

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

**In the matter of an Application for a mandate in  
the nature of *Writ of Certiorari and Mandamus*  
under article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka**

Dandeniya Gamage Manuri Wathma  
Karunaratna,  
Near Sambhodhi Vihara,  
Minikukula Watta,  
Kewulgalla,  
Matiyagane.

**PETITIONER**

**CA/WRIT/109/2016**

**Vs,**

University Grants Commission,  
No. 20,  
Ward Place,  
Colombo 07.

**RESPONDENT**

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

**Counsel:** Upul Kumarapperuma with Sunil Watagala for the Petitioner  
Anusha Samaranayake DSG for the Respondent

Argued On: 25.07.2016, 03.08.2016

Written Submissions On: 02.09.2016

**Judgment On: 02.11.2016**

## **Order**

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

Petitioner to the present application Dandeniya Gamage Manuri Wathma Karunarathne had come before this court seeking inter alia,

- b) grant and issue a mandate in the nature of writ of *Certiorari* quashing the decision of the Respondent embodied in P-12, rejecting the Petitioner's appeal to get cancelled the application for selection (purportedly worded as 'registration') to the University of Peradeniya for the academic year 2014/2015,
- c) grant and issue a mandate in the nature of writ of *Mandamus* compelling the Respondent to accept the Petitioner's application for University Admission based on her results of the G.C.E. (A/L) examination held in 2015 (marked as P-9 (a) and P-9 (b))

When the present application was supported before this court on 01.04.2016 court after satisfying that there is a matter to be looked into, had decided to issue notices on the Respondent. When the Respondent appear before this court on notice, considering the nature of this application, specially the impugned decision was referred to the University Admission to academic year 2014/2015, decided to conclude the argument within a short period. Respondent whilst adhering to the undertaking given tendered their objection before this court by 13.06.2016 and fixed the matter for argument before this court 11.07.2016.

Even though this court could not take up this matter for argument on 11.07.2016 due to the fact that numbers of other matters were to be taken up on that day, this matter was re fixed for 25.07.2016. The matter was taken up for argument on 25.07.2016 and the arguments were concluded on 03.08.2016.

As revealed before us during the arguments, the Petitioner, had her school education at Mayurapada Junior School at Narammala up to G.C.E (Ordinary Level) Examination held in December 2011 for

which she has obtained 9 'A' passes and thereafter continued with her studies leading to the G.C.E Advance Level Examination at Holy Family Balika Maha Vidyalaya Kurunegala.

The Petitioner had sat for her G.C.E. (Advance Level) Examination for the 1<sup>st</sup> time in August 2014 and received the results of the above examination on 27<sup>th</sup> December 2014 where she has obtained one 'A' pass one 'B' pass and one 'C' pass having obtained 1.5319 Z-score.

Since the Petitioner was eligible to apply for University entrance for the year 2014/2015 she had submitted the duly filed Entrance Manual indicating her preferences. Being unsatisfied with her Z-score the Petitioner had sat for G.C.E. (Advance Level) Examination in August 2015 for the 2<sup>nd</sup> time.

As submitted by the Petitioner, she received a letter dated 16.10.2015 by the University Grants Commission (here in after referred to as UGC) titled "University Admission- Academic Year 2014/2015" informing that the Petitioner was selected for admission to follow the course of 'Biological Science' at the University of Peradeniya with Annex I (the schedule) and Annex II (the registration form) (P-05).

Since the Petitioner was not interested in following the "Bio Stream" she has not submitted the said form to UGC. However the Petitioner received another letter from the UGC dated 04.12.2015 titled the same as above, but informing that she was selected for admission to fill a vacancy to follow the course of 'Agricultural Technology and Management' at the University of Peradeniya (P-06).

It was admitted by both parties before us that the results for the G.C.E. (Advance Level) Examination held in August 2015 was not available at that time.

However as observed by this court the following instructions were specifically given to the Petitioner by the UGC in the said letter P-06, and if the Petitioner decided to accept the offer by the UGC she has to submit the 'registration form' in order to 'complete her registration'.

P-06,

**"I have pleasure in informing you that you have been selected by the University Grants Commission to fill a vacancy to follow the under mentioned course of study in the University stated below for the Academic Year 2014/2015. The conditions pertaining to your selection are given in Annex I. if you accept the offer, you are requested to send the duly filled registration form given in Annex**

**II along with the bank slip for the payment of Rs 50/- as the registration fee, to University Grants Commission before 15.12.2015 in order to complete your registration.”**

Annex I,

Schedule, Academic Year 2014/2015

The conditions governing your University admissions are as follows;

- 1) Your selection for University admission will be invalid;
  - b) If you had been previously admitted to a Higher Educational Institution and registered as an internal student at any such institution subject to provisions made in the section 2 below or
- 2) The attention of every student who wishes to register at a University as from the commencement of the Academic Year 2014/2015 is drawn to the following matters.
  - d) Please note that **if you will get registered to follow this course of study for the Academic Year 2014/2015, you will not be eligible for University admission based on the results of a subsequent G.C.E. (A/L) Examination**
- 5) Registration forms for new entrants

If the new candidates accept the selection for the particular course of study and the University to which they have been assigned, they should sent the bank deposit slip or the on line generated payment receipt of Rs. 50/- to the University Grants Commission via registered post by using the envelop and the application attached for the purpose in **order to do the registration.** (Emphasis added)

The registration form referred to above too carries the conditions applicable to the said registration as follows,

I ..... hereby acknowledge that I agree to get registered for the course of study in ..... at ..... under filling of vacancies based on results of the G.C.E. (A/L) Examination in 2014 and commence the academic sessions, for the Academic Year 2014/2015.

I further acknowledge that I am well aware that **I am not eligible for University admission based on the results of a subsequent G.C.E (A/L) Examination, by virtue of the registration for this course of study I got selected for the Academic Year 2014/2015.** (Emphasis added)

When the 2<sup>nd</sup> selection to fill a vacancy in the course of study, Agricultural Technology and Management was received, the Petitioner decided to submit the student registration form and the duly filled and signed 'Registration Form' along with a payment receipt for Rs. 50/- was sent to the UGC on 11.12.2015.

Subsequent to the submission of the said registration form to UGC the petitioner had received a set of documents from the University of Peradeniya along with a covering letter titled, "Registration of new entrants for the Academic Year 2014/2015." Several documents including a document named "Application for Registration of New Entrants Academic Year 2014/2015" (P8b), a message from the Vice Chancellor, bursary application, instructions and a copy of the relevant Act with regard to student ragging and the rules made by the University of Peradeniya under section 135(1) read with section 29(n) were among the documents received by the Petitioner.

In the said covering letter a date and time had been given for the registration at the Faculty of Agriculture and the said date and time given was, on 11<sup>th</sup> January 2016 at 9.00 am.

As submitted by the Petitioner before this court, the results of the second sitting was published on 03.01.2016 and the Petitioner has obtained two A passes and one B pass with a Z- score mark of 2.1981 placing her in the 18<sup>th</sup> position in the District Rank and 353<sup>rd</sup> position in the Island Rank with a strong possibility of selecting her to the Faculty of Medicine.

Since the Petitioner has received her results for the second sitting prior to the date given by the University of Peradeniya the Petitioner has immediately wrote to the University of Peradeniya informing that, considering the results she got from her second sitting she will not be attending for the registration on 11<sup>th</sup> and steps would be taken by her to inform the UGC of this development. She had further stated that she is writing the said letter under instruction 6.2 of the Students Guide Book issued by the UGC.

As observed by this court the Petitioner has sent the identical letter to the UGC on the same day. (P-10 (a) and (b))

UGC by its letter dated 04.03.2016 had informed the Petitioner that the appeal board had considered the appeal submitted by the Petitioner but decided to reject the said appeal considering the admission rules which are in operation (P-12)

As observed by this court the entire case for the Petitioner as well as for Respondent is based on the fact as to what stage the student registration of the Petitioner was completed, for the Petitioner to be considered as a registered student under the meaning of clause 6.1 of the hand book.

Even though the Petitioner did not challenge the validity of the selection procedure identified by the hand book it is our duty to first consider the legality of the guide lines found on the hand book which is one of the main document concerned in student admission to the Universities.

Section 15 of the Universities Act has entrusted several functions to the UGC and under sub paragraph (vii) the UGC is entrusted with,

“To select students for admission to each Higher Education Institution, in consultation with an Admission Committee whose composition, powers duties and functions shall be prescribed by Ordinance.”

The preparation of the hand book to identify the selection procedure is the initial step in this process and the extent to which the UGC can exercise these powers is a matter we have to consider at this point. As observed by this court, the provisions of the hand book had been the basis for several fundamental Rights applications filed before the Supreme Court and in these instances their Lordships have considered the provisions in the said hand book when concluding those cases.

In this regard our attention was drawn to SCFR 318/14 when one T. Suganiyah challenged the provisions in clause 6.1 (b) of the hand book year 2013/2014 and prayed,

- e) Declare that paragraph 6.1(b) of the University Admissions hand book for the Academic Year 2013/2014 when applied to the Petitioner constitute an infringement of the fundamental Rights of the Petitioner contained in Article 12 (1) of the Constitution
- g) Declare that paragraph 6.1(b) of the University Admissions hand book for the Academic Year 2013/2014 is illegal and of no force or effect in law but a bench comprising of Mohan Peiris CJ, Aluvihare J and Sarath De. Abrew J held that, “we are of the view that a prima facie of violation of a fundamental right has not been made out. We therefore refuse leave to proceed.”

***Theventhian Suganiyah V. Chairman University Grants Commission and Eight others***  
***SCFR 318/2014*** SC minutes dated 24.11.2014

In the case of *D.J.Wickremarathne and 41 others V. University Grants Commission and 18 others SCFR 13/2015* SC minutes dated 20.07.2016 K. Sripawan CJ had discussed at length the provisions of clause 6.1 of the hand book, when considering the complaint by the Petitioners' before Supreme Court that "the failure on the part of the University Grants Commission to permit the Petitioners to cancel their registration for the Academic Year 2013/2014 and to permit them to register for their preferred course of study for the Academic Year 2014/2015 based on the results of the G.C.E. (Advance Level) Examination 2014 and had dismiss the said application.

Even though the legal issues in the said decisions were different to the case in hand, what is important to note is that the Supreme Court's disinclination to strike these rules down.

However as observed above, the main issue to be conclude, in the present case is not the validity of clause 6.1 but at what stage a student is considered as a Registered Student under the said clause.

In this regard to the Petitioner as well as the respondents raised several arguments before this court. However in the absence of a specific reference to the term 'registration' with the functions of both these authorities we will have to first analyze the relevant provisions in the Universities Act.

In part II of the Universities Act which refers to the powers, duties, function of the UGC, section 15 (vii) identifies the powers of selection conferred on the 1<sup>st</sup> Respondent as follows;

Section 15 The Commission shall have and exercise all or any of the following powers,

- vii) "To select students for admission to each Higher Education Institution in consultation with an Admission Committee whose composition, powers, duties and functions shall be prescribed by Ordinance"

In part V of the Universities Act which refers to the powers, duties and functions of a University, section 29 (a) identifies the powers to admit a student by a University as follows,

Section 29 Subject to the powers, duties and functions of the Commission, a University shall have power

- a) To admit students and to provide for instruction in any approved branch of learning

As observed the term 'registration' had not used in the above sub section but what is permitted by the University under section 29 (a) is to admit the student. However in the same section the

University is given powers to 'register' students under different circumstances. Sub section (h) refers to the term registration as follows,

- h) To admit graduates or students of other Universities to equal or similar degrees and courses of study in the University on such condition as may be prescribed By-Law and to register them as graduates or students of the University.

When considering the two sub sections referred to above it is clear, that the legislature when granting powers to Universities, were mindful of the function of the University in two instances referred to above and used the term registration at the most appropriate instance. Therefore it is clear that when the Universities were given power to admit students under section 29 (a) no reference has been made to the registration of students under the said sub section.

If the legislature was so careful not to use the term "register", under 29(a), another question would arise as to why the legislature did not use the term "register", in section 15 (vii) instead of use the term "select students for admission".

In this regard this court is mindful of the observation made by the Supreme Court in the case of *Noon V. University Grants Commission and others SCFR 352/2010 (SC minute 23.11.2013)* to the effect;

...."that in terms of section 15(vii) of the Universities Act No 16 of 1978 as amended, the selection of students for admissions to Universities has to be done is consultation with the Admission Committee. Once the governing criteria for admission is decided by the Commission it is the duty of the Commission to apply the said criteria strictly in terms of the powers vested in it. The conditions given in the Hand Book with regard to admission of students to the University shall not be charged in an ad hoc manner"....

In the said judgment the Supreme Court had clearly identified the key role played by the UGC in University Admissions and the need to apply the said criteria strictly by the UGC.

In this regard we are also mindful of the terms used "subject to the powers, duties and function, of the Commission a University shall have power"....in section 29 in the said Act, when powers of the Universities are discussed.

In the said circumstances it is clear that the term "select students for admissions" used by the legislature when discussing the powers of the UGC has to be given a wide interpretation having in



mind the powers given to the UGC by the Universities Act No 16 of 1978 (as amended) as against the powers granted to Universities under section 29 of the said Act.

During the arguments before this court the Learned Counsel for the Petitioner heavily relied on the letter received by the University of Peradentiya which was produced marked P-8.

In the said letter which was signed by the Deputy Registrar, student Registration branch, for the Registrar had informed the Petitioner that, "Registration of New Entrants for the Academic Year 2014/2015".....

.....you must be present in person for registration on the date given below. If you are unable to be present on this date due to any valid reason, you are required to obtain permission from the Dean of the Faculty concerned one week before the date of registration."

Whilst referring to the said letter the Petitioner argued that the student Registration was to take place only at Peradeniya and therefore there cannot be another registration with the UGC since the role of the UGC is only to select the students for respective courses at the Universities.

Based on the above argument the Petitioner took up the position that, the term "Registration" referred to in clause 6.1 is the registration at the University of Peradeniya as referred to in P-8 above and therefore the Petitioner does not come under clause 6.1 (b) of the student guide book for future registrations.

As referred to above in this judgment, in the absence of the term "Registration" used in section 29 (a) of the Universities Act, the Petitioner relied on the interpretation given to the "Registered Student" in the By- Laws made under the Universities Act which was produced marked P-8J.

The said interpretation reads thus,

"for the purpose of these By-Laws "Registered Student" means any student who had already been duly admitted and registered at the University, for any academic Year or any student who is duly admitted and registered from time to time in respect of any academic year, or other period of study"

However it was observed by this court that the said By-Laws had been made under section 29 (n) read with 135 (1) (d) of the Universities Act and the said subsection, 29 (n) refers to "to regulate and provide for the residence, discipline and well-being of students and teachers, officers and other employees of the University" and not under 29(a) of the Universities Act.

In the said circumstances it is clear that interpretation given to the By-Laws produced marked P-8J has nothing to do with the provisions in section 29 (a) of the Universities Act.

It is further observed by this court that the following note is produced by the UGC under clause 6 in page 13 of the student Hand Book 2014/2015.

“Note 1; once a candidate, upon receiving a letter from the UGC, having made the due payment to the Bank or online in credit of UGC and forward the duly filled form attached with the selection letter to the UGC by Registered post for the selected course and the University, he/she is deemed to registered student at a Higher Educational Institution mentioned under section 1.2 of this Hand Book.”

In these circumstances it is clear that the Petitioner was well aware of the fact that “ the moment the student so selected, after making the payment to the bank or via website and submitted the necessary papers under Registered cover or via website, he/she deemed to be considered as Registered Student at the Higher Education Institute. This position is further established from the fact that her previous decision not to submit the Registration form when she received selection to followed Bio stream at the same University.

When considering the material I have already discussed above, it appears to me that the Respondent has establish before this court that, the powers of Registration of a student is with the UGC and not with the respective University as argued by the Petitioner. In the said circumstance this court does not see merit in the argument raised on behalf of the Petitioner. I therefore dismiss this application but does not make any order with regard to cost.

Application Dismissed.

**President of the Court of Appeal**

**P. Padman Surasena J**

I agree,

**Judge of the Court of Appeal**