

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

In the matter of an application under and in terms of Articles 126 read with Article 17 of the Constitution against an impugned violation of Fundamental Rights under Articles 12(1) and 14(1)(g) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. (FR) 35/2021

Bope Athauda Mudiyanseelage Daminda
Rangana Athauda,
102/39/1, 6th Lane, Nadun Uyana,
Muthuhenawatta, Meegoda.

Petitioner

Vs.

1. University of the Visual and Performing Arts,
No 21,
Albert Crescent, Colombo 07.
2. Senior Professor Rohana
P.Mahaliyanaarachchi,
Vice Chancellor,
Chairman of the Governing Council of the
University of the Visual and Performing Arts
3. Dr. Indika Ferdinando,
Dean, Faculty of Dance & Drama,
Member of the Governing Council of the
University of the Visual and Performing Arts
4. Dr. P.K.S.P. Rathnakumara,
Dean, Faculty of Music,
Member of the Governing Council of the
University of the Visual and Performing Arts,
Member of the Board of Interview for the Post
of Lecturer (Prob)(Flute)
5. Senior Lecturer M. Jagath Raveendra,
Dean,
Faculty of Visual Arts,
Member of the Governing Council of the
University of the Visual and Performing Arts

6. Dr. Priyantha Udagedara,
Acting Dean,
Faculty of Graduate Studies,
Member of the Governing Council of the
University of the Visual and Performing Arts
7. Emeritus Prof. (Mrs.) Kusuma Karunaratne,
Member of the Governing Council of the
University of the Visual and Performing Arts,
Member of the Board of Interview for the
Post of Lecturer (Prob)(Flute)
8. Professor Rohana Lakshman Piyadasa,
Member of the Governing Council of the
University of the Visual and Performing Arts
9. Emeritus Prof. N. K. Dangalla,
Member of the Governing Council of the
University of the Visual and Performing Arts,
Member of the Board of Interview for the Post
of Lecturer (Prob) (Flute)
10. Mr. C. Maliyadda,
Member of the Governing Council of the
University of the Visual and Performing Arts
11. Mr. Gunasena Thenabadu,
Member of the Governing Council of the
University of the Visual and Performing Arts
12. Mr. Lakshman Abeysekara,
Member of the Governing Council of the
University of the Visual and Performing Arts
13. Mr. Ranjith Liyanage,
Member of the Governing Council of the
University of the Visual and Performing Arts,
Member of the Selection Board of the Practical
Test for the Post of Lecturer (Prob)(Flute)
14. Mr. T. Darmarajah,
Member of the Governing Council of the
University of the Visual and Performing Arts

15. Senior Lecturer J.A.S.P. Aravindana,
Senate Nominee
Member of the Governing Council of the
University of the Visual and Performing Arts
16. Prof. Kolitha Bhanu Dissanayake,
Senate Nominee
Member of the Governing Council of the
University of the Visual and Performing Arts,
Member of the Board of Interview for the Post
of Lecturer (Prob)(Flute)
17. Mr. B.M. Dayawansa,
Secretary to the Governing Council and the
Registrar of the University of the Visual and
Performing Arts
18. Mr. Ajith Jayaweera,
Member of the Selection Board of the Practical
Test for the Post of Lecturer (Prob)(Flute)
19. Senior Lecturer Bhageshri Fonseka,
Member of the Selection Board of the Practical
Test for the Post of Lecturer (Prob)(Flute)
20. Senior Lecturer Chiltus Dayawansa,
Member of the Selection Board of the Practical
Test for the Post of Lecturer (Prob)(Flute)
21. Senior Lecturer Ranjan Wickramaratne,
Head of the Department, Department of North
Indian Music,
Member of the Selection Board of the Practical
Test for the Post of Lecturer (Prob)(Flute),
Member of the Board of Interview for the Post
of Lecturer (Prob)(Flute)

2nd to 21st Respondents all of University of the
Visual and Performing Arts,

No 21, Albert Crescent Colombo 07.
22. J.A.G.N. Jayasinghe,
431/1, Ranmuthugala Maha Vihara Mawatha,
Kirillawala.

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

Respondents

Before : Janak De Silva, J.
Menaka Wijesundera, J.
K.M.G.H. Kulatunga, J.

Counsel : Upul Kumarapperuma, PC with Shalini Weerarathne,
Duvini Godagama, K.H. Dilrukshi and Dilki Wathsalya instructed
by Darshika Nayomi for the Petitioner.

Nirmalan Wigneswaran, DSG instructed by Nimalika
Wickramasinghe, SA for the 1st – 21st and 23rd Respondents.

Asthika Devendra with Wasantha S. Widanage instructed by Mrs.
Thushari Jayawardane for the 22nd Respondent.

Written

Submissions : Written submissions on behalf of the Petitioner on 10th
of July 2026.

Written submissions on behalf of the 22nd Respondent on
13th July 2026

Argued on : 27.05.2026

Decided on : 01.10.2026

MENAKA WIJESUNDERA J.

The instant application has been filed by the Petitioner seeking a declaration that his fundamental rights under Articles 12(1) and 14(1)(g) have been violated at the time of support. This Court had granted leave under Articles 12(1) and 14(1)(g) of the Constitution on 30.08.2022.

The grievance of the Petitioner is his non-appointment to the post of Lecturer (Probationary) for North Indian Classical Instrumental (Flute) in the Department of North Indian Music of the Faculty of Music, and his challenge to the appointment of the 22nd Respondent, which was made in place of the Petitioner.

The instant post has been advertised on 06.01.2019, and the Petitioner alleges that he holds a First Degree and a Postgraduate Degree from India, and that he had been granted an International Scholarship to study music abroad.

The Petitioner has further averred that he had been involved in various creative works, which are indicative of his creative inborn talents with regard to aesthetic subjects and furthermore, that he has vast experience as a professional flautist.

The Petitioner, in his petition, has raised the following concerns,

- The petitioner states that the University Grants Commission (UGC) Establishment Circular Letter No. 03 of 2018 dated 20.02.2018 marked as P13 was illegal.
- The panelists at the practical test and the interview board, were not professional flutists.
- The practical test which the Petitioner had to face did not provide him with adequate facilities.
- At the interview, the Petitioner did not have adequate time to make his presentation.
- The Petitioner was not properly evaluated on his professional skills by the interview board.
- The Petitioner was not given an opportunity to make his impromptu presentation.
- The Petitioner had not been granted an opportunity to be questioned about his language skills with regard to other languages apart from the Sinhala language.
- The 22nd Respondent had been favored and the Petitioner had been not been suitably evaluated.
- The Petitioner had not been given the adequate marks.

In response to the points raised by the Petitioner in his petition, the Respondents have taken a preliminary objection with regard to the time bar. The Respondents have pointed out that the instant petition has been filed on 17.02.2021 and that the alleged interview referred to in the Petition had been

held on 15.12.2020 conducted via online zoom meeting, while a practical test had been held on 26.11.2020 at the Faculty Premises. In view of this, they contend that the instant petition is out of time. The Respondents have further pointed out that the Petitioner's complaints to the Human Rights Commission (HRC) were made under Complaint bearing No. HRC/2742/2016, which also had been after the prescribed time period.

However, the Petitioner, in his written submissions, has stated that he had not been aware of the outcome of the interview, and that he had to obtain the necessary information from the 1st Respondent through an application made under the provisions of the Right to Information act which he has marked and produced as P19(i). He also claims that he had taken steps to complain to the HRC with regard to the alleged violation.

Hence in view of the said material in the above paragraph I find that he had taken all the steps possible to file the instant application within the stipulated time, and as such I find that it is not fair to apply the time bar rigidly in the instant matter.

The Petitioner had made the allegation that the panel which conducted the practical tests which the Petitioner had to face before the interview was not manned by qualified professionals. The Respondents, by producing R1 and R2 had pointed out to this Court that the composition of the panel for the practical tests had consisted of professional academics in the field of Visual Arts and Aesthetic Studies. Furthermore, they had stated that the said panelists had the expertise in the field of North Indian Classical Music and were not limited to a particular instrument such as a Flute. Therefore, they had claimed that the experts who were on the practical board were knowledgeable in the Raag-based tradition of North Indian Classical Music and were qualified to assess the candidates in any forum. Therefore, the Respondents have claimed that the Petitioner's submission that an expert on the flute was not present is without any merit.

The Petitioner has also alleged that he was not given adequate time to make his presentation and to answer the interview board, but the Respondents have stated that the Petitioner had been given approximately 19 minutes and 25 seconds, which they have claimed has been presented to the Court as a recording of the entire interview marked and produced as X2 to their objections.

Another allegation made by the petitioner was that he was not properly evaluated professionally and practically with regard to his musical talents.

However, the Respondents have pointed out that the interview board, has consisted of Council members who were appointed by the University Council, subject experts appointed by the Senate and the rest of the members had been ex-officio members of the selection panel as per the UGC Circular No. 166, and consisted of members who were Senior Professors, Deans, involved in music in the Faculty of Music and eminent artists in the fields of music. Therefore, they have claimed that the selection panel had been adequately qualified as per the UGC Rules. The Petitioner had further alleged that he was not properly evaluated by the interview board, but the Respondents have pointed out that it is a matter of academic evaluation and that the interview board has the discretion to evaluate the performance of each candidate as per his or her individual performances when facing the interview. In my opinion, this should not be questioned by persons who have not been involved in the process.

The Petitioner had also made the allegation that his language skills were not properly evaluated by the Respondents. He had also said that the 22nd Respondent had unduly been given marks. The mark sheet of the interview panel has been marked and produced as R7 by the Respondents.

On perusal of the same, I observe that for the First Degree category the Petitioner had possessed only a three-year basic degree, which had warranted only 20 marks. The Petitioner had been awarded 30 marks, which were generally given for a four-year First Class degree, whereas the 22nd Respondent who has had a four-year Upper Class degree, had received only 25 marks. Hence, I see no ground to conclude that the petitioner had been discriminated under this category.

The maximum marks due for a Postgraduate degree, were 20 marks but if the research component is not available some marks would be deducted, such as in the Master of Music, of which the Petitioner had been entitled only for four marks, because the research component had been not available. The 22nd Respondent, who held an M. Phil. Degree, had received 10 marks to which he was entitled because of his research work done and published.

The next category is the creative works, professional experiences with teaching experiences as an instructor and in workshops, for which 10 marks have been allocated, and the Petitioner had not received any marks because he did not possess the relevant teaching experience.

However, the 22nd respondent, who had been serving as Temporary Lecturer for three academic years, received 3 marks, which I do not see as being unduly favoured.

The next category is the research and publications, which includes indexed journals, peer reviewed publications, referred books, and abstracts. The maximum mark is 10 marks. Both the Petitioner and the 22nd respondent had received 5 marks out of 10 and as such, I see no discrimination in that category also.

The next category is assessing the teaching ability, for which the Petitioner had received 5 marks, which is subject to the discretion of the panel.

The other categories are communication skills, for which the Petitioner had been given 4 out of 5 marks, and performances at the interview, for which the maximum had been 5 marks and the Petitioner had received 3 marks. These three categories, I find are at the discretion of the panel, which they are entitled to exercise.

The overall marks obtained by the Petitioner had been 56.1 marks, and the total marks obtained by the 22nd respondent had been 71.7 marks. It is obvious that the 22nd respondent had scored higher marks than the Petitioner. Upon going through R7 and considering the maximum marks given for each category and the marks received by the Petitioner in comparison to his capabilities and qualifications for each category, I do not see any discrimination being taken place with regard to the petitioner.

In the case of **Clark v. University of Lincolnshire and Humberside [2000] 1 WLR 1988**, as referred to in **Administrative Law by Wade and Forsyth (Ninth Edition) Page 637 (supra)** where it has been pointed out that Courts will be reluctant to enter into,

"Issues of academic or pastoral judgment which the University is equipped to consider in breadth and in depth but on which any judgment of the Courts would be jejune and inappropriate... It is a class which undoubtedly includes, in my view, such questions as what mark or class a student ought to be awarded or whether an aegrotat is justified."

In the case of **Abeyesundara Mudiyanse Sarath Weera Bandara v. University of Colombo and Others, CA (Writ) Application No. 844/2010**; decided on 8th June 2018, in which Nawaz, J. held as follows:

"The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is

demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinize and judge the merits and/or demerits of such decisions. Dealing with the scope of interference in matters relating to orders passed by the authorities of educational institutions, the Courts should normally be very slow to pass orders in regard thereto and such matters should normally be left to the decision of the educational authorities."

Further in the case **Dr. Karunananda v. Open University of Sri Lanka and Others [2006] 3 SLR 225** at page 236, the Supreme Court held as follows:

*"Therefore, although there may be cautionary remarks indicating reluctance to enter into academic judgment, **I am not in agreement with the view that academic decisions are beyond challenge.** There is no necessity for the Courts to unnecessarily intervene in matters "purely of academic nature," since such issues would be best dealt with by academics, who are 'fully equipped' to consider the question in hand. However, if there are allegations against decisions of academic establishments that fall under the category stipulated in terms of Article 126 of the Constitution, there are no provisions to restrain this Court from examining an alleged violation relating to an infringement or imminent infringement irrespective of the fact that the said violation is in relation to a decision of an academic establishment."*

The above position is a restatement of the approach adopted by Courts when exercising judicial review of administrative decisions, as pointed out in the following passage from **Administrative Law by Wade and Forsyth, supra Page 362:**

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits."

The 22nd Respondent had also filed his objections and has pointed out to this Court that while denying the allegation that he had been unduly favored, he had stated that apart from him there had been three other candidates who had applied the post referred to in the instant petition. The 22nd Respondent, whose appointment had been challenged by the Petitioner, has also filed his written

submissions and objections denying the allegations that he had been unduly favored. He had further stated that the Petitioner does not have the required qualification for the impugned post.

Therefore, upon considering the oral and written submissions of both parties and the documentation filed, I find that the material contained in the Petition of the Petitioner has no merit.

I do not see any violation of Article 12(1) or Article 14(1)(g) of the Constitution by the Respondents against the Petitioner. I find the allegations of the Petitioner to be frivolous and irrational, especially considering the mark sheets submitted by the Respondents marked as R7.

Hence, I am compelled to conclude that the instant application should be dismissed.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

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

I agree.

JUDGE OF THE SUPREME COURT