat for the March/ April 2019, VIVA examination of the ERPM without first granting admission to the Petitioners to sit for the examination and considering the results of all the said foreign medical graduates is dissolved hereby in the interest of the public and considering the dire need of Sri Lanka necessitating the services of the medical practitioners to the hospitals. This court prioritizes

the public interest and it is emphasized that, no citizen shall be suffered by an order or a decision of the court in the process of justice administration.

Considering the above circumstances, the court decides that, the Petitioners' fundamental rights guaranteed to them by the Articles 12 (1) and 14 (1)(g) of the Constitution have been violated by the arbitrary act of the 1<sup>st</sup> Respondent. Further, the court orders the 1<sup>st</sup> Respondent to enable the Petitioners to sit for the remaining part/ parts of the ERPM within a reasonable time.

Judge of the Supreme Court

Prasanna Jayawardena PC, J

I agree

Judge of the Supreme Court

Murdu Fernando PC, J

I agree

Judge of the Supreme Court