

**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*

C A (Writ) Application

No. 187 / 2016

Dhilmi Kasunda Malshani Suriyarachchi

No. 42/3,

Thambiliwatta Road,

Piliyandala.

**PETITIONER**

-Vs-

1. Sri Lanka Medical Council

No. 31,

Norris Canal Road,

Colombo 10.

2. South Asian Institute of Technology and  
Medicine Limited

No. 60,

Suhada Mawatha,

Millennium Drive,

Off Chandrika Bandaranaike

Kumarathunga Mawatha,

Malabe.

3. Hon. Lakshman Kiriella,

Minister of Higher Education &  
Highways,

Ministry of Higher Education &  
Highways,

Ward Place,

Colombo 7.

4. Secretary,

Ministry of Higher Education and  
Highways,

Ward Place,

Colombo 07.

5. University Grants Commission

No. 20,  
Ward Place,  
Colombo 07.

6. Hon. Dr. Rajitha Senarathne,  
Minister of Health,  
Nutrition & Indigenous Medicine,  
Ministry of Health, Nutrition &  
Indigenous Medicine.

**Respondents**

**AND NOW BETWEEN**

***In the matter of an Application for  
Intervention***

1. Pechchimuthu Nadaraja,  
No. 156/16,  
Jinthupiti Vidiya,  
Colombo 13.
2. Kokmaduwa Mudalige Sugath,  
Gunathilaka,  
Beligamuwa,

Gallewela.

3. Hewasam Puwakpitiyage Ranjith Perera,  
No. 146,  
North Makola.

4. Rathnayaka Mudiyanseelage Ananda  
Sarath Rathnayaka,  
No. 63/22A,  
Prof. Ediriweera Sarachchandra  
Mawatha,  
Pitakotte.

&

The President,

The Government Dental Surgeons'  
Association,

No. 275/75,

Professional Centre,

Prof. Stanley Wijesundara Mawatha,  
Colombo 07.

5. Appuhamilage Vipula Keerthi  
Wickramasinghe,  
No. 130/E/3,  
Sirinanda Jothikarama Road,  
Kalalgoda,  
Pannipitiya.

&

The Secretary,

The Government Dental Surgeons'

Association,

No. 275/75,

Professional Centre,

Prof. Stanley Wijesundara Mawatha,

Colombo 07.

6. The Government Dental Surgeons'  
Association,  
No. 275/75,  
Professional Centre,  
Prof. Stanley Wijesundara Mawatha,  
Colombo 07.

7. Dr. S Terrence G R De Silva,

No. 637,  
Kandy Road,  
Pattiya Junction,  
Kelaniya.

8. All Ceylon Medical Officers' Association  
No. 949/4,  
Maradana Road,  
Colombo 08.

9. Ekanayake Mudiyansele Jayantha  
Bandara,  
Secretary,  
All Ceylon Medical Officers' Association,  
No. 949/4,  
Maradana Road,  
Colombo 08.

10. Government Medical Officers'  
Association  
No. 10,  
1<sup>st</sup> Floor,  
O P A Centre,  
No. 274/75,

Prof. Stanley Wijesundara Mawatha,  
Colombo 07.

11. U M Jayami Eshana Samaranayake

No. 8,  
1<sup>st</sup> Lane,  
Werellaatta,  
Yakkala.

12. Tharindu Ruwanpathiranage

No. 61/3,  
Golf Link Road,  
Bandarawela.

13. H K Thushani Charitha Haputhanthree

No. 340/A,  
Korothota North,  
Kaduwela.

**Intervenient-Petitioners**

Vs.

Dhilmi Kasunda Malshani Suriyarachchi

No. 42/3, 1

Thambiliwatta Road,

Piliyandala.

**Petitioner-Respondent**

1. Sri Lanka Medical Council

No. 31,

Norris Canal Road,

Colombo 10.

2. South Asian Institute of Technology and  
Medicine Limited

No. 60,

Suhada Mawatha,

Millennium Drive,

Off Chandrika Bandaranaike

Kumarathunga Mawatha,

Malabe.

3. Hon. Lakshman Kiriella,

Minister of Higher Education &

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Ward Place,  
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4. Secretary

Ministry of Higher Education and  
Highways,  
Ward Place,  
Colombo 07.

5. University Grants Commission

No. 20,  
Ward Place,  
Colombo 07.

6. Hon. Dr. Rajitha Senarathne

Minister of Health, Nutrition &  
Indigenous Medicine,  
Ministry of Health, Nutrition &  
Indigenous Medicine.

**Respondent - Respondents**

**Before: Vijith K. Malalgoda PC J (P/CA)**

**P. Padman Surasena J**

Counsel: Nuwan Bopage with Chatura Wettasinghe for the 1<sup>st</sup> - 3<sup>rd</sup>

Interventient Petitioners.

4<sup>th</sup> - 6<sup>th</sup> Interventient Petitioners were absent and unrepresented when this case was mentioned on 2016-09-14 for verification of appearances.

Manohara de Silva PC for the 7<sup>th</sup> Interventient Petitioner.

Shantha Jayawardena for the 8<sup>th</sup> - 9<sup>th</sup> Interventient Petitioners.

Chandana Liyanapatabendi PC with R Babare, Harshana Rupasinghe for the 10<sup>th</sup> Interventient Petitioner.

J C Waliamuna with Pulasthi Hewamanna for the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Interventient Petitioners. (Three students of the 2<sup>nd</sup> Respondent)

Romesh de Silva PC with Sugath Caldera for the Petitioner  
Respondent.

Ikram Mohomed PC with Neomal Senatilake and Chathura  
Galhena instructed by Sanath Weeraratne for the 1<sup>st</sup>  
Respondent-Respondent.

Faiz Musthapa PC with Riad Ameen and Faizer Musthapa for the  
2<sup>nd</sup> Respondent-Respondent.

S Rajarathnam PC Additional Solicitor General with Nayomi  
Kahawita SC for the 3<sup>rd</sup> - 6<sup>th</sup> Respondent-Respondents.

Decided on: 2016-10-05

ORDER RELATING TO THE APPLICATIONS FOR INTERVENTION

**P Padman Surasena J**

In this order, the party who has filed the petition instituting this writ  
application at the first instance, will be referred to as the Petitioner. The  
parties who have been named as Respondents in the said original writ

application will be referred to as the Respondents. The parties who subsequently seek to intervene after this writ application was filed will be referred to as Intervening Parties.

Learned counsel for all the Parties when this case came up on 2016-08-02 before us, agreed to file their written submissions and requested this Court to pronounce the order pertaining to the applications for intervention after considering the written submissions, dispensing with their necessity of making oral submissions. Therefore this judgment would be based on the material adduced by the parties in their pleadings and written submissions.

The parties who have filed written submissions to substantiate the respective positions taken up by them have relied on number of case laws. Out of the judgments cited by parties some support the view that an application for intervention in a writ application could be considered, while the others support the view that such an application for interventions in a writ application is not possible.

Superior courts of this country have from time to time considered these judgments at number of occasions. This is clear from the numerous judgments above referred to cited by the parties in this case. Thus, it is not the intention of this court at this stage to reconsider this aspect of law at

this moment also. This is particularly so as a Divisional Bench of this court has decided this issue in the case of Weerakoon and another vs Bandaragama Pradeshiya Sabhawa {C A Writ Application No. 586 / 2007 [(Decided on 2011-11-22) (2012 BLR 310)]}.

After consideration of the relevant judgments the said Divisional Bench of this court has held that the Court of Appeal Rules 1990 do not provide for third party interventions in applications for Prerogative Writs.

Thus this court is not in a position at this moment to entertain any of these applications by third parties for intervention in this proceedings since this is a proceeding with regard to an application for prerogative writs.

No further writing is necessary in this judgment as the issue to be decided here namely the question whether or not this court should permit the applications for interventions could be decided as has been decided above. However this court would for the sake of completeness proceed to observe the followings as well.

It would be relevant at this stage to bear in mind that it is the following main reliefs that the Petitioner has sought from this court in her application:

- a) a mandate in the nature of a writ of Certiorari to quash the decision of the Sri Lanka Medical Council refusing to register the Petitioner as a medical practitioner;
- b) a mandate in the nature of a writ of Mandamus to compel the Sri Lanka Medical Council to register the Petitioner as a medical practitioner in terms of section 29 of the Medical Council as amended;
- c) a mandate in the nature of a writ of Prohibition to prevent the Sri Lanka Medical Council from refusing to register the Petitioner as a medical practitioner in terms of section 29 of the Medical Ordinance as amended;
- d) a mandate in the nature of a writ of Certiorari quashing the decision of the Sri Lanka Medical Council refusing provisional registration to the Petitioner;
- e) a mandate in the nature of a writ of Mandamus to compel the Sri Lanka Medical Council to register the Petitioner provisionally as a

medical practitioner in terms of section 29(2) of the Medical Ordinance as amended;

- f) a mandate in the nature of a writ of Prohibition to prevent the Sri Lanka Medical Council from refusing to register the Petitioner provisionally as a medical practitioner in terms of section 29(2) of the Medical Ordinance as amended;

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Interventient Parties in their petition and the joint affidavit do not disclose adequate acceptable basis for their intervention in this proceedings.

4<sup>th</sup> and 5<sup>th</sup> Interventient Parties are respectively, the president and the secretary of the Government Dental Surgeons' Association. In the joint affidavit filed by them they do not disclose any acceptable basis for intervention in this proceedings. The grounds they have put forward in paragraphs 13 and 14 of their affidavit cannot be accepted as a basis to justify their intervention in this proceedings.

6<sup>th</sup> Interventient Party is the Government Dental Surgeons' Association and hence it would follow from the above conclusion (with regard to 4<sup>th</sup> and 5<sup>th</sup>

Interventient parties) that there is no acceptable basis for the 6<sup>th</sup> Interventient Party also to intervene in this proceedings.

8<sup>th</sup> and 9<sup>th</sup> interventient parties namely All Ceylon Medical officers' Association and its secretary respectively. They too have not adduced any acceptable basis as to why their intervention in this application should be necessary.

In the petition and the affidavit filed by the 10<sup>th</sup> Interventient Party which is the Government Medical Officers' Association also does not disclose any acceptable basis as to why they should intervene in this application.

7<sup>th</sup> Interventient Party Dr. S Terrence G R De Silva is the current Registrar of the 1<sup>st</sup> Respondent Sri Lanka Medical Council. He is seeking to intervene in this application for the reason that several allegations have been made against him and his daughter in the application filed by the Petitioner. He has referred to paragraph 24 (d) of the petition and in his affidavit filed in this proceedings, had sought to answer the allegations leveled against him by the Petitioner, in paragraph 24 (d) of the Petition.

While the Petitioner in his written submissions has admitted making this allegation against this Interventient Party, the course of action he has suggested is for this Interventient Party to hand over an affidavit answering this allegation through the 1<sup>st</sup> Respondent of which he is the Registrar.

However, question arises as to what would happen if such opportunity was not afforded to this Interventient Party by the 1<sup>st</sup> Respondent as 1<sup>st</sup> Respondent would only be concerned about his interest in this case and may not necessarily be the private interests of this Interventient Party in his private capacity.

It stands to reason that a party against whom an allegation is made must be afforded an opportunity of defending himself.

The Petitioner has made allegations against a party without making that party a respondent to the proceedings, although that party has made an application, this court cannot allow that party to intervene, in view of the ruling of the Divisional Bench above mentioned.

The Petitioner is free to consider making this party a Respondent if he is so advised that such a course of action would be necessary to avoid problems

that might arise in this proceedings as a result of this party being not made a respondent.

The law governing an application for prerogative writs is governed by a regime of administrative law which has its own specific grounds for the issuance of a writ. Therefore once an applicant satisfies court of the existence of such grounds court in its discretion would decide whether or not to issue the writs applied for. It would be a pre-requisite for the Petitioner to make necessary parties as respondents. This would be in his own interest particularly when he is interested in getting the court to make an adverse finding against such party.

The position taken up by the Petitioner with regard to the application for intervention made by the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Intervening Parties is that they could be heard in this proceedings in the event this court is inclined to grant their applications for intervention as they are also similarly circumstanced parties because they are also students of the 2<sup>nd</sup> Respondent institution who have been affected by the action of the 1<sup>st</sup> Respondent.

10<sup>th</sup> 11<sup>th</sup> and 12<sup>th</sup> intervenient parties may not be the only other students of the 2<sup>nd</sup> Respondent institution. If anybody has required grounds which could be established to the satisfaction of court he or she is free to invoke the writ jurisdiction of this court subject to, and in accordance with law.

If they file separate applications to obtain the identical reliefs on the identical grounds, this court may deal with those cases also in an appropriate way.

However in view of the ruling of the Divisional Bench of this court above referred to, we desist ourselves from allowing this application as well.

For the foregoing reasons we decide to refuse the applications for intervention made by all Intervenient Parties.

Applications for interventions refused.

**JUDGE OF THE COURT OF APPEAL**

## **Vijith K. Malalgoda PC J**

I had the opportunity of going through the Order of Justice Surasena above. When considering the question of intervention, Justice Surasena was guided by the decision of the Divisional Bench of this court in the case of **Weerakoon and Another V. Banadaragama Pradeshiya Sabhawa (CA Writ Application No. 586/2007 decided on 2011.11.22) 2012 BLR 310.**

As observed by Justice Surasena, Superior Courts have considered this issue on several occasions and different views have been taken in those cases. As I have previously observed in one of my orders, I have identified two different schools of thought, one being the strict adherence to the rules and other the liberalized approach and preferred to follow the liberalized approach. However at the time I decided to follow the said approach, it was not brought to my notice by the parties, of the decision in the Divisional Bench and if I was aware of the above decision I wouldn't have deviated from the said decision. I therefore agree with Justice Surasena when he decided to follow the decision in the Divisional Bench of this Court.

**PRESIDENT OF THE COURT OF APPEAL**