

**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/0527/2019**

1. Dr. R. J. Welikala  
No. 410/1,  
Batahena road,  
Magammana,  
Homagama.

2. Dr. A. B. Dharmaratne  
No. 313/2, Naiwala road,  
Udugampola.

3. Dr. B. G. M. K. Rajakaruna  
No.115/20, Honnanthara South,  
Kudamaduwa Road,  
Piliyandala.

4. Dr. B. L. Edirisinghe  
No.07 / 16B, 6th Lane, Pagoda Road,  
Nugegoda.

5. Dr. D. N. D. P. Saparamadu  
No.257 / A, Batagama South,  
Kandana.

**Petitioners**

**Vs**

1. Prof. (Mrs.) Priyani A. Paranagama  
Director, (Chairperson of the Board of  
Management)  
Institute of Indigenous Medicine

2. Mrs. J.M.C.J. Wijethunga  
State Secretary,  
Ministry of Higher Education & Highways,  
Higher Education Division

3. Mr. K.D.C.S. Kumarathunga  
Commissioner of Ayurveda Department  
Ayurveda  
Navinna

4. Mr. L.H. Thilakarathne  
Additional Secretary  
(Development), Ministry of Health, Nutrition  
& Indigenous Medicine

5. Dr. M.D.J Wiyajabandara  
Director,  
Bandaranaike Ayurveda Research Institute

6. Dr. J.C.K.D. Kumarasekara -  
Director,  
Ayurvedic Teaching Hospital,  
Colombo 08

7. Prof. (Ms) Jenifer Perera  
Dean, Faculty of Medicine

8. Dr .L.P.A. Karunathilake,  
Sectional Head / Ayurveda

9. Dr. M.I. Manuha,  
Sectional Head / Unani

10. Dr.(Ms) Chamari Weeraratne  
Member of Faculty of Medicine

11. Prof.(Ms) SSBDP Soysa  
Member of Faculty of Medicine

12. Prof. Priyadarshani Galappaththy  
Member of Faculty of Medicine

13. Dr. S.M.H. Senabandara  
Member of Ayurvedic Medical Council

14. Mr. C Maliyadda  
UGC Appointed Member

15. Mr. MDD Peiris  
UGC Appointed Member  
Former Secretary / Ministry of  
Education

16. Dr. U.R.P.P. Wimalasooriya  
UGC Appointed Member  
Medical Officer,  
NATH, Borella

17. Dr. T. Weerarathne  
Director (Technical),  
Ministry of Health, Nutrition & Indigenous  
Medicine

18. Dr. B.M. Rishad  
Medical Officer, NITM

19. Dr. MDJ Abeygunawardena  
Provincial Commissioner of Ayurveda  
UGC Appointed Member

20. Dr. Tharaka Prasad Hendawitharana  
UGC Appointed Member

21. Prof. Kapila Senevirathne, Department  
of Chemistry,  
University of Kelaniya

22. Mr. A.V. Janadara,  
Director  
Dep. Of National Budget,  
The Secretariat

23. Mr. T P Liyanarachchi,  
Deputy Bursar – Invitee

24. Deputy Registrar,  
Secretary to the Board

The 1st to 24th Respondents above all of  
The Board of Management, Institute of  
Indigenous Medicine,  
University of Colombo  
No. 94, Kumaratunga Munidasa  
Mawatha, Colombo 07.

25. Dr. K. Chandi Perera  
Sectional  
Head/ Ayurveda  
Institute of Indigenous Medicine  
University of Colombo.

26. Ayurvedic Medical Council  
Old Kottawa Rd,  
Maharagama,  
Navinna

27. University Grants Commission  
Ward Place, Colombo 07

28. University of Colombo  
Colombo  
No. 94, Kumaratunga Munidasa  
Mawatha, Colombo 07.

29. Professor Chandrika N.  
Wijeyaratne  
Vice-Chancellor

30. Professor R. C. K. Hettiarachchi  
Rector/Sri Palee Campus

31. Professor D. A. Premakumara de  
Silva  
Dean/Faculty of Arts

32. Professor M. V. Vithanapathirana  
Dean/Faculty of Education

33. Professor Nayani Melegoda  
Dean/ Faculty of Graduate Studies

34. Professor W I Nanayakkara  
Dean/Faculty of Law

35. Dr. M P P Dharmadasa  
Dean/ Faculty of Mgt. & Finance

36. Professor K.R. R. Mahanama  
Dean/ Faculty of Science

37. Professor | K D S Javanetti  
Dean/ Faculty of Technology

38. Professor Devaka Weerakoon  
Dean/ Faculty of Nursing

39. Professor K P Hewagamage  
Senate Representative

40. Professor V T Thamilmaran  
Senate Representative

41. Ven. Professor Aththangane Ratanapala  
Thero  
Appointed Member

42. Rev. Father Ivan Perera  
Appointed Member

43. Mr. Thilak Karunaratne  
Appointed Member

44. Dr. Harsha Cabral, PC  
Appointed Member

45. Dr. I M Swaminathan  
Appointed Member

46. Dr. V P Gamage  
Appointed Member

47. Mrs. C Mubarak  
Appointed Member

48. Professor P A J Perera  
Appointed Member

49. Professor A N I Ekanayaka  
Appointed Member

50. Mr. Mahinda Madihahewa  
Appointed Member

51. Mr. Anil Rajakaruna  
Appointed Member

52. Professor L L Ratnayake  
Appointed Member

53. Mr. A D B Talwatta  
Appointed Member

54. Mr. K A S Edward  
Registrar

The 29<sup>th</sup> to 54<sup>th</sup> Respondents above all of  
The University Council, University of  
Colombo No. 94, Kumaratunga Munidasa  
Mawatha,  
Colombo 07.

55. Dr. G. M. Mala Perera  
Commissioner of Ayurveda  
Department of Ayurveda  
Western Province  
NO. 18, Nawala Road,  
Nugegoda.

### **Respondents**

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

Counsel: Uditha Egalahewa P.C. with Miyuru Egalahewa for the  
Petitioners.

Y. Fernando, DSG for the Respondents.

Argued on: 29. 11.2023

Written Submissions on: 31.03.2023 by the 27<sup>th</sup> Respondent.

Not tendered by the Petitioner.

Decided on: 13.07.2023

**MOHAMMED LAFFAR, J.**

The Petitioners by their petition dated 02.12.2019, are seeking, *inter alia*, the following reliefs:

(b). A writ of Certiorari quashing the decision of the 27<sup>th</sup> Respondent (University Grants Commission-UGC) dated 08-08-2019 suspending the Postgraduate Degree Course MD (AYU) [Vachaspathi] 2016/19 conducted by the Institute of Indigenous Medicine contained in the document marked **P26**.



(c). A writ of Certiorari quashing the decision of the 3<sup>rd</sup> Respondent (The Commissioner of Ayurveda) contained in **P25 (a)**.

(d). A writ of Certiorari quashing the decision of the 55<sup>th</sup> Respondent (The Commissioner of Ayurveda-Western Province) contained in **P25 (b)**.

(e). A writ of Certiorari quashing the decision of the 3<sup>rd</sup> Respondent (The Commissioner of Ayurveda) contained in **P25 (c)**.

The 1<sup>st</sup>, 28<sup>th</sup> – 54<sup>th</sup> Respondents moved for a dismissal of the Application on the basis, *inter-alia*, that;

1. The Institute of Indigenous Medicine (hereinafter referred to as the IIM) had not yet incorporated into the curriculum of the MD program suggestions made by the Standing Committee of Indigenous Medicine of the University Grants Commission.
2. The IIM has been mandated to continue with the syllabuses only upon approval by UGC.
3. Upon the recommendation of the Standing Committee of Indigenous Medicine, the UGC decided to suspend the Post Graduate Degree Program Ayurveda/Siddha/Unani conducted by the IIM with immediate effect.
4. Since the UGC has suspended the said Course and no approval has been granted, the IIM is not in a position to conduct the same.
5. The UGC has allowed awarding of the MD in Ayurveda at the Post Graduate Institute of Indigenous Medicine (hereinafter referred to as the PGIIM) affiliated with the University of Colombo.

The 27<sup>th</sup> Respondent, in its statements of objection, took up the position, *inter-alia*, that;

1. The UGC received a proposal for establishing a Postgraduate Degree Programme MD (Ayu) from the IIM. The UGC referred the matter to the Standing Committee on Post-Graduate Studies and Research for its observations and recommendations. As per the recommendation of the Standing Committee on Post-Graduate Studies and Research, the UGC appointed a Review Panel. Thereafter, the UGC conditionally approved the said program subject to the incorporation of proposed amendments suggested by the Review Panel. Since the IIM failed to adhere to the proposed amendments, the UGC suspended the said program.
2. The UGC states that in the absence of a duly formulated curriculum in keeping with the standards and training components required as recommended by the relevant subject expert panel of the UGC, *inter-alia*, the provisions of the Sri-Lanka Qualification Framework (2015) as well the relevant Service Minute, there was no basis to revise the decision of suspension.
3. The UGC further states that in view of the non-compliance with required standards in the formulation of a curriculum and the failure to submit a duly revised document by the 1<sup>st</sup> Respondent, the UGC which is mandated to exercise regulatory authority in terms of section 15 (5) of the Universities Act, No. 16 of 1978, is unable to approve the relevant Masters Program.
4. The 27<sup>th</sup> Respondent further states that the Standing Committees of the UGC which are established under section 4 (2) of the Universities Act are not empowered to approve the study programs, which is a power exclusively vested with the UGC itself.

### **The contention of the Petitioners in a nutshell:**

The IIM called for applications for the Postgraduate Degree Course in MD (AYU) [Vachaspathi]- 2016/2019. On or before 28-02-2016, all the Petitioners submitted applications for the said Course, and accordingly, by letters marked as **P5 (a) to P5 (e)**, the Petitioners were selected to follow the same. The Petitioners were approved for three years of educational leave commencing from 23-02-2017 as well. Thereupon, the Petitioners commenced coursework and reading for the said course in the IIM from 06-03-2017.

When the Petitioners came to know that the said course was not approved by the UGC, the Petitioners requested the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to resolve the issues prevalent in the said course. In pursuant to the said request, the 3<sup>rd</sup> Respondent with the participation of the representatives of the 1<sup>st</sup> Respondent, the 5<sup>th</sup> Respondent, the 27<sup>th</sup> Respondent and all the relevant institutions convened a meeting on 02-06-2017 at the Department of Ayurveda to resolve the issues relevant to the said course. Accordingly, by letter dated 14-08-2017 (**P13**), the 1<sup>st</sup> Respondent informed the 3<sup>rd</sup> Respondent that the Petitioners would be allowed to continue their studies without any impediments. In the meantime, by letter dated 14-09-2017 (**P14**), the UGC informed the 3<sup>rd</sup> Respondent that the said course has not been recommended or approved by the Standing Committee.

Thereafter, by the Gazette Extraordinary dated 08-12-2017, the PGIIM was established and the UGC in its letter dated 11-07-2017 (**P14**) expressed its opinion that the Petitioners will be able to continue their postgraduate studies at the PGIIM. By letter dated 27-03-2018 (**P19**) addressed to the University of Colombo with a copy to the IIM, the UGC informed *inter-alia*,

that the IIM is allowed to conduct the said program for the 2016/2019 batch only, subject to the submission of the curriculum through proper channel, whereby the IIM has not submitted the curriculum. In these circumstances, the 3<sup>rd</sup> Respondent, by letters dated 22-10-2019 marked as **P25 (a), (b) and (c)** informed the 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> Petitioners that the Postgraduate Degree Course MD (AYU) [Vachaspathi] 2016/19 has been suspended and to report back to service immediately. Subsequently, the UGC by letter dated 29-08-2019 marked as **P26**, informed the 1<sup>st</sup> Respondent that as per the recommendation of the Standing Committee on Indigenous Medicine, the UGC decided to suspend the said program conducted by the IIM with immediate effect.

The Petitioners state that the decision of the UGC is irrational, arbitrary, capricious, illegal, and in total violation of the rules of natural justice. Moreover, the Petitioners state that they have a legitimate expectation to continue the said program at the IIM.

**Observation and determination:**

The UGC received a proposal for establishing a Postgraduate Degree Program MD (Ayu) from the IIM. The UGC decided to refer the proposal to the Standing Committee on Post-Graduate Studies and Research for its observations and recommendations. According to the recommendation of the Standing Committee on Post Graduate Studies and Research, the UGC appointed a Review Panel comprising Dr. Senaka Pilapitiya-Rajarata University, Prof. Nelum De Silva- University of Ruhuna and Dr. (Ms) S. Pancharajah-University of Jaffna, which observed that;

1. The eligibility requirement of the proposal was unsatisfactory due to the reasons specified in the review report marked as **27R4, 27R4A, 27R4B and 27R4C.**

2. Dr. Senaka Pilapitiya had not recommended proceeding further. He had specially observed the inadequacy of a clinical training component enabling practitioners to reach the required levels of competence.
3. Dr. Nelum De Silva also observed that specialization in the relevant field is necessary for Ayurveda Medical Officers, and observed further that the eligibility requirement was unsatisfactory.

By letter dated 09-02-2012 marked as **27R5A**, addressed to the 28<sup>th</sup> Respondent with a copy to the 1<sup>st</sup> Respondent, the UGC conditionally approved the said course subject to the incorporation of the proposed amendments suggested by the Review Panel. A meeting was convened on 12-06-2012 with the Ministry of Higher Education and representatives of the relevant institutions in order to resolve the issues and a separate committee was appointed to incorporate the recommendations of the Review Panel of the UGC into the Course Syllabus. Accordingly, the IIM was requested by the UGC to ensure that the amended course syllabus be submitted on or before 15-08-2012 (Vide document marked **27R9A**). Since the IIM failed to submit the curriculum before the deadline, the UGC by letter dated 12-07-2012 marked as **27R10A** temporarily suspended the program until the detailed curriculum was submitted.

In these circumstances, this matter was reconsidered by the UGC on 15-06-2017 and the following decisions were taken;

1. The Commission having discussed this matter at length, decided to have a meeting with the Ministry of Health, Indigenous Medicine and Nutrition with regard to the 1<sup>st</sup> batch of students who have completed the MD program at the IIM.

2. The Commission was of the view that the students of other batches can be admitted to the proposed PGIIM once it is established.
3. The Commission also decided to inquire from the Director-IIM whether the curriculum of MD (Ayurveda/Siddha/Unani) has included the requirements of the Ministry of Health Indigenous Medicine and Nutrition as per the relevant Gazette /applicable Service Minute (i.e. Gazette Extraordinary No. 1882/50 dated 03-10-2014- Minute of the Sri Lanka Ayurveda Medical Service) which requires *inter-alia*, a medical consultant to have followed a minimum of 3 years full-time Post Graduate Degree in the respective subject areas **(27R17, 27R17A & 27R17B)**.

As such, the UGC by letter dated 16-10-2017 marked as **27R20B**, requested IIM to submit the curriculum of MD (Ayurveda/Siddha/Unani) as recommended by the Standing Committee within three months, on or before 21-12-2017), which reads thus;

*“The University Grants Commission at its 972<sup>nd</sup> meeting held on 21<sup>st</sup> September 2017 noted that as per the decision taken at its 966<sup>th</sup> meeting, the Institute of Indigenous Medicine (IIM) was requested to include the curriculum of MD (Ayurveda/Siddha/Unani) as per the requirement of Ministry of Health, Nutrition & Indigenous Medicine, Gazette Notification and the serviceMinute of the same.*

*Further; the Commission decided to inform you to submit the curriculum of MD (Ayurveda/Siddha/Unani) as per the requirement Ministry of Health, Nutrition & Indigenous Medicine. Gazette notification and the Service minute.*

*Accordingly, please send the curriculum of MD (Ayurveda/Siddha/Unani) as recommended by the Standing Committee held on 11<sup>th</sup> September 2017*

*within three months (on or before 21<sup>st</sup> December 2017) as requested by the Ministry of Health, Nutrition & Indigenous Medicine.*

*This decision of the Commission is conveyed to you for your information and necessary action.”*

As per the document marked **27R25**, it is evident that there was a meeting convened with affected batches of students as well, in order to ensure that they were given a proper hearing in an endeavor to resolve the matter. After having considered the views of the affected students, the UGC allowed the IIM to continue the program provided that the curriculum is submitted through proper channels (Vide- letter dated 13-07-2018 marked as **27R30C**). Since the IIM failed to submit the properly formulated curriculum for approval of the UGC, the latter decided to suspend the said program, and accordingly by letter dated 29-08-2019 marked as **P26/27R31B** informed the IIM that the said program has been suspended with immediate effect. Thereafter, the UGC approved the Postgraduate course at the PGIIM. Having considered the detriment caused to the students, the UGC once again by letter dated 24-03-2021 marked as **27R39B** requested the IIM to submit a revised proposal on the MD (Ayu) Postgraduate Degree program to consider for approval. In view of the non-compliance with required standards in the formulation of a curriculum and the failure to submit a duly revised document by the IIM and the University of Colombo, the UGC did not approve the said program.

The learned President’s Counsel for the Petitioner contended that the UGC has no authority to suspend the said program which is vested with the Senate of the 28<sup>th</sup> Respondent. Furthermore, the UGC has no power to approve any course, syllabus or program. As such, the decision which is contained in **P26** is illegal and *ultra-vires*. The central issue to be

determined by this Court is whether the UGC has power/authority to approve the course, syllabus or program of the universities.

In this regard, I refer to section 15 (v) of the Universities Act No. 16 of 1978 (as amended), which reads thus;

*“The Commission shall have and exercise all or any of the following powers :-*

*(v) to determine, in consultation with the governing authority of each Higher Educational Institution, the courses which shall be provided therein, and the degrees, diplomas, and other academic distinctions which shall be awarded ;”*

Section 29 (d) of the said Act reads as follows;

***“Subject to the powers, duties and functions of the Commission, a University shall have power-***

*(d) to provide postgraduate courses, and for this purpose, to co-operate with other universities or authorities in Sri Lanka or abroad, in such manner and for such purposes as the University may determine;”*

Section 46 (6) (iv) of the said Act is reproduced as follows;

*“Subject to the provisions of this Act and without prejudice to the generality of the powers conferred upon it by subsection (5), the Senate shall exercise, perform and discharge the following powers, duties and functions;-*

*(iv) to recommend to the Council after consideration of reports from the Faculty or the Faculties concerned-*



*(a) schemes for the reorganization of existing Faculties and Departments of Study and the organization of new Faculties and Departments of Study; and*

*(b) the assignment of subjects of study to the respective Faculties;”*

Thereby, according to the Universities Act, No. 16 of 1978, the University Grants Commission (UGC) has the power to determine the courses to be offered.

Considering these provisions, it is evident that the University of Colombo, as the 28th Respondent and the IIM, have a statutory responsibility to design and implement study programs subject to the relevant by-laws, standards, and criteria set by the UGC, ensuring compliance with the specified standards regulated by the UGC.

In the present scenario, it is abundantly clear that the universities which have been established under the Universities Act are not autonomous in introducing new courses and programs without the approval and sanction of the UGC.

The UGC holds exclusive and sole authority to grant approval for universities to introduce new courses and programs. I firmly reject the contention put forth by the learned President's Counsel for the Petitioner, asserting that although the UGC has the power to approve courses, it lacks the power to determine the syllabus for such courses. It is well understood that courses cannot exist without a syllabus. Therefore, if the UGC possesses the power to approve courses, it necessarily follows that it also holds the authority to decide the syllabus for such courses in accordance with the provisions of the Universities Act.

In the present application, the IIM rightly sought permission from the UGC to establish the aforementioned postgraduate degree. Subsequently, the UGC constituted a panel of experts to examine this matter. The UGC requested the IIM to incorporate the recommendations of the expert panel into the syllabus of the proposed postgraduate degree to ensure the maintenance of academic standards.

Regrettably, despite being provided with ample opportunities by the UGC to comply with its requests, the IIM utterly failed to do so. Given these circumstances, the UGC had no alternative but to disapprove the said program.

It is the considered opinion of this Court that the decision taken by the UGC, as contained in document P26, is justifiable, falls within the authority conferred by law (*intra vires*), and is consistent with the provisions of the Universities Act.

Furthermore, it is ensured that through the establishment of the PGIIM for postgraduate studies, the discontinuation of the disputed program by the UGC will not cause any prejudice to the petitioners.

It is borne out from the documents marked P9A, P9C, P9C, P101, P10, P12 etc that the Petitioners were fully aware of the fact that the postgraduate program in dispute was not within an adequate standard and the IIM failed to comply with the report presented by the expert panel of the UGC. Further, as per the document marked 27R25, the UGC had kept informed the Petitioners the present situation and the Petitioners were given an adequate hearing as well. As such it appears to this Court that the UGC had adhered to the principles of natural justice.

For the foregoing reasons, it is the view of this Court that the instant Application of the Petitioners is devoid of merits. Thus, the Application is dismissed. No costs.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**