

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

C.A Writ No. 664/2011

Anuja Yoganathan

385/41, Aluthmawatha,

Colombo 15

Petitioner

Vs

1. University Grants Commission  
Ward Place, Colombo 7
2. Dr P.Premakumara,  
Additional Secretary,  
University Grants Commission,  
Colombo 7
3. V. Jayawathani,  
No. 43, Stage II,  
Vishvamadu

Respondents

BEFORE: (Mrs) Deepali Wijesundera J.,

M.M.A. Gaffoor J.,

COUNSEL: Riad Ameen with P. Balendra for the Petitioner

V. Puvitharan with R.R. Ushanthani for the 3<sup>rd</sup> Respondent

ARGUED ON : 12.07.2016

DECIDED ON : 13.09.2016

Gaffoor J.,

The Petitioner filed this application stating that the 3<sup>rd</sup> Respondent is not entitled to be selected to the University from the District of Mullaitivu as she has not been enrolled to a school

within the three year period as specified in Clause 4.1 of the "Admissions to Undergraduate Course of the Universities in Sri Lanka – Academic year 2009/2010 and sought to invoke the jurisdiction of this Court to issue a writ of certiorari to quash the decision made by the 1st Respondent and/or 2<sup>nd</sup> Respondent to treat the 3<sup>rd</sup> Respondent as a candidate from the Mullaitivu District and for grant of a writ of Mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to admit the Petitioner to follow an Undergraduate Course in Dental Science and Surgery at a University.

Petitioner states that she was born in Mullaitivu town when it was under Government control. She commenced her studies at "Puthukudiyiruppu Central College". She further stated that she had pursued her studies when the armed conflict between Government forces and the LTTE was going on and her studies were hampered and she had to live in Menik Farm. The Petitioner states that her family continued to live as displaced civilians and she could not return back to Mullaitivu as it was a focal point for armed conflict..

She further stated that she sat for the GCE (Adv) Examination In 2009, the Petitioner would have been entitled to follow a course in Dental Science and Surgery, if the 3<sup>rd</sup> Respondent not been included among the list of candidates from Mullaitivu District. .

Counsel for the Petitioner states that the admission to Universities is based on "Z" score in different Districts. The Petitioner stated that the 3<sup>rd</sup> Respondent avoided sitting for the examination from Mullaitivu.

On the other hand the Counsel for the 3<sup>rd</sup> Respondent submitted that the Petitioner and the 3<sup>rd</sup> Respondent were selected for the Academic year 2009/2010. The Petitioner's course is (Veterinary Science) a 4 year course which she should have completed by now. The 3<sup>rd</sup> Respondent's course (Medicine) is a 5 year course. The 3<sup>rd</sup> Respondent has completed her final examination and doing her pre-internship at Kilinochchi Base Hospital.

Counsel further submitted that the decision to select the 3<sup>rd</sup> Respondent and the Petitioner was done by members of the University Grants Commission and as such they should have been made parties to this application.

Counsel further submitted that the 3<sup>rd</sup> Respondent is entitled to be selected under proviso to Clause 4.1 of the said guidelines set out in Admissions to Undergraduate Course of the Universities of Sri Lanka.

The 3<sup>rd</sup> Respondent did not enroll in any school less than one year during the three year period stipulated in the said Guidelines and as such University Grants Commission has rightly decided to determine her admission on the basis of her permanent residence. The 3<sup>rd</sup> Respondent's permanent residence is not challenged and that the 3<sup>rd</sup> Respondent is a permanent resident of Mullaitivu. The selection complained of by the Petitioner is 2009/2010. Now it is 2016 and the Petitioner cannot be absorbed into 2016 selection process, as it will affect another student who is selected for 2016/2017.

This application has become futile. The 3<sup>rd</sup> Respondent has completed her studies in the Dental Surgery stream and at the moment following her internship at Kilinochchi Base Hospital. The Petitioner also may have completed her studies in the Veterinary Science and may be practicing by now.

The delay was not only due to the laws delays prevailing in the country but also the Petitioner's delay in coming to Court. The Petitioner was informed of her selection to the University on 14.06.2010, but she came to court only on 30.11.2011, in between the Petitioner has gone before the Human Rights Commission and they have informed their decision to the Petitioner on 13.12.2010, stating that there is no violation of Petitioner's fundamental rights.

Certiorari will not be issued to quash a particular exercise of powers if it be futile to do so because it is not more operational or it has had its effect. Justice Anil Gunaratne in C.A.67/2008. A writ will not issue where it would be vexatious or futile ( 1958) 61 NLR 491.496. The Court will have regard to the special circumstances of the case before it, issue a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality. Marsoof J. in Ratnasiri Vs. Ellawala (2004) 2 SLR 189. Marsoof J followed Soza J's word cited page 90 citing H.W.ade administrative Law 5<sup>th</sup> Ed.Pg.546-591 Even Mandamus had been refused by courts on many occasions based on futility.

Further under those circumstances, it is clear that the issue of a writ of mandamus as prayed for in the petition would certainly become futile. In the event, the issuance of a writ is futile then a writ of mandamus would not lie. Justice K.T. Chitrasiri cited following judgments in CA writ 45/2008 and states that this position of law is clearly seen in the cases including that of P.S. Bus Co. Ltd V.

Ceylon Transport Board (61 NLR 491) Samarasinghe V de Mel (1982 (1) SLR 123). Pathirana V. Victor Perera (2006 (2) SLR 281) Centre for Policy Alternatives Vs. Dayananda Dissanayake (2003 (1) SLR 277)

If the court makes an order at this stage to admit the Petitioner to the Dental Faculty, she will have to be admitted with the next batch of students who did their Advanced Level Examination immediately prior to the admission. If the Petitioner is to be admitted, a student who was qualified to be admitted to the Dental Faculty will lose his/her chance without any fault of his/her. Writ jurisdiction being a discretionary remedy, Court should not be a party to deprive a legitimate chance of a qualified student.

Under these circumstance the application is dismissed without cost.

JUDGE OF THE COURT OF APPEAL

(Mrs) Deepali Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL