

**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 in respect of the violations of Article 12(1) of the Constitution.*

**CASE NO. SC/FR/311/2019**

M.D. Malik Sachinthana, 231/1,  
Lucasgoda,  
Tissamaharama.

**PETITIONER**

**vs**

1. University Grants Commission,  
No. 20, Ward Place,  
Colombo 7.
2. Chairman,  
University Grants Commission,  
No. 20, Ward Place,  
Colombo 7.

3. Director,  
Advanced Technological  
Institute,  
Labuduwa, Galle.
4. Director General,  
Sri Lanka Institute of Advanced  
Technological Education,  
No. 320, T.B. Jayah Mawatha,  
Colombo 10.
5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

#### **RESPONDENTS**

**BEFORE** : **MURDU N.B. FERNANDO PC,J**  
**S. THURAIRAJA PC,J AND**  
**YASANTHA KODAGODA PC,J**

**COUNSEL** : Sunil Cooray for the Petitioner  
Thanuka M. Nandasiri with R.M.N.R Bandara for the 3<sup>rd</sup> & 4<sup>th</sup>  
Respondents  
Ms. Sureka Ahmed, SC for the 1<sup>st</sup>, 2<sup>nd</sup> & 5<sup>th</sup> Respondents

**WRITTEN SUBMISSIONS** : Petitioner on 28<sup>th</sup> February 2022

1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents on 14<sup>th</sup> February 2022

**ARGUED ON** : 19<sup>th</sup> January 2022

**DECIDED ON** : 9<sup>th</sup> June 2022

**S. THURAIRAJA, PC, J.**

Manimel Dura Malik Sachinthana (hereinafter sometimes referred to as the "Petitioner") sat the General Certificate of Education Examination (Advanced Level) in August 2018 (as his second attempt to enter University) and applied to be admitted to a Faculty of Law.

The 1<sup>st</sup> Respondent is the University Grants Commission (hereinafter sometimes referred to as the UGC) which is a body Corporate established under the Universities Act, No. 16 of 1978. The 2<sup>nd</sup> Respondent is the Chairman of the 1<sup>st</sup> Respondent.

The 3<sup>rd</sup> Respondent is the Director of the Advanced Technological Institute (hereinafter referred to as ATI), the institute under which the Petitioner has allegedly been registered for a three-year course of study to obtain a Higher National Diploma. The 4<sup>th</sup> Respondent is the Director General of the Sri Lanka Institute of Advanced Technological Education (hereinafter referred to as SLIATE) established under Act No. 29 of 1995.

This matter was supported on 10/02/2020 before this Court and leave was granted under Article 12(1) of the Constitution against 1<sup>st</sup> - 4<sup>th</sup> Respondents. The 1<sup>st</sup> - 4<sup>th</sup> Respondents are alleged to have directly violated the Fundamental Rights of the Petitioner.

## **The Facts**

The Petitioner states that he sat for the General Certificate of Education, Advanced Level (hereinafter referred to as GCE A/L) Examination in August 2018, from the Hambantota District in the Arts Stream and obtained 'A' passes (Distinction passes) in all three subjects. In order of merit, he was placed 4<sup>th</sup> in the Hambantota district and 90<sup>th</sup> all Island, securing a Z-score of 2.1652.

The minimum Z-score required to be admitted to the Faculty of Law of the University of Colombo for the academic year 2018/2019 was 1.9574, as such the Petitioner was eligible to be admitted to the University. Accordingly, the Petitioner states that he made an application to the 1<sup>st</sup> Respondent to enter the Faculty of Law of the University of Colombo, Peradeniya or Jaffna as he was keen on becoming a lawyer.

However, the 1<sup>st</sup> Respondent had rejected the Petitioner's application to enter a Faculty of Law. The reason being that the Petitioner had registered for a three-year course of study to obtain a Higher National Diploma in Technology and Hospitality under Part 1, paragraph 1.7(6)(a) of the Handbook issued by the 1<sup>st</sup> Respondent with regard to admissions to universities for the academic year 2018/2019 based on the results of the GCE A/L examination held in 2018. However, in the normal circumstances he would have gotten a definite placement at the Faculty of Law of the University of Colombo.

However, the Petitioner states that there is no evidential proof that the Petitioner was a properly registered student of the ATI, Galle. Using his results obtained at the GCE A/L examination in August 2016 (first attempt), the Petitioner sat the entrance examination to be admitted as a student of the ATI, Galle. Although he was successful in the examination, he states that he never registered as a student as he did not submit the mandatory documents, including his school leaving certificate.

Nevertheless, as it was submitted by the Petitioner that the ATI has included the Petitioner's name as a prospective student of the institute. On further investigation it had been revealed by the Officials of the ATI that due to a mistake of their clerical staff the Petitioner's name had not been removed from their computer system, whereas his name had in fact been removed from their books and they had admitted another student in his place. As per the submitted documents and evidence before this Court it was revealed that the Petitioner, though successful at the entrance examination, never registered himself or attended any lectures.

Accordingly, the Petitioner on 11/02/2022 requested the officials of ATI to inform the 1<sup>st</sup> Respondent UGC, that he was not a registered student of ATI at any time. However, the Petitioner states that ATI, erroneously by a letter dated 11/02/2019 (document marked "X5"/ "2R5") informed the 2<sup>nd</sup> Respondent Chairman of UGC, that the Petitioner had been registered for a Diploma with the said Institute on 08/05/2018 and that by his own request on 11/02/2019 ceased to follow the diploma any further.

Then, by a letter dated 13/02/2019 (the document marked "X6"/ "2R7") addressed to 2<sup>nd</sup> Respondent, sent by ATI it had been stated that the Petitioner had been registered for a Higher National Diploma Program on Tourism and Hospitality Management with the said Institute on 08/05/2018 and from the initial stage he had not attended any lectures and that by his own request on 02/07/2018 ceased to follow the diploma any further.

By the document marked "X7A", a letter dated 25/02/2019 addressed to 4<sup>th</sup> Respondent Director General of Sri Lanka Institute of Advanced Technological Education (SLIATE), sent by the 1<sup>st</sup> Respondent UGC, sought clarifications as to the contradictory statements said in aforementioned letters and the delay in supply of requested information regarding the Petitioner.

A letter dated 27/02/2019 (document marked "X7"/ "2R10") addressed to Director General of SLIATE sent by ATI, furthered to clarify the document marked "X6" the letter dated 13/02/2019 (which stated that the Petitioner had willingly withdrawn from the course on 02/07/2018), stating that it was sent so that the Petitioner may be eligible to enter a University, satisfying the requirement that he had ceased registration 60 days prior to the last date of registration, so as not to hinder the Petitioner's future.

A letter dated 11/04/2019 (document marked "X8") addressed to SLIATE sent by the Petitioner made an appeal to the 4<sup>th</sup> Respondent, Director General of SLIATE, requesting that correct facts be informed to the 1<sup>st</sup> Respondent, UGC.

A letter dated 10/04/2019 (document marked "X9"/ "2R11") addressed to 2<sup>nd</sup> Respondent, Chairman of UGC sent by 4<sup>th</sup> Respondent, Director General of SLIATE clarified the true position as to the erroneous misconception which has taken place.

Thereafter, the Petitioner started to visit the officers of the UGC, and to request them to reconsider his position and to admit him to the Law Faculty of the University of Colombo. However, he was turned down by the authoritative administrative bodies, informing him that once a decision is taken that a student is disqualified to be admitted to a University, it cannot be changed thereafter, and that it had never been done.

The Petitioner states in view of the letter dated 10/04/2019 (document marked "X9") together with the letter dated 13/02/2019 (document marked "X6"), that the purporting cancellation of the erroneous registration was done on 02/07/2018 within the time frame of 60 days; thus, the Petitioner is qualified to be admitted to a University, according to the Handbook issued by the 1<sup>st</sup> Respondent UGC (which the relevant pages were marked as "X10").

Further, it is clear by document marked "X11" that, in instructions for registration at ATI, it is mandatory that the school Leaving Certificate be forwarded for the due registration process to be admitted as a student at the Institute.

The Petitioner states that after much difficulty, the Petitioner and his father were able to meet the 2<sup>nd</sup> Respondent himself on the 05/07/2019, who holds the position of Chairman of the 1<sup>st</sup> Respondent. At the conclusion of the meeting, the 2<sup>nd</sup> Respondent being the head of the 1<sup>st</sup> Respondent incorporated body, had verbally informed the Petitioner that the aforesaid decision of the 1<sup>st</sup> Respondent, UGC refusing to admit the Petitioner to a University is final and that it cannot be changed.

### **Variances in facts as per the Respondents**

The 2<sup>nd</sup> Respondent to this application (Chairman of the UGC) admitted that the Petitioner sat for the GCE A/L examination in 2018 from the Hambantota District in the Arts Stream, securing 'A' passes in all three subjects, as he states the Petitioner obtained a Z score of 2.1647 and was ranked No.91 in the Island (no evidential proof was provided).

Further, he admitted the fact that the Petitioner submitted his application to the 1<sup>st</sup> Respondent to gain admission to the Faculty of Law of the University of Colombo. However, he stated that the said application contained incorrect information that the Petitioner was not a registered student at the ATI, Galle. Therefore, he was ineligible to be admitted to the Faculty of Law of the University of Colombo, hence his application was rejected. He admits only the receipt of the documents marked "X5, X6, X7". Further, the 2<sup>nd</sup> Respondent admits that the Petitioner had met his predecessor.

He further states that the Petitioner's name was included as No. 267 in the list of registered students (marked "2R3") which was sent via email by the 3<sup>rd</sup> Respondent on 04/06/2018 to the 1<sup>st</sup> Respondent. The list states that the last date for registration for the said Diploma programme was 20/07/2018.

The 3<sup>rd</sup> Respondent, Director of ATI and the 4<sup>th</sup> Respondent, the Director General of SLIATE stated that the Petitioner was a student of the ATI and that he was well aware that he had been properly registered as a student at the ATI till 11/02/2019.

Hence, he is not entitled to apply for any other University which comes under the UGC. They further admit that the Petitioner was absent from lectures and that he did not follow the aforesaid programme.

Thus, the 1<sup>st</sup> - 4<sup>th</sup> Respondents all state that the Petitioner was a registered student of the ATI, Galle.

### **Infringement of Article 12(1) of the Constitution**

Article 12(1) of the Constitution ensures that individuals despite their status in a given circumstance are entitled to equal treatment and equal protection guaranteed by the law. In this context, it is the duty of the executive body, the University Grants Commission, a body corporate established under the University Act, No. 16 of 1978 to intake students each year to the Universities established under the said Act based on the Z-scores obtained by students sitting the GCE A/L examination held each year.

In the instant case, the Petitioner had obtained a Z-score of 2.1652 which is well above the required Z-score of 1.9574 to enter the Faculty of Law at the University of Colombo (as provided in document marked "X1a").

As per the documents provided by the Petitioner, it is evident that the Petitioner was not a validly registered student of the ATI, Galle. As per the letter dated 10/04/2019 marked "2R11" and the letter dated 13/03/2020 marked "2R13", SLIATE admits that, although the Petitioner was successful at the entrance examination to ATI, he had not submitted his school leaving certificate. It is by the mistake of the officials of ATI that the Petitioner has been included as a 'prospective' student of ATI (as seen in the document marked "2R3") and they have no objections against the Petitioner being admitted to University. Further, as stated by the Petitioner, his name has been removed from the records of the Institute and another student has been admitted in his place. The same has not been challenged by the Respondents.

Therefore, ATI has not followed a valid registration process in admitting the Petitioner as a student of their Institute as the required mandatory documents had not been submitted by the Petitioner. As per the guidelines to be admitted to ATI, the Petitioner must have submitted his school leaving certificate, which he did not submit as he had used it to apply for University admission. Furthermore, in the letter of the Petitioner dated 11/04/2019 (document marked "X8") he has stated that although he was successful at the entrance examination, he had not attended any lectures, used any library facilities or received the Mahapola scholarship. He had not been asked to attend any lectures nor was he informed of his registration at the Institute or received any documents relating to that. Thus, it is valid for the Petitioner to assume that his registration at ATI was not successful.

As per the clarification letter sent by the ATI on the request of the UGC (marked "2R10"), as the Petitioner had not attended any lectures, so as not to hinder the Petitioner's future, ATI admits that Petitioner has withdrawn from the said Diploma within the stipulated period of 60 days.

Therefore, under normal circumstances it is clear that the Petitioner would definitely be eligible to be admitted to the Faculty of Law at the University of Colombo. As the UGC handbook provides that if a student withdraws their registration 60 days prior to the last date of registration, the student is allowed to enter University based on the results of his second attempt at the GCE A/L Examination.

The court exercising equity jurisdiction can consider that the Petitioner had a legitimate expectation to enter the Faculty of Law as he had a sufficient Z-score. Therefore, I find his Fundamental Rights enshrined in Article 12(1) violated and I am of the opinion that the Petitioner should be given a placement in the next intake of students for the Faculty of Law at the University of Colombo.

As per Justice Fernando, in the case of **Surendran v The University Grants Commission and Another (1993) 1 SLR 344**,

*"Justice must not only be done, but must be seen to be done. And in the field of higher education this requires that the system of University admissions, both as formulated and as implemented, must not only be fair but seen to be fair."*

Education in Sri Lanka has a long history that dates back two millennia. While the Constitution of Sri Lanka does not provide free education as a fundamental right, by **Article 27(2) (h) of the 1978 Constitution under Chapter VI** – Directive Principles of State Policy (DPSP) the State is pledged to *"the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels"*.

The right to education is illustrated by the formulation in **Article 26 of the Universal Declaration of Human Rights**. Article 26 (1) of the said Declaration states that : *"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit"*.

Therefore, although there is no specific provision dealing with the right to Education in our Constitution as such in the Universal Declaration of Human Rights, the said right has been accepted and acknowledged by our Courts through the provisions embodied in Article 12 (1) of the Constitution. In doing so, the Supreme Court has not only considered that the Right to Education should be accepted as a fundamental human right, but also had accepted the value of such Education, which has been described by **James A. Garfield** (in his letter accepting the Republican nomination to run for President on 12th July 1880), as, *"next in importance to freedom*

*and justice is popular Education, without which neither freedom nor justice can be permanently maintained."*

The establishment of the free education strategy in 1944 was a standard shift in the history of the education system in Sri Lanka. This policy provided equal prospects for all to accomplish access to the education system and formed a strong basis for long term ecological development within the human capital of the country. A report recently published by the National Education Commission of Sri Lanka even recognizes education as a right rather than a privilege available to all citizens. Therefore, it must be understood that education must stay equally and freely available to everyone as per C.W.W. Kannangara's long term vision.

Therefore, I am of the opinion that the UGC cannot arbitrarily deprive the Petitioner of the opportunity to follow his higher education at a State funded University as he is clearly eligible to be admitted as per the evidential documents provided. As per the letters submitted by both ATI and SLIATE, they have no objections in the Petitioner being admitted to a University. The Petitioner had not attended any lectures nor did he return with his school leaving certificate to register himself as a student at ATI.

Therefore, taking into consideration these factors I see no reason for the UGC to disqualify the Petitioner's application. Although it appears to be that the Petitioner was a registered student under an Institute coming under the UGC, it is as admitted by the Respondents, that the fault lies with the ATI.

The UGC as an Institution advocating free education must not deprive a student of his future. In doing so it's breaking down the very futures of the students it is trying to build. Therefore, I do not see a reasonable explanation as to why the UGC should reject the Petitioner's application as the Petitioner is not a validly registered student of

ATI to start with. The critical need everywhere in the world is for education to prepare students to lead successful, fulfilling lives.

As per Justice Sharvananda in **Rienzie Perera v University Grants Commission** ([1978-79-80] 1 SLR 128,

*“Education is one of the most important functions of the State today. The large expenditure of money incurred by the State for education signifies its recognition of the importance of education to a democratic society. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the State undertakes to provide it, is a right which must be made available to all on equal terms. The Constitution enjoins the organs of Government to secure and advance and not deny this fundamental right of equality of treatment.”*

As was mentioned by this bench, “Free Education is the only way to go up in life”. Therefore, government institutions must ensure that they do not deprive students of this opportunity.

## **Decision**

Considering the facts of the case while I declare the Petitioner’s Fundamental Rights enshrined in Article 12(1) of the Constitution are violated, I direct the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to admit the Petitioner to the appropriate University that he would have been eligible for as per the Z-score that he has obtained during the GCE A/L Examination in August 2018 and be admitted to the next available intake with immediate effect.

If this Petitioner had been admitted he would have completed 3 years of his 4-year degree programme. Denial of admission by the UGC had caused not only the cost

of litigation, but 3 years of his youth. Considering all, I impose a cost of Rs.500,000 be paid to him within 6 months by the 1<sup>st</sup> Respondent.

***Application allowed.***

**JUDGE OF THE SUPREME COURT**

**MURDU N.B. FERNANDO PC, J**

I agree

**JUDGE OF THE SUPREME COURT**

**YASANTHA KODAGODA PC, J**

I agree

**JUDGE OF THE SUPREME COURT**