

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 Writ of Certiorari under and
in terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal Case No.
CA/WRT/408/19

Anthony Weranga Pushpika De Silva
179/1, Modara Patuwaththa,
Dodanduwa, Galle.

Petitioner

1. University of Ruhuna,
Wellamadama, Mathara.
2. Vice Chancellor,
University of Ruhuna,
Wellamadama, Mathara.
3. Registrar,
University of Ruhuna,
Wellamadama, Mathara.
4. Prof. E.P.S. Chandana
Deputy Vice Chancellor,
University of Ruhuna,
Wellamadama, Mathara.
5. Prof. S.D. Wanniarachchi, Dean,
Faculty of Agriculture,
University of Ruhuna,
Wellamadama, Mathara.
6. Dr. K.G. Imendra,
Dean, Faculty of Allied Health Science,
University of Ruhuna,
Wellamadama, Mathara.
7. Dr. H.P. Suriyaarachchi,
Dean, Faculty of Engineering
University of Ruhuna,

Wellamadama, Mathara.

8. Dr. H.B. Asanthi,
Dean, Faculty of Fisheries Marine Sciences
and Technology,
University of Ruhuna,
Wellamadama, Mathara.
9. Prof. M.V. Weerasuriya,
Dean, Faculty of Graduate Studies,
University of Ruhuna,
Wellamadama, Mathara.
10. Prof. Upali Pannilage,
Dean, Faculty of Humanities and Social
Sciences,
University of Ruhuna,
Wellamadama, Mathara.
11. Dr. T.S.L.W. Gunawardhane,
Dean, Faculty of Management and Finance,
University of Ruhuna,
Wellamadama, Mathara.
12. Prof. Wasantha Deawasiri,
Dean, Faculty of Medicine,
University of Ruhuna,
Wellamadama, Mathara.
13. Prof. P.A. Jayantha,
Dean, Faculty of Science,
University of Ruhuna,
Wellamadama, Mathara.
14. Prof. W.D.G. Dharmarathne,
Dean, Faculty of Technology,
University of Ruhuna,
Wellamadama, Mathara.
15. Rev. Heelle Ghanananda
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
16. Prof. Deni Athapaththu,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.

17. Sudath Jayasekara,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
18. Sanath Karunanayake,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
19. L.C.K. Pathirana
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
20. M.G. Punchihewa,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
21. Kapila Nalaka Samarasinghe,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
22. Safrat Samsudeen,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
23. P.H. Sugathadasa,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
24. Prof. N.J. de S. Amarasinghe,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
25. P.S. Kalugama,
Secretary of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
26. S.A. Andrahennadi,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.

27. Asoka de Silva,
University of Ruhuna,
Wellamadama, Mathara.
28. T.M. Nimal de Silva,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
29. Dr. U.G. Karunaratne,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
30. R.M. Gamini Rathnayake,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
31. Prof. Saman Abesinghe,
Member of the Senate,
University of Ruhuna,
Wellamadama, Mathara.
32. Prof. D.A.L. Leelamanie,
Head, Department of Soil Science,
Faculty of Agriculture,
University of Ruhuna,
Wellamadama, Mathara.
33. Wnniarachchilage Disna Rathnasekara,
Head, Department of Agricultural biology,
Faculty of Agriculture,
University of Ruhuna,
Wellamadama, Mathara.
34. Aruna Disanayaka,
Lecturer, Faculty of allied Health Science,
University of Ruhuna,
Wellamadama, Mathara.
35. Hon. Attorney General,
Attorney General Department, Colombo 12.

Respondents

Before: M. T. MOHAMMED LAFFAR, J. and
S. U. B. KARALLIYADDE, J.

Counsel: Nuwan Bopage with Chathura Weththasinghe for the Petitioner
Ms. Sabrina Ahmed, SC for the Respondents

Argued on: 31.03.2022

Written Submissions on: 25.07.2022 (by the Petitioner)
30.06.2022 (by the Respondents)

Decided on: 14.09.2022

MOHAMMED LAFFAR, J.

The Petitioner in this application is seeking an order in the nature of a Writ of *Certiorari* quashing the decision dated 07.08.2019 (marked as 'P7'), the decision dated 20.11.2019 (marked as 'P8(i)') and an order in the nature of a Writ of *Mandamus* directing the Respondent to reinstate the studentship of the Petitioner.

The 1st to 35th Respondents, having filed their statement of objections dated 30.07.2021, moved for a dismissal of the Petition of the Petitioner.

The Petitioner at the time of the impugned decision was a third-year student of the Faculty of Management and Finance and also President of the Student Union of the University.

The impugned decisions arise out of the conduct of the Petitioner at the University of Ruhuna for which a charge sheet dated 18.06.2019 had been issued by the University to hold a disciplinary inquiry against the Petitioner. The charges *inter alia* were the breach of the security regulations, obstruction to the security from carrying out their duties, non-cooperation at preliminary inquiry, breach of temporary suspension order by entering the hostel etc. The said charge sheet had been served in

pursuance of the recommendation of a Preliminary Investigation Report following an investigation into two incidents that had taken place on 29.05.2019 and 03.06.2019 where the Petitioner is said to have breached certain stipulated security measures.

Thereafter, a formal inquiry had been conducted by a three-member panel of the University which recommended that the Petitioner be suspended for three years. This recommendation was implemented by the Council of the University and the said decision was conveyed to the Petitioner by letter dated 07.08.2019 (marked as 'P5'), which is now sought to be quashed.

The Court is informed that a third incident had taken place on 24.10.2019 and an investigation in that regard is also being conducted by the University.

Following the aforesaid suspension, the Petitioner had submitted an appeal against the said decision. The Appeals' Board of the University has thereafter decided to expel the Petitioner from the student membership of the University. The said appeal decision had been conveyed to the Petitioner by letter dated 20.11.2019 (marked as 'P6(i)'), which is also now sought to be quashed.

Attention of this Court was drawn towards a complaint to the Human Rights Commission and an inquiry carried out thereon which has now supposedly been concluded. However, this Court is not informed of the outcome of the said inquiry.

The Petitioner's contention is based upon the premise that the allegations were not proved, rules of natural justice have not been followed and that the decision made is not proportional to the offence committed. The Petitioner also asserts that he was not given an opportunity to cross examine the complainant and/or other witnesses.

The Court observes that the discipline and residence of the student population at the University of Ruhuna is governed by the by-laws approved by the Council of the University under subsection (1)(d) of Section 135 of the Universities Act No. 16 of 1978. At the Respondent University, the by-laws in respect of discipline and residence of students had come into force on 12.01.2015. Accordingly, attention of Court was drawn to the following by-laws:

- Where there has been indiscipline or misconduct by a student, the VC or Deputy VC shall be informed without delay; s.5 (1)
- The relevant student maybe warned, or temporarily suspended; s.6(1)(b), 7(5)(b)
- Preliminary Inquiries; s. 30
- Formal Inquiry; s. 32
- Any student who contravened to comply with the rules shall be guilty of misconduct or Indiscipline and be liable to expelled from the University; s. 29(b)
- Appeals; s. 34

In this context, the Court considering the process by which the impugned decisions were made gathers that the Petitioner firstly participated at the preliminary investigation where an oral statement followed by a written statement was provided; Petitioner was then issued with a charge sheet and given an opportunity to show cause upon it, he was then invited to participate at the formal inquiry by giving a statement which was recorded. The Court also learns that the Preliminary Investigation, Formal Inquiry and the Appeal stages, the Petitioner was judged by a panel of Professors attached to various departments and faculties of the University. Further it is apparent that the inquiry has been held according to the by-laws after the statements being recorded.

In view of the above by-laws and considering all material placed before Court in this regard, it is ascertained that principles of *audi alteram partem* and *nemo judex in causa sua* have been duly followed. Thus, it is my considered view that the decisions implemented by the University were arrived at, in conformity with the rules of Natural Justice and in terms of the evidence led.

While an opportunity to cross-examine the witnesses was not provided to the Petitioner, it is also noted that such need has not arisen as no such procedure had been in place nor had such a request been made by the Petitioner at that time.

In this regard, the attention of Court is drawn to ***Thanipulli Appuhamilage Anoma V. Sri layawardhana University***¹ where the Petitioner was accused of copying by a fellow candidate at the same examinations wherein the Court observed as follows:

*"A committee was appointed to look into the incident. The said committee held an inquiry on 17.05.2005. The statement of the Petitioner and those who functioned as invigilators on 27.03.2005 were recorded and the committee thereafter submitted their report. In the inquiry it was revealed that the petitioner had in fact copied from material that she has brought into the examination hall and when confronted failed to handover the material and had swallowed the material... **The Petitioner contended that she was not allowed to cross examine the witness against her.**"*

In the above pretext, the Court analyzing the proportionality of the decision made for the offence committed has considered the continued conduct of the Petitioner and the severity of the offence in view of the security concerns at the period in which the offence was committed. The security

¹ CA Writ App 1537/2006 (CAM 22 November 2010)

measures implemented by the University is in the background of checks put into place for the protection of life and property in the immediate aftermath of the Easter Bomb Attacks and the state of the country. Wherein the Petitioner has facilitated outsiders and/or unauthorized individuals entry into the University. Further, the Petitioner is also part of a pending criminal case in the Magistrates Court of Matara in which the Petitioner is related to entering and damaging property at the Meddawatte Hostel whilst being temporarily suspended. It is also noted that the Petitioner was involved with threats being made against the witnesses of the said case.

Thus, I am of the view that the Council had arrived at the decision with careful consideration to the facts placed before them.

The Court observes that the Petitioner has continuously failed to duly exercise the duty cast upon him as a student at the University to abide by its rules, by-laws and also maintain the discipline and decorum of the institution. Students must make every attempt to adhere to the disciplinary standards espoused upon by their University and should not in any manner bring disrepute to the establishment. The Court also notes that the Petitioner has needlessly involved himself in another third incident, despite being temporarily suspended.

The Court is also mindful of the particulars of the settlement terms dated 17.05.2022 proposed by the Respondents to permit the Petitioner to join the University and the fact that the Petitioner was not in agreement to the said terms.

As such, I hold that the decisions by the Respondents, inter alia, to suspend and thereafter expel the Petitioner from the University, does merit the necessary requirements stipulated by law and are also in line with the principles of natural justice. In this respect, I hold that the impugned

decisions are not liable to be quashed and that the Petitioner is not entitled for a Writ of *Mandamus* to reinstate his studentship.

For the above reasons, I dismiss the application of the Petitioner.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL