

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

In the matter of an Application for  
mandates in the nature of writs of  
Certiorari, Prohibition and  
Mandamus in terms of Article 140 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

1. Dr. Navadeva Harendra Cooray  
No. 22/6 B , Kalyani Road,  
Colombo 6.  
And thirteen (13) others

**Petitioners**

C.A. Writ Application No: 672/2011

Vs

1. Prof. Rezvi Sheriff  
The Director,  
Postgraduate Institute of Medicine,  
University of Colombo, Sri Lanka,  
No.160, Norris Canal Road,  
Colombo 7.  
And hundred and ninety nine (199)  
others

**Respondents**

**BEFORE** : S. SRISKANDARAJAH, J (P/CA)  
H.N.J.PERERA, J  
**COUNSEL** : Sanjeewa Jayawardana,

for the Petitioner.

Supported on : 16.12. 2011

Order on : 12.01.2012

**S.Sriskandarajah, J.**

The Petitioners submitted that their opportunity of enrolling to, and completing the Postgraduate MD Degree Programme in Critical Care Medicine, leading up to Board Certification in Critical Care Medicine is denied by Postgraduate Institute of Medicine of the University of Colombo (PGIM). This denial is evident in the decision made and confirmed by the Board of Management of the PGIM dated 3.09.2001, the said decision states as follows:

“Initially to start the programme with trainees who will enter through the Alternate Pathway and join the training at the post MD point..”

The Petitioners in this application is seeking notice for an application of a writ of certiorari to quash the above decision among other reliefs. The Petitioner has also sought an interim order restraining the Respondents from commencing and/or continuing MD Programme in Critical Care Medicine excluding the 1<sup>st</sup> to 12<sup>th</sup> Petitioners.

The Petitioners submitted that the new Speciality of Critical Care Medicine is about to be commenced by the PGIM. The Petitioners have successfully completed the Diploma in Critical Care conducted by the PGIM, under the express holding out that the said diploma which they followed was the first step toward the development of Critical Care as a Specialty in Sri Lanka.

The PGIM was established under and in terms of Postgraduate Institute of Medicine Ordinance No.1 of 1980. It is empowered to provide for

postgraduate instruction, training and research in such specialities in medicine as may be approved by the Commission upon the recommendation of the Commission and the University.

Under Clause 12(3)(g) it has the power and authority to recommend to the University, in consultation with the Board of Studies, the postgraduate degrees, diplomas, certificates and other academic distinctions which shall be awarded in several specialities in medicine, and the courses of study and training to be followed, the examination to be passed and the other conditions to be satisfied by students who wish to qualify for such degrees, diplomas, certificates and other academic distinctions.

The Petitioners contended that it was stated in the prospectus issued to the Petitioners as well as those who are interested in joining the Diploma Programme in Critical Care Medicine that the Diploma in Critical Care Medicine can be considered the first step towards the development of critical care as a speciality in Sri Lanka. It is in distinct contrast with other Diplomas, where it has been expressly stated that the acquisition of the Diploma would inter-alia not give any concession in the subsequent MD programme.

The Petitioners further contended that they were eagerly awaiting with the legitimate expectation to further specialising in the said field and becoming specialists in the said field as the Petitioners had duly completed the Diploma in Critical Care and carrying on their duties at ICUs and Emergency Care Units in hospitals island wide.

The Petitioners submitted that they learnt that the Board of Management of the PGIM, at a meeting held on 06.08.2011, decided to introduce and commence a post graduate training programme in MD Critical Care Medicine leading to Board Certification and it has also decided to introduce the said

MD programme initially only by way of the Alternate Pathway i.e those who had already passed the MD Part II Examination in other specialities. This decision has excluded the Petitioners and others similarly placed. By this decision the Petitioners contended that the Respondents have completely shut out the Diploma holders from the MD programme and it is unfair and unreasonable, as there was a holding out to all prospective candidates of Diploma, that the Diploma in Critical Care Medicine can be considered the first step towards the development of critical care as a speciality in Sri Lanka.

As provided by Clause 12(3)(g) of the ordinance the Board of Management has the power to recommend to the University to introduce and commence a post graduate training programme in MD Critical Care Medicine leading to Board Certification. It has also the power to recommend the basic qualification that has to be fulfilled by a candidate to follow the said programme. The Board of Management of the PGIM has recommended to introduce the said MD programme initially only by way of the Alternate Pathway. This recommendation has to be approved by the University and it is yet to be approved by the University.

The Petitioner in this application has sought to challenge a recommendation made to the University. The University has yet to take a decision whether to accept or reject the recommendation or to accept the same with amendments. Only the decision of the University in this regard will be implemented and not the recommendation of the Board of Management.

The Supreme Court held in *Jayawardene v Silva* 72 NLR 25; that a writ of certiorari does not lie to quash an election made by the collector under Section 130 of the Customs Ordinance. Certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of a subject

and at the same time, has the duty to act judicially when he determine such question.

In *G.P.A. Silva and Others v Sadique and Others* [1978-79-80] 1 Sri LR 166 at 172,177 the full bench of the Supreme Court comprising Justices Samarawickrame J., Thamotheram J. Ismail J. Weeraratne J. and Sharvananda J came to the conclusion that the report of a commission does not take effect *proprio vigore*, accordingly, Certiorari will not issue to quash the report of the commission. The Court held:

“It appears to be clear that certiorari will also lie where there is some decision, as opposed to a recommendation, which is a prescribed step in a statutory process and leads to an ultimate decision affecting rights even though that decision itself does not immediately affect rights. From the citations which I have set out, it would appear that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect. “

In this application the recommendation of the Board of Management is not an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect but it is only a recommendation therefore, Certiorari will not issue to quash such a recommendation.

As the Petitioners have not established an arguable case this court refuses notice in this application.

President of the Court of Appeal

H.N.J.Perera J

I agree,

~~Judge~~ of the Court of Appeal