

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

*In the matter of an appeal to the Supreme Court under Article
128 (2) of the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC/Appeal / 07/ 2023
SC /SPL/ LA 73/2021
CA/WRIT/159/2012

1. D.D.Bandula,
No 17, Samanala Mawatha, Mahaweli Uyana,
Watapuluwa,
Kandy.
2. G.W. Wijesekara,
No 10, Dunuwathugodalla Mawatha, Beliatta.
3. W.A. Noel Karunarathne, Wattegedara,
Kottellena,
Hatton.
4. W.P.P.L. Kotuwegoda,
'Nilwala' Welipeliya, Temple Road, Polgolla.
5. N. Tamilchelvan,
150, Radha Building, Kotagala.

PETITIONERS

Vs.

1. University of Peradeniya, Peradeniya.
2. Dr. Gamini Buthpitiya,
The Dean of the Faculty of Medicine, University of
Peradeniya.
3. Mrs. S. Happuhinna,
The Registrar (Faculty of Medicine)
University of Peradeniya, Peradeniya.

RESPONDENTS

AND NOW BETWEEN

1. University of Peradeniya, Peradeniya.
2. Dr. Gamini Buthpitiya,
The Dean of the Faculty of Medicine, University of
Peradeniya.
3. Mrs. S. Happuhinna,
The Registrar (Faculty of Medicine)
University of Peradeniya, Peradeniya

RESPONDENTS-PETITIONERS

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PETITIONERS- RESPONDENTS

University of Peradeniya and Others v D.D. Bandula and Others

Case No. SC/Appeal/ 07/ 2023

(together with SC/Appeal/08/2023 and SC/Appeal/09/2023)

Before: Mahinda Samayawardhena, J.

Dr Sobhitha Rajakaruna, J.

K.M.G.H. Kulatunga, J.

Counsel: Manohara Jayasinghe, DSG for the Respondents-Appellants.

Keerthi Thilakarathna for the Petitioners-Respondents.

Written Submissions: Respondents-Appellants – 30th June 2023

2nd and 5th Petitioner-Respondent – 08th January 2023

Argued on: 23 March 2026

Decided on: 25 September 2026

Judgement

Dr Sobhitha Rajakaruna, J.

This appeal arises from the judgment dated 16 March 2021, by which the Court of Appeal granted the relief sought by the Petitioners- Respondents (hereinafter referred to as the 'Respondents'). The Court of Appeal issued a writ of certiorari quashing the rule contained in the Handbook of the University of Peradeniya prescribing that the studentship of a medical student would expire upon the lapse of ten years from the date of registration. The Court further quashed the respective decisions terminating the studentships of the Petitioners and issued a writ of mandamus directing the restoration of their studentships and permitting them to sit the Final MBBS (Degree of Bachelor of Medicine and Bachelor of Surgery) Examination.

The Respondents-Appellants (hereinafter referred to as the ‘Appellants’), namely the University of Peradeniya and the persons who, at the relevant time, held the offices of Dean and Assistant Registrar of the Faculty of Medicine, challenge the aforesaid judgment. The Respondents are persons who had been admitted to the Faculty of Medicine of the University of Peradeniya in different academic years. Their respective years of admission were 1982, 1997, 1994, 1996 and 1992. The MBBS degree programme is a five-year course of study.

Background to the Case

It is common ground that the University had, for a considerable period, prescribed a rule requiring a medical student to complete the Final Examination within ten years from the date of registration. According to the Appellants, this requirement was contained in the examination rules and regulations published in the University Handbook and, prior thereto, in the Calendar of the University of Ceylon. The Appellants contend that the effect of the rule was that a student was placed on notice that the Final Examination had to be completed within ten years of registration.

The Respondents through their writ application sought, inter alia, a writ of certiorari quashing the rule prescribing the ten years of studentship and the respective decisions terminating their studentships. They further sought a writ of mandamus directing the restoration of their studentships and permitting them to sit the Final MBBS Examination. The Appellants filed their Statement of Objections on 28 January 2013. They relied, inter alia, upon Clause 37 of the examination rules and regulations contained in the University Handbook, identified as the Examination Procedures, Offences and Punishment Regulation No. 1 of 1989.

The Appellants state that none of the Respondents completed the Final Examination within the prescribed period and that their respective studentships were consequently terminated. They further maintain that the circumstances of the Respondents were not identical, and that the explanations advanced for their failure to complete the course within the prescribed period included university closures, medical conditions and psychiatric difficulties. According to the Appellants, where such circumstances were verifiable, reasonable accommodation had been made.

The Appellants' position is that, in terms of the amended rules, the Respondents were required to establish circumstances which would justify an extension, but that none of the Respondents had established before the Court of Appeal circumstances entitling them to such an extension. The Appellants also contend that the document marked P1 relied upon by the Respondents did not constitute the relevant or updated examination rules and regulations, and that the applicable provisions were contained in the document marked R3. The Appellants also rely upon the considerable periods of delay in invoking the writ jurisdiction of the Court of Appeal, particularly in the case of the 1st Petitioner-Respondent, whose studentship had been terminated in 1996 but who instituted the writ application only in 2012.

Summary of the Appellants' Arguments

Before this Court, the principal contention of the Appellants is that the Court of Appeal erred both in fact and in law in granting the relief sought by the Respondents. The Appellants submit that the judgment is unsupported by the material placed before the Court of Appeal and that the Court failed to give due consideration to the inordinate delay of the Respondents in invoking the writ jurisdiction of that Court.

The Appellants contend that the Court of Appeal failed to appreciate the significance of the amendments made to the examination rules and regulations (R3). Clauses 37.1 and 37.2 were introduced as supplementary provisions. The Appellants contend that, under the amended provisions, an extension could be granted in two specified circumstances, namely, where academic work had been disrupted by an unforeseen circumstance, and where a student had suffered an illness, supported by a recommendation of a University-approved Medical Board, subject to a maximum extension of two years. They submit that the Respondents failed to establish circumstances falling within either of those provisions.

It is further contended that the Respondents had misrepresented or suppressed material facts and that the consequences of such conduct had not been properly considered by the Court of Appeal. The Appellants also challenge the conclusion that the Respondents had a legitimate expectation that they would be afforded a further opportunity to sit the Final MBBS Examination.

The Appellants rely upon the fact that, where credible applications were made, the University had in fact granted extensions to students who had established genuine

circumstances warranting such extensions. In particular, they refer to the 5th Petitioner-Respondent, who, according to the Appellants, had been permitted to sit the Final Examination notwithstanding the expiry of his studentship after he established a legitimate medical condition. The Appellants contend that this demonstrates that the ten-year rule was not applied inflexibly where appropriate circumstances were established.

With regard to the 1st and 2nd Respondents, the Appellants rely upon their conduct following the termination of their studentships. In respect of the 1st Respondent, they refer to his request for certificates relating to examinations he had passed as evidence of acquiescence in the termination of his studentship. In respect of the 2nd Respondent, they point out that although he had failed all four subjects at the Final Examination in 2006 and was entitled to make another attempt in 2007, he did not exercise that opportunity and instead instituted the writ application in 2012. The Appellants characterise this conduct as an abuse of the process of court.

The Appellants further contend that the Court of Appeal failed to give adequate consideration to the finite resources of the University and to the possible prejudice to current and future students if the Respondents were permitted to resume their studies after the lapse of many years. They also maintain that the failure of the Respondents to make the members of the University Council and/or Senate parties to the writ application was fatal to their claim.

The Position of the 2nd and 5th Respondents

The 2nd and 5th Petitioner- Respondents, in opposing the Appeal, emphasise that both had successfully completed substantial portions of the MBBS degree programme and that their respective claims concern their entitlement to sit the Final MBBS Examination. The MBBS programme is a five-year course involving lectures, tutorials, practical and clinical training. The 2nd Respondent, who entered the University in June 1997, had passed the Second MBBS Examination, the Third MB Parts I and II examinations and one subject of the Final Examination, namely Obstetrics and Gynaecology. His results in the remaining Final Examination subjects were Medicine – “Referred”, Surgery – “Referred”, and Paediatrics – “Referred”.

The 5th Petitioner- Respondent entered the University in January 1992 and had also passed the Second and Third MBBS examinations. He had sought an extension of his

studentship on the basis that he was suffering from depression. An extension was initially granted until 5 June 2003. He was thereafter unable to sit the Final Examination. His psychiatrist, by letter dated 29 April 2003, informed the Chief Medical Officer of the University Health Centre that the 5th Respondent was suffering from a depressive disorder, was severely depressed and was not fit to sit the Final MBBS Examination scheduled for June 2003.

The Respondents rely substantially upon the decision of the Supreme Court in *W.H.M.I. Wijekoon v University of Peradeniya and Others* (SC/SPL/239/98, SC Minutes of 12 July 2000). They contend that the said decision arose from the University's refusal to grant an extension in circumstances where exceptions had previously been made to the ten-year rule, but where no guidelines had been prescribed or published governing the exercise of that discretion. They submit that this Court had considered it equitable to grant the petitioner in that case additional time and had stated that the University was entitled to make appropriate amendments to its rules and regulations concerning extensions of studentships.

The principal submission of the Respondents is that, notwithstanding the subsequent amendment of the rules, the absence of prescribed and published guidelines governing the exercise of the discretion to make exceptions continues to render the University's exercise of power arbitrary and capricious. They contend that the University had, in the past, granted extensions to students similarly situated, but had not disclosed or publicised the circumstances or criteria upon which such extensions were granted. In their submission, the Respondents were thereby deprived of a fair opportunity to establish that they too were entitled to additional time.

The Respondents further rely upon the provision appearing in the University of Ceylon Calendar, which contemplated that, notwithstanding the expiry of ten years from registration, a student could be permitted to sit the Final Examination with the special consent of the Senate upon the recommendation of the Faculty of Medicine. They contend that the exercise of such discretion, in the absence of prescribed and published criteria, amounted to an unfettered discretion and was therefore susceptible to arbitrary exercise. In support of this proposition, they rely upon the principle articulated in *Roncarelli v Duplessis* [1959] SCR 121 and upon the observations of Fernando J. in *Perera v Prof. Daya*

Edirisinghe and Others [1995] 1 SLR 148 concerning the requirement that discretionary powers vested in public authorities be exercised reasonably.

The Respondents also contend that the rule prescribing the ten-year period is amenable to judicial review. Reliance is placed upon the decision in *Dr. K.M.L. Rathnakumara and 13 others v The Postgraduate institute of Medicine and 52 others*, SC Appeal 16/2014 SC Minutes of 30 March 2016, where this Court considered, inter alia, the susceptibility of subordinate legislation to judicial review. They submit that the ten-year rule is likewise liable to be reviewed and quashed where its operation results in an arbitrary exercise of power.

The Respondents further maintain that they had a legitimate expectation that appropriate guidelines would be prescribed and published and that their applications for extensions would be considered in accordance with such guidelines. They reject the Appellants' contention that their delay in invoking the jurisdiction of the Court of Appeal should, by itself, disentitle them to relief. Relying upon *V. Ramasamy v Ceylon State Mortgage Bank* [1976] 78 NLR 510 and *Biso Menika v Cyril de Alwis and Others* [1982] 1 Sri L R 368, they submit that the doctrine of laches is not to be applied mechanically and that a court may, in appropriate circumstances, grant relief notwithstanding delay, particularly where the impugned decision is alleged to be a nullity.

Finally, the Respondents contend that the relief sought would not result in the displacement of current medical students or impose the prejudice alleged by the Appellants. They emphasise that the 2nd and 5th Petitioners- Respondents have completed most of the requirements of the MBBS programme and have reached the final stage, requiring only an opportunity to sit the Final Examination. They therefore submit that permitting them to sit the Final Examination would not have the consequences asserted by the Appellants.

On these grounds, the 2nd and 5th Petitioners- Respondents support the judgment of the Court of Appeal and contend that the said judgment ought to be upheld.

Evaluation

Having considered the material placed before this Court, the submissions of the learned Counsel for the parties and the judgment of the Court of Appeal, I am of the view that the central issue in these proceedings is whether the Respondents have established a legal basis

upon which this Court could interfere with the decisions of the University authorities terminating their studentships upon the expiry of the prescribed period.

It is not in dispute that the MBBS course is a five-year course and that the University has, for a considerable period of time, prescribed a maximum period within which a student is required to complete the course. The material placed before this Court, including the Calendar of the University of Ceylon marked R2, demonstrates that the requirement that a medical student complete the course within ten years of registration was not a rule introduced subsequent to the admission of the Respondents, but a requirement which had existed for several decades.

I have also carefully considered the effect of the aforesaid judgment in *W.H.M.I. Wijekoon v University of Peradeniya and Others*. That judgment did not, in my view, remove the ten-year rule. Rather, the circumstances in which the University could consider an extension were subsequently addressed by amendments to the relevant examination rules and regulations (R3). Rule 37.2, as relied upon by the Appellants, contemplates an extension in circumstances where there has been a disruption of academic work due to unforeseen circumstances or where illness, supported by the recommendation of a University-approved Medical Board, has impaired the student's ability to pursue his or her studies. The period of extension on the latter ground is subject to a maximum of two years.

The Respondents nevertheless contend that extensions had been granted to other students and that the absence of publicly available guidelines governing the exercise of such discretion renders the decisions affecting them arbitrary and capricious. However, the existence of instances in which extensions may have been granted cannot, by itself, confer upon a student an enforceable legal right to an extension irrespective of the governing rules and the circumstances applicable to that student. Each case must necessarily be considered upon its own facts and in accordance with the applicable rules.

More importantly, the Respondents have not demonstrated, on the material before Court, circumstances which would bring their respective cases within the exceptions contemplated by the amended rules so as to justify the further extensions sought by them. The fact that a student has completed most of the examinations necessary for the MBBS degree, although a relevant circumstance, cannot by itself confer an entitlement to remain a student indefinitely or to sit the Final Examination notwithstanding the expiry of the prescribed period.

There is a further matter which, in my view, assumes considerable significance. The decisions terminating the studentships of the Petitioners-Respondents were made several years before the institution of the Writ Application (No. 159/2012). The dates and circumstances relating to the individual Petitioners are not identical; nevertheless, the substantial lapse of time between the impugned decisions and the invocation of the writ jurisdiction of the Court of Appeal is a factor which cannot be disregarded. It is well established that the remedies of certiorari and mandamus are discretionary remedies and that an applicant seeking such relief must approach Court without undue delay, unless a satisfactory explanation is furnished for the delay.

In the present case, I do not find a satisfactory explanation for the substantial periods of delay attributable to the Respondents. This is particularly significant where the relief sought is not merely declaratory in character, but would require the University to restore studentships which had been terminated years earlier and to permit the Respondents to resume or complete their medical studies notwithstanding the expiry of the prescribed period.

The circumstances of the 2nd and 5th Petitioners-Respondents, relied upon in their submissions, have also been considered. In particular, the medical circumstances relied upon by the 5th Petitioner-Respondent and the extensions previously granted to him demonstrate that the University did, in appropriate circumstances, take medical considerations into account. The material concerning the 2nd Petitioner-Respondent likewise does not, in my view, establish a legal entitlement to a further extension after the expiry of the prescribed period.

I am therefore unable to agree with the conclusion of the Court of Appeal that the Respondents had established a legitimate expectation that they would necessarily be granted a further opportunity to sit the Final MBBS Examination. A legitimate expectation cannot, in my view, be founded merely upon the fact that exceptions had been made in some cases, particularly where the governing rules prescribe the circumstances in which an extension may be granted. Nor can an expectation arising from past administrative conduct override the applicable rules governing the University's exercise of its powers.

The discretionary nature of the remedies sought by the Respondents is also of considerable importance. Even where an applicant demonstrates an arguable irregularity in the exercise

of administrative power, the Court is not bound, as a matter of course, to grant a prerogative writ. Delay, the conduct of the applicant, the nature of the relief sought, and the consequences which may follow from the grant of relief are all matters which may properly be taken into account in determining whether the Court should exercise its discretionary jurisdiction.

I have also considered the submission concerning the finite resources of the Universities. It is unnecessary, in my view, to determine whether permitting the Respondents to sit the Final Examination would, in fact, deprive another student of an opportunity to enter the medical programme. Nevertheless, the Court cannot be oblivious to the fact that the administration of a medical degree programme involves substantial academic, clinical and institutional resources and that the University must be permitted to administer its academic programmes in accordance with duly established rules, subject to judicial review where those rules or their implementation are shown to be unlawful.

Finally, there is an additional circumstance which I consider appropriate to mention. Most of the Respondents are now above sixty years of age, having entered the medical programme many decades ago. I make this observation not as a criticism of their age or of their desire to complete a course of study which they commenced many years ago. However, viewed against the exceptionally long period that has elapsed since their respective admissions, and the further period that has elapsed since the termination of their studentships, the facts and circumstances of these cases do not, in my view, disclose an exceptional ground which would justify this Court going an extra mile and granting prerogative relief on sympathetic considerations. Sympathy, however understandable, cannot substitute for the legal basis required for the exercise of the discretionary jurisdiction of this Court.

Conclusion

Upon a consideration of all the circumstances, I am therefore of the view that the Petitioners-Respondents have failed to establish a sufficient legal or equitable basis for the grant of the writs of certiorari and mandamus sought by them. The Court of Appeal, in my view, erred in granting the relief prayed for in the Writ Application.

In view of the foregoing, I proceed to answer the following Questions of Law set out in sub paragraphs (iii), (iv) and (v) of the Petition dated 19 April 2021 in favour of the Respondents-Appellants:

- iii) Did their Lordships fail to consider that the inordinate delay on the part of the Petitioners in filing the writ application would disentitle them from discretionary relief?
- iv) Did the Court of Appeal fail to consider that the Respondents had amended their examination rules and regulations contained in the Handbook to include the guidelines for granting extensions beyond the original ten-year studentship period?
- v) Did Their Lordships misdirect themselves by not appreciating both the fact that the Petitioners misrepresented/suppressed material facts and the consequence of such misrepresentation and suppression?

Accordingly, I would allow this appeal and set aside the judgment of the Court of Appeal dated 16 March 2021. Pursuant to the journal entries dated 9 January 2023 and 23 March 2026, the parties in Case Nos. SC/Appeal/08/2023 and SC/Appeal/09/2023 are bound by this judgment in the present Case. Anyhow, I have reviewed the facts and circumstances of those cases, bearing Nos. SC/Appeal/08/2023 as well as SC/Appeal/09/2023, and I am satisfied in adopting my above findings of the present Case, in those two cases as well.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court