

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

In the matter of an Application for a Writ of
Certiorari under Article 140 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal Case No.

CA/WRT/0333/21

Mohamed Razie Ashiq Lafir
No. 4/10A, Thalakotuwa Gardens,
Colombo 5

Petitioner

Vs

1. The Incorporated Council of Legal Education
Superior Courts Complex
Colombo 12.
2. Hon. Chief Justice
Chairman - The Incorporated Council of
Legal Education
Superior Courts Complex
Colombo 12.
3. The Secretary
Ministry of Justice
Member - The Incorporated Council of Legal
Education
Superior Courts Complex
Colombo 12.
4. Hon. Attorney General
Member - The Incorporated Council of Legal
Education
Attorney General's Department
Colombo 12.

5. Hon. Justice Buwaneka Aluwihare, P.C.
Member - The Incorporated Council of Legal
Education
Superior Courts Complex
Colombo 12.
6. Hon. Justice Priyantha Jayawardene, P.C.
Member - The Incorporated Council of Legal
Education
Superior Courts Complex
Colombo 12.
7. The Solicitor General
Member - The Incorporated Council of Legal
Education
Attorney General's Department
Colombo 12.
8. Shiran Harsha Amarasekara, P.C.
Member - The Incorporated Council of Legal
Education
No. 03, Sravasti Place,
Colombo 12.
9. Sanjeeva Jayawardene, P.C.
Member - The Incorporated Council of Legal
Education
No. 11A, Spathodea Avenue,
Colombo 05.
10. Mr. Naveen Marapana, P.C.
Member - The Incorporated Council of Legal
Education
No. 103, Barnes Place,
Colombo 07.
11. Mr. Sampath Mendis, P.C.
Member - The Incorporated Council of Legal
Education

No. 37, Sagara Road,
Colombo 04.

12. Prof. Camena Guneratne,
Member - The Incorporated Council of Legal
Education
Faculty of Humanities & Social Science,
Open University of Sri Lanka
PO Box 21, Nawala,
Nugegoda.

13. Prof. W. I. Nanayakkara,
Member - The Incorporated Council of Legal
Education
Faculty of Law,
University of Colombo
College House
No. 94, Kumarathunga Munidasa Mawatha,
Colombo 07.

14. Mr. Saliya Peiris, P.C.
Member - The Incorporated Council of Legal
Education
President of the Bar Association of Sri Lanka
No. 153, Mihindu Mawatha,
Colombo 12.

15. Principal
Sri Lanka Law College
No. 244, Hulftsdorp Street,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: N. Hatch, P.C., with Siroshini Illangage for the Petitioner.
S. Dharmawardhena, A.S.G., P.C. for the 4th and 15th Respondents.

Argued on: 07.03.2023

Written Submissions on: Not tendered by the Petitioner & Respondents.

Decided on: 21.06.2023

MOHAMMED LAFFAR, J.

The Petitioner in this Application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution, seeking the following main reliefs;

1. A Writ of Certiorari quashing the requirement in Rule 23 of the Incorporated Council of Legal Education relating to the requirement of a Credit pass in Sinhala at the GCE O/L examination for admission of an LL.B. graduate in the English medium of a Sri Lankan University established under the Universities Act, No. 16 of 1978, who has sat the Sri-Lanka GCE O/L examination in the Sinhala medium, and obtained a pass in the Sinhala language at the GCE O/L examination.
2. A Writ of Certiorari quashing the Determination **(P11)** rejecting the Petitioner's application to Sri Lanka Law College to be registered as a student of Sri Lanka Law College for the final year examination as contained in the determination dated 25-06-2021.
3. Granting an Order/direction as this Court may deem fit in favour of the Petitioner's Application to be admitted to the Sri Lanka Law College to sit the final year examination.

Factual Matrix in a nutshell:

The Petitioner attended S. Thomas' College, Mount Lavinia, from the years 1986 to 1993 for his primary and secondary education and studied in the Sinhala medium throughout the said period. The Petitioner successfully

passed the GCE O/L examination in 1990 in the Sinhala medium, obtaining a Distinction for English language and an Ordinary pass for Sinhala language. Based on the Petitioner's GCE A/L examination results he gained entry to the Faculty of Law, University of Colombo in 1996. The Petitioner followed lectures and sat for examinations in the English language throughout his course of studies at the Faculty of Law and successfully completed the Degree of Bachelor of Laws on 01-09-1999.

In September 2020, being a graduate with a Bachelor of Laws degree from the University of Colombo, the Petitioner applied to Sri Lanka Law College to obtain the Attorney-at-Law qualification. The Petitioner's Application is annexed marked and produced as **P9**. As per **P9**, Sri Lanka Law College received the said Application on 21-01-2021. The Petitioner attended the admission interview on 24-02-2021. Thereafter, Sri Lanka Law College by email (**P11**), informed the Petitioner that his Application has been rejected as he does not possess a Credit pass in Sinhala at the G.C.E. O/L examination.

The Petitioner states that as per Rule 23 of the Rules of the Incorporated Council of Legal Education (Rules as at 2012) which is marked as **P12**, English medium law graduates who have sat the GCE O/L examination in the Sinhala/Tamil medium and satisfied the requirement for a pass in that examination offering Sinhala/Tamil language is deemed to satisfy the requirement of Singala/Tamil. However, by an amendment published in Gazette No. 2208/13 dated 30-12-2020 (**P12a**) a Credit pass in the Sinhala/Tamil language obtained at the Sri Lanka GCE O/L examination was required for English medium LL.B. graduates of the University of Colombo as well.

The Petitioner further states that the requirement stipulated under Rule 23 in **P12** is applicable to the Petitioner's Application and not the subsequent amendment stated in **P12a**. Moreover, the contention of the Petitioner is that the amendment to the said Rule, a requirement of a Credit pass in the Sinhala language at the GCE O/L examination for an LL.B. graduate in the English medium of a Sri Lanka University established under the Universities Act, No. 16 of 1978, is *per se* unreasonable in law.

Furthermore, the Petitioner states that in terms of Section 7 (3) of the Council of Legal Education Ordinance, No. 2 of 1900 (as amended) the said amendment to the Rule, as contained in Gazette No. 2208/13 (**P12a**), has to be approved by Parliament, and if not so approved, is deemed to be rescinded as from the date of disapproval.

In this scenario, the Petitioner states that the said Determination rejecting his Application to Sri Lanka Law College by email dated 25-06-2021 (**P11**) due to the lack of a Credit pass in Sinhala at the GCE O/L examination is *ultra vires*, illegal, unreasonable and contrary to law, and therefore, liable to be set aside.

The 15th Respondent, having filed his statement of objections moved for a dismissal of the Petitioner's Application on the basis *inter-alia* that;

1. In terms of the Minutes dated 11-01-2008 of the meeting of the Incorporated Council of Legal Education which is marked as **R3**, the requirement for a Credit pass in the English Language and the Sinhala/Tamil Language at the GCE O/L examination was mandatory even in 2008.
2. The Application of the Petitioner was made on 21-01-2021, after the Gazette **P12a** was published on 30-12-2020, and therefore, the Petitioner is bound by the requirements contained in **P12a**.

Determination:

The language requirements to enroll at Sri Lanka Law College are stipulated in Rule 23 (1) E of the Rules of the Council of Legal Education (as at 2012) marked as **P12**, which reads thus;

*“that he has passed reaching **credit** standard in **English Language and in Sinhala Language or Tamil Language** at the Sri Lanka Senior School certificate examination or the Sri Lanka General Certificate of Education (Ordinary Level) examination*

English medium Law Graduates who have sat the Sri Lanka General Certificate of Education (Ordinary level) examination in the Sinhala/Tamil medium and satisfied the requirements for a pass in that examination offering Sinhala/Tamil as a subject be deemed to have satisfied the requirements as to Sinhala/Tamil Language.”

It is manifestly clear that the first part of Rule 23 (1) E is applicable to the students who are seeking admission directly to Sri Lanka Law College with the GCE A/L qualifications where they should possess a Credit pass in English language and a Credit pass either in Sinhala/Tamil language. The second part of Rule 23 (1)E is applicable to the English medium Law Graduates who are seeking admission to Sri Lanka Law College where they should possess a minimum Ordinary pass either in Sinhala/Tamil language when they have sat the GCE O/L examination in the Sinhala/ Tamil medium.

In the instant Application, the Petitioner is an English medium LL.B. graduate of the University of Colombo who sat for the GCE O/L examination in the Sinhala medium and obtained an Ordinary pass in the Sinhala language. As such, it is abundantly clear that in terms of Rule 23 (1)E of the Rules of the Council of Legal Education (as at 2012), the Petitioner has the required qualifications to be admitted to Sri Lanka Law College.

I shall now deal with the Document relied upon by the 15th Respondent marked as **R3**. Document R3 is the minutes of the meeting of the Incorporated Council of Legal Education dated 11-01-2008, wherein it was decided that the persons seeking admission to Law College should possess Credit passes in English and Sinhala/Tamil languages at the GCE O/L examination. It is to be noted that the requirement stipulated in **R3** is not applicable to the English medium LL.B. Graduates who are eligible to obtain admission under Rule 23 (1)E of the Rules of the Council of Legal Education (as at 2012). The Rule 23 (1)E of the Rules of the Council of Legal Education (as at 2012) has not been amended or varied by **R3**.

Section 7 (3) of the Council of Legal Education Ordinance No. 02 of 1900 (as amended) reads thus;

“(1) It shall be lawful for the Incorporated Council of Legal Education, with the concurrence of the Minister, to make such by-laws, rules and orders as to it shall seem necessary for any of the following purposes:

(a) for convening the ordinary or any special meetings of the Council and fixing the number of ordinary meetings to be held each year, and the dates on which such meetings shall be held ;

(b) for prescribing the manner in which the seal of the Council shall be affixed

(c) for prescribing the course of studies and examinations to be observed by such law students and the payments to be made therefore;

(d) for the appointment of lecturers and examiners, and fixing the salary or fees to be paid to such lecturers and examiners respectively ;

(e) for fixing the minimum number of marks to be earned by candidates at the several examinations ;

(f) for the appointment and removal of such secretary, librarian, officers, clerks, and servants as the Council may deem useful or necessary ;

(g) and generally for carrying out the objects for which the Council is incorporated into full force and effect.

(2) Every by-law, rule or order made by the Council shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the by-law, rule or order, as the case may be.

(3) Every by-law, rule or order made by the Council shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any by-law, rule or order which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder. Notification of the date on which any by-law, rule or order made by the Council is so deemed to be rescinded shall be published in the Gazette.”

In terms of section 7 (3) of the Council of Legal Education Ordinance, No. 02 of 1900 (as amended), the Council of Legal Education, with the concurrence of the Minister, is empowered to make by-laws. However, the by-laws shall be published in the Gazette and approved in Parliament. If the by-laws are not approved in Parliament those by-laws shall be deemed to be rescinded. It is pertinent to be noted that the purported by-laws marked as **R3** have not been Gazette and approved in Parliament, and therefore, the purported rules in **R3** are not valid rules of the Council of Legal Education. In short, there is no legal value attached to **R3**.

The learned Additional Solicitor General contended that in terms of the Gazette No. 2208/13 dated 30-12-2020 (**P12a**) a Credit pass in the Sinhala/Tamil language obtained at the Sri Lanka GCE O/L examination was required for English medium LL.B. graduates of the University of Colombo as well.

The last date for issuing application forms for persons who have graduated in law in recognized Universities was 20-10-2020 (**R1a**). The impugned Gazette marked as **P12a** was published on 30-11-2020 and the guidelines marked as **R1b** was published on 15-10-2020. Hence, at the time of calling for applications and issuance of Guidelines, the Gazette **P12a** was not in existence. Moreover, since, the impugned Gazette was not approved in Parliament at the time of rejecting the Petitioner’s application, it is abundantly clear that the purported Rules set out in **P12a** are not valid under section 7 (3) of the Council of Legal Education Ordinance, No. 02 of 1900 (as amended), and therefore, rejecting the application of the Petitioner in terms

of **P12a** is *ex-facie* bad in law. In these respects, I observe that **R1a** and **R1b** are contrary to the Rules of the Council of Legal Education.

In assessing the Petitioner claim of a legitimate expectation, one must consider what legitimate expectation is? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.

In **Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale**¹ the Court of Appeal simply described the principle of legitimate expectation as follows:

“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”

Wade discusses the principle of legitimate expectations as follows²:

“...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and the government becomes a choice between chaos and coercion”. (Page 452.)

The Supreme Court, in the case of **Choolani Vs. Peoples Bank**³ observed that;

“In general terms, the legitimate expectation was based on the principle of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. A promise or a regular procedure could give rise to a legitimate expectation. The doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural justice.”

¹ CA/WRIT/328/215, CA Minutes of 19.02.2020.

² H.W.R. Wade and C.F. Forsyth, Administrative Law, 11th Edition, p.451

³ 2008 (2) SLR-p93.

When applying the above stated principles to the instant Application, the question that begs an answer is whether a promise, representation or assurance was given by the Respondents to the Petitioner that he should possess a Credit pass in Sinhala Language to obtain admission to the Law College. It is pertinent to be noted that until the Petitioner had successfully completed his studies at the University of Colombo in 1999, the governing Rules of the Council of Legal Education to enroll the English medium LL.B. Graduates to the Sri Lanka Law College was Rule 23 (1)E of **P12**, accordingly, the Petitioner had a legitimate expectation to join the Law College with an Ordinary pass in the Sinhala language in GCE O/L examination. The Petitioner, after completing the LL.B. Degree at the University of Colombo, at the time of seeking admission to the Law College in accordance with the Rules in force, the Council of Legal Education by introducing new rules requiring a Credit pass in Sinhala Language is unreasonable. In these respects, it appears to this Court that the Petitioner's expectation to obtain admission to Sri Lanka Law College with an Ordinary pass in Sinhala Language is legitimate.

Be that as it may, the attention of this Court is drawn to the fact that during the pendency of this Application, the impugned Gazette marked **P12a** has been disapproved by Parliament on 21-03-2023, and therefore, the determination rejecting the Petitioner's application in terms of **P12a** due to a lack of Credit pass in Sinhala at the GCE O/L Examination is *ex-facia* illegal.

This Court, upon careful consideration, observes that the decision rendered by the Sri Lanka Law College, wherein they unjustifiably, irrationally, and erroneously rejected the Petitioner's application for admission as a student, has resulted in significant prejudice to the Petitioner, depriving him of the ability to sit for examinations in order to qualify as an Attorney-at-Law for the past three years. It is imperative that educational institutions display heightened diligence and assume greater responsibility when dealing with prospective students. This Court firmly opines that in the interpretation of regulations pertaining to educational institutes and students, any ambiguities or uncertainties should be resolved in favor of the students, for these institutions hold the lives and futures of students in their hands.

For the foregoing reasons, a Writ of Certiorari quashing the requirement in Rule 23 (1)E of the Incorporated Council of Legal Education relating to the requirement of a Credit pass in Sinhala at the GCE O/L examination for admission of an LL.B. Graduate in the English medium of a Sri Lankan University established under the Universities Act, No. 16 of 1978, who has sat the Sri Lanka GCE O/L examination in the Sinhala medium, and obtained

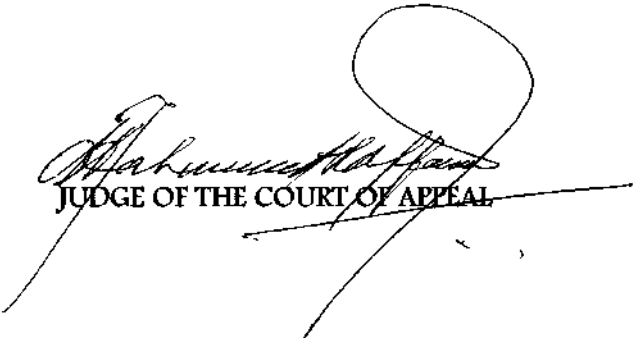
an Ordinary pass in the Sinhala language at the GCE O/L examination, is issued.

A Writ of Certiorari quashing the determination dated 25-06-2021, marked as P11, rejecting the Petitioner's Application to Sri Lanka Law College to be registered as a student of Sri Lanka Law College, is issued.

The Respondents, particularly, the 15th Respondent are Ordered to admit the Petitioner to the Sri Lanka Law College to sit for the examinations.

I make no Order as to costs.

Application allowed.



JUDGE OF THE COURT OF APPEAL

