

**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.

**CA Writ No.134/2012**

Professor Yapa Mudiyanseelage Sunanda  
 Madduma Bandara,  
 No.102/5/A, Pushparama Road,  
 Pahala Biyanwala,  
 Kadawatha.

**Petitioner**

**Vs.**

1. University of Kelaniya,  
 Dalugama,  
 Kelaniya.  
 And 34 others

**Respondents**

**BEFORE** : **S. SRISKANDARAJAH, J (P/CA)**

**P.W.D.C.JAYATHILAKA, J**

**COUNSEL** : **M.U.M.Ali Sabry PC with Erusha kalidara,**  
**for the Petitioner.**

Aruna Obeysekera DSG

for the 1<sup>st</sup> -3<sup>rd</sup> ,5<sup>th</sup> -30<sup>th</sup> and 35<sup>th</sup> Respondent

Argued on : 22.01.2013

Decided on : 20.06.2013

**S.Sriskandarajah,I**

The Petitioner joined the Department of Economics of the 1<sup>st</sup> Respondent University in 1979, as a Probationer Assistant Lecturer and thereafter he was promoted to Senior Lecturer Grade II and Grade I. The Petitioner held different positions in the said University and the Petitioner currently is the Director-General of Development and Communication of the Ministry of Economic Development. The Petitioner in this application has sought a Writ of Certiorari to quash the decision of the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> and 9<sup>th</sup> to 21<sup>st</sup> Respondents, electing and/or selecting the 32<sup>nd</sup> and 33<sup>rd</sup> Respondents as suitable candidates for the post of Vice-Chancellor of the 1<sup>st</sup> Respondent University, to be submitted to the 22<sup>nd</sup> Respondent Commission, and the Petitioner has also sought a Writ of Mandamus to hold a fresh election for the purpose of electing a Vice-Chancellor to the 1<sup>st</sup> Respondent University. The Petitioner has also sought a Writ of Prohibition preventing the 22<sup>nd</sup> to the 30<sup>th</sup> Respondents, from acting on the nomination submitted by the 21<sup>st</sup> Respondent and submitting the same to His Excellency the President in terms of Section 39 of the University Act, as amended.

The issue raised in this application is in relation to the election and/or selection of the 3 Members to the post of Vice-Chancellor to the University of Kelaniya in terms of Section 34 of the Universities Act No.16 of 1978, as amended by Act No.7 of 1985 and Act No.1 of 1995. Section 34 provides as follows:-

Section 34:

- (a) The Vice Chancellor of a University shall be appointed for a term of 3 years by the President upon the recommendation of the Commission from a panel of 3 names recommended by the Council of that University;
- (b) The Vice Chancellor of a University may be removed from office by the President after consultation with the Commission.

The procedure for the selection of the Vice-Chancellor is set out in the Commission circular. According to the circular, the said post has to be advertised in the newspaper. Accordingly, the Registrar and the Secretary of the Council of the 1<sup>st</sup> Respondent University published an advertisement in the newspaper on 21<sup>st</sup> March 2012 inviting applications/nominations from suitable candidates to the post of Vice-Chancellor of the 1<sup>st</sup> Respondent University. In terms of the said advertisement, the Petitioner, the 2<sup>nd</sup> Respondent, the 8<sup>th</sup> Respondent and 31<sup>st</sup> to the 34<sup>th</sup> Respondents and 4 other candidates applied for the post of Vice-Chancellor of the 1<sup>st</sup> Respondent. Subsequently, 3 members withdrew their applications. The Petitioner, the 2<sup>nd</sup> Respondent, 8<sup>th</sup> Respondent and the 31<sup>st</sup> to the 34<sup>th</sup> Respondents remained as applicants for this post. The 1<sup>st</sup> Respondent Council fixed a Council meeting for the 8<sup>th</sup> of May 2012 for election of three candidates in terms of Section 34 of the University Act for the purpose of appointing a Vice-Chancellor. On 8<sup>th</sup> May 2012, the 1<sup>st</sup> Respondent Council took a vote from the Members of the Council to elect 3 Members for the post of Vice Chancellor in terms of the circular issued by the University Grants Commission. The Applicant received the following votes in the 1<sup>st</sup> round:

The 2<sup>nd</sup> Respondent - 13

The 8<sup>th</sup> Respondent - 3

31<sup>st</sup> Respondent - 2

32st Respondent	- 8
33 <sup>rd</sup> Respondent	- 6
34 <sup>th</sup> Respondent	- 0
Petitioner	- 6

Since the Petitioner and the 33<sup>rd</sup> Respondent received equal number of votes for the 3<sup>rd</sup> position, the Council decided to have a 2<sup>nd</sup> round voting. The votes secured by each application in the 2<sup>nd</sup> round are as follows:-

The 33 <sup>rd</sup> Respondent	- 8 votes
The Petitioner	- 7 votes.

As per the votes, the Council of the 1<sup>st</sup> Respondent had decided to recommend the 2<sup>nd</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Respondents to the 22<sup>nd</sup> Respondent in terms of Section 34 of the Universities Act for the Vice-Chancellor's post.

It is the submission of the Petitioner that Mr. Deepal Sooriya Arachchi, who had been absent for more than 3 consecutive meetings, and thus deemed to have vacated his office in terms of Section 44(5) of the University Act No.16 of 1988, had participated in the said voting, and had voted and, if he has not participated in the meeting, and not cast his vote, the Petitioner had a fair chance of getting elected to the 3 Member Panel of the post of Vice-Chancellor. The Petitioner submitted, in the aforesaid circumstances, the selection of the 3 Members to the post of Vice-Chancellor of the 1<sup>st</sup> Respondent at the meeting held on 8/05/2012 is illegal, unlawful and ultra vires and, therefore, the recommendation made by the Council has to be quashed by a Writ of Certiorari.

The Petitioner relied on the interpretation of Section 44(5) of the Universities Act. Section 44(5) which provides as follows:-

Section 44(5): A branch member of the Council who, for whatever reason, absents himself from 3 consecutive meetings of the Council, shall be deemed to have vacated his office as a Member of the Council, and the Commission shall appoint a fit person to fill the resulting vacancy.

It is the position of the Petitioner that Mr. Deepal Sooriya Arachchi was absent from 3 consecutive meetings of the Council and, therefore, he had deemed to have vacated his office as a Member of the Council and, therefore, he is not entitled to vote in the selection process that was held to select the Vice-Chancellor. It is the submission of the Petitioner that if he has not voted in the said election, he would have had a fair chance to get elected.

The Respondents contended, the election was held fairly and the Members of the Council present at the said meeting accepted the results of the election and, after the minutes of the election were prepared by the pro-tem Chairman, it was read out to the Members who were present at the meeting, and they agreed with the contents thereof. Thereafter the Council decided, in terms of Section 34 of the Universities Act, to recommend to the 22<sup>nd</sup> Respondent the names of the 2<sup>nd</sup> Respondent, 32<sup>nd</sup> Respondent and 33<sup>rd</sup> Respondent for the post of Vice-Chancellor of the 1<sup>st</sup> Respondent. It is the position of the Respondents that Mr. Deepal Sooriya Arachchi the 19<sup>th</sup> Respondent, had been present at the meeting of the Council held on 13/09/2011. Mr. Deepal Sooriya Arachchi had informed the Registrar of the 1<sup>st</sup> Respondent University of his inability to attend the Council meeting held on 8/11/2011, 20/12/2012 and 14/02/2012 by documents marked P8, P9, P10 and P11. It is the position of the Respondents that since the 19<sup>th</sup> Respondent had informed the 1<sup>st</sup> Respondent of his inability to attend the aforesaid meetings of the Council, and the Council has excused his absence, he cannot be considered as absent from the said meetings and, therefore, the

Respondent's submission that Section 44(5) of the said Act does not apply to the 19<sup>th</sup> Respondent and hence he is eligible to attend and vote at the Council meeting held on 8/05/2012.

The Petitioner's submission that Section 44(5) that imposed the disqualification of a Member has awarded the disqualification in the following manner:-

"For whatever reasons, absence means, absence from 3 consecutive meetings of the Council, shall be deemed to have vacated his office as a Member of the Council."

It is the submission of the Petitioner that if a Member is absent for whatever reasons, he is deemed to have vacated his office. The position of the Respondent is that if a Member has got prior approval of the Council to excuse his absence at the Council meeting, then his absence cannot be considered under Section 44(5) as a person absent from the meeting of the Council.

A fair reading of Section 44(5) would show that a Member, without due diligence in attending the meeting, has kept away from attending the meeting for 3 consecutive occasions, could be considered as deemed to have vacated his office, but a Member who is conscious of the fact that the meetings are being held and due to his inability to attend the meetings had got prior approval of the Council from not attending the meetings, cannot be considered as a person absent from the meeting and absence of that nature for 3 consecutive meetings would not result in vacating his office. The words 'absents himself for whatever reasons, the words in the section, could be construed as, a Member who was absent at 3 consecutive meetings without prior approval and subsequently giving whatever excuse for his absence will not be accepted and condoned for his

absence at the said meeting. As Mr. Deepal Sooriya Arachchi has got prior approval and excused himself from attending some meetings of the Council, he cannot be treated as having vacated his office as a Member of the Council and, therefore, his vote could be considered as a valid vote in the meeting held on the 8<sup>th</sup> of May 2012, the 2<sup>nd</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Respondents were elected by a vote of the Members and, therefore, the position of the Council to recommend these 3 candidates to the 22<sup>nd</sup> Respondent for the post of Vice-Chancellor of the 1<sup>st</sup> Respondent cannot be considered as illegal, unreasonable or was arrived at by a procedural error and therefore, this Court holds that the Petitioner has not established a case for this Court to issue a Writ of Certiorari to quash the decision of the 1<sup>st</sup>, 3<sup>rd</sup> to 7<sup>th</sup> and 9<sup>th</sup> to the 21<sup>st</sup> Respondents to select the 2<sup>nd</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> candidates as suitable candidates for the post of Vice-Chancellor. In view of this, the Petitioner's application is dismissed without cost.

President of the Court of Appeal

**P.W.D.C.Jayathilaka, J**

I agree,

Judge of the Court of Appeal