

**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 Mandamus and
Prohibition under and in terms of
Article 140 of the Constitution of
the Democratic Socialist Republic
of Sri Lanka

1. Karunakalage Sanumi Tarinya de Silva,
No. 24, Nambimulla Road, Ambalangoda

C. A. Writ Application No. 451 2020

PETITIONER

Vs.

1. Professor G. L. Peiris, Hon. Minister of
Education, Ministry of Education, "Isurupaya",
Battaramulla and others

RESPONDENTS

Before: Hon. D. N. Samarakoon J.,
Hon. Sasi Mahendran J.

Counsel: Migara Doss with Dinesh de Silva for the Petitioner
Nirmalan Wigneswaran, D.S.G., with Shamanthi Dunuwila for the
3rd 4th and 5th respondents

Written Submissions on: Petitioner on 27.06.2022

Respondents on 25.06.2022

Argued on: 02.06.2022

Date: 28.10.2022

D.N. Samarakoon J.

The written submissions of the respondents with regard to the preliminary objections begin by saying,

1. The instant application seeks to challenge the basis of selection of students for admission to the medical faculties of universities by the Third Respondent; University Grants Commission (“UGC”). This matter specifically relates to the selection of a student who sat for the G.C.E. Advanced Level Examination in 2019, in the biology stream under the new syllabus introduced in 2017.

It is stated in the written submissions of the petitioner at paragraph 02,

2. Your Lordships be pleased to observe that the aforesaid prayers relied by the Petitioner provide for as follows:
 - (d) To grant and issue an order in the nature of a Writ of Prohibition prohibiting one or more or all of the Respondents in adopting the **District Merit based quota system** of selecting 55% of candidates for higher educational institutions and universities

from the G.C.E. Advanced Level Examination here onwards as more fully reflected in P4A;

(e) To grant and issue an order in the nature of a Writ of Mandamus directing one or more of the Respondents **to formulate a new admissions criteria** in selecting students for higher education institutions and universities from the G.C.E. Advanced Level Examination 2019 and onwards according to law.

Furthermore, written submissions of the respondents in paragraph 4 states,

4. The petitioner's counsel intimated to Your Lordships that he was not pursuing the challenge to the Z-Score method, and, instead, was limiting the challenge only to the District based admission system.

On 02.06.2022 the learned counsel for the petitioner informed that he is not pursuing with the reliefs mentioned in paragraphs (b) (c) and (f). Those reliefs were,

(b) To grant and issue an order in the nature of a Writ of Certiorari against one or more of the Respondents quashing the Admission Criteria which categorizes candidates as "Old syllabus" and "New syllabus" and allocation of District percentages in selecting candidates for higher education institutions and universities from the G.C.E. Advanced Level Examination 2019 as reflected in P5;

(c) To grant and issue an order in the nature of a Writ of Certiorari quashing the decision to adopt the District Merit based quota system in selecting 55% of candidates for higher education institutions and universities from the G.C.E. Advanced Level Examination 2019 as more fully reflected in P4A;

(f) To grant and issue an order in the nature of a Writ of Mandamus directing one or more of the Respondents to admit the

Petitioner to a Course of Medicine of the State based on her original preferences.

In addition, written submissions of the **petitioner** states in paragraphs 10,11 and 12

10. Accordingly Your Lordships be pleased to see that the University Grants Commission (UGC) annually decides its admission criteria for admission of students to Universities and Higher Educational Institutes. The criteria announced by the UGC for the academic years 2019/2020 is contained in document marked as P4, wherein the admissions criteria is set out as follows:-

- a. Island Wide Merit Basis- 40%
- b. District Quota System -55%
- c. Underprivileged District Quota – 5%

11. Your Lordships would be pleased to see that the present Petitioner is challenging the aforesaid Selection Criteria published by the UGC in 2020 and morefully reflected in document marked as P4; which applies to the candidates who sat for the G.C.E. Advanced Level Examination 2019, including the Petitioner.

12.The basis for challenging the **District Quota System** would be more fully dealt with by the Petitioner at the stage of hearing; but at this stage Your Lordships attention is drawn with respect to judgments of Your Lordships Court which have called into question the legality of the aforesaid District Quota System on several occasions and highlighted that the time is ripe to challenge the legality of the said criteria.

In written submissions respondents have enumerated five preliminary objections which are,

- a) The petitioner is guilty of laches
- b) The Petitioner is estopped from maintaining this application;
- c) The Petitioner's conduct disentitles her to relief
- d) Necessary parties have not been named; and
- e) The Petitioner's application and reliefs are futile, misconceived and mutually inconsistent.

The preliminary objections in (b), (c) and (e) are connected to the facts of the case and they will be considered before the other preliminary objections. This necessitates a brief examination of the facts of the case. It is convenient to refer to the facts as recounted by the respondents.

A new syllabus was introduced to Advanced Level students in 2017 and the first batch of the students sat the Advanced Level examination under the new syllabus in 2019. **The respondents state that they complied with the decision of the Supreme Court in SCFR/29/2012 by treating the two populations of students who sat the old and new syllabuses as distinct populations in using the composit average method and applying it at the District level and the National level** also using the Z-Score method, which was recommended by an Expert Committee. The University Grants Commission having accepted the said recommendations and publishing them in several news papers on two occasions also issued a "Handbook" relating to admission to undergraduate courses for the academic year 2019/2020. The cut off marks were released on 26th October 2020 and 1851 students were to be admitted. It is further stated that as per a Cabinet Decision dated 10th May 2021 (R.4) the Secretary to the Ministry of Education was directed to send the list of next immediate qualified students to the Vice Chancellor of the Kotelawala Defence University. It is also stated that the petitioner was accordingly selected as a registered medical student at the Kotelawala Defence University.

It is convenient to initially consider as to why the respondents state that **“Petition and relief are futile and inconsistent”**. It is stated in written submissions at paragraph 60,

(60) The Petitioner is now attempting to proceed only upon her challenge to the District -based admission policy. Such an approach was adopted only when the Petitioner was informed that the Supreme Court and Court of Appeal have dismissed numerous applications challenging the admissions relating to the 2019 examination. The Respondent respectfully submits that the application cannot be maintained for the following reasons, each of which will be elaborated below:

(a) The application is not in the public interest but in private interest. Therefore, the reliefs prayed for cannot be granted.

(b) In any event, the Petitioner has not shown how or why she is to be considered a public interest litigant.

(c) The entire Petition is structured to challenge the Composite Average Z-Score method and the reference to the District based admission system is challenged only in combination with the Z-Score method.

(d) In any event, the Composite Average Z-Score method already includes the District based system within it and as such the previous Supreme Court and Court of Appeal cases have impliedly approved the District based admission system.

(e) The relief is futile as the Petitioner has already obtained admission to the Kotelawala Defence University

(f) The relief is futile as it also relates to the years 2019,2020 and 2021 in respect of which decisions have been made.

Thereafter the written submissions of the respondents have elaborated the alleged private interest, that the whole structure of the petition is to challenge the Composite Average Z-Score method and the reference to the District based admissions is only in passing, that in any event the District based system is subsumed within the Z-Score method, the Petitioner has obtained admission to a medical faculty and the relief is futile since it relates to years 2019, 2020 and 2021.

The respondents in their written submissions state at paragraph 66,

66. Furthermore, the Petitioner has not indicated how the petitioner is acting in the public interest – in other words the Petitioner has failed to produce any evidence that the Petitioner is a person who is genuinely concerned about the Public Interest. The Petitioner has not averred that she in any manner acts for the benefit of the public in her professional or personal capacity. The only reference to the public interest is in paragraph 67, which is clearly only a “by the way” comment and certainly not the basis of the entire case.”

As indicated by the respondents themselves the Petitioner’s answer to this allegation in paragraph 23 of the written submissions is paragraph 67 of the petition which says,

67. The Petitioner states that in terms of the results of G.C.E. Advanced Level Examination 2019 there have been qualified candidates from Districts such as Galle, Colombo and any other Districts which are being adversely affected by reasons of the 55% set allocation under the District Merit based quota system and hence this application represents the grievances of such larger population and is hence made in the greater public interest.

The words “... and is hence made in the greater public interest” is not a “by the way” comment as alleged for the respondents. Furthermore, the petitioner

states in paragraph 20 of the written submissions that paragraph 48 to 67 of the petition specifically deal with the grounds upon which the “District Quota System” is being challenged.

Paragraph 48 of the petition is the first paragraph under the heading, “The decision of one or more of the respondents is arbitrary, discriminatory and unreasonable”. The petitioner states in paragraph 53 of the petition that,

53. The petitioner states that in the said circumstances the present **District Merit System** and allocation of admissions to state universities to follow the course of medicine stands inimical to the very objective of admission from amongst the best talented amongst all candidates.

It is further stated in written submissions at paragraph 59,

59. The petitioner states that the drawbacks and manifest unreasonableness of the District Merit based Quota System was noted even in the “National Education Commission Report 2003” published by the National Education Commission established under [Act] No.19 of 1991 National Education Commission. The petitioner states that the aforesaid commission even had in its membership as an ex officio member the then chairman of the University Grants Commission.

In addition, this court notes that under paragraph (e) of the prayer to the petition, the petitioner is asking for a Writ of Mandamus directing the respondents to formulate a new admission criteria in selecting students for higher education institutes and Universities from the G.C.E. Advanced Level Examination 2019 and onwards according to law.

The respondent’s argument, “that in any event the District based system is subsumed within the Z-Score method”, is incorrect.

In **SENEVIRATNE AND ANOTHER v. UNIVERSITY GRANTS COMMISSION AND ANOTHER, (1978/79/80) 1 SLR 182**, Wanasundara J., said,

“After the present Government came into power, due to considerable agitation on this matter, a Ministerial Committee, as shown in document R3, had decided on the following scheme as the most equitable in the present circumstances :- (1) 30% on merit. (2) 55% district wise on basis of population. (3) 15% for the 12 under-privileged districts. This was intended to be a temporary measure, valid for admission in 1979 and to be reviewed thereafter”.

In **SURENDRAN v. THE UNIVERSITY GRANTS COMMISSION AND ANOTHER**, Mark D. H. Fernando J., said,

“In 1980 the District Quota system ("intended to be a temporary measure, valid for admission in 1979, and to be reviewed thereafter") was held not to be unconstitutional (*Seneviratne v. U.G.C.*); in *Ramupittai v. Minister of Public Administration*, (2). I expressed doubt as to its constitutionality a decade later. However, the Petitioner does not question the District Quota system in this application, as his position is that whether admission is solely on merit, or on the Merit cum-District Quotas system, he was entitled to admission”.

The Z Score system commenced very much after the District Quota System.

It was said in **S.C . (FR) Application No.29/2012**,

“Due to having two sets of syllabi and two sets of Advanced Level Examinations in the year 2000, the then Secretary to the Ministry of Education, Prof. R.P. Gunawardena, had appointed a Committee with a view to finding a suitable method to rank candidates for University admission. There had been several discussions on this and after much deliberation, the said Committee had decided to adopt a statistical method, which was widely accepted, known as the Z-Score method. This was decided on a comprehensive proposal submitted by the 4th

respondent, who was serving as a Consultant to the Ministry of Education and the University Grants Commission, in order to implement the selection at that time”.

“Therefore since the year 2000, Z-Score had been used as the method by which the candidates of the Advanced Level Examination were selected for admission to Universities. It was also stated that since then there has been no alteration or change in the method of calculating the Z-Score until the Advanced Level Examination held in 2011”

Therefore the Z Score system has commenced in year 2000, which is twenty years after 1980, in which year District Quota System came into being. Hence the latter is not subsumed in the former.

The preliminary objections in (b) and (c) can be considered together. The petitioner need not have challenged the system before sitting the Examination. The cause of action has been accrued to the petitioner on her not being selected to a state University despite having a very high Z Score. As per the respondent’s recounting of the facts itself, the University Admission Handbook was published in year 2020 whereas the Examination was held in year 2019. Hence the respondent’s argument has no merit.

In this connection, the respondents have cited **Verschures Creameries Limited vs. Hull & Netherlands Steamship Co. Ltd., (1921)**. This case has been cited with regard to approbation and reprobation in C.A. Writ 148/2017 of 09.08.2019, C. A. Writ 129/2013 of 22.11.2020 and SC FR 116/2021 dated 23.03.2022. The said two judgments of the Court of Appeal and one judgment of the Supreme Court (written within 09.08.2019 to 23.03.2022) cite the said three cases. There is no approbation and reprobation by the petitioner and the attempt to employ the said case and what followed it, in the written submissions of the respondent is futile.

The petitioner sitting the Examination does not amount to an approbation. It is after the Examination is held that the University Grants Commission issues the “handbook” which deals with the criteria of admissions and hence the cause of action arises.

It is submitted in (c) that the petitioner’s conduct deprives her of relief because she has not disclosed the date of the University Admissions Handbook and the fact of the public being informed of the basis of selections.

There is no duty cast upon the petitioner to disclose such a date and it does not affect her conduct. It is not something she concealed, the reveal of which will place her in a disadvantageous situation. The cases such as **Udayami Evam Khadi Gramodyog Welfare Senstha vs. State of U.P.** and other cases cited for the respondents are on full discloser. They will not apply to this case because the University Admissions Handbook is published by the University Grants Commission which is a respondent and no prejudice has caused to the respondents by the petitioner if she has not stated the date of the publication of that handbook. In any event the petitioner has attached P.04 and P.05.

The preliminary objection in (a) is laches. It is submitted that the District Quota System is in force for a half a century and the petitioner knows it when she applied for Examination in 2019. The District Quota System is in force from 1980 and it is less than half a century. Although the document P.04 was published in 2020, the petitioner suffered the grievance only after the release of the results. Furthermore, the District Quota System is a continuous phenomenon and the Public Interest Component of petitioner’s application is not affected. It is said in **Ramasamy vs. Ceylon State Mortgage Bank 78 NLR 510**, that, the doctrine of laches cannot be applied arbitrarily as a mere technicality to evade the addressing of the merits of the application. The petitioner has instituted this application in 2020. Hence there is no laches on the part of the petitioner.

The preliminary objection in (d) is that the petitioner did not name the necessary parties. The petitioner cannot name all the candidates who sat the Examination in 2019 and affected by the District Quota System and those who will be affected by that system in future. It was said in **Rajendran vs. State of Madras 1968 AIR 1012**, cited for the petitioner,

“It is urged that the selected candidates whose number is in the neighborhood of 1,100 have not been made parties in these cases and therefore the cases should be rejected on that ground alone... They therefore pray that the points raised may be decided for the future and the selections made this year may not be disturbed. On that basis it is urged on behalf of the petitioners and the appellant that it would not be necessary to make the candidates selected for this year parties. In view of this statement at the bar we propose to decide the points raised in these cases but shall not disturb the selections made this year”.

The present petitioner’s application is similar since she argues that the District Quota System may not be continued in the future. Hence it is impossible for her to name all candidates that will be affected in future and the said preliminary objection is without merit.

As Sir Sidney Solomon Abrahams, the Chief Justice of Ceylon has said in *Velupillai vs. Chairman U. C. Jaffna*, 39 NLR 464,

“...a Court of law...should not be trammled by technical objections [as] it is not an academy of law”.

In the circumstances, this Court overrules the preliminary objections of the respondents. There is no order on costs.

Judge of the Court of Appeal

Hon. Sasi Mahendran J.

I agree.

Judge of the Court of Appeal