

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 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka

1. Ms. A.M. Noon
46/ 2, Lady Lavinia Housing,
1st Templers Mawatha,
Templers Road,
Mount Lavinia.
2. K.P. Noon,
46/ 2, Lady Lavinia Housing,
1st Templers Mawatha,
Templers Road,
Mount Lavinia.

Petitioners

Case No. S.C.F.R 352/2010

Vs.

1. University Grants Commission,
20, Ward Place,
Colombo 07.
2. Prof. Samaranayake,
Chairman, University Grants
Commission, Ward Place,
Colombo 07.
3. Secretary, Ministry of External
Affairs, Republic Building,
Colombo 01.

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

Respondents

BEFORE : Mohan Pieris, P.C.,C.J.,
K. Sripavan, J.
E. Wanasundera, P.C.,J.

COUNSEL : Shibley Aziz P.C. with Senany Dayarathna for
the Petitioners
Wijeyadasa Rajapaksha, P.C. With Nilantha
Kumarage and Rakitha Rajapaksha for the 1st
and 2nd Respondents.

Ms.Indika Demuni de Silva, D.S.G. For the
Attorney General

ARGUED ON : 06.03.2013 & 30.09.2013

WRITTEN SUBMISSIONS

FILED : By the Petitioners on 18.11.2013
By the 1st and 2nd Respondents
on 26.09.2013 & 25.11.2013

DECIDED ON : 28.11.2013

K. SRIPAVAN, J.

The Petitioners filed this application seeking admission to the First
Petitioner in a University in Sri Lanka for the Academic year
2008/2009 under and in terms of the special quota allocated by the

University Grants Commission for students with foreign qualifications. Leave to proceed was granted on 29.06.2010 for the alleged violation of Article 12(1) of the Constitution. The provision relating to the special quota in respect of the Academic year 2008/2009 appears in the Manual issued by the University Grants Commission titled “Admission to Undergraduates Courses of the Universities in Sri Lanka” marked **P2**.

Clause 18(d) of the said Manual provides, inter alia, as follows:-

“Up to 0.5 percent of the places from the proposed intake in each course study have been allocated to Sri Lankan students who have obtained qualifications abroad and foreign students. Accordingly, candidates who have foreign qualifications equivalent to G.C.E. (A/L) Examination of Sri Lanka are eligible to apply.

Selections are based on the following priority:

(a) Children of Sri Lankan diplomatic personnel who are/have been stationed in other countries provided they have received education abroad for at least three years in the six-year period immediately preceding the qualifying examination. “

(emphasis added)

In addition, the University Grants Commission issued a separate handbook called “Admission of Students with the Foreign Qualifications to Undergraduate Courses of the Universities of Sri Lanka – Academic Year 2008/2009” marked **R1**.

The minimum requirements for admission are contained in Clauses 2:1 and 2.2 of the said Handbook.

The conditions referred to therein are as follows:-

“2.1 Candidates with impressive results at a foreign examination held outside Sri Lanka deems equivalent to G.C.E.(Advanced Level) Examination of Sri Lanka are also eligible to apply admission to universities in Sri Lanka.

(a) Applicants are advised to attach to their applications a letter (original) obtained from the Examinations Board concerned, that their educational qualifications are equivalent to the G.C.E (A/L) Examination of the University of London for admission to a university in their own country to follow an undergraduate course of study leading to a Bachelor Degree.

(b) Applicants must make sure that all required passes should be obtained in one and the same sitting under a recognized Board of Examinations.

2.2 In order to become eligible for admission under this special provision,

(a) Sri Lankan candidates should have studied abroad for a period of not less than five years immediately prior to sitting the qualifying examination.

N.B. - Applicants must provide documentary proof.

(b) *In the case of children of Sri Lankans attached to Sri Lanka diplomatic missions abroad or on foreign assignments sponsored by the Government of Sri Lanka, candidates should have studied abroad at least for a period of 03 years in the six-year period immediately prior to sitting the qualifying examination.* (emphasis added)

N.B. - Applicants must provide documentary proof.”

Thus, in terms of the Manual and the Handbook issued by the University Grants Commission the governing criteria for admission of the children of Sri Lankans attached to the Sri Lanka Diplomatic Missions abroad to the Sri Lankan Universities for the Academic Year 2008/2009 is that a candidate should have received education abroad for at least three years in the six-year period immediately preceding the qualifying examination. It is not in dispute that during the year commencing from 2002 to 2006, the 1st Petitioner who was a minor at the time, accompanied her father (the 2nd Petitioner), on his foreign postings to Indonesia and Maldives and proceeded her education in those countries, successfully completing the London (O/L) Examination conducted by Ed-excel International. When the 2nd

Petitioner returned to Sri Lanka in 2006, the 1st Petitioner too accompanied her father, joined the Colombo International School and followed a course of study leading to the London G.C.E. (A/L) Examination and sat the said examination in June 2008. The Petitioners in their petition conceded that the 1st Petitioner remained in Sri Lanka and sat for the G.C.E. (A/L) Examination in Colombo and obtained the following results :

Biology	-	A
Chemistry	-	A
Mathematics	-	A
Physics	-	B

Thus, it is obvious that the 1st Petitioner having returned to Sri Lanka in 2006, has studied for a period of two years for the Qualifying Examination in Sri Lanka. The three year period `referred to in Clause 18(d) should be understood as meaning “receiving education abroad in relation to the Qualifying Examination.” The failure on the part of the 1st Petitioner to satisfy that she received education abroad during a period of three years prior to sitting the Qualifying Examination, (viz. G.C.E. (A/L) Examination) dis-entitle her to be considered for admission to any Universities in Sri Lanka for the Academic Year 2008/2009. The 1st Petitioner's father too was not attached to any Sri Lankan diplomatic mission after his return in 2006 until he was posted to Abu-Dhabi in January 2008. Thus, the Petitioners have not satisfied the requirements contained in Clause 2.2(b) of the Handbook.

Learned President's Counsel for the Petitioners submitted that the Petitioners were aware of at least two previous instances where candidates gained admission under the said special quota having sat for the Qualifying Examination in Sri Lanka. Learned Counsel urged that Miss D.N.S. Serasinghe, the daughter of a former SLFS Officer and one time High Commissioner was admitted to follow a course of study in Medicine at the University of Colombo in 1996, under and in terms of the special quota contained in Clause 18(d) of the Manual.

The other instance was where Mr. M.H. Noon, the 1st Petitioner's elder brother was admitted to follow a Course in Engineering at the University of Moratuwa in 2007 deviating the provisions contained in Clause 18(d) of the Manual.

Article 12(1) of the Constitution which deals with the right to equality states that “All persons are equal before a law and are entitled to the equal protection of the law”. The object of this concept of “right to equality” is to secure every person against any intentional and/or arbitrary discrimination. This concept cannot be understood as requiring officers to act illegally because they have acted illegally on previous occasions. Sharvananda, C.J. in the case of *C.W. Mackie and Company Ltd. Vs Hugh Molagoda Commissioner General of Inland Revenue and Others* (1986) 1 S.L.R. 300 observed that -

“...the equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act. Via Article 12, one cannot seek the execution of any illegal or invalid act.

Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, formulated in law in contradistinction to an illegal right which is invalid in law.”

The dicta in *C.W. Mackie* (supra) was followed by M.D.H. Fernando, J. in the case of *Gamaethige Vs. Siriwardene* (1988) 1 S.L.R. 384 where the learned Judge stated thus:-

Two wrongs do not make a right, and on proof of the commission of one wrong the equal protection of the law cannot be invoked to obtain relief in the form of an order compelling commission of a second wrong.”

This question was once again considered by Dr. Shirani Bandaranayake, J. (as she then was) in the case of *Dissanayake Vs. Priyal de Silva* (2007) 2 S.L.R. 134 where reference was made to the decision in *C.W. Mackie* (Supra) to hold that Article 12(1) of the Constitution provides only for the equal protection of law and not for the equal violation of the law.

Accordingly, it is evident that the Petitioners cannot rely on the provisions of Article 12(1) of the Constitution which guarantees equality and equal protection of the law to compel the University Grants Commission to act illegally merely because the Commission acted illegally on previous occasions with regard to two other students.

It is observed that in terms of Section 15 (vii) of the Universities Act

No. 16 of 1978 as amended, the selection of students for admission to universities has to be done in consultation with an Admission Committee. Once the governing criteria for admission is decided by the Commission, it is the duty of the Commission to apply the said criteria strictly in terms of the powers vested in it. The conditions given in the Handbook with regard to admission of students to the Universities shall not be changed in an ad hoc manner to satisfy persons attached to the Sri Lankan Missions abroad. In this context, it is imperative to refer to the observation made by S.N. Silva, C.J. in the case of *Patrick Lowe and Others Vs. Commercial Bank of Ceylon Ltd.*, (2001) 1S.L.R. 280 at 284:

“It is a fundamental principle of law that a person who functions in terms of statutory power vested in him is subject to an implied limitation that he cannot exceed such power or authority. The ultra vires doctrine, now recognized universally, evolved in England on this premise (vide Ashbury Railway Carriage & Iron Co. Ltd., vs. Hector Riche and the Attorney-General vs. The Great Eastern Railway). It follows that what is not permitted by the provisions of the enabling statute should be taken as forbidden and struck down by Court as being in excess of authority.

Hence, what is not permitted by the Manual and the Handbook should be taken as forbidden and struck down by Court as being in excess of the powers of the University Grants Commission.

Considering the totality of the submissions made by the learned President's Counsel for the Petitioners, the Court holds that the Petitioners have failed to establish any violation of their fundamental rights guaranteed to them in terms of Article 12(1) of the Constitution. The petition is accordingly dismissed. There will be no costs.

JUDGE OF THE SUPREME COURT.

MOHAN PIERIS, P.C.,

I agree.

CHIEF JUSTICE

E. WANASUNDERA, P.C.,J.

I agree.

JUDGE OF THE SUPREME COURT.

