

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

In the matter of an Application under and in terms
of Article 126 of the Constitution.

1. R.H.A.S.S. Karunarathna,
Na Sevana,
Deraniyagala
2. K.M. Rupasinghe,
'Rupani',
Angulugalla,
Nawandugala.
3. V.S. Wanasinghe,
61/F, Parakum Mawatha,
Bandarawatta,
Gampaha.
4. M.A.G.C.Wijesekara,
Apsara,
Urapalawwa,
Kuruwita
5. M.M.N. Kumari,
No. 75, Dunupothagama,
Nochchiyagama.
6. J.A.R. Jayasooriya,
Agalawatta,
Memeripitiya,
Parakaduwa.
7. K.J.A.W.L. Jayasinghe,
538, Bodhimaluwa,
Parakaduwa.
8. R.P.R. Madusanka,
775, Thaligala,
Barawakumbuka.
9. K. G.P.S. Samarasinghe,
Ananda,
Balawinna,
Godakawela,
10. M.C.C. Perera,
104, Katuwapitiya Rd.,
Negombo.

11. D T Ratnayaka ,
289/4,
Thalapatuhenpita North,
Kiribathgoda,
Kelaniya.
12. K.K.C. Harshanai,
265C,
Hidakaraldeniya,
Ihalamitiyala,
Matara.
13. B.L.S. Madhushani,
Thekkawatta,
Jayawardane Mawatha,
Malimbada.
14. W.P. Heshan,
85/3,
Silverwaliwatta,
Koralaima, Gonapola.
15. D.M.M. Menaka,
01, Pahalaramawa,
Ketawala,
Landewala,
Haliela.
16. P.M.A. Nipunika,
Boyawalana,
Kappetiwalana,
Alawwa.
17. C.D. Padmaperuma,
493/2B, Sirrimedurawatta,
Meegoda.
18. M.G.N. Dilhani,
58, Rathmalkaduwa,
Gampola.
19. H.P.S.T. Wickramaratna,
538, Thalliyadda,
Dorawaka.
20. W.M.N. Udayajeewa,
Udakumbura,
Pussallawagama,
Pussallawa.

21. H.P.T. Subashini,
B2/65,
Beligodapitiya,
Rambukkana.
22. D.A.U. Sandamini,
87, Sri Piyarathana Road,
Bandaragama.
23. H.P.S. Rasadari,
195C,
Moragahakandawatta,
Vilegoda, Kalutara North.
24. D.C. Dahanayake, 19,
Poramba Lane,
Akuressa.
25. H.M.S.T. Sandaruwan,
118, Isuru Vimana,
Munagama,
Horana.
26. N.H.M. Lakmini,
Maduranga,
Ankenduwa Kapuduwa,
Thihagoda,
Matara.
27. K.B.T.U.K. Bandara,
711/A, 2 Piyawara,
Anuradapura.
28. R.M.C.L. Weerasinghe,
Hitawala,
Hiriwadunna.
29. L.B.U. Sandamali,
357/87A, Gallawatta,
Raddoluwa,
Seeduwa.
30. B.S. Thisarasinghe,
Godaparagahawatta,
Yatalamatta,
Galle.
31. R.M.A.P. Ramanayake,
43/C-4,
Pragathi Mawatha,
Udariyagama,
Peradeniya.

32. N.A.S.D. Madushani,
14, 4th Piyawara,
Ruwaneliya,
Nuwaraeliya.
33. G.L.I. Dhananjani,
548/55, Daminnagahawatta,
Kimbulapitiya.
34. H.M.N.G.C. Bandara,
117, Udalumada,
Rikillagaskada
35. S.D.N.C. Fernando,
No. 16,
Giragama Land Sale,
Kuriwela, Ukuwela

Petitioners

SC FR No. 09/2015

Vs.

1. University Grants Commission,
No. 20, Ward Place,
Colombo 7.
2. The Chairman,
University Grants Commission,
No. 20, Ward Place,
Colombo 7.
3. Additional Secretary (Academic Affairs and
University Admissions),
University Grants Commission,
No. 20, Ward Place,
Colombo 7.
4. Mr. W.M.N.J. Pushpakumara,
Commissioner General of Examinations,
Department of Examinations,
P.O.Box 1503,
Colombo.
5. Secretary,
Ministry of Higher Education,
No. 20, Ward Place,
Colombo 7.
6. The Registrar,
University of Colombo,
94, Cumarathunga Munidasa Mawatha,
Colombo 3.

7. The Registrar,
University of Peradeniya, Galaha Road,
Peradeniya.
8. The Registrar,
University of Sri Jayawardanepura,
Gangodawila, Nugegoda.
9. The Registrar,
University of Kelaniya,
Dalugama,
Kelaniya.
10. The Registrar,
University of Moratuwa, Bandaranayaka
Mawatha, Katubedda, Moratuwa.
11. The Registrar,
University of Jaffna,
Puliyadi Lane,
Jaffna.
12. The Registrar,
University of Ruhuna,
Tangalle Road,
Matara.
13. The Registrar,
Eastern University,
Batticaloa.
14. The Registrar,
South Eastern University,
Oluvil.
15. The Registrar,
University of Rajarata,
Mihintale.
16. The Registrar,
University of Sabaragamuwa,
Belihuloya,
Balangoda.
17. The Registrar,
North Western University,
Kuliyapitiya.

18. The Registrar,
University of Uva Wellassa,
Badulla.

19. Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

BEFORE : K. Sripavan, C.J.
B.P. Aluwihare, P.C., J.
Anil Gooneratne, J.

COUNSEL Saliya Pieris with T. Nandani for the Petitioners.

Nerin Pulle , Deputy Solicitor General with S. Gnanaraj,
State Counsel for 1st , 2nd , 4th 5th 8th 9th 12th 13th 15th
16th and 19th Respondents.

WRITTEN SUBMISSIONS

FILED ON : 27.05.2016 by the Petitioners
26.05.2016 by the Respondents

ARGUED ON : 04.05.2016

DECIDED ON : **20.07.2016**

K. SRIPAVAN, C.J.,

The Petitioners are citizens of Sri Lanka who sat for their G.C.E. (Advanced Level) Examinations in the years 2012 to 2014. The 1st to the 20th Petitioners claim that they sat for the G.C.E. (Advanced Level) Examinations in 2013 in their first attempt and in 2014 in their second attempt. The 21st to the 35th Petitioners claim that they sat for the G.C.E. (Advanced Level) Examinations in 2012 and 2013 in their first and second attempts respectively and in 2014 they sat for the examination for the third time which was the final attempt for University admissions. Thus, all the Petitioners sat for the G.C.E. (Advanced Level) Examinations in the year 2013.

The grievances of the Petitioners are as follows:-

- a. the Petitioners have obtained 'better' results at the 2014 examination as against the 2013 examination;
- b. the registration process based on the 2013 results had not been concluded even though the Petitioners have already registered for various courses of study;
- c. the academic sessions of the respective courses of studies had not commenced; and
- d. there was no positive rule barring a student from deregistering from the Course of Study to which he has already registered.

The Court granted leave to proceed on 06.05.2015 for the alleged violation of the Petitioners' fundamental rights guaranteed by Article 12(1) of the Constitution.

Before examining the rival stand of the parties, it may be necessary to consider the relevant provisions of the Universities Act No. 16 of 1998 (hereinafter referred to as the "Act") with regard to admission of students to various Faculties of the Universities.

Section 15 of the Act provides, inter alia, as follows :-

The University Grants Commission is vested with power :-

- (i) to determine from time to time in consultation with the governing authority of each Higher Educational Institution, the total number of students which shall be admitted annually to each Higher Educational Institution and the appointment of that number to the different Courses of study therein; and
- (ii) to select for admission to each Higher Educational Institution in consultation with an "Admission Committee" whose composition, powers, duties and functions should be prescribed by the Ordinance.

The legislative intent is therefore crystal clear that the authority to manage and conduct the affairs relating to University admission vests solely with the University Grants Commission. It is to be borne in mind that the Court will not intervene, in the exercise of its power by the

University Grants Commission unless the exercise of such power was for an improper purpose not defined in the statute which confers it.

This Court while examining the policy of the University Grants Commission held in *Seneviratne and another Vs. University Grants Commission* (1980) 1 S.L.R. 182 at 220 as follows:-

“This Court would be going outside its judicial powers, were it to substitute its own judgment for that of the University Grants Commission on what is essentially a matter of policy and which has been properly entrusted for decision to that body. When a similar submission was made in Kumari Vs. State of Mysore, the Supreme Court of India observed ...

But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This however would not render the rule unconstitutional. For relief against hardships in the working of a valid rule the Petitioner has to approach elsewhere because it relates to the policy underlying the rule”

The legal position that emerges out of the decision extracted above is that once the University Grants Commission lays down a policy, it has to follow it uniformly even if it causes hardship in certain instances. The first respondent Commission cannot resort to such policy in certain cases where it likes and depart from the said policy as it chooses. Having laid down a definite policy the Commission cannot follow the irrational method of pick and choose. Such action of pick and choose would become arbitrary and violative of Article 12(1) of the Constitution and has to be struck down as being contrary to the constitutional provisions.

It is in this backdrop, I have to consider the complaint of the Petitioners. The Petitioners sat for the G.C.E. (Advanced Level) Examination 2013, the results of which were released on 20.12.2013. The First Respondent thereafter published notices calling for applications for University admission from eligible candidates. The closing date of receiving the said application was 19.05.2014. The Petitioners state that they applied for University

admissions by filling the application forms provided by the First Respondent in its handbook and forwarding them to the First Respondent for the academic year 2013/14.

Clause 6.1 of the Handbook refers to the categories of persons who do not qualify for admission as internal students of a University/Campus/Higher Educational Institute. (Clause 6.1 (b) reads thus:-

“Students who were/are registered (See Note 1) as internal students for courses of study in any institution listed under Paragraphs 1.2 & 1.4 of this Handbook.”

Note 1 :- Once a student forwards an application to the respective Higher Educational Institution/Campus/Institute for registration after paying the registration fee to the relevant Higher Educational Institution upon receiving a letter from the respective Higher Education Institution or otherwise, he/she is deemed to be registered student.

Paragraph 1.2 of the Handbook refers to the following Higher Educational Institutions/Campuses/Higher Educational Institutes.

1. *University of Colombo*
2. *University of Peradeniya*
3. *University of Sri Jayewardenepura*
4. *University of Kelaniya*
5. *University of Moratuwa*
6. *University of Jaffna*
7. *University of Ruhuna*
8. *Eastern University, Sri Lanka*
9. *South Eastern University of Sri Lanka*
10. *Rajarata University of Sri Lanka*
11. *Sabaragamuwa University of Sri Lanka*
12. *Wayamba University of Sri Lanka*
13. *Uva Wellassa University of Sri Lanka*

14. *University of the Visual & Performing Arts*
15. *Sripalee Campus*
16. *Trincomalee Campus*
17. *Vavuniya Campus*
18. *Institute of Indigenous Medicine*
19. *Gampaha Wickramarachchi Ayurveda Institute*
20. *University of Colombo School of Computing*
21. *Swami Vipulananda Institute of Aesthetic Studies, Eastern University, Sri Lanka*
22. *Ramanathan Academy of Fine Arts, University of Jaffna*

Paragraph 1.4 refers to the following two institutions:-

1. *Institute of Human Resource Advancement (IHRA). University of Colombo.*
2. *Institute of Technology, University of Moratuwa.*

The Petitioners at Paragraph 16 of the Petition aver that based on the results of the G.C.E. (Advanced Level) Examination 2013, that registration of the Petitioners for different Courses of Study commenced on or around 30.09.2014 and they had to register for their respective Courses of Study on the dates contained in the Chart marked **P1**. The Respondents by way of a motion dated 23.07.2015 produced the Schedule in Annex 1 of the letters requesting the Petitioners for registration to Universities for the Academic Year 2013/14. The letters marked **P4A** to **P4AH** and annexed to the Petition refers to the conditions subject to which the Petitioners would be selected for admission. Those conditions are given in Annex I which was not produced to Court by the Petitioners. The attention of every student who wishes to register at a University as from the commencement of the Academic Year 2013/14, was drawn to certain matters in Annexe 1. One of the matters referred to therein reads as follows:-

(d) Please note that if you will get registered to follow this Course of Study for the Academic Year 2013/14, you will not be eligible for University admission **based on the results of a subsequent G.C.E. (Advanced Level) Examination.** (emphasis added).

Thus, the Schedule in Annex I in a definite and clear terms notifies the policy of the First Respondent with regard to University admissions on the basis of the results of a subsequent G.C.E. (Advanced Level) Examination.

Learned Deputy Solicitor General sought to argue that the Petitioners have suppressed this material fact from this Court by failing to attach Annexe I of the schedule sent to them and referred to in the Petitioners' documents marked **PA** to **P4AH**. In my view, there is much substance in the contention raised by the learned Deputy Solicitor General. It is well settled that the relief under Article 126 of the Constitution is just and equitable and the Petitioners who approach this Court for such relief must come with frank and full disclosure of facts. If the Petitioners fail to do so and suppress material facts, their application is liable to be dismissed on that ground alone.

In a leading case of *R Vs. Kensington Income Tax Commissioners* (1917) 1K.B. 486 at 497 Viscount Reading C.J. of Divisional Court observed :-

".....if the Court comes to the conclusion that an affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent the abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court, that it has been deceived."

Scrutton L.J. made an independent opinion on the following lines:-

"an applicant who does not come with candid facts and clear hands cannot hold a writ of the Court with soiled hands. Suppression or concealment of material facts is not an advocacy. It is a jugglery, which has no place in equitable and prerogative jurisdiction."

I therefore hold that failure to attach the Schedule in Annexe I to the letters filed by the Petitioners marked **P4A** to **P4AH** amounts to "suppression of a material fact" and the application of the Petitioners is liable to be dismissed without proceeding further with the examination on the merits.

However, considering Article 27(2)(h) of the Constitution, which reflects the policy of the State to assure to all persons of the right to universal and equal access to education at all levels and the purported legal wrong as claimed by the Petitioners committed by the First Respondent against the Petitioners, I decide to go into the merits as well. The following facts are not disputed :

- (i) The results of the G.C.E. (Advanced Level) Examination 2013 were released on 20.12.2013.
- (ii) The First Respondent issued the cut off marks for admission to various Courses of Studies on 06.09.2014.
- (iii) The registration period to various Courses of studies commenced on 30.09.2014
- (iv) The registration for all Courses of Study for the academic year 2013/ 14 completed on 06.02.2015.
- (v) The results of the G.C.E. ((Advanced Level) Examination 2014 were released in December 2014.

Learned Counsel for the Petitioners contended that the Petitioners would be entitled to register for a Course study which is considered to be better or requiring a higher 'Z' score than the courses/streams for which they were registered, based on the results of G.C.E. (Advanced Level) Examination 2014. The Petitioners state that between 28.12.2014 and 02.01.2015, the Petitioners and their parents made representations and appeals to various parties including the 1st Respondent, seeking that they be permitted to cancel their registration for the academic year 2013/14, so that they could apply for University admission based on their results at the G.C.E. (Advanced Level) Examination 2014. The question therefore arises whether the Petitioners have any expectation to apply for and to register for a preferred Course of Study for the next academic year, namely, 2014/15 based on their results at the G.C.E. (Advanced Level) Examination 2014.

In a leading case of *Attorney General of Hong Kong Vs. Ng Yuen Shin* [(1983) 2 A C 629 / (1983) 2 W.L.R. 735] the Privy Council on the question of expectation made the following observations:-

“The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.”

Wade on “Administrative Law – Eleventh Edition” at page 452 discusses as to when an expectation becomes legitimate. He states thus :-

“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 or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance.”

Based on the discussion of Wade quoted above, the Court has to consider whether the First Respondent Commission did give any assurance to the Petitioners in a clear, unequivocal and unambiguous term, that based on the results of the G.C.E. (Advanced Level) Examination of 2014, they would be permitted to cancel their registration for the academic year 2013/14 to enable them to apply for the next academic year 2014/15. Neither the Handbook relating to University Admission for the Academic Year 2013/14 nor the Annexe I referred to in the letters marked **P4A** to **P4AH** refer to any such assurances. On the contrary, the Schedule in Annexe I attached to the letters marked **P4A** to **P4AH** clearly and unambiguously states that once a student registers to follow the Course of Study for the academic year 2013/14, he/she will not be eligible for University admission based on the results of a subsequent G.C.E. (Advanced Level) Examination. Thus, I hold that the Petitioners do not have a legitimate expectation to register for a preferred Course of Study for the Academic year 2014/15 based on their results at the G.C.E. (Advanced Level) Examination 2014.

I shall go further and examine whether any such benefit has been regularly granted by the

First Respondent in the past and such benefits have been denied to the Petitioners. The Second Respondent in his affidavit dated 08.06.2015 states that the policy of the First Respondent morefully reflected in Clause 6.1(b) of the Handbook for the relevant academic year was introduced by the First Respondent in the year 2007 and the First Respondent gave wide publicity to the same and **this policy has never been challenged to date.** (emphasis added.)

A notice marked **R6** and published in the Newspaper in October 2006 for all prospective candidates for University Admission from 2007 G.C.E. (Advanced Level) Examination onwards reads thus:-

“.....a Candidate who is registered for a particular Course of Study in a Higher Educational Institution/Institute, based on the results of the G.C.E. (Advanced Level) Examination in 2007 or a later year is not eligible for University admission based on the results of the subsequent G.C.E. (Advanced Level) Examination.”

Hence, the Petitioners cannot succeed based on a benefit given to students in the past as such benefit or concession was not extended to students after 2007.

It is settled principle of law that where a power is given to do a certain thing in a certain manner, that thing must be done in that way and not in any other way. Thus, having laid down the conditions/rules subject to which admissions to the Universities could be made the First Respondent cannot deviate from the conditions/rules laid down thereafter. This Court in *Noon Vs. University Grants Commission and Others* S.C. F.R. 352/2010 (S.C. Minute 23.11.2013) observed as follows :

*“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 the 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 University shall not be changed in an ad hoc manner.....” (emphasis added)

For the reasons stated above, I hold that the Petitioners have failed to establish the violation of their fundamental rights enshrined in Article 12(1) of the Constitution, by the Respondents. The application is therefore dismissed in all the circumstances without costs.

CHIEF JUSTICE

B.P. ALUWIHARE, P.C.,J.

I agree.

JUDGE OF THE SUPREME COURT

ANIL GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT