

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
Kaushalya Sujeewani.
2. Dissanayake Mudiyansele
Punchibanda Dissanayake

Both of Goluwakada, Minhetiya,
Kurunegala.

PETITIONERS

Vs.

CA Writ Application No.528/2011

1. The University Grants
Commission,
No.20, Ward Place,
Colombo 07.
And 2 others

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 daughter of the 2nd Petitioner, and the 2nd Petitioner was a Member of the Sri Lanka Foreign Service and was in service from October 2001 to December 2010. The 2nd Petitioner served as a Counsellor of the Sri Lanka Embassy in Kuwait from 19/07/2007 to 5/12/2010. The 1st Petitioner accompanied the 2nd Petitioner and was living in Kuwait during the said period. The 1st Petitioner and her brother were enrolled at the New English School Hawally, Kuwait, in September 2007, and were students of the said institution until 23/05/2010. 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 September and ending in June. A copy of the school prospectus showing the term duration is annexed to the petition as P4(a).

In June 2010, the 1st Petitioner sat for the G.C.E Advance Level Examination through "New English School" which is affiliated to the University of Cambridge. At the said examination, the 1st Petitioner obtained the following results:-

- | | |
|---------------|----|
| (1) Biology | A* |
| (2) Chemistry | A* |

- | | |
|---------------------|----|
| (3) Physics | A* |
| (4) Mathematics | A* |
| (5) Thinking Skills | A* |

The 1st Petitioner submitted, in view of her academic excellences at the said examinations, she was awarded "The Chairman's Award for Excellence at Advance Level for the academic years 2009/2010. The Petitioner returned to Sri Lanka on 4/07/2010 after the completion of her examination.

The 1st Petitioner made an application dated 27/02/2010 under the category of Admission of Students with Foreign Qualifications to Undergraduate Course of the Universities in Sri Lanka, under which children of Sri Lankans attached to the Sri Lanka Diplomatic Missions abroad who had studied abroad at least for a period of 3 years continuously during the 6 year period immediately prior to sitting the qualifying examination is considered for admission.

The 1st Petitioner submitted that she had the required qualifications to follow a degree course in medicine and made the said application to the University Grants Commission, seeking admission to a University in Sri Lanka, to follow a degree course in medicine. The 2nd Petitioner submitted that the 2nd Petitioner received a letter dated 3/05/2011 from the 1st Respondent University Grants Commission, refusing the 1st Petitioner's application for admission. This refusal was on the ground that 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. The 2nd Petitioner contended that the decision to refuse admission to the 1st Petitioner to a University, as contained in the 1st Respondent's letter dated 3/05/2011 and 25/04/2011 is null and void and of no force or avail in law and, therefore, the Petitioner in this application has sought a Writ of Certiorari to quash the decision of the 1st Respondent contained in the said letters, and the Petitioner has also sought a mandate in the nature

of a Writ of Mandamus directing the 1st Respondent to admit the 1st Petitioner as a student of Faculty of Medicine of the Faculty of the University of Medicine, Colombo, according to law.

The University Grants Commission of Sri Lanka has published a hand-book giving the details of admissions of students with foreign qualifications to undergraduate courses of the Universities of Sri Lanka. The said hand-book for the academic year 2010/2011, in Clause II, has provided for minimum requirements for admission of students with foreign examinations, 2(1).

Paragraph 2(1) provides:-

2.(1) Candidates with impressive results at a foreign examination held outside Sri Lanka, deemed equivalent to G.C.E. Level Examination of Sri Lanka are eligible to apply for admission to Universities in Sri Lanka.

(a) Applicants are advised to attach to their applications the original letter obtained from the Examinations Board concerned, to provide with their educational qualifications which are equivalent to the G.C.E. (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's Degree.

(b) Applicants should ensure that all required passes should be obtained in one and the same sitting under a recognized Board of Examination.

2.2: In order to become eligible for examination under this special provision -

(a) Sri Lankan candidate should have studied abroad for a period of

not less than 5 years immediately prior to sitting the qualifying examination;

- (b) In the case of children of Sri Lankans attached to Sri Lankan Diplomatic Missions abroad or on foreign assignments sponsored by the government of Sri Lanka, candidate should 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 Respondent's position in relation to the refusal of the application of the 1st Petitioner is that the 1st Petitioner has failed to fulfill Clause 2.2(b) of the immediate requirements specified in the hand-book published by the 1st Respondent, the University Grants Commission. The position of the 1st Respondent is that the 1st Petitioner is not eligible for admission as she had not satisfied the requirements that she has studied abroad at least for a period of 3 years continuously during the 6 year period immediately prior to sitting the qualifying examination. The Respondents, with their objections, have annexed an application forwarded by the 1st Petitioner to the 1st Respondent. In the said application there are 3 columns. I produce below the said 3 columns.

No.4. The period of study abroad (submit documentary evidence)

From: 10.	08.	2003
Date:	Month:	Year
To: 02	07	2010

No.5: Period of Study in Sri Lanka

From: 26 06 2006
To :20 08 2007

It appears from the said application, the 1st Petitioner has fulfilled the requirements of 2.2(a) that the candidate should have studied abroad for a period of not less than 5 years immediately prior to sitting the qualifying examination.

The dispute is in relation to the requirements stipulated in 2.2(b), it is the position of the Respondents that the 1st Petitioner had not fulfilled these requirements i.e. the candidate should have studied abroad at least for a period of 3 years continuously during the 6 year period immediately prior to sitting the qualifying examination. It appears from the application, the 1st Petitioner, prior to sitting the qualifying examination, had studied abroad from 2/07/2007 to 28/08/2010. If one mathematically calculates the period between these two dates, it is 2 years, 10 months and 4 days. The requirements that need to be fulfilled was that candidates should have studied abroad at least for a period of 3 years continuously. The said term "3 years" have to be given a meaningful interpretation in relation to foreign students. The academic year and the semesters in foreign schools, international schools reopen at the end of August or at the beginning of September, and close at the end of May for semester vacation, it is the submission of the Petitioner, the 1st Petitioner joined the New English School in Kuwait at the end of August 2007 and studied there for 3 academic years, viz., 2007/2008, 2008/2009, 2009/2010 continuously and sat the Advance Level Examination. The schools were closed after the examination in June 2010, and no educational activities are carried out. Hence, the 1st Petitioner returned to Sri Lanka, and the 1st Petitioner was not obliged to join the school after completion of her examination in June 2010. To show that the 1st Petitioner studied at the New English School in Kuwait for a period of 3 academic years, and an academic year consists of 3 semesters, commencing in September and ending in June, the Petitioner submitted document marked P4(a), the

prospectus of the said school. The Respondents in their objections to this court have not addressed this issue and have merely stated that they are not aware of these facts.

It appears from the application of the Petitioner and the response to the said application by the Respondents, that the 1st Petitioner's application was rejected only on the basis that the 1st Petitioner had not fulfilled the criteria that she had studied abroad for a continuous period of 3 years. As I have observed above, the continuous period of study abroad has to be given a meaningful interpretation considering the academic years and the semester system of the Universities abroad, and the material submitted by the Petitioners show that the 1st Petitioner had fulfilled the criteria that she had studied abroad for a continuous period of 3 academic years and, therefore, this court issues a Writ of Certiorari to quash the decision of the 1st Respondent contained in letters dated 3rd May 2011 and 24th May 2011.

As the Petitioner is entitled to seek admission under the category of foreign students with foreign qualifications, I issue a Writ of Mandamus, directing the 1st Respondent to consider the 1st Petitioner's application for admission to the relevant courses sought by the 1st Petitioner for the next academic year if this student cannot be admitted to the year to which she has sought for admission. Application for Writ of Certiorari and Mandamus is issued as prayed for in this petition without cost.

President of the Court of Appeal