

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

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

SC FR Application

No. 113 / 2017

01 Tharushi Navodini Amarasena,
Manipal College of Medical Sciences,
P O Box 155,
Pokhara,
Nepal.

Appearing through her Power of Attorney
holder

02 Ramya Rohini Hettige Amarasena,
No. 8 1/1,
Skyline Residencies,

Magazine Road,
Colombo 08.

PETITIONER

-Vs-

01 Sri Lanka Medical Council,
No. 31,
Norris Canal Road,
Colombo 10.

02 Professor Carlo Fonseka,
Chairman,
Sri Lanka Medical Council,
No. 31,
Norris Canal Road,
Colombo 10.

02 (a) Dr. Colvin Gunaratne,
Chairman,
Sri Lanka Medical Council,
No. 31,
Norris Canal Road,
Colombo 10.

Dr. Terrence de Silva,
Registrar,
Sri Lanka Medical Council,
No. 31,
Norris Canal Road,
Colombo 10.

04 Dr. Jayasundara Bandara,
Acting Director General of Health
Services,
"Suwasiripaya",
No. 385,
Rev Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

03(a) Dr. Anil Jasinghe,
Acting Director General of Health
Services,
"Suwasiripaya",
No. 385,
Rev Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

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

RESPONDENTS

Before: **Buwaneka Aluwihare PC J**

L. T. B. Dehideniya J

P. Padman Surasena J

Counsel:

Uditha Egalahewa PC with Ranga Dayananda for the Petitioner.

Manohara de Silva PC with Chathura Galhena instructed by Ms Bashini Hettiarachchi for the 1st to 3rd Respondents.

Indika Demuni de Silva PC ASG with Sureka Ahmad SC for the 4(a) and 5th Respondents.

Nuwan Bopage with Chathura Weththasinghe for the Intervenient - Petitioner.

Argued on: 21-03-2019, 29-03-2019, 02-04-2019, 09-05-2019.

Decided on: 01 - 11 - 2019.

P Padman Surasena J

At the outset, it must be mentioned here that the learned counsel for all the parties have agreed that the issues to be decided by this court in the cases bearing No's. SC FR 134/2017 and SC FR 113/2017 are substantially the same. Hence, they agreed that it would suffice for this Court to pronounce one judgment in respect of both those cases.¹ Therefore, references wherever necessary, would be made to the pleadings of the case No. SC FR 134/2017 although this judgment is primarily based on the pleadings filed in the case No. SC FR No. 113/2017.

The Petitioner is a citizen of Sri Lanka and is a medical student of Manipal College of Medical Sciences (hereinafter referred to as MCOMS). It is the position of the Petitioner that MCOMS is a medical college approved and recognized by the 1st Respondent (Sri Lanka Medical Council, hereinafter sometimes referred to as SLMC).

The Petitioner has Produced a list marked **P 2-b**, which sets out the 'List of Foreign Universities/ Medical Schools/ Institutions Recognized by the Sri Lanka Medical Council under sections 29(1)(b)(ii)(bb) and 29(2)(b)(iii)(bb) of the Medical Ordinance'. This list clearly indicates that MCOMS is a medical college approved and recognized by the 1st Respondent.

The letter dated 24-08-1999 produced marked **P 2-a**, is a letter issued by the Registrar of SLMC informing the Dean and Director of MCOMS that 'the

¹ Vide the minute dated 09-05-2019 in SC FR Application No. 134/2017.

Sri Lanka Medical Council at its meeting held on 23-08-1999 decided to give full recognition to the Manipal College of Medical Sciences, Pokhara, Nepal'.

Thus, MCOMS is a foreign medical college approved and recognized by the SLMC for the purposes of the sections 29(1)(b)(ii)(bb) and 29(2)(b)(iii)(bb) of the Medical Ordinance. The course offered by MCOMS leading to a MBBS degree is a four and half year course. The students of MCOMS who pass the final MBBS examination are also required to undergo for one year, a 'Compulsory Rotational Residential Internship' (hereinafter sometimes referred to as CRRI) before they are awarded the MBBS degree.

For the past seventeen years, those who passed the final MBBS examination at MCOMS but not awarded the MBBS degree owing to non-completion of CRRI were allowed to sit the 'Examination for Registration to Practice Medicine' (hereinafter sometimes referred to as ERPM) held in Sri Lanka. The said ERPM is an examination conducted in terms of section 29 of the Medical Ordinance. Thereafter, those who pass ERPM were allowed to complete their 'internships' in Sri Lanka. MCOMS has awarded the MBBS degrees to those who had successfully completed the 'internship' in Sri Lanka in the aforesaid manner. This practice has been in place without any restriction for the past seventeen years.

In the instant application, the Petitioner complains that a batch of seventeen MCOMS medical students who have passed the final MBBS examination at MCOMS, were refused permission to sit the ERPM in spite of the fact that they had submitted the necessary Provisional Pass certificates issued by MCOMS and paid requisite fees to sit the ERPM. They have been directed to

complete the CRRI in Nepal. This was on the basis that the said CRRI is a part of the MBBS program offered by MCOMS. The Petitioner further complains that the 3rd Respondent (Registrar of SLMC) has refused to grant the said permission without the prior approval of the 1st Respondent (SLMC) and that there is no such decision made by the SLMC to that effect.

According to the Petitioner, this is despite the Vice Chancellor of the Kathmandu University through the ambassador designate of the Embassy of Sri Lanka in Nepal, Chairman of the Nepal Medical Council and the Principal of MCOMS affiliated to the University of Kathmandu by their letters dated 11th August 2016, 21st November 2016 and 23rd November 2016 have informed the 3rd Respondent that the University of Kathmandu, MCOMS and Nepal Medical Council accept the internship completed in Sri Lanka for the purpose of awarding MBBS degree in lieu of one year CRRI to be completed in Nepal and that the said CRRI was not part of the MBBS program. The Petitioner has produced the aforesaid letters marked **P 4-a, P 4-b** and **P 4-c**.

It is in the above backdrop that the Petitioner complains that there is an imminent infringement of her fundamental rights guaranteed under Article 12(1) of the Constitution by one or more of the Respondents.

This Court, when this case was supported, having heard the submissions of the learned President's Counsel for the Petitioner, learned President's Counsel for the 1st to 3rd Respondents and the learned Additional Solicitor General for the 4th and the 5th Respondents, by its order dated 09-10-2017,

has granted leave to proceed in respect of the alleged imminent infringement of fundamental rights guaranteed under Article 12 (1) of the Constitution.

Article 12(1) of the Constitution reads as follows;

"All persons are equal before the law and are entitled to the equal protection of the law".

Thus, the task before this Court is to ascertain whether there is any infringement or any imminent infringement of the aforementioned right of the Petitioners by one or more of the Respondents. As I have already mentioned the position primarily taken up by the Petitioner, it would be appropriate at this stage, to also mention here briefly, the position taken up by the Respondents.

The 3rd Respondent (Registrar of SLMC) in his affidavit has taken up the following positions;

- i. the 1st Respondent (SLMC) has approved and recognized Five and half year MBBS degree program offered by MCOMS,
- ii. the said five and half year degree program of MCOMS has been approved by the SLMC in 1999,
- iii. the degree program offered by MCOMS which was submitted for approval by the SLMC in the year 1997 is a degree program which

included one year Compulsory Rotational Residential Internship (CRRI) and therefore the students of MCOMS have to undergo the said CRRI for one year, to become eligible for the award of the MBBS degree by MCOMS,

- iv. the said CRRI is not an additional training but a part of the said degree programme, and different in both content and scope from the 'employment in a resident medical capacity' for one-year, referred to in section 32 of the Medical Ordinance,
- v. it is mandatory for foreign Medical Graduates to complete the MBBS degree in full and then pass the ERPM to obtain provisional registration,
- vi. the SLMC, inadvertently and in violation of the provisions of the Medical Ordinance, had allowed the students of MCOMS who had not been awarded MBBS degrees, to sit the ERPM and therefore the SLMC has only rectified the said mistake when the same was brought to its notice in February 2016,
- vii. granting permission for the MCOMS students who had not been awarded MBBS degrees, to sit ERPM, is contrary to the provisions of the Medical Ordinance,

- viii. the SLMC decided in February 2016 to rectify the said continuing error and the 2nd Respondent has only communicated the said decision in May 2016 to the students of the MCOMS who had applied for registration to sit ERPM as they had not been awarded their MBBS degrees,
- ix. the SLMC is not bound to follow the opinion expressed by Hon. Attorney General,
- x. there cannot be a legal right created or anticipated by an illegal act.

It would be opportune at this juncture to reproduce section 29 (2) which deals with the criteria upon which a person could be registered provisionally as a medical practitioner for the purposes only of enabling the acquirement of experience which is required for obtaining from the Medical Council, a certificate under section 32 of the Medical Ordinance. It is as follows.

Section 29 (2)

For the purposes only of enabling the acquirement of such experiences as is required for obtaining from the Medical Council, a certificate under section 32, a person shall, upon application made in that behalf to the Medical Council, be registered provisionally as a medical practitioner –

(a) if he is of good character; and

(b) if he –

- (i) *holds the degree of Bachelor of Medicine of the University of Ceylon or a corresponding university or a Degree Awarding Institute or the General Sir John Kotelawala Defence University;*
or
- (ii) *has passed the examination necessary for obtaining a degree of Bachelor of Medicine of the University of Ceylon or a corresponding university or of a Degree Awarding Institute, but has not obtained that degree owing to a delay on the part of that university or Degree Awarding Institute or the General Sir John Kotelawala Defence University in conferring that degree on him; or*
- (iii) *not being qualified to be registered under any of the preceding sub-paragraphs –*
 - aa) *is a citizen of Sri Lanka; and*
 - bb)-
 - i. *holds a degree of Bachelor of Medicine or an equivalent qualification of any university or medical school of any country other than Sri Lanka, which is recognized by the*

Medical Council for the purposes of this section having regard to the standard of medical education of such university or medical school; or

ii. has passed the examinations necessary for obtaining a degree of Bachelor of Medicine or an equivalent qualification of any university or medical school of any country other than Sri Lanka which is recognized by the Medical Council for the purposes of this section, having regard to the standard of medical education of such university or medical school but has not obtained that degree owing to fact that he has not completed the period of internship required for obtaining that degree and the Director-General of Health Services has permitted him to complete that period of internship in Sri Lanka; and

cc) has passed the special examination prescribed in that behalf by the Medical Council;

(iv) not being qualified to be registered provisionally under any of the preceding sub-paragraphs: –

(aa) is a citizen of Sri Lanka;

(bb) holds a degree of Bachelor of Medicine or an equivalent qualification of any university or medical school of any country outside Sri Lanka, which, on the date on which such person was admitted to such university or medical school, was a degree or qualification which entitled its holder to be registered as a medical practitioner under this ordinance;

(cc) has had an aggregate period of at least five years of efficient and satisfactory service in the capacity of a medical officer.

The Petitioners in both the cases (SC FR No. 113/2017 and SC FR 134/2017) are citizens of Sri Lanka and medical students of Manipal College of Medical Sciences (MCOMS). Since MCOMS is not a medical school in Sri Lanka, it is the provisions in section 29 (2) (b) (iii) (bb) (ii) which determines whether a medical student of MCOMS who pass the examinations necessary for obtaining a degree of Bachelor of Medicine from MCOMS, should be permitted to complete the period of internship required for obtaining that degree.

For the past seventeen years, those who had passed the final MBBS examination at MCOMS but not being awarded the MBBS degree owing to non-completion of CRRI, were allowed to sit the ERPM and complete their

'internship' in Sri Lanka based on a provisional pass certificate provided by MCOMS. It was thereafter that MCOMS had awarded the MBBS degrees to those who had completed the 'internship' in Sri Lanka in the aforesaid manner. The SLMC does not dispute this fact. Although I have mentioned before, the positions 3rd Respondent has taken up in his affidavit, it would be convenient to set down here, the arguments advanced by the learned President's Counsel on behalf of the SLMC. They are briefly as follows;

- (i) The SLMC in the past has erroneously granted such provisional registrations.
- (ii) This irregularity was brought to the notice of SLMC in the year 2016.
- (iii) The internship of MCOMS is totally different from the experience required for obtaining from the Medical Council a certificate under section 32 which is referred to in section 29 (2) of the Medical Ordinance.
- (iv) The power to decide whether the persons under such circumstances should be allowed to complete the internship in Sri Lanka, is vested with the Director General of Health Services.²
- (v) The 'internship' referred to in section 29 (2) (b) (iii) (bb) (ii) is not the 'employment' referred to in section 32 of the Medical Ordinance.³
- (vi) In contradistinction to the paragraph 19 of the affidavit (dated 16-03-2017) of the Petitioner, the Director-General of Health Services has never permitted in the past, any such student to complete such period

² Paragraph 32 of the written submissions filed in case No. SC FR 113/2017 on behalf of the 1st, 2nd and 3rd Respondents.

³ Ibid paragraph 33.

of internship in Sri Lanka to enable such student to become eligible for the award of MBBS degree by MCOMS.

(vii) The granting of provisional registration to a student who does not possess a Medical Degree is a violation of section 29 (2) (bb) (i) of the Medical Ordinance.⁴

(viii) The said irregular practice has continued for several years.

(ix) The SLMC after consideration, has decided not to grant permission for the students of MCOMS who have not been awarded their MBBS degrees, to sit the ERPM.⁵

According to section 29 (2) (b) (iii) (bb) (ii), it is the Director-General of Health Services who is empowered by the Ordinance to permit, students of MCMOS who have passed the examinations necessary for obtaining a degree of Bachelor of Medicine from MCMOS, but have not obtained their degrees owing to the fact that they have not completed the period of internship required for obtaining that degree, to complete their internships in Sri Lanka.

In the above circumstances, it is the Director-General of Health Services who should confirm before this Court whether he has granted such permission in the past for such MCMOS students to complete their internships in Sri Lanka which had enabled such students to acquire their MBBS degrees consequent to the completion of such internships. However, the Director-General of Health Services who stands as a respondent in this case, despite being

⁴ Ibid paragraphs 29 and 30.

⁵ Paragraphs 16 and 22 of the affidavit of the 3rd Respondent filed on behalf of the 1st, 2nd and 3rd Respondents and paragraph 47 of the written submissions filed on behalf of the 1st, 2nd and 3rd Respondents in case No. SC FR 113/2017.

represented by a Senior State Counsel, has thought it fit not to file any affidavit in this proceeding. This precipitates this Court to focuss its attention on the illustration (f) of section 114 of the Evidence Ordinance. The said illustration states, "The Court may presume (f) that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it;" This Court is of the view that the facts and circumstances of the instant case warrants such a presumption by this Court.

Further, the fact that the DGHS has sought an opinion from Hon. Attorney General is another significant factor in this case.

It is to be noted that Hon. Attorney General, by his letter dated 15th March 2017⁶ addressed to the DGHS, has informed him that the SLMC cannot at this stage, require such MCOMS students who have passed the examinations conducted by the MCOMS for the granting of the MBBS degree and who have been issued with a provisional Pass Certificate by the MCOMS, to complete an internship in Nepal as a pre-condition for sitting the ERPM. The Attorney General presumably having foreseen the unreasonableness of imposition of such condition, has thought it fit to warn the DGHS in the said letter that any imposition of such a pre-condition on such student would be liable to be challenged by such students in view of the conclusions set out in that letter.

Neither the DGHS nor the SLMC do not appear to have taken the opinion expressed by Hon. Attorney General seriously. The SLMC states that the said opinion was given on a request made by DGHS and not on a request by the

⁶ Produced marked **P 19**.

SLMC.⁷ The letter **P 19** reveals that the officers of the Attorney General's Department have had consultations with the DGHS and some other officials of the Ministry of Health on 9th March 2017, 10th March 2017 and 15th March 2017 before expressing the said opinion. This is clear proof that the DGHS was definitely aware that the Attorney General of the Country has taken a considered view that any imposition of such a pre-condition at this stage would be contrary to legal principles and liable to be challenged in Courts.

This Court observes that the Director-General of Health Services is an ex officio member of the SLMC in terms of section 12 (1) (g) of the Medical Ordinance. In terms of section 29 (2) (b) (iii) (cc), it is the SLMC, which is empowered to prescribe the special examination which such students are required to pass. The DGHS who is an ex-officio member is silent as to whether he placed the opinion of Hon. Attorney General before SLMC and explained to the SLMC, regarding the dangers of imposition of such condition.

Further, the 3rd Respondent has also taken up the position that the Attorney General did not call for any observations or information from the SLMC with regard to the recognition of MCOMS students and that the 1st Respondent Council therefore has no binding obligation to follow the opinion of the Hon. Attorney General.⁸ The letter dated 27-02-2017 produced marked **P 20** signed by the President of SLMC does not support the above averment. The

⁷ Paragraph 49-51 of the written submissions filed on behalf of the 1st, 2nd and 3rd Respondents and paragraph 32 of the affidavit dated 02-01-2018 filed by the 3rd Respondent on behalf of the 1st, 2nd and 3rd Respondents.

⁸ Paragraph 32 of the affidavit dated 02-01-2018 filed by the 3rd Respondent on behalf of the 1st, 2nd and 3rd Respondents.

said letter states that the SLMC decided at its 574th Council meeting to seek the advice of the Attorney General regarding the issue in question. Proceedings of the said 574th meeting of the SLMC has been produced marked **P 22**. The relevant portion of the said proceedings is as follows;

“... Dr. Upul Gunasekara said that we have two legal opinions obtained from Mr. Chathura Galhena and Mr. Shibly Azeez related to this matter. He suggested obtaining another legal opinion from the Attorney General through the DGHS. It was decided to prepare a document and submit it to the Attorney General through the DGHS and request for an appointment to meet and explain the issues pertaining to this matter. ... ”.

Thus, suffice it to say that the above 'explanation' given by the SLMC, would, in the face of the above facts and circumstances, remain nothing more than a lame excuse for its deliberate refusal to comply with the law of the land presumably for its own vested interests. This only indicates its mala fide conduct.

The letter produced marked **P 28** under the heading "APPROVAL TO SIT ERPM" dated 25th September 2013, sent by the SLMC to a past student of MCOMS who had passed the examinations conducted by the MCOMS for awarding of the MBBS degree and who had been issued with a provisional Pass Certificate by the MCOMS, also sheds light on the procedure adopted by the respondents in the past regarding the MCOMS medical students. It would be worthwhile to reproduce the full text of the said letter here. It is as follows.

"..... **APPROVAL TO SIT ERPM**

*The Provisional degree certificate of the final MBBS exam you have obtained from **MANIPAL COLLEGE OF MEDICAL SCIENCES [KATHMANDU UNIVERSITY], POKHARA, NEPAL** is hereby approved by the Sri Lanka Medical Council to enable you to sit the ERPM.*

- 1. Please note that this letter does not entitle you to engage in any form of medical practice except internship when eligible, as mentioned below in section [5]. This approval will be withdrawn if you engage in any form of medical practice.*
- 2. This approval would enable you to sit the Examination for Registration to Practice Medicine (ERPM) in Sri Lanka.*
- 3. The Part A – Multiple Choice Questions (MCQ) of the examination is held periodically. Successful completion of Part A will make you eligible to sit for Part B (Clinical/ Viva Voce) examination.*
- 4. If your degree/ diploma course was in a language other than English, it is compulsory that you complete the four-month's familiarization course.*
- 5. When you complete the ERPM successfully (Part A & B), you should apply to the Sri Lanka Medical council for a Certificate of Completion of the ERPM and for Provisional Registration. After obtaining Provisional Registration you should apply to the Director General of Health Services to perform a one year's period of Internship.*
- 6. After successful completion of Internship, you could apply to the Sri Lanka Medical Council for Full Registration as a Medical Practitioner by submitting the Evaluation Certificate and the Certificate of Experience (Internship) indicating satisfactory completion of Internship.*

Yours faithfully

Dr. H M S S D Herath

Acting Registrar

Copy to: The Director General of Health Services "

The above document in unequivocal terms shows that SLMC has recognized that the MCOMS students with the Provisional degree certificate of the final MBBS exam obtained from MCOMS, as being eligible to sit the ERPM.

Moreover, it is to be noted that the ' Guidelines issued by SLMC to the Sri Lankan Graduates with foreign medical/dental qualifications who wish to practice medicine/dentistry in Sri Lanka' ⁹ states "... *If you have not been awarded the degree but completed the final exam and issued a Provisional Pass Certificate, you would receive approval to sit ERPM/ERPDS. If you fulfil the criteria, the Council would issue you a Letter of Approval of Degree/ Approval to sit ERPM/ERPDS.*" ¹⁰ This too precisely indicates the procedure the SLMC had previously followed.

Further, the information revealed from the fourth paragraph of the letter (produced marked **P 23**) dated 10th May 2017 addressed to the 3rd Respondent by the Manipal College of Medical Sciences would also be relevant at this point. It is as follows.

".... *Upon completion of the Final MBBS examination, the Provisional Pass Certificate (PPC) is issued to MCOMS graduates enabling them to take up internship appointments in the countries approved by the Kathmandu University. Kathmandu University has permitted overseas MCOMS graduates to undertake the internship in their home countries since the rotational internship done in Nepal (CRRI) is mandatory only for Nepal graduates. Once*

⁹ Produced marked **P 17**.

¹⁰ Paragraph 2 of the said Guidelines.

Nepal students complete CRRI, the Nepal Medical Council grants them full registration to work independently in Nepal. CRRI is a 12 month paid employment. ... "

This clearly indicates that the requirement to complete the 12 months long CRRI in Nepal is the counterpart of 'acquirement of experience required for obtaining from the Medical Council a certificate under section 32' in Sri Lanka.

All the above factors converge on the point that the practice that had been adopted by the respondents until the time they had made the impugned decision has been to allow the students of MCOMS who had acquired the Provisional Pass Certificate to sit the ERPM to enable them to acquire the experience (referred to in section 29) required for obtaining from the Medical Council, a certificate under section 32 of the Medical Ordinance.

Thus, those who had enrolled in the MCOMS when the said practice was in place are entitled to entertain a legitimate expectation that the respondent authorities namely the DGHS and the SLMC would extend the same practice already in place, to them as well. There is no reason whatsoever, for them to doubt about the existence of such an expectation. After all, Article 12 (1) is all about affording that kind of protection to all citizens of this country. Any citizen of this country is entitled to that right.

Sudden action by the SLMC to suspend the existing practice, has clearly infringed the fundamental right guaranteed by Article 12 (1) in respect of those who had already enrolled in the MCOMS with the legitimate expectation that the said existing practice would continue.

In any case, in terms of section 29 (2) of the Medical Ordinance, the SLMC has only been empowered to consider the followings, in respect of such students of MCOMS.

That is whether such applicant;

- (i) is of good character; and¹¹
- (ii) is a citizen of Sri Lanka,¹²
- (iii) has passed the examinations necessary for obtaining a Degree of Bachelor of Medicine but has not obtained that degree owing to the fact that he has not completed the period of internship required for obtaining that degree,¹³
- (iv) has been permitted by the Director-General of Health Services to complete the relevant period of internship in Sri Lanka.¹⁴

This is because the MBBS degree awarded by MCOMS has been recognized by the Medical Council for the purpose of the said section having regard to the standard of medical education of the said medical school.

The fact that for the last seventeen years, those who were under similar circumstances, namely those who had passed the final MBBS examination at MCOMS but not awarded the MBBS degrees owing to non-completion of CRRI, were allowed to sit the ERPM and complete the 'internships' in Sri Lanka based on provisional pass certificate provided by MCOMS, would clearly establish a legitimate expectation that the Director-General of Health

¹¹ Section 29 (2) (a) of the Medical Ordinance.

¹² Section 29 (2) (b) (iii) (aa) of the Medical Ordinance.

¹³ Section 29 (2) (b) (iii) (bb) (ii) of the Medical Ordinance.

¹⁴ Ibid.

Services would permit those who had enrolled in the MCOMS when the said practice was in place, to complete the period of internship (CRRI) in Sri Lanka.

As it is now time to make the concluding remarks, it would not be out of place to refer to the case of Dayarathna and others Vs. Minister of Health and Indigenous Medicine and others.¹⁵ That is one of the instances in the past where this Court was called upon to consider the legality of the actions of altering the existing policy of a public institution to the detriment of the legitimate expectation of those who had relied on the pre-existing policy.

Petitioners of that case who were eligible for enrolment to follow the course of training leading to the award of the certificate of competency as Assistant Medical Officers had applied in response to the notification and sat a competitive examination. They were so placed on the results of the examination as to be qualified to follow the said course of training. The next step was the holding of an interview to verify the basic qualifications such as the date of birth, citizenship, and the educational qualifications. That interview was not held.

Then, the Secretary, Government Medical Officers' Association (GMOA) informed the Minister of Health and Indigenous Medicine as follows; " As at present the Government is not in a position to assure employment to all medical graduates and the intention of the government is to post qualified doctors to the peripheries. Therefore we see no justification to restart the

¹⁵ 1999 (1) Sri. L. R. 393.

AMP training course and our members would not participate in any component of the training programme."

Accordingly, the Minister sought the approval of the cabinet to fill the existing and future vacancies in the cadre of Assistant Medical Practitioners with medical graduates and to offer the petitioners of that case, the option of following the course for Paramedical Services/Public Health Inspectors, if they so desire. The said petitioners were thereafter invited to apply for training as Pharmacists, Medical Laboratory Technologists and Public Health Inspectors.

The said petitioners contended that, having regard to the established practice based upon the past actions and settled conduct of the first, second and third respondents in that case and their predecessors in office, they (the petitioners in that case) had a legitimate expectation of being provided with the training leading to the award of the certificate of competency as Assistant Medical Officers.

This Court holding that the second respondent has infringed the fundamental rights of the said petitioners guaranteed by Article 12 (1) of the Constitution, directed the respondents in that case to hold the relevant interviews and provide the petitioners in that case, the said scheme of training.

It is worthwhile reproducing the following paragraphs from the judgment¹⁶ of His Lordship Justice Amerasinghe;

¹⁶ Ibid. at pages 411-413.

".... *It comes to this : in terms of existing legislative policy, both Medical Graduates and Assistant Medical Practitioners are qualified in specified circumstances to practice medicine and surgery. Having regard to published information, representations and past executive practice which the petitioners relied on in applying for the course of training and sitting the prescribed examination, they had a legitimate expectation that they would, upon satisfying the prescribed conditions, be provided with "a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Officers". The respondents decided that it was preferable or necessary to employ Graduate Medical Officers to fill the vacancies of Assistant Medical Officers and to offer the petitioners a course of training leading to their qualification as Pharmacists, Medical Laboratory Technologists - described by the Minister as "paramedical services" - or as mere Public Health Inspectors, thereby resiling from the advertised scheme, representations and established practices.*

*No opportunity was given to the petitioners to argue why the change of policy should not affect them: they were faced with a situation where a change of policy had been made without their knowledge and when it had been decided that they might apply for some other, inferior, course "if they so desire". It was perhaps an unsatisfactory way in which the petitioners were dealt with by the first to third respondents from an administrative point of view. Moreover, legally, the respondents failed to observe their duty. When a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably: cf. *R. v. Secretary of State of the Home Dept, exp. P. Khan*¹⁷; *R. v. MAFF, ex p. Hamble Fisheries.* ¹⁸ Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive. "They focus on formal justice and the rule of law, in the sense that the rules of natural justice help to*

¹⁷ *Rex v. Secretary of State of the Home Dept., ex. P. Khan* (1985) 1 ALL ER 40, 46.

¹⁸ *R. v. MAFF ex. P. Hamble (Offshore Fisheries Ltd.,)* (1995) 2 All ER 714, at 731.

ensure objectivity and impartiality, and facilitate the treating of like cases alike. Procedural rights are also seen as protecting human dignity by ensuring that the individual is told why he is being treated unfavourably, and by enabling him to take part in that decision." Craig. ¹⁹

In addition to the procedural opportunity required by law, there is a substantive requirement that there must be an overriding public interest if a change of policy were to set at nought an individual's prior expectation: R. v. Secretary of State for the Home Dept.²⁰; R v. MAFF, ex p. Hamble Fisheries.²¹ There was no such interest claimed in the matters before me. For all the involved explanations of the first respondent in his Cabinet memorandum and that of the second respondent in his affidavit, essentially the change of policy was based on the preference of the interests of one of two classes of persons recognized by the Legislature as entitled to practice medicine to the other. The conflicting interests were those of the Graduate Medical Officers and the Assistant Medical Practitioners. The first, second and third respondents, considered the views of the Trade Union known as the General Medical Officers' Union on behalf of Graduate Medical Officers and yielded to their pressure of non-cooperation in the matter of conducting the advertised course of training. Neither the views of the Assistant Medical Practitioners nor those of the petitioners were sought. The decision of the respondents, and recommendations to the Cabinet effecting a change of policy did not depend either upon considerations of public interest weighed against private interests or even upon an informed consideration of conflicting private interests.

The change of policy, in the circumstances, may nevertheless affect the future, having regard to the fact that the legislature and executive are free to formulate and reformulate policy; however, it is the duty of this Court to safeguard the rights and privileges, as well as interests "deserving of protection such as those based on legitimate expectations, of individuals. In my view, the legitimate expectations of the petitioners with regard to the

¹⁹ P. P. Craig, *Legitimate Expectations: A Conceptual Analysis*, (1992) vol. 108 LQR 79 at 86.

²⁰ *supra*.

²¹ *supra*.

"Scheme of Training" as described in paragraph 11 of the Gazette notification of 10.05.1996 survive the policy change that has taken place. ... "

The above extract from the said judgment is self-explanatory and hence needs no further elucidation.

The document produced marked **P 1 (b)** by the Petitioner in SC FR 134/2017 shows that the said Petitioner (Madushika Bridget Rajapakse) had commenced the MBBS degree programme in MCOMS in the year 2011. Further, the document produced marked **P 1 (a)** by the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) shows that the said Petitioner has passed the final MBBS held in MCOMS in October/November 2016. This letter has been issued on 18th January 2017. The said documents clearly establish that the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) is a student who had enrolled in the MCOMS when the aforesaid practice of allowing the students of MCOMS who had acquired the Provisional Pass Certificate to sit the ERPM to enable them to acquire the experience (referred to in section 29) required for obtaining from the Medical Council a certificate under section 32 of the Medical Ordinance. Therefore, the said Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) is entitled in law to be permitted to sit the ERPM to enable her to acquire the experience required for obtaining from the Medical Council, a certificate under section 32 of the Medical Ordinance.

The Petitioner in SC FR 113/2017 (Tharushi Navodini Amarasena) is admittedly a medical student who has been studying in MCOMS. She has not adduced any material to establish that she possesses a Provisional Pass

Certificate issued by MCOMS. It is not clear as to when she had joined MCOMS. She has not proved before this Court that she is entitled in law to be permitted to sit the ERPM to enable her to acquire the experience required for obtaining from the Medical Council, a certificate under section 32 of the Medical Ordinance. Due to that reason, this Court is unable to hold that her rights have been infringed. Therefore, this Court is not in a position to grant the relief prayed in her petition although this Court for the reasons set out above, has accepted the arguments commonly advanced by the learned President's Counsel who appeared for the Petitioners in both the aforementioned applications.

In these circumstances, with regard to the application in SC FR 134/2017, this Court decides to;

- a) declare that the Respondents except the 5th Respondent have infringed the fundamental rights of the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) guaranteed under Article 12(1);
- b) declare that the decision taken by the 1st Respondent not to allow those who had passed the final MBBS examination at MCOMS but not awarded the MBBS degrees owing to non-completion of CRRI, to sit the ERPM to enable them to complete the 'internships' in Sri Lanka based on provisional pass certificate provided by MCOMS, is null and void and has no force or avail in law, in respect of those who had enrolled in the MCOMS when the aforesaid practice of allowing such students to sit the ERPM was in place,;
- c) declare that the decision taken by the 1st Respondent not to allow the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) to sit

ERPM without completing the Compulsory Rotational Residential Internship (CRRI) in Nepal, is null and void and has no force or avail in law;

- d) direct the 1st to 4th Respondents to allow the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) to sit the ERPM examination upon furnishing the provisional pass certificate issued by the MCOMS,
- e) direct the 1st Respondent to pay to the Petitioner in SC FR 134/2017 (Madushika Bridget Rajapakse) a compensation in a sum of Rs. 500,000/=

In view of the granting of above relief, this Court is of the view that no further decision in respect of SC FR 113/2017 is necessary.

JUDGE OF THE SUPREME COURT

Buwaneka Aluwihare PC J

I agree,

JUDGE OF THE SUPREME COURT

L. T. B. Dehideniya J

I had the privilege of reading the judgement written by my brother judge Justice Padman Surasena. I am in agreement with the findings of his Lordship other than the amount ordered as compensation.

This court, in violation of fundamental rights applications does not consider the amount of damages that has been incurred to the Petitioner. The court does not call for evidence to establish the amount of damages. The Petitioner is paid a compensation in recognising that his fundamental rights are being violated.

Under these circumstances, I order only Rs. 100,000.00 be paid as compensation.

JUDGE OF THE SUPREME COURT