

**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, Quo Warranto and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. G. R. Noyel Wijayarathna
2. Agampodi Prabath Chathuranga Silva

Both of
Department of Fine Arts
University of Kelaniya,
Kelaniya.

Petitioners

CA/WRIT/0059/2022

Vs.

1. University Grant Commission
2. Prof. Sampath Amarathunga
Chairman
3. Prof. Chandana P. Udawatte
4. Rev. Kotapitiye Rahula Thero
5. A.K. W. Jayawardane
6. Mrs. Vasanthi Arasaratnam
7. Prof. Premakumara De Silva
8. Prof. Palitha Kumarasinghe, PC.

1st to 8th of
No. 90, Ward Place, Colombo 07
9. University of Kelaniya
10. Prof. Nilanthi de Silva
Vice Chancellor, University of Kelaniya

11. Prof. M.M. Gunathilaka
Dean, Faculty of Social science
12. Prof. J. M. D. Ariyaratna
Dean/Faculty of Graduate Studies
13. Dr. Chamley Pushpakumara
Dean, Faculty of Computing and Technology
14. Snr. Prof. S. R. D. Kalingamudali
Dean, Faculty of Science
15. Dr. P. N. D. Fernando
Dean, faculty of Commerce & Management
Studies
16. Mr. U. S. Senarath
Dean, Faculty of Humanities
17. Snr. Prof. S. J. de S. Hewavisenthi
Dean, Faculty of Medicine
18. Mr. Rakhitha shri Dharshana
Abeygoonawardana
19. Prof. H. Abeygunawardena
20. Prof. Ranjith Arthanayake
21. Mr. Sanjaya Bandara
22. Mr. S.M. Gotabaya Jayarathne
23. Prof. Ananda Patabandige
24. Prof. Nimal Perera
25. Prof. Rohan Rajapakse
26. Mr. L.E. Susantha Silva
27. Mr. Cyril Suduwella
28. Ven. (Snr. Prof) Induragare
Dhammarathana Thero

29. Prof. Kapila Seneviratne
30. Mr. K. K. K. Dharmathilaka
Registrar
31. Snr. Prof. Parrick Ratnayake
32. Mr. R. M. Priyankara Ratnayake
33. Mr. Upul Jayantha Ranepura
34. Mrs. M. M. N. T. K. Yalegama
Deputy Registrar
35. Mr. N. P. A. R. Subasinghe
36. Mr. T. S. N. Gunarathne
- 9th to 36 of
C/O The Registrar
University of Kelaniya, Kelaniya.
37. Dr. Uditha Gunasekara
No. 330, Ihala Karagahamuna,
Kadawatha
38. Mr. W. S. K. Perera
Assistant Director. Town Hall theater
Foundation
Colombo 7

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Pradeepa Ariyawansa for the Petitioners.

K.G. Jinasena for the 37th Respondent.

H. Opatha, SC for the Respondents.

Supported and Decided on : 28.09.2022

Sobhitha Rajakaruna J.

Heard learned Counsel for the Petitioners in support of this application and the learned State Counsel for the Respondents opposing this application.

Primarily, the Petitioners in this application are seeking to quash the decisions reflected in documents marked 'P13(a)' and 'P13(b)'. The Court observes that the said impugned documents 'P13(a)' and 'P13(b)' are identical to the impugned documents (marked as 'P15(a)' & 'P15(b)') in the Case No. CA/Writ/0082/22. This Court after hearing both parties of the said case No. CA/Writ/0082/22 refused to issue formal notice on the relevant Respondents, based on the grounds mentioned in the order thereto, dated 28/09/2022.

The learned Counsel who appears for the Petitioner in the said case CA/Writ/0082/22 is appearing for the 37th Respondent in the instant application No. CA/Writ/0059/22. The learned Counsel for the Petitioners in this application categorically informs Court that she associates with the submissions made on behalf of the said 37th Respondent. It appears as per the rubber stamps placed on the documents, the learned registered Attorneys for the (i) Petitioners of this case, (ii) the 37th Respondent of this case and (iii) the Petitioner of the said case No. CA/Writ/0082/22 are from a same Law Office.

Further, this Court observes that the two documents namely 'P13(a)' & 'P13(b)' are being canvassed through two different cases by two different learned Counsel in association with the registered Attorneys of a same Law Office.

As mentioned above, the Counsel for the Petitioners of this case sails with the submissions of the 37th Respondent's Counsel who appeared for the Petitioner in case No. CA/Writ/0082/22. The learned State Counsel in case No. CA/Writ/0082/22 submitted that the Petitioner of that case had filed another application before this Court bearing case No. CA/Writ/578/2021 in which this Court had refused to issue formal notices. The learned Counsel for the above named 37th Respondent is the Counsel for those Petitioners in CA/Writ/578/2021. The learned State Counsel in that case has pointed out (vide-paragraph 35 of the Petition) that the Petitioner of the said CA/Writ/0082/22 had filed the case bearing No. SC/FR/429/2021 in the Supreme Court on the identical issues. The Court observes that such conduct of the parties and their recognized agents tend to grossly abuse the judicial process. Hence, we are of the view that the Petitioners have come to Court with unclean hands.

Additionally, the learned Counsel for the Petitioners submits that apart from the document marked 'P13(a)' and 'P13(b)', the Petitioners are challenging the composition of the relevant selection committee. It is observed that the same argument was raised by the learned Counsel for the 37th Respondent when he was appearing for the Petitioner in the said case No. CA/Writ/0082/22. Anyhow, the Petitioners have failed to manifest that there is a duly formulated prayer to that effect in the prayer of the Petition of the Petitioners.

At the threshold stage of a judicial review application as established by several judgements, the Court must be satisfied that there is a serious case to be heard and based on the facts before the Court there is a probability that the Petitioner is entitled to relief. This Court has constantly observed that the vitiating ground must be arguably material to the impugned decision and such decision must be arguably amenable to judicial review. (See- *Jinadasa vs. Weerasinghe* 31 NLR 33 and *R vs. Chief Rabbi ex. p. Wachmann* (1993) 2 All ER

249). Thus, we are of the unanimous view that prima facie there is no merit in the application of the Petitioners.

In the circumstances and based on the reasons given in our order in CA/Writ/0082/22 dated 28.09.2022, we take the view that Petitioners have not submitted a prima facie case which warrants this Court to issue formal notices on the Respondents.

Therefore, we proceed to dismiss this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal