

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

In the matter of an application in
terms of Article 140 of the Constitution
for mandates in the nature of Writs of
Certiorari and Mandamus.

1. Dissanayake Mudiyansele
Jayanath Wijayasanke Dissanayake
2. Dissanayake Mudiyansele
Punchibanda Dissanayake

Both of Goluwakada, Minhettiya,
Kurunegala.

CA Writ Application No.527/2011

Petitioners

Vs.

1. The University Grants Commission,
No.20, Ward Place,
Colombo 07.
2. The University of Moratuwa,
Katubedda, Moratuwa.
3. The University of Peradeniya,
Peradeniya.

Respondents

BEFORE : S.SRISKANDARAJAH, J (P/ CA).
COUNSEL : Faiz Musthapha PC with Faiza Marker,
for the Petitioners.
M.N.B.Fernando DSG
for Respondents.
Argued on : 29.05.2012
Decided on : 21.09.2012

S.Sriskandarajah, J,

The 1st Petitioner is the son of the 2nd Petitioner who was a member of the Sri Lanka Foreign Service, and was in service from October 2001 to December 2010. During the tenure of his foreign service, he has served in Kuwait at the time the 2nd Petitioner's family members, viz., his wife and the 1st Petitioner and the 1st Petitioner's sister were with him, and the 2nd Petitioner's children were enrolled at the New English School, Hawally, Kuwait in September 2007, and were students of the said institution until 23rd May 2010. The Petitioner submitted that during the said period, the 1st Petitioner studied at this institution for a period of 3 academic years. An academic year consists of 3 semesters, commencing in September and ending in June, and in support of this contention the Petitioners annexed a copy of the New English School prospectus showing the term duration marked as P4A to the petition of this application.

The 1st Petitioner sat for the G.C.E. Advance Level Examination through the said "New English School" which is affiliated to the University of Cambridge. At the said examination conducted by the University of Cambridge, the 1st Petitioner obtained the following results:-

Physics	A
Chemistry	A
Mathematics	B
Acquired Information and Communication Technology	B

Upon completion of the examination, the 1st Petitioner returned to Sri Lanka on 4/07/2010. The 1st Petitioner made an application to the University Grants Commission on the 27th of February 2011 under the category of admission of students with foreign qualification to undergraduate courses of the Universities in Sri Lanka. This category was designed to admit students who sat for the Advance Level Examination in foreign countries. One of the categories that were considered under this scheme is, the children of Sri Lankans attached to Sri Lankan Diplomatic Missions abroad, who have studied abroad at least for a period of 3 years continuously during the 6 year period immediately prior to sitting the qualifying examination.

The Petitioner submitted that he had the required qualifications to follow a degree in Engineering and hence he made an application to the University Grants Commission seeking admission to a degree course in the Faculty of Engineering in the University of Moratuwa, Sri Lanka. The Petitioner submitted that the 2nd Petitioner received a letter dated 3rd May 2011 from the 1st Respondent University Grants Commission, refusing the 1st Petitioner's application for admission informing him that his application for admission had been rejected on the following grounds:-

- (i) The 1st Petitioner had not studied abroad at least for a period of 3 years continuously during the 6 year period immediately prior to sitting the qualifying examination, and

- (ii) That he had not fulfilled the special pre-requisites for the course of study in Engineering, (Engineering M), Transport and Logistics Management, Quantity Surveyor, (Building) computing and Information Systems, Industrial Standards and Mathematical Functions.

The Petitioners in this Application are seeking a Writ of Certiorari to quash the decision of the 1st Respondent contained in the letters dated 3rd May 2011 and 24/05/2011 refusing admission to the 1st Petitioner to the Faculty of Engineering in the University of Moratuwa or University of Peradeniya.

Admission of students with foreign qualifications to undergraduate courses of the Universities in Sri Lanka is government by the rules and regulations laid down by the University Grants Commission of Sri Lanka in keeping with the government's policy. According to the admission policy for admission of students to the Universities of Sri Lanka, the number of places reserved for students with foreign qualifications is limited, and at present, is up to .5% of the total number of places available in each course of study. The minimum requirements for admission of students with foreign qualifications is stipulated in the booklet published by the University Grants Commission of Sri Lanka for admission of students with foreign qualifications to undergraduate courses of the Universities in Sri Lanka for academic year 2010/2011. Under paragraph 2(1)(b) of the said publication, the minimum qualifications required for admission of students with foreign qualifications should prove that their educational qualifications are equivalent to the GCE (Advance Level) Examination of the University of London or qualifications required for admission to a University in their own country to follow an undergraduate course of study leading to a Bachelor Degree, and the applicant should ensure all required passes should be obtained in one and the same sitting under a recognized Board of Examination.

One of the grounds on which the application of the 1st Petitioner was refused was that the 1st Petitioner had failed to satisfy that he got the required qualifications in one and the same sitting under a recognized Board of Examination.

The Respondents contended that the 1st Petitioner has failed to fulfill Clause II(1)(d) having sat for 3 subjects (Physics, Chemistry and Applied Information and Communications Technology) under one Board of Examination and Mathematics under another Board of Examination.

The decision in relation to whether the Petitioner has fulfilled the subject criteria, and whether he had obtained the said qualifications in one and the same sitting under a recognized Board of Examination is a matter of fact that can only be determined by the University Grants Commission, as it has the necessary expertise to consider these factors and to arrive at a decision. The 1st Respondent has submitted that it had considered the application of the 1st Petitioner and had come to the conclusion that the 1st Petitioner had failed to obtain the required passes in one and the same sitting under a recognized Board of Examination and, as such, he has not fulfilled the subject criteria. In these circumstances this court is of the view that the decision of the University Grants Commission is based on facts placed before the University Grants Commission and, hence, this court cannot interfere in the said decision and, therefore, this court dismisses this application without cost.

President of the Court of Appeal