

**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 and Mandamus  
in terms of Article 140 of the Constitution.

Dr. K.K.N.C. Premaratne,  
No. 105, Amarathunga Mawatha,  
Mirigama.

**Case No: CA (Writ) 0804/2008**

**PETITIONER**

**Vs.**

1. The University of Colombo,  
Munidasa Cumarathunga Mawatha,  
Colombo 03.
2. Prof. S.S.M.K. Hirimburegama,  
The Vice-Chancellor,  
University of Colombo,  
Munidasa Cumarathunga Mawatha,  
Colombo 03.
3. Prof. Amal Jayawardena,
4. Prof. S. Sandarasegaram,
5. Prof. T.R. Ariyaratna,
6. Prof. Harsha Senevirathne,
7. N. Selvakumaran,
8. Dr. N.R. de Silva,
9. L.J.P. Alexis Silva,
10. S. J. Amarasekara,
11. Ramance Amarasuriya,
12. Dr. P. S. M. Gunarathne,
13. Prof. Dulitha Fernando,
14. Prof. D.M.S.S.L. Dissanayake,

15. Prof. N.D. Gunawardena,
16. Dr. K. Wickramasuriya,
17. Prof. A.H.M. Nussain.
18. R. Asirwatham.
19. K. Kanag-Iswaran P.C.,
20. N. Attygalla,
21. Dr. Y.L.H. Yakandawala,
22. Malani Peiris,

Members of the University Council,  
University of Colombo.  
Munidasa Cumarathunga Mawatha.  
Colombo 03.

23. University Grants Commission,  
No. 20, Ward Place,  
Colombo 07.
24. The Post Graduate Institute of Medicine,  
No. 160, Norris Canal Road,  
Colombo 07.
25. Prof. Rezvi Sheriff.  
Director,  
Post Graduate Institute of Medicine,  
160, Norris Canal Road,  
Colombo 08.
26. Prof. Susirith Mendis,  
Chairman,  
Board of Management,  
The Post Graduate Institute  
of Medicine of the University of  
Colombo,  
160, Norris Canal Road,  
Colombo 08.

27. Prof. Lalitha Mendis.
28. Prof. Carlo Fonseka.
29. F.R. Maligaspe
30. A. Abeygunasekara.
31. Dr. Ajith Mendis.
32. Dr. S. T. G. Rde Silva,
33. Dr. C. D. A. Goonasekara.
34. Dr. K. Sivapalan.
35. Prof. P. L. Ariyananda,
36. Prof. Jayanatha Jayawardana,
37. Prof. H. J. de Silva,
38. Prof. R. L. Wijaeeweera.
39. Prof. Nimal Senanayake.
40. Prof. V. Arsaratnam,
41. Prof. P. S. Wijesinghe,
42. Prof. Mohan de Silva,
43. Prof. A. N. L. Ekanayake,
44. M. D. D. Peiris,
45. Dr. Lucian Jayasuriya.
46. Dr. E. D. Rodrigo,
47. Dr. Deepthi Atyygalle,
48. Dr. S. Sivakumaran,
49. S. A.C. M. Zubyle,

All members of the Board of  
Management of the Post Graduate  
Institute of Medicine,  
No. 160, Norris Canal Road,  
Colombo 08.

50. Prof. Rohan Jayasekara,
51. Dr. B. J. C. Perera,
52. Dr. Hilary W.M. Cooray,
53. Dr. Geethnajana Mendis,
54. Dr. Shayam Fernando,
55. Dr. Raveen Hanwella,
56. Dr. N. Pinto,
57. Dr. H. J. S. Suraweera,
58. L. K. Jayaweera,
59. Dr. Lalith S. Wijayarathna,
60. Dr. C. Thureiraja.

All members of the Board of Study in Sports  
Medicine of the Post Graduate Institute of  
Medicine

No. 160. Norris Canal Road,  
Colombo 08.

61. Dr. Jaspal Singh Sandu  
C/o The Post Graduate Institute of Medicine  
of the University of Colombo.  
160, Norris Canal Road, Colombo 08.

62. Dr. Upali Banagala,  
C/o The Post Graduate Institute of Medicine  
of the University of Colombo.  
160, Norris Canal Road, Colombo 08.

63. Dr. Athula Kahandaliyanage,  
Secretary,  
Ministry of Health and Nutrition,  
"Suwasiripaya".  
Baddegama Wimalawansa Mawatha,  
Colombo 10.

64. Dr. N. J. Nonis,  
Registrar,  
Sri Lanka Medical Council,  
31, Norris Canal Road,  
Colombo 10.

**RESPONDENTS**

**Before:** M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

**Counsel:** Uditha Egalahewa, P.C. with Ranga Dayananda for Petitioner.

N. Wigneswaran, DSG for the Respondents.

**Written submissions tendered on:**

30.08.2022 by the Petitioner

**Argued:** By way of written submissions

**Decided on:** 10.08.2023

**S.U.B. Karalliyadde, J.**

The Petitioner to this Writ Application is a Medical Officer. The Postgraduate Institution of Medicine (the PGIM) decided to conduct a Postgraduate Diploma in Sports Medicine and issued the prospectus (marked as P2) specifying the scope of the subject, eligibility criteria, rules of examination etc. Having been successful in this selection test, the Petitioner was selected to follow the Diploma. Altogether 20 applicants were selected to follow the Diploma and it was a distance learning program. At the end of the course, an examination was held and it consisted of three components; written, clinical and oral components. By the letter dated 21. 07. 2008 (marked as P10) the Petitioner was informed that he failed to obtain the minimum required marks for the clinical component although, he has obtained the required marks for the other two components as well as the total aggregate marks to pass the examination. According to

clause II of the prospectus marked as P2, a doctor who follows the course should obtain a minimum percentage of 50 in each of the three components of the examination, and if not obtained 50% in each component, even though the aggregate marks for the whole examination is 50% or above he/she will be considered as failed. The Petitioner has averred in the Petition that many irregularities were taken place in conducting the Diploma as well as during the examination and he has complained in writing about the same before and after the examination was held and even before the results were released.

When the case was taken up for argument on 14.06.2010, the learned DSG appearing for the Respondents raised preliminary objections about the maintainability of the action and thereafter on 07.03.2011, the learned Counsel for the Petitioner informed Court that the Petitioner will not proceed with the reliefs sought in prayers (c) and (d) and will restrict himself only to the reliefs prayed for in prayers (e) to (g) in the Petition. When the matter was taken up for argument on 06.06.2022, parties consented to dispose of the matter on written submissions and accordingly, only the Petitioner has tendered written submissions on 30.08.2022.

The substantive reliefs prayed for in the Petition dated 06.10.2022 are as follows;

(e) issue a mandate in the nature of a Writ of Certiorari to quash the decision/results to fail the Petitioner by the 24<sup>th</sup> Respondent (the PGIM) as reflected in the letter dated 21<sup>st</sup> July 2008, marked as P10

(f) issue a mandate in the nature of a Writ of Mandamus directing the 24<sup>th</sup> Respondent to include the Petitioner's name in the past list

(g) issue a mandate in the nature of a Writ of Mandamus directing the 24<sup>th</sup> Respondent to award the Diploma in Sports Medicine to the Petitioner

Now I will address my mind to the reliefs sought by the Petitioner in prayers (e) to (g) of the Petition which he is pressing upon. In prayer (e) the Petitioner seeks to issue a Writ of Certiorari to quash the decision of the PGIM contained in P10 to fail him from the examination. The learned DSG appearing for the Respondents argues that the relief sought in prayer (e) is futile for the reason that the marks awarded in respect of the clinical component have not been sought to be quashed.

In *Samastha Lanka Nidahas Grama Niladhari Sangamaya Vs Dissanayake*<sup>1</sup> Saleem Marsoof J. held that,

*“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”*

Marsoof, PC. J (P/CA) in the case of *Ratnasiri and others Vs Ellawala and others*<sup>2</sup> held that;

*“This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that “A writ... will not issue where it would be vexatious or futile.”*

In the case of *Siddeek Vs Jacolyn Seneviratne*<sup>3</sup> Soza J. observed that,

*“The Court will have regard to the special circumstances of the case before it before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality.”*

Vide; *Rev. Nehinwela Piyadassi Thero Vs National Water Supply and Drainage Board*<sup>4</sup>; *Credit Information Bureau of Sri Lanka Vs Messrs Jafferjee & Jafferjee (Pvt) Ltd.*<sup>5</sup>; *De Silva Vs University Grants Commission*<sup>6</sup>; *P.S. Bus Co. Ltd. Vs Members and Secretary of Ceylon Transport Board*<sup>7</sup>; *Pushpakumara Vs Lt. Commander Wijesuriya.*<sup>8</sup>

In the case at hand, the Petitioner is seeking a Writ of Certiorari to quash P10, by which the PGIM informed the Petitioner that he had failed the clinical component of the Diploma. Therefore, even if the Court decide to quash the decision mentioned in P10, the decision taken by the PGIM to fail the Petitioner will remain unchanged. Therefore, I hold that the relief sought in prayer (e) is futile.

---

<sup>1</sup> [2013] BLR 68.

<sup>2</sup> (2004) SLR 180.

<sup>3</sup> [1984] 1 Sri LR 83.

<sup>4</sup> [2011] 2 BLR 470.

<sup>5</sup> 2005 (1) Sri LR 89.

<sup>6</sup> [2011] 2 BLR 474.

<sup>7</sup> (1960) 61 NLR 491.

<sup>8</sup> [2010] 2 Sri LR 393.

The Petitioner has stated in the Petition that two examiners interviewed him on two clinical cases (two patients) at the clinical component and alleges that out of those two cases, one case was not relevant to the subject matter of the Diploma. Further, the Petitioner alleges that both examiners who interviewed him were not qualified in the relevant field of study as required by the applicable rules for the examiners issued by the PGIM and therefore, they are disqualified to be the examiners and for that reason, the examination panel was not properly constituted. The Petitioner alleges that even though there should be two examiners at the examination and the evaluation of the clinical cases (the two patients), when the Petitioner had the consultation with the patient in the second clinical case and when discussing the case with the examiners one of the examiners (Dr. C. Thurairaja) was not at the bedside. The Petitioner further alleges that there were many irregularities and deficiencies involved in conducting the Diploma and in the relevant examination and he had protested and complained against the same (P11 and P6a). The Petitioner argues in terms of clause 4.1.1. of the P8 that the two examination panellists (the 59<sup>th</sup> and the 60<sup>th</sup> Respondents) were not qualified to function as examiners for the reason that they functioned as course supervisors as well as main clinical trainers other than their role as examiners. Clause 4.1.1 states that;

4.1 The examiners should

4.1.1. disclose to the Chief Examiner if assessing a candidate causes a conflict of interest (i.e. immediate family, supervising trainee) in order that alternative arrangements can be made for the assessment, if necessary.

The Petitioner states that he was a supervising trainee of one of the panellists and therefore he (the panellist) could not have been appointed as his examiner. The Respondents deny the allegations of the Petitioner and taken up the position that the 59<sup>th</sup> and the 60<sup>th</sup> Respondents were only batch supervisors and not clinical trainers in the training program.

The Petitioner argues that he is entitled to full marks for the clinical component and by prayers (f) and (g) he seeks Writs of Mandamus compelling the Respondents to pass him from the examination. The learned President's Counsel appearing for the Petitioner has restricted the written submissions only to satisfy Court why the Petitioner should have given full marks in respect of the clinical component. In that regard, the Petitioner has averred that the Respondents failed to adhere to the procedure and guidelines as



contained in the Prospectus, Regulations and Training Programme issued by the PGIM regarding the Diploma (marked as P2), General Regulations and Guidelines of the PGIM (marked as P5) and Code of Conduct and Guidelines for Examiners issued by the PGIM (marked as P8). Furthermore, the Petitioner has averred that hereinbefore mentioned irregularities that took place at the clinical component have resulted in him failing the clinical component. The Petitioner argues that the Respondents made an express representation to the Petitioner that they would follow the instructions mentioned in P2, P5 and P8 and the failure of the Respondents to adhere to the procedure and guidelines laid down in the P2, P5 and P8 amounts to a violation of his legitimate expectation. The concept of legitimate expectation derives from the administrative law principle that public authorities must act fairly and reasonably. It was held in *Manufacturers (Pvt) Ltd Vs Commissioner General of Excise*<sup>9</sup> at page 4 that,

*“Legitimate expectation arises to protect a procedural or substantive interest when a public authority rescinds from a representation made to a person. It is based on the principles of natural justice and fairness, and seeks to prevent authorities from abusing power.”*

Lord Neuberger held in the Privy Council decision of *The United Policyholders Group Vs AG of Trinidad and Tobago*<sup>10</sup> at para. 37 that,

*“In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts.”*

However legitimate expectation will not be protected by judicial review, *inter alia*, where the granting of the expectation would have an unfair or unjust result. In the case of *Regina Vs Inland Revenue Commissioners, Ex parte M.F.K. Underwriting Agents Ltd. and Others*,<sup>11</sup> Bingham L.J. at page 1569 held that,

*“In so stating these requirements I do not, I hope, diminish or emasculate the valuable, developing doctrine of legitimate expectation. If a public authority so conducts itself as*

---

<sup>9</sup> CA Writ 242/2015 CA Minutes of 15<sup>th</sup> December 2016.

<sup>10</sup> [2016] 1 W.L.R. 3383.

<sup>11</sup> [1990] 1 W.L.R. 1545.

*to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. **The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one-way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizen.***" (Emphasis added)

The argument of the Petitioner is that if the Diploma had been conducted adhering to the prospectus and guidelines mentioned in P2, P5 and P8 he could have obtained full marks for the clinical component and failure to adhere to P2, P5 and P8 amounts to a breach of his legitimate expectation. The Court cannot agree that a person who faces an interview or examination will have a legitimate expectation that the interview board or examiners would give him full marks. Therefore, I am of the view that Petitioner is not entitled to relief on the ground of legitimate expectation. Furthermore, the Court neither has the expertise to decide on the relevancy of the 1<sup>st</sup> case to the Diploma nor the qualifications of the panellists on the field of study nor their qualifications to be in the examination panel nor whether the panel was properly constituted. Therefore, the Court is not in a position to issue writs of Mandamus compelling the Respondents to pass the Petitioner from the clinical component and award him the Diploma.

In the case of *Abeyasinghe and 3 others Vs. Central Engineering Consultancy Bureau and 6 others*<sup>12</sup> the court had to consider whether a foreign degree in engineering is equivalent to a degree in engineering or its equivalent in Sri Lanka. Fernando, J. held that "*Learned Counsel for the Petitioners submitted that the 5<sup>th</sup> Respondent's Leningrad Diploma could not be regarded as being a degree in Engineering, or its equivalent, as it was a qualification in Geology, and not in Engineering as understood in Sri Lanka. The Respondents produced details of the subjects offered for that Diploma, and Counsel submitted that these could not be considered equivalent to those prescribed for a local degree in Engineering. It is not for us to determine, on the merits, whether the Diploma conferred by the Leningrad Institute of Mining was the equivalent of a degree in Engineering from a recognized University; that was a matter for the 1st*

---

<sup>12</sup>(1996) 2 Sri L. R. 36.

*Respondent and the Interview Board, and as long as their decision was not perverse or unreasonable, or tainted by procedural error, this Court would not seek to substitute its views" (Emphasis added).*

In the case of *Dr. C.J.A. Jayawardena Vs. University of Colombo and 28 Others*<sup>13</sup>, his Lordship Justice Arjuna Obeyesekere investigated whether academic issues are outside the jurisdiction of this Court. In delivering his judgement Justice Arjuna Obeyesekere observed the followings:

*"The issue that this Court must decide in this application is whether the decision of the 1<sup>st</sup> Respondent not to appoint the Petitioner to the post of Associate Professor / Professor is illegal, irrational or unreasonable. In considering the above issue, this Court would first like to lay down the parameters within which Courts have previously acted when faced with decisions by academic institutions, especially since this is a matter on which a great deal of emphasis has been placed by the learned Senior State Counsel in resisting this application.*

*In Administrative Law by Wade and Forsyth*<sup>14</sup>, it has been pointed out that Courts will be reluctant to enter into "issues of academic or pastoral judgment which the University was equipped to consider in breadth and in depth but on which any judgment of the Courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified."

In *Abeyesundara Mudiyanseelage Sarath Weera Bandara Vs University of Colombo and others*<sup>15</sup>, having considered several English cases in this regard, this Court held as follows:

*"The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinise*

---

<sup>13</sup> CA (Writ) Application No. 137/2018; CA Minutes of 22 of June 2020. H.W.R. Wade,

<sup>14</sup> C.F. Forsyth, *Administrative Law* (11<sup>th</sup> Edition, Oxford University Press 2014), page 537.

<sup>15</sup> CA (Writ) Application No. 844/2010; CA Minutes of 8<sup>th</sup> June 2018.

*and judge the merits and/or demerits of such decisions. Dealing with the scope of interference in matters relating to orders passed by the authorities of educational institutions, the Courts should normally be very slow to pass orders in regard thereto and such matters should normally be left to the decision of the educational authorities."*

Observing the aforementioned authorities Justice Arjuna Obeyesekere held as follows; *"This Court is therefore of the view that while due recognition will be given to the view of the decision maker, whether the decision relates to academic matters or otherwise, this Court can, and will, in the exercise of the jurisdiction vested in it by Article 140 of the Constitution, examine whether the impugned decision of the 1<sup>st</sup> Respondent is tainted with illegality, irrationality or procedural impropriety. This Court would however exercise extreme caution if asked to consider, for example as in this case whether a decision of a selection board or panel to award less marks than what a petitioner claims is rightfully due, is irrational or unreasonable."*

Under the above-stated circumstances in the instant Application, this Court cannot issue Writs of Mandamus compelling the PGIM to pass the Petitioner from the examination and award him the diploma. Considering the above-stated facts and circumstances, I hold that the Petitioner is not entitled to the reliefs sought in the prayers (e) to (g).

Therefore, I dismiss the Application without costs.

***Application dismissed.***

**JUDGE OF THE COURT OF APPEAL**

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

**I agree.**

**JUDGE OF THE COURT OF APPEAL**