

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

In the matter of an application for mandate in
the nature of writ of Certiorari and Mandamus
under Article 140 of the Constitution.

Miss M.S.F.Rismina,
Akbar Lane,
Kottambapitiya,
Kurunegala.

Petitioner

C.A. Writ Application No: 206/2007

Vs

1. Chairman, University Grants Commission,
Ward Place, Colombo 7.
And four (04) others.

Respondents.

BEFORE : S. SRISKANDARAJAH, J.
COUNSEL : Faiz Musthapa PC with Faiza Marca
for the Petitioner.
: A.Gnanathan PC ASG with Deepthi Tilakawardana SC ,
for the Respondents.
Argued on : 09.07.2010
Decided on : 14.02.2011

S.Sriskandarajah, J.

The Petitioner in her first attempt of the G.C.E (A/L) examination held in April 2003 obtained credits in Biology, Chemistry and Physics. On her application to the University Grants Commission (UGC) for seeking admission to the University, the UGC by its letter dated 21.05.2004 (P1) informed the Petitioner as follows:

“I have pleasure in informing you that subject to the approval of the University Grants Commission, you have been selected to fill a vacancy to follow the under mentioned course of study in the University stated below as from the Academic Year 2003/2004. You are requested to report to the Registrar of the University mentioned below immediately, with regard to the matters pertaining to your registration.”

Course of Study -Biological Science

University - South Eastern University of Sri Lanka

The Petitioner registered on 31.05.2004 at the South Eastern University to follow a course of study in Biological Science. Subsequently the Petitioner by her letter dated 10.06.2004 made an application to the South Eastern University of Sri Lanka to cancel the said registration. The said registration was cancelled on her request by the Registrar of the South Eastern University of Sri Lanka and this was communicated to the Petitioner by the letter of 10.06.2004.

The Petitioner in her second attempt in G.C.E (A/L) Examination held in April 2004 obtained 'A' pass in Biology, 'C' pass in Chemistry and 'B' pass in Physics but she has not disclosed in this application whether she applied for admission to the University based on the result of April 2004. The Petitioner submitted that she did not sit for the G.C.E (A/L) Examination held in the year 2005 due to financial constrains. The Petitioner sat for the G.C.E (A/L) Examination held in April 2006 and sequired 'B' pass in Biology, 'A' pass in Chemistry and 'A' pass in Physics. Based on these results the

Petitioner made an application on 27.10.2006 to the UGC seeking admission to undergraduate courses indicating her preferences. The Petitioner was informed by the Senior Assistant Secretary of the UGC by his letter dated 16.01.2007 that the Petitioner's application for admission for the academic year 2006/2007 had been rejected on the ground that the Petitioner is not qualified in terms of paragraph 6.2 of the Admission Hand Book for the Academic year 2006/2007.

The Petitioner in this application has sought a writ of certiorari to quash the refusal to consider the Petitioner's application. The said refusal is contained in the letter of 16.01.2007. The Petitioner has also sought a writ of Mandamus directing the UGC to admit the Petitioner in terms of Section 15(vi) of the Universities Act No. 16 of 1978 as amended.

The Petitioner submitted that the failure on the part of the 3rd Respondent to admit the Petitioner for the course of medicine is totally ultra virus and unsupported by evidence. The reason given by the 3rd Respondent for the refusal to register the Petitioner was that she was registered with a university, whereas the Petitioner's previous registration had in fact been cancelled as evidenced by P3. The rule 6.2 relied by the Respondents to reject admission of the Petitioner is arbitrary, unreasonable and discriminatory and violation of the Petitioner's fundamental rights under Article 12(1) of the Constitution.

The Petitioner's admission was rejected as the Petitioner was not qualified for University admission under rule 6.2 . This rule was brought to the notice of all the candidates who apply for University admission for the respective years. The Admissions Handbook valid for Academic year 2006/2007 in paragraph 6.2 states as follows:

"A student who is already registered for a particular course of study at a Higher Educational Institution/Institute set up under the Universities Act No. 16 of 1978 including the institutes mentioned in the paragraph 1.4 above would apply for

admission to another course of study on the basis of the results of a G.C.E (A/L) Examination held in a later year, only if he/she had withdrawn his/her registration within a period of 30 days from the last date for registration. Candidates who have not withdrawn their registration within the stipulated period of time given by the respective Higher Educational Institution/Institute will not be eligible for admission as they come under 6.1 (b) above. **The 30 day concession stated herein will not be given to candidates who will get selected to fill vacancy and who will be selected to any course of study under paragraph 18 (a)(b)(c)(d)(e) and 19 of this hand book."**

The Petitioner was selected to fill a vacancy to follow the course of Biological Science in the Academic Year 2003/2004. The Petitioner registered for this course on 31.05.2004. According to the above rule the Petitioner's withdrawal from the said course would not grant a right to the Petitioner to reapply to a course of study on the basis of the results of a G.C.E (A/L) Examination held in a later year. This rule cannot be considered as arbitrary, unreasonable or discriminatory; Shiranee Tilakawardane J observed in *U.G.Lalani Ruwanthika v University Grants Commission S.C Application 539/2004 S.C Minutes 08.02.2005* as follows:

"No doubt the rational of 6.2 is to prevent the advantage of free education granted to a student, being denied to another student, which would happen if the Petitioner was to be admitted, and concurrently held admissions to two district and separate courses in 2 consecutive years.."

The Respondents have acted according to the rules applicable to the relevant examination. In the above circumstances the Petitioner is not entitle to any of the reliefs prayed for in the Petition. The application of the Petitioner is dismissed without costs.

Judge of the Court of Appeal