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

In the matter of an application for the grant of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

CA Case No: CA WRT: 173/2020

Rohan Jayantha Fernando,
No. 475,
Galle Road,
Panadura

Petitioner

1. National Water Supply and Drainage Board,
   Galle Road,
   Ratmalana.

2. Nishantha Ranatunga
   Chairman

3. N.R.Ranawaka
   Vice Chairman

4. R.H.Ruvinis
   General Manager

5. T.W.S.Perera
   Additional General Manager (WSP)

6. G.K. Iddamalgoda
   Additional General Manager (HRM)

1st to 6th Respondents all of:
National Water Supply and Drainage Board,
Galle Road,
Ratmalana.

7. L.W. Mangalika
   Former Additional Secretary (Technical)

8. Hon. Mahinda Rajapaksa
   Minister of Urban Development, Water Supply and Higher Education

9. Dr. Eng. Priyath B. Wickrama
   Secretary

   7th to 9th Respondents all of:
   Minister of Urban Development, Water Supply and Housing Facilities
   No. 35, Lakdiye Medura",
   New Parliament Road,
   Pelawatta,
   Battaramulla.

10. N.A. Shantha
    Assistant General Manager

11. A. Munasinghe
    Assistant General Manager

12. A.K. Kapuruge
    Assistant General Manager

13. M.A.C. Hemachandra
    Assistant General Manager

14. N.U.K. Ranatunge
    Assistant General Manager

15. T. M. M. H. Tennakoon
    Assistant General Manager

16. M.M.M. Nazeel
    Assistant General Manager

17. S.L. Mohan
    Assistant General Manager

18. G.D.N. Neville
    Assistant General Manager

19. A.M. Abdul Raffeek
    Assistant General Manager

20. D.V. Medawatte
    Assistant General Manager

21. A. Mahathanthila
    Assistant General Manager

22. G.M. Thilekeratne
    Assistant General Manager

    10th to 22nd Respondents all of:
    National Water Supply and Drainage Board,
    Galle Road, Ratmalana

23. Director General

National Institute of Business Management (NIBM)
No.120/5 Vidya Mawatha,
Colombo 07.

Respondents

Before : **D.N . Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel : Nisala Seniya Fernando for the Petitioner
Malin Danansuriya for the 10th to 18th 20th and 21st Respondents
Amasara Gajadeera, SC for the 1st to 9th Respondents except 7th Respondent.

Written Submissions On : 11.11.2021 and 30.06.2022 (by the Petitioner)
02.11.2021 (by the 1st-6th ,8th and 9th Respondents)
03.11.2021 (by the 10th-18th, 20th-21st Respondents)

Argued On : 01.04.2022

Decided On : 29.07.2022

B. Sasi Mahendran, J.

The Petitioner, by Petition dated 15th July 2020, in terms of Article 140 of the Constitution seeks, inter alia, a Writ of Certiorari to quash the decision of the 1st to 9th Respondents to place him 7th (as opposed to in the top three) in the order of merit of the candidates for the post of Deputy General Manager of the National Water Supply and Drainage Board, a Writ of Mandamus to compel the 1st to 9th Respondents to place him within the top three ranks in the order of merit and to award him 02 marks under category

2(f) and/or 2(g) of the marking scheme for the Postgraduate Diploma in Business Management and/or the Postgraduate Diploma in International Relations.

Before we consider the merits of this application, we must address a preliminary objection taken by the Petitioner in his Counter Affidavits and further elaborated in the oral and written submissions to this Court as to the validity of the affidavit that accompanied the Statement of Objections of the 1st to 6th, 8th, and 9th Respondents. It was contended that the affidavit has no force or avail in law because it did not contain a valid jurat stating the place and date on which the affidavit was signed. (The jurat only states the month and year: February 2021)

In this regard, attention is drawn to Section 12(3) of the Oaths and Affirmation Ordinance No. 9 of 1895, as amended, which reads:

Every Commissioner before whom any oath or affirmation is administered, or before whom any affidavit is taken under this Ordinance, ***shall state truly in the jurat or attestation at what place and on what date the same was administered or taken****, and shall initial all alterations, erasures, and interlineations appearing on the face thereof and made before the same was so administered or taken.* [emphasis added]

It is seen then that the duty is on the Commissioner before whom the oath or affirmation is administered to indicate in the jurat the place and date on which it was administered. Whether the failure of the Commissioner to do so should result in the deponent being penalized has been discussed in the case of Billion Bay Apparels v. Chief Minister Sabaragamuwa Provincial Council [2016] 1 SLR 36. His Lordship Nawaz J. held:

"Therefore remissness on the part of a Justice of the Peace or the Commissioner for Oaths in **not making sure to insert the date and place of attestation in the jurat of an affidavit cannot be a ground for penalizing the affiant because his involvement is minimalist in the formulation of the jurat**. Such remissness on the part of the Justice of the Peace or a Commissioner for Oaths to specify the place of attestation is his non-compliance with a statutory duty placed upon him in terms of Section 12(3) of the Oaths and Affirmation Ordinance and a breach of the statutory duty on the part of the Justice of the Peace or the Commissioner for Oaths cannot deprive the Respondents of their right to be heard on their statement of objections." [emphasis added]

His Lordship further observed:

"Mulla on the Code of Civil Procedure16 cites the precedent of Mehar Singh and Others v Mahendra Singh which holds 'a defect in a verification is only an irregularity and not fatal. It is no ground in rejecting the affidavit …' The verification of the affidavit in Indian case had been signed without specifying the date and place of the execution of the affidavit."

His Lordship Basanayake C.J. in Kanagasabai v. Kirupamoorthy 62 NLR 54 held obiter:

"I wish to point out that the respondent's affidavit is undated. It is the duty of the Justice of the Peace before whom an affidavit is sworn to see that the jurat is properly made."

Regrettably, the Commissioner neglected in including the date and place. However, in the circumstances of this case, this is a curable defect, which can be remedied by a fresh affidavit. The 6th Respondent subsequently filed an affidavit on 2nd November 2021 remedying this defect.

Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 as discussed in the case of Dias v. Karawita [1999] 1 SLR 98 permits defects to be remedied, with the permission of the Court.

This objection is overruled since there has been no prejudice caused to the Petitioner who has invited this Court to ascertain the truth as to the substantive matter by controverting the evidence therein by way of a counter affidavit, and since the subsequent affidavit has been filed of record.

The substantive matter involves a purportedly unlawful or irrational application or interpretation of the marking scheme adopted in the interview for the post of Deputy General Manager of the National Water Supply and Drainage Board, including a refusal to award marks that the Petitioner contends ought to have been awarded. The awarding of the marks claimed would result in advancing the Petitioner to the 3rd rank in the order

of merit, thus enabling him to be promoted to the post of Deputy General Manager, while maintaining his seniority in the National Water Supply and Drainage Board.

Additionally, the Petitioner claims that there has been an abdication of authority since the General Manager of the National Water Supply and Drainage Board has sought 'clarifications' from the Director General of the National Institute of Business Management with regard to an ambiguity in the marking scheme (as the scheme was created by the National Institute of Business Management) when the Director General of NIBM is not a lawful delegate.

It must be noted that the Petitioner, was subsequently (in November 2020) promoted to the post of Deputy General Manager, yet this action is maintained because the purported wrongful application or interpretation which deprived him of marks (and thereby a lower rank) adversely affected his seniority in the National Water Supply and Drainage Board. When this matter was taken up for support on 12th August 2020, the learned State Counsel informed this Court that if the Petitioner is successful the letter of appointment would be backdated.

As narrated in the Petition, the Petitioner was recruited by the National Water Supply and Drainage Board (hereinafter referred to as "the Board") as a Civil Engineer (Class II) on 03rd October 1994. He was promoted to Senior Engineer and then Chief Engineer on 10th October 1999 and 01St November 2000 respectively. From January 2002 to September 2004, having been seconded in service to the Ministry of Urban Development in 1999, the Petitioner functioned as the Deputy Director (Construction) of the said Ministry. In 2005, the Petitioner was assigned to the position of the Director-in-Charge of the Tsunami Restoration Water Supply and Sanitation programmes. The Petitioner, having functioned as Project Director in two other programmes and contributed to the creation of a new website for the Ministry, returned to his post of Chief Engineer in the Board to serve as the Manager (Planning & Coordination) in a regional support center and thereafter in the Planning & Design Section. On 13th June 2013, the Petitioner was promoted to the post of Assistant General Manager. He also served as the Project Director of the Greater Colombo Wastewater Management Project and the Project Manager for the project for Enhancement of Operations Efficiency and Asset Management Capacity of the Regional Support Centre (Western Province).

Applications for the post of Deputy General Manager were called on 26th July 2019. The document marked **"P7a"** provides that an applicant for the post of Deputy General Manager must have membership of a recognized institution of Engineers with four years of experience as an Assistant General Manager of the Board. The selection was to be made by "performance at an interview". The interview took place on 19th December 2019. The interview panel consisted of the 4th to 7th Respondents. The National Institute of Business Management (hereinafter referred to as "NIBM") issued the marking scheme adopted at the interview. This scheme (marked "P8") is divided into several categories; "Work Experience as an Engineer", "Additional Qualifications", "Fellowship of a Recognized Institution of Engineers", "Performance Evaluation", "Interview", and "Special Contributions". Each category has a value of 60, 10, 10, 15, and 5 marks, with an aggregate of 100. The categories titled "Work Experience as an Engineer" and "Additional Qualifications" are further subdivided.

The Petitioner was placed 7th (with an aggregate total of 89.72/100) in the order of merit. It should be noted that the Petitioner does not challenge this scheme. Instead, his main grievance is the unreasonable, irrational, flawed, and unlawful application or interpretation of the marking scheme by the 1st to 9th Respondents, by not awarding 02 marks for his Postgraduate Diploma in International Relations because it does not qualify as in 'a relevant field', and by refusing to award 02 marks for the Petitioner's Postgraduate Diploma in Business Management insisting that the Petitioner submit a certificate certifying the same.

The Petitioner contends that had this scheme been properly applied (and marks allocated correctly) he would have obtained 91.72/100 marks and thus placed 3rd in the order of merit. (The candidate in third place obtained 91.70/100)

Where, as in the instant case, the Petitioner is inviting this Court to exercise its supervisory jurisdiction over the application of a scheme that involves the allocation of marks, in academic or expert matters that are beyond the expertise of this Court, the role of the Court is strictly circumscribed to that of reviewing to see whether there exists any illegality, irrationality, or procedural impropriety in its application. This attitude is reinforced by the following line of authorities.

Wade and Forsyth in their seminal text, Administrative Law 11th Edition, (at p. 537) quoting the judgment in Clark v. University of Lincolnshire and Humberside, (2000) 1 WLR 1988, state as follows:

"The courts will, in any case, be reluctant to enter into 'issues of academic or pastoral judgment which the university was equipped to consider in breadth and in depth but on which any judgment of the courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified'."

In R v. Higher Education Funding Council ex parte Institute of Dental Surgery (1994) 1 WLR 242, Sedley L.J. held:

"We would hold that where what is sought to be impugned is on the evidence no more than an informed exercise of academic judgment, fairness alone will not require reasons to be given. This is not to say for a moment that academic decisions are beyond challenge. A mark, for example, awarded at an examiners' meeting where irrelevant and damaging personal factors have been allowed to enter into the evaluation of a candidate's written paper is something more than an informed exercise of academic judgment. Where evidence shows that something extraneous has entered into the process of academic judgment, one of two results may follow depending on the nature of the fault: either the decision will fall without more, or the court may require reasons to be given, so that the decision can either be seen to be sound or can be seen or (absent reasons) be inferred to be flawed. But purely academic judgments, in our view, will as a rule ……. will be in the Ex parte Cunningham [1992] I.C.R. 816 class where some trigger factor is required to show, that, in the circumstances of the particular decision, fairness calls for reasons to be given."

This dictum has been cited with approval by our Courts as well.

In Dr. Karunadasa v. Open University of Sri Lanka & Others [2006] 3 SLR 225, her Ladyship Shirani Bandaranayake J. (as she then was) held:

"Therefore, although this Court may not interfere with purely an academic issue the Court would not hesitate to intervene in any other dispute relating to academic

matters if it infringes the rights guaranteed in terms of the provisions stipulated in the Constitution……

Therefore, although there may be cautionary remarks indicating reluctance to enter into academic judgment, I am not in agreement with the view that academic decisions are beyond challenge. There is no necessity for the Courts to unnecessarily intervene in matters "purely of academic nature," since such issues would be best dealt with by academics, who are 'fully equipped' to consider the question in hand."

Recently, his Lordship Nawaz J. in Abeysundara Mudiyanselage Sarath Weera Bandara v. University of Colombo, CA Writ Application No. 844/2010 decided on 08.06.2018, observed:

"The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinise and judge the merits and/or demerits of such decisions.

Dealing with the scope of interference in mattes relating to orders passed by the authorities of educational institutions, the Courts should normally be very slow to pass orders in regard thereto and such matters should normally be left to the decision of the educational authorities."

The passage of Sedley LJ in R v. Higher Education Funding Council (supra) has been referred to with approval in judgments of the Australian courts.

In King v. The University of Notre Dame [2015] NSWSC 309 Davies J. of the Supreme Court of New South Wales, having referred to this passage, also cited with approval a passage from Harding v. University of New South Wales [2002] NSWSC 113, which held:

"However, it remains true that this Court does not sit as a Court of factual review over decisions of such committees. Rather, it can only intervene in accordance with accepted administrative law principles, for example where the Committee has not been properly constituted, where it failed to follow proper procedure, where it acted in a way constituting a denial of natural justice, where it otherwise reached a decision which was contrary to law, or where its decision was such that no reasonable committee, acting with a due appreciation of its responsibility, could have arrived at it."

A similar attitude is prevalent in the Indian Courts as well.

In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27 the Indian Supreme Court held:

"As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

S. A. De Smith's, 'Judicial Review' (8th Edition), in setting out limitations inherent in the court's institutional capacity, (at p.25) notes that one such limitation is the "lack of relevant expertise". Further, that:

"Particularly, as the review of fact, or the merits of a decision, is not routinely permitted in judicial review, there are some matters which are best resolved by those with specialist knowledge."

Therefore, in consideration of the authorities on this matter, it can be said that academic or expert opinion is not beyond the pale of judicial review on the ordinary

grounds of review viz, illegality, irrationality, and procedural impropriety. However, in venturing to do so, great caution must be exercised so as to not substitute its own views for that of the relevant body.

Although the present application does not deal with an educational institution per se, the matters involved as discussed below, involve expert knowledge or awareness specific to the relevant field. This Court must follow a similar approach to that involving academic institutions and see that it does not venture into unfamiliar territory.

Non-recognition of the Postgraduate Diploma in International Relations

In the marking scheme, as mentioned above, under the category "Additional Qualifications", subcategory (g) of the Scheme provides 02 marks for "CIMA Chartered Accountancy, CIM & LLB Intermediate levels Certificate Courses, PG (Direct/Distant Education) in a relevant field".

The Petitioner claims that under this subcategory which provides 02 marks for a "PG (Direct/Distant Education) **in a relevant field"**, the Petitioner ought to have been awarded the said 02 marks for his Postgraduate Diploma in International Relations (conducted by the Bandaranaike Centre for International Studies) which included a thesis on "Politics of Transnational Water Sharing in South Asian Region" (per document marked "P9"). This qualification which comprises modules such as Transboundary Water Sharing, Sri Lanka in World Affairs, he claims, will be of assistance as the post of Deputy General Manager is a senior managerial position that requires working with foreign donor agencies, and contractors, consultants. Further, if CIMA Chartered Accountancy, CIM & LLB Intermediate levels Certificate Courses are relevant, then Postgraduate Diploma in International Relations ought to be "relevant" as well.

However, the Respondents contend that this Postgraduate Diploma contained no subject relevant to the field of engineering and was thus not considered a relevant qualification under subcategory (f) or (g) of the marking scheme. It was contended that at a Board Meeting of the National Water Supply and Drainage Board on 5th February 2020 a decision was made, "after lengthy discussion", to submit the question of whether a Postgraduate Diploma in International Relations was a qualification "in a relevant field" to the NIBM, as NIBM were the creators of the marking scheme (Vide Minutes of the Board Meeting held on 05.02.2020 marked "R1"). The General Manager of the Board sent

a letter in this regard to NIBM. NIBM, in response, by letter dated 25th February 2020 (marked "R4") confirmed that this qualification was not in a relevant field.

With regard to this qualification, this Court cannot determine whether Postgraduate Diploma in International Relations is in a "relevant field" as it is beyond our expertise to make that call. The aforementioned letter sent by NIBM to the General Manager of the Board, states that a "team of consultants of NIBM" reviewed the Petitioner's transcript and they have so "observed" that this qualification is not in the relevant field. The interview panel's refusal has already been subject to discussion at the Board Meeting of the National Water Supply and Drainage Board and by the creators of the scheme, NIBM.

If the Petitioner takes issue with this fact, then the Scheme itself must be challenged. There is no material submitted to show that he has challenged the basis or structure of the scheme at any point. He has challenged only the allocation of marks with regard to his qualifications. This Court cannot conclude that a Postgraduate Diploma in International Relations is a qualification "in a relevant field" and thus grant relief to compel the Respondents to award those 02 marks.

At this juncture, it is pertinent to address the Petitioner's argument that there has been an abdication of powers.

This argument runs as follows. In terms of Section 17 of the National Water Supply and Drainage Board Law, No. 2 of 1974, as amended, the power to appoint and promote officers of the Board is vested in the Board. In terms of Section 68(3) of the said Law, the General Manager may with the approval of the Board **delegate to any other employee of the Board** his powers, functions, or duties from time to time. It is thus argued that since the Director General NIBM is not an **employee of the Board** and not even a member of the interview panel, or as the Petitioner states (in paragraph 37 of the Written Submissions dated 30.06.2022) "a separate entity which characterizes its purview within the field of Business Management and not in either of the fields of Water Supply or Engineering", requiring the Director General NIBM to answer and clarify whether a qualification is in a relevant field is an abdication of powers by the Board. It is a matter to be determined by the Board itself.

It is a well-established principle of Administrative Law that an authority entrusted with a discretion must not in the exercise of its discretion act under the dictation of another body or person. This is known as "the rule against acting as a 'puppet'."

Wade & Forsyth (supra) (at p. 269) note:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised by the wrong authority, and the resulting decision is ultra vires and void."

An example of this is found in the case of Lavender v. Ministry of Housing and Local Government [1970] 1 WLR 1231 in which it was held that the duty to decide whether planning permission should be granted had been entrusted by Parliament to the Minister of Housing but, on a true construction of his decision letter, the Minister had wrongly delegated that decision to the Minister of Agriculture, so that he had not properly or at all exercised his duty or his discretion.

In Ellis v. Dubowski [1921] All ER Rep 272, the Middlesex County Council's licensing conditions which included a provision that banned the showing of any movie which had not been approved by the British Board of Film Censors were held to be unlawful. Lawrence CJ held:

"A condition putting the matter into the hands of a third person or body not possessed of statutory or constitutional authority is ultra vires."

This principle is not unknown to our law. (Vide Samadasa v. Wijeratne, Commissioner General of Excise and Oaths [1999] 2 SLR 85, Premaratne v. University Grants Commission [1998] 3 SLR 395)

In R.M.C.J. Ratnayake v. The Commissioner General of Excise, CA 505/2008 decided on 08.06.2011, his Lordship Sathya Hettige J. held:

"I observe that the statutory discretion conferred by the statute upon the functionary must be exercised by the same authority and not by any other officer. The discretion cannot be abdicated to another officer unless the statute expressly authorizes."

In the instant case, by referring the matter for clarification to the Director General NIBM we cannot arrive at the finding that there has been an abdication of powers. This is because as stated plainly on the face of the document marked "R4" (Meeting Minutes dated 05.03.2020) it is stated that "Considering the facts as above **the Board decided**" [emphasis added] that the status quo remains.

As Wade & Forsyth further observe (at p. 270):

"There must always be a difference between seeking advice and then genuinely exercising one's own discretion, on the one hand, and, on the other hand, acting obediently or automatically under someone else's advice or directions."

If a doubt arises about an application of a particular scheme, it would be only logical to clarify it from the creator itself. This does not mean that one surrenders to the views of the creator. The decision must be taken and the consequences of such a decision must be faced by the relevant statutory functionary, in this case, the Board.

It must be reiterated that if the Petitioner takes issue with the fact that NIBM, as contended by him, which does not have Water Supply or Engineering within its purview, has made the scheme or that the scheme is illogical or inappropriate for the purposes of interviewing candidates for senior managerial positions at the National Water Supply and Drainage Board then that scheme itself should be challenged.

Non-recognition of the Postgraduate Diploma in Business Management

In the marking scheme, as mentioned above, under the category "Additional Qualifications", subcategory (g) of the Scheme provides 02 marks for "CIMA Chartered Accountancy, CIM & LLB Intermediate levels Certificate Courses, PG (Direct/Distant Education) in a relevant field".

The Petitioner states that he completed a Postgraduate Diploma in Business Management leading to the Master of Business Administration in July 2015 at the Wayamba University of Sri Lanka. The Petitioner claims that only those candidates that have successfully completed this pre-requisite are entitled to register for a Master of Business Administration (MBA) qualification. Those, successful candidates, who opt not to pursue an MBA qualification are awarded a certificate of Postgraduate Diploma in Business Management at a convocation. Those who do opt to pursue an MBA qualification are issued provisional results subject to the formality of being confirmed by the Senate of the University before candidates can commence research and modules relevant to the MBA qualification. On successful completion of the relevant second-year courses and the thesis, candidates are eligible to be awarded an MBA qualification. The Petitioner submitted documents marked **C5** and **C6** (issued by the University) to substantiate his claim. The document marked **C6** issued by the Director MBA Programme of the University states that the Petitioner has completed all the course work for the first and second year of the MBA programme and submitted a thesis to be evaluated by the examiners.

As such, the Petitioner claims that this should have qualified as an additional qualification under subcategory (g) of the Scheme.

However, the Respondents contend (as seen in paragraphs 3(iv) and 8 of the Statement of Objections) that marks cannot be allocated for this qualification as the Petitioner did not submit the relevant certificates evidencing the award of a Postgraduate Diploma in Business Management or a Master of Business Administration Degree.

It then appears that the sole reason this qualification was not recognised was that the Petitioner was unable to provide a certificate certifying the completion of the Postgraduate Diploma in Business Management and not because the qualification was irrelevant. It has not been contended by the Respondents that this qualification is unrelated to the scope of work, as they did in regard to his Postgraduate Diploma in International Relations.

As evinced by the aforesaid documents issued by the University, as per their bylaws they cannot so issue a certificate for those candidates deciding to pursue an MBA

qualification. It would be unreasonable to hold the Petitioner at fault for not submitting a certificate, for no fault of his own.

Nonetheless, the Petitioner had applied for the post of Deputy General Manager on a previous occasion, in the year **2018**. In the document marked "R5" it is seen that the interviews for the post of Deputy General Manager were held on 23rd and 24th August 2018. The Petitioner had ranked 13th and scored 83.70/100. As evident from his letter (marked "C2" dated 25th October 2018) to the Chairman/ General Manager of the Board he has requested for the marks awarded to him at the August 2018 interview to be rectified. In that letter, he states he should have been awarded more marks as he possessed the aforesaid qualifications. These are facts that were not forthcoming in the Petition.

Thus, there appears to be an acquiescence on his part to the scheme of interviews, which had been the same in both interviews. If the Petitioner knew that his qualifications would not be accepted by the interview panel a question arises why he waited until the second time he was unsuccessful to challenge whether his Postgraduate Diploma in International Relations fell within the relevant field or the Board's reason that there was no certificate to recognize his Postgraduate Diploma in Business Management. This could have been pre-empted by him presenting the relevant documentation similar to that of the document marked **"C5"** from the University clearly explaining the fact of non-issuance of certificates for those candidates pursuing an MBA. The document marked **"C6"** is insufficient. It merely states that the Petitioner has completed the course work of the first and second years of the MBA programme. Therefore, we are of the view that the Petitioner cannot now challenge this when in fact he has acquiesced to the same.

In Nagalingam v. Lakshman de Mel 78 NLR 231 his Lordship Sharvananda J. (as he then was) held:

"Further, the petitioner, having participated in the prolonged proceedings without any objection and having taken the chance of the final outcome of the proceedings, is precluded from raising any objection to the jurisdiction of the Commissioner of Labour to make a valid order after the zero hour. The jurisdictional defect, if any, has been cured by the petitioner's consent and acquiescence. The petitioner had approbated the act of the

2nd respondent in continuing to hold the inquiry after 18th December 1973. The right to impugn the proceedings has been lost by his acquiescence."

On this basis, we do not find any illegality, irrationality, or procedural impropriety to grant the relief prayed for.

This application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL