

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

In the matter of an Application for Orders
in the nature of Writs of Certiorari and
Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA (Writ) Application No: 142/2015

Dr. K.C.P. Perera
No.695, Station Road,
Kapuwatte,
Ja-Ela.

Petitioner

Vs.

1. University of Colombo
No.94, Kumaratunga Munidasa Mawatha,
Colombo 03.
2. Dr. W.K.Hirimburegama
Vice Chancellor,
University of Colombo,
No.94, Kumaratunga Munidasa Mawatha,
Colombo 03.

2A. Prof. Lakshman Dissanayaka
Vice Chancellor,
University of Colombo,
No.94, Kumaratunga Munidasa
Mawatha,
Colombo 03.

3. Prof. S.D. Jayaratne
Chairperson, Post Graduate Institute of
Medicine,
160, Norris Canal Road,
Colombo 07.
4. Prof. Janaka de Silva
Director, Post Graduate Institute of
Medicine,
160, Norris Canal Road,
Colombo 07.
5. Prof. H.T.C.S. Abeysena
Deputy Director, Post Graduate Institute
of Medicine,
160, Norris Canal Road,
Colombo 07.

5A. Dr. Senaka Rajapakse

Deputy Director, Post Graduate Institute
of Medicine,
160, Norris Canal Road,
Colombo 07.

6. Prof. Jayantha Jayawardana
7. Dr. Sunil Jayantha Navaratne
- 7A. S.D. Jayaratne**
8. Dr. Nihal Jayathilake
- 8A. S.D. Jayaratne**
9. Mr. R.M.P. Rathnayake
- 9A. D.C. Dissanayake**
10. Dr. P.G. Maheepala
11. Prof. Rohan Jayasekera
- 11A. Anura Jayawickrama**
12. Prof. M.D. Lamawansa
- 12A. R.H.S. Samaratunga**
13. Prof. S. Lekamwasam
14. Dr. S. Balakumar
- 14A. Prof. Jennifer Perera**

15. Prof. Mohan de Silva
15A. Prof. Vajira Weerasinghe
16. Prof. N.R. de Silva
17. Prof. Upul B. Dissanayake
17A. Prof. S.G. Yasawardene
18. Dr. K.T. Sundaresan
18A. Prof. W.M. Tilakaratne
19. Prof. S.H. Siribaddana
20. Prof. Malkanthi Chandrasekera
20A. Prof. Antoinette Perera
21. Prof. Abdul Hussain
21A. Prof. P.S.Wijesinghe
22. Prof. Senaka Rajapakse
22A. Dr. Mahanama Gunasekera
23. Prof. Nandadeva Samarasekera
24. Prof. (Ms) Ranjanie Gamage
25. Dr. Harsha Cabral P.C.
26. Dr. S. Raviraj
27. Mr. Ranjan Asirwatham
28. Mr. C. Maliyadde
28A. Prof. Lakshman Ratnayake
29. Dr. Lakshmi Somathunga
30. Dr. J.M.W. Jayasundara Bandara
31. Dr. Sunil De Alwis
32. Prof. P.R. Fernando
32A. V.P. Wickramasinghe
33. Prof. P.V.R. Kumarasiri
33A. Dr. G.S.S.R. Dias
34. Prof. I.M.R. Goonewardena
34A. Dr. K. Muhunthan
35. Dr. (Mrs) T.S. Navaratnarajah
35A. Prof. Deepaka Weerasekera
36. Prof. Dulani Gunasekera
36A. Prof. A.P. De Silva
37. Dr. S.S. Williams
37A. Dr. J.A.V.P. Jayasinghe
38. Prof. (Ms)S.L. Ekanayake
38A. Dr. M. Thirukumar
39. Dr. A.N. Arulpragasam
40. Dr. S.P.B. Thalgaspitiya

3rd to 40th Respondents all of:
The Board of Management of the Post
Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

- 41. Prof. A.L.P. De S. Seneviratne
41A. Dr. Sanath Hettige
- 42. Dr. Seneth Samaranayake
42A. Dr. R.M. Mudiyanse
- 43. Dr. Sarth Paranthavithana
- 44. Dr. Ananda Perera
- 45. Dr. Prasanna Siriwardane
- 46. Dr. Sanath Hettige
46A. Prof. Kumara Mendis
- 47. Dr. Jayantha Jayatissa
47A. Dr. Shyamalee Samaranayake
- 48. Dr. Sankari Balabaskaran
48A. Prof. Chandrika Wijeratne
- 49. Dr. Thilak De Silva
49A. Dr. H.M.M. Herat
49B. Dr. Sri Ranjan
- 50. Dr. Chandana Galappaththi
50A. Dr. Thyagi Ponnampereuma
50B. Dr. S.B.S. Serasinghe

41 to 50th Respondents all of:
Board of Study for Family Medicine,
Post Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

- 51. Dr. Janaka Ramanayake
Chief Examiner for MD Family
Medicine Examination,
Post Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

- 52. Prof. Nandani De Silva
- 53. Professor M.S.A. Perera
- 54. Dr. Shamalie Samaranayake
- 55. Prof. Leela Karunarathne

52nd to 55th Respondents all of:
Examiners for the Portfolio Viva
Component of the MD Family Medicine
Examination,
Post Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

- 56. Dr. Shaluka Jayamanna
- 57. Dr. Anuja Premawardhana
- 58. Dr. Sumudu Kumarage
- 59. Dr. Sharman Rajindrajith
- 60. Dr. U.D.P. Rathnasiri
- 61. Dr. Ajith Fernando
- 62. Prof. Aloka Pathirana
- 63. Dr. Janaka Akarawita
- 64. Dr. K.A. Salvin
- 65. Dr. Chalukya Gunasekara
- 66. Dr. Bandu Gunasena
- 67. Dr. Hemantha Perera
- 68. Prof. Wasantha Karunasekara

56th to 68th Respondents all of:
Examiners for the Objectively Structured
Clinical Examinations Component of the
MD Family Medicine Examination,
Post Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

- 69. Mr. K.A.S. Edward
- 70. Dr. Tudor Weerasinghe
- 70A. DR. R.C.K. Hettiarachchi**
- 71. Prof. M.D.A.L. Ranasinghe
- 72. Prof. W. Chandradasa

73. Mr. V.T. Thamilmaran
73A. W. Indira Nanayakkara
74. Dr. A.A.C. Abeysinghe
74A. Dr. R. Senathiraja
75. Prof. Nadira Karunaweera
75A. Prof. Jennifer Perera
76. Prof. K.R.R. Mahanama
77. Prof. Sunil Chandrasiri
77A. Prof. Nayani Melegoda
78. Prof. Indralal De Silva
78A. Prof. J.K.D.S. Jayanetti
79. Prof. Janaka de Silva
80. Mr. K. Kang-Isvaran P.C.
80A. Ranjan Asirwatham
81. Mr. Thilak Karunaratne
82. Mr. C. Maliyadde
82A. Dr. Harsha Cabral P.C.
83. Dr. Cudu Wijeyeratne
83A. Nigel Hatch P.C.
84. Mr. Amitha K.U. Gamage
84A. Prof. Lakshman Ratnayake
85. Ms. Lesha de Silva Chandrasena
85A. Dr. Raneer Jayamaha
86. Mr. Mahinda Madihahewa
86A. Jehan Prasanna Amaratunga
87. Mr. Ranjith G. Rulasinghe
87A. J.M.Swaminathan
88. Prof. Tilak Hettiarachchy
88A. Prof. Rohan Jayasekera
89. Prof. R. Senathiraja
89A. Mrs. A. C. Mubarak
90. Prof. G.N. Wickramanayake
90A. Prof. Sandagomi Coperahewa
91. Dr. S.M. Handunnetti
91A. Dr. P.R.N. Fernando
92. Mr. S. Senaratne
92A. Dr. M.T.M.Mahees
93. Dr. R. Perera
93A. Dr. Shrinika Weerakoon
94. Mr. U. Amarasiri

- 94A. Mrs. S.Y. Dias
95. Mr. T.L.R. Silva
- 95A. Mr. M. Kapila Bandara
96. Dr. S. Ukwatta
- 96A. Dr. S. Senerath
97. Prof. D. Mendis
98. Mr. M. Senanayake
- 98A. Mr. P.K.J.E. Nonis
99. Ven. A. Sirisumana
- 99A. Dr. A.M. Hettige
100. Dr. N.R. Devasiri
101. Dr. W. Chandradasa
- 101A. Ms. W. Seneviratne
102. Mr. K. Bandara
- 102A. Mrs. Nirmala Perera
103. Mr. N.V. Karunasena
- 103A. Mrs. R. Wijesekera
104. Dr. A.A. Jayawardena
105. Ms. W.I. Nanayakkara
- 105A. Dr. B. Nishantha
106. Ms. J. Niriella
- 106A. Prof. H.N.P. Jayasinghe
107. Dr. A.A.C. Abeysinghe
108. Dr. A.S.P. Weeratunga
- 108A. Mr. B. Fonseka
109. Dr. A.A. Azeez
110. Dr. P. Kailasapathy
111. Dr. J.A.S.K. Jayakody
112. Dr. K. Kajendra
113. Dr. M.M. Dissanayake
- 113A. Dr. T.U. Hewage
114. Dr. P. Galappatthy
115. Dr. A. De Silva
- 115A. Prof. Pradeep Randiwela
116. Dr. D.R.C. Hanwella
117. Dr. S. Tirimanne
- 117A. Prof. P. Mahawatte
118. Dr. J.K. Wijeratne
- 118A. Dr. S.M.W. Ranwala
119. Dr. S. Kulatunga

- 119A. Prof. Upul Senerath**
120. Prof. S.R.D. Rosa
- 120A. Dr. G.R. Constantine**
121. Dr. M.D.T. Attygalle
122. Dr. N. Pallewatte
- 122A. Dr. Jean Perera**
123. Prof. M.M.R.W. Jayasekera
- 123A. Dr. C.P. Senanayake**
124. Prof. V.H.W. Dissanayake
125. Prof. C.P.D.W. Mathew
126. Prof. W.S.S. Wijesundara
127. Prof. H.D. Karunaratne
128. Prof. K.M.N. de Silva
129. Prof S.A. Deraniyagala
130. Prof. E.D. de Silva
- 130A. Dr. Dinithi Fernando**
131. Prof. K.R.R. Mahanama
- 131A. Prof. V.A. De Silva**
132. Prof. M.D.P. de Costa
133. Prof. D.T.U. Abeytunga
134. Prof. R.D. Wijesekera
135. Prof. D.P. Dissanayake
136. Prof. R.S. Dassanayake
137. Prof. Saroj Jayasinghe
138. Prof. Shyam Fernando
139. Prof. Rezvi Sheriff
- 139A. Dr. Kithmini Sirideva**
140. Prof. Senaka Rajapakse
141. Prof. (Mrs.)C.A. Gnanathan
142. Prof. Rohini de A. Seneviratne
- 142A. Prof. N.S. Gunawardana**
143. Prof. M.W. Gunatunga
144. K.A.P. Siddhisena
- 144A. Prof. G.S.A. Gunawardana**
145. Prof. D.M.S.S.L. Dissanayake
- 145A. Prof. S. Sri Ranganatan**
146. Prof. W.I. De Silva
147. Prof. A.D.M.S. Abeyratne
148. Prof. A.M.G.N.K. Attanayake
149. Prof. Amala de Silva

150. Prof. Athula Ranasinghe
150A. Prof. Priyanjale De Zoysa
151. Prof. K.S. Chandrasiri
151A. Prof. Indira Karunathilaka
152. Prof. R.W.T.M Ranjith Bandara
153. Ven. (Professor) W. Wimalarathana Thero
153A. Dr. M.R. Haniffa
154. Prof. Roland Abeypala
155. Prof. Neloufer de Mel
155A. Prof. K.H. Tennakoon
156. Prof. Neluka Silva
157. Prof. S.W. Kotagama
157A. Prof. H.A.S. Ariyawansa
158. Prof. P.S.M. Gunaratne
159. Prof. R. Fernando
160. Prof. N.L. Abeysinghe
160A. Dr. G.D.S. Wimalaratna
161. Prof. S.A. Norbert
162. Prof. L. Manawadu
162A. Dr. D.A.S. Atukorala
163. Prof. M.E.S. Perera
164. Prof. A.P.G. Amarasinghe
165. Prof. E.R.H.S.S. Ediriveera
166. Prof. (Mrs.) N. Melagoda
166A. Prof. K.P. Hewagamage
167. Prof. Ajantha Hapuarachchi
168. Prof. H.M.S. Herath
168A. Dr. A.H.M. Majwood
169. Prof. T.D.K. Waleboda
170. Prof. Jennifer Perera
170A. Dr. P.R. Waratenna
171. **Prof. Rohini Hewamanne (deceased)**
172. Prof. C.N. Wijeratne
173. Prof. Sumedha Wijeratne
174. Prof. A. Kaluarachchi
175. Prof. H. M. Senanayake
176. Prof. Manouri Senanayake
177. Prof. V.P. Wickramasinghe
178. Prof. (Ms.) K.S.H. De Silva
179. Prof. (Ven.) M. Dammajothi Thero

180. Prof. Prof. Deepika Fernando
181. Prof. (Mrs.) N.D. Karunaweera
182. Prof. M.D.S. Lokuhetti
183. Prof. Preethika Angunawala
184. Prof. M.V.C. Silva
185. Prof. W.K. de Abrew
186. Prof. Laal Jayakody
187. Prof. T.R. Ariyaratne
- 187A. Dr. K.V. Dhanapala**
188. Prof. D.U.J. Sonnadara
189. Prof. Prof. J.K.D.S. Jayanetti
190. Prof. K.P.S.C. Jayaratne
191. Prof. Kshanika Hirimburegama
192. Prof. R.L.C. Wijesundera
193. Prof. (Mrs.) T.D. Silva
194. Prof. (Mrs.) T.L.S. Tirimanne
195. Prof. S.I. Keethaponcalan
- 195A. Dr. Kumuduni Madummage**
196. Prof. J. Uyangoda
- 196A. Dr. G.D.D.K. Sri Ranjan**
197. Prof. Sharya Scharenvguivel
198. Prof. Hemamali Perera
- 198A. Dr. J. Wanigasinghe**
199. Prof. L.A.D.A. Tissa Kumara
200. Prof. Sarath Wijesuriya
201. Prof. Asanga Tilakaratne
202. Prof. M. Karunanithy
- 202A. Dr. R.C.K. Hettiarachchi**
203. Prof. S.T. Hettige
204. Prof. L.A.S. Perera
205. Prof. D.A.P. de Silva
206. Prof. (Mrs) M.R. Sooriyarachchi
207. Prof. S.M. Wijeratne
208. Prof. M.M.de Soysa
209. Prof. (Ms) A.U. Abeydheera
210. Prof. D.N. Samarasekera
211. Prof. N.D. Kodikara
212. Prof. W.D. Ratnasooriya
213. Prof. Y.N.A. Jayatunge
214. Prof. P.V. Udagama

- 215. Prof. (Mrs) D.N. de Silva
- 216. Prof. W.S. Premawansa
- 217. Prof. H.D.K.G.A. Weerakoon
- 218. Prof. W.B. Yapa
- 219. Mrs. D.C. Kuruppu
- 220. Prof. Ramani Jayathilake
- 221. Dr. Dushyanthi Mendis
- 222. Mrs. N. Perera
- 223. Mrs. S. Segarajasingham
- 224. Dr. N.N.J. Nawarathne
- 225. Dr. M.P.P. Dharmadasa
- 226. Dr. A.P. Malalasekara
- 227. Dr. K.P.S.C. Jayaratne
- 228. Mrs. Dilrukshi N de Silva

69th 228th Respondents all of:
University of Colombo,
No.94, Kumaratunga Munidasa Mawatha,
Colombo 03.

- 229. Dr. W.D.S.D. Kaunathilake
No.7/8, Harischandra Mawatha,
Pamankada,
Colombo 06.
- 230. Dr. M.D.R. Kumara
No. 258/A, Temple Road,
Homagama.
- 231. Dr. K. Niroshani Anne Pradeepa De Silva
'Shamrock',
Katunayaka.
- 232. Dr. D.L.S. Munasinghe
No. 43/91, Poorwarama Mawatha,
Colombo 05.
- 233. Dr. K.H.D. Milroy
No. 29/13, Jaya Mawatha,
Mirigama.

234. Dr. D.J.H. Gunasekara
Kendaliyaddapaluwa,
Ragama.
235. Dr. W.G.P. Gunawardhana
No. 33, Kurana,
Katunayake.
236. Dr. C.M.A. Anthony
No. 374, Galle Road,
Colombo 03.
237. Dr. M.U.K. Galhena
No. 29C, Perera Avenue,
Kohuwela,
Nugegoda.
238. Dr. M.G.T. Fernando
No. 22, Vidyala Road,
Gampaha.
239. Mr. Boteju
Senior Assistant Registrar-Examinations,
Post Graduate Institute of Medicine,
160, Norris Canal Road,
Colombo 07.

Respondents

Before : Dhammika Ganepola, J.
Damith Thotawatta, J.

Counsel : Shantha Jayawardena with Hirannya
Damunupola, Azra Basheer and Wihangi
Tissera for the Petitioner.
Senany Dayaratne with Nishadi

Wickramasinghe, Maheshika Bandara,
Adithya Karalliadde, Janani Abeywickrema
instructed by Indunil Bandara for the
42nd, 43rd, 44th, 45th, 48th, 49th and 50th
Respondents.
Nirmalan Wigneswaran, D.S.G for the 3rd
– 5th and 239th Respondents.

Argued on : 18.02.2025

Written Submissions : Petitioner : 28.03.2025
tendered on

Decided on : 09.05.2025

Dhammika Ganepola, J.

The Petitioner in the instant application is a Medical Practitioner who has obtained a Postgraduate Diploma in Family Medicine, which is the minimum eligibility requirement to be enrolled for the Postgraduate Degree in Family Medicine from the Postgraduate Institute of Medicine (PGIM) of the University of Colombo. After sitting for a screening test held in December 2010, the Petitioner had been enrolled for the Postgraduate Degree in Family Medicine at the PGIM. The programme for the Doctor of Medicine Degree in Family Medicine and General Practice consists of:

- a. Nine months of training in family practices approved by the Board of Study
- b. Fifteen months of training in hospital specialties in the hospital units approved by the Board of Study
- c. Research project and submission of a dissertation
- d. MD (Family Medicine) Examination

It was submitted that after successfully completing the required training and sitting for the relevant examination, the Petitioner and 229th to 231st Respondents had completed the programme on Doctor of Medicine Degree in Family Medicine and General Practice, and the relevant results had been released on 19.07.2013. However, based on the allegations made by the unsuccessful candidates against the manner in which the examination was conducted and how marks had been allocated, the 6th Respondent had issued a notice stating that the Board of Management of PGIM has decided to cancel the results released on 19.07.2013.

Thereafter, the Petitioner and the 229th to 230th Respondents had filed the action bearing No. DSP 00171/13 before the District Court of Colombo seeking *inter alia*, a declaration that the decision to cancel the results of the Examination is null and void. The 232nd to 238th Respondents, who were the unsuccessful candidates, filed an application bearing No.SC (FR)No. 354/2013 seeking *inter alia* a declaration to the effect that their fundamental rights have been violated, a directive to the Board of Management of PGIM to dissolve the Board of Study under which the examination had been conducted and a directive to appoint a new Board of Study for the rescheduled MD (Family Medicine) Examination and directives to Board of Management and Board of Study of the PGIM and the Senate of the University to appoint a new panel of examiners for the rescheduled MD (Family Examination).

In the Supreme Court, the proceedings of the above application, bearing No.SC (FR) No. 354/2013 were terminated based on the terms which *inter alia* included the following: (document marked P26)

- a. The present 229th, 230th, and 232nd to 238th Respondents and the present Petitioner shall repeat the Portfolio Viva and Clinical Examination (OSCE) of the Examination held on 20.05.2013 to 16.07.2013;
- b. This Examination will be conducted by the new panel of examiners and the new Chief Examiner already appointed by the Senate in January 2014;
- c. The results of the present 232nd to 238th Respondents who were unsuccessful in the Written Examination and the

Dissertation Viva held in 2013 shall be reviewed by the new panel of Examiners; and

- d. The Members of the Board of Studies and the panel of Examiners must ensure that they are impartial in the conduct of the said examination.

Given the above Supreme Court settlement, the Petitioner had withdrawn the aforesaid District Court action. Thereafter, the 4th Respondent had informed the Petitioner that the new panel of Examiners and the Chief Examiner appointed by the Senate of the 1st Respondent University in January will conduct the Portfolio Viva and Clinical Examination as per the Supreme Court order. The Petitioner states that although the above settlement arrived at before the Supreme Court specifically mentioned that the Board of Studies and the Panel of Examiners must ensure that they are impartial in the conduct of the Examination, some of the members of the new Panel of Examiners appointed were not impartial. It is stated that some members appointed, namely Dr. Janaka Rathnayake (Chief Examiner), Prof. Nandani De Silva, Prof. M.S.A. Perera and Dr. Leela Karunarathna (51st, 52nd, 53rd and 55th Respondents) are persons who have given/signed letters (P15) in support of the Petitioners in the above application No.SC (FR)No. 354/2013 and therefore demonstrated partiality towards the Petitioners in the aforesaid Supreme Court matter. Further, it had been submitted that Dr. Shayamalee (54th Respondent), one of the new Examiners, has not completed 7 years after completion of MD to qualify as an Examiner, and her appointment is a violation of the PGIM rules.

Further, it is stated that as per the PGIM's 'Code of Conduct for Examiners' and 'Guidelines for Conduct of Examinations', it is essential that the Examiners maintain their impartiality as Examiners. However, the Director of the PGIM had informed the Senate of the University that the Board of Management of the PGIM has recommended a list of Examiners for the approval of the Senate. The Petitioner states that, based on the reasons mentioned above, the panel of Examiners named by the PGIM is partial and therefore, illegal. Thus, the Petitioner, by his letter dated 04.02.2005 (P35), had informed the 4th Respondent that he shall not

participate in an illegal Examination and had requested that he be permitted to sit for the subsequent examination under a properly constituted Board of Examiners, which shall be considered as his first attempt. However, the Petitioner has not received any response to said letter. The Respondents had continued to hold the examination in February 2015. The 229th and 230th Respondents had also participated in the aforesaid examination. As per the results published on the PGIM website on 16.03.2015(P39), all the candidates who had sat for the examination, namely the 229th to 238th, had passed the examination.

Subsequently, the Petitioner applied for the MD (Family Medicine) examination (by clinical training), which was scheduled to begin on 28.04.2015. It is stated that in the past, PGIM allowed the candidates to repeat only the components that they had failed. However, the 4th Respondent, by his letter dated 18.03.2015 (P40), had informed the Petitioner that the examination that he will be sitting for in April 2015 will be considered as his second attempt and that the Petitioner is required to sit for all four components of the examination. The Petitioner states that such a decision would deny the Petitioner his opportunity to win prizes and medals for his performance at the examination.

The Petitioner states that the above decision of the PGIM reflected in P40 is *ultra vires* and illegal. In the aforesaid circumstances, the Petitioner seeks *inter alia* in the nature of Writs of Certiorari quashing the Clinical Examination, held on 06.02.2015 and Portfolio Viva held on 09.02.2015, for the purpose MD(Family Medicine) Examination, results of the above examination reflected in P39 and decision of the Board of Management of the PGIM reflected in P40 and Writs of Mandamus directing 1st to 228th Respondents to hold fresh Clinical Examination(OSCE) and Portfolio Viva for the purpose of MD (Family Medicine)Examination 2013 with a panel of Examiners who are legally appointed under the provisions of the Postgraduate Institute of Medicine Ordinance, not to consider the examination held in February 2015 which the Petitioner did not participate as an attempt of the Petitioner, to act and treat the Petitioner, has successfully completed the 'Written Examination' and 'Dissertation Viva' components of the MD(Family Medicine) Examination conducted by

the PGIM, and to allow the Petitioner to sit only for the Clinical Examination(OSCE) and Portfolio Viva components of the MD(Family Medicine) Examination scheduled for April 2015 for the purpose of completing the MD(Family Medicine)Examination 2013.

Preliminary Objection in respect of the Jurisdiction of this Court to Hear and Determine the Instant Application in View of the Settlement Arrived Before the Supreme Court in Case No. SC FR 354/13

The 3rd to 5th and the 239th Respondents have raised a preliminary objection to the effect that this Court has no jurisdiction to hear and determine this application as the instant application arises out of an alleged non-compliance with the settlement entered before the Supreme Court in application No. SC FR 354/13 dated 07.10.2014(P26). The Petitioner in his Petition avers that the Petitioner, the 229th and the 230th Respondents of the instant application were unaware of the settlement arrived before the Supreme Court and were surprised by the said settlement. It is on the common ground that the Petitioner, the 229th and the 230th Respondents of the instant application were the 216th, 217th, and 218th Respondents of the Supreme Court application No. SC FR 354/13. As per document P26, the present Petitioner (216th Respondent) was represented by a Counsel on the day the instant settlement was entered before the Supreme Court. Hence, the Petitioner's submission cannot be accepted.

The Petitioner also complains that the Supreme Court settlement has not been properly complied with in appointing a new panel of Examiners. It is stated that some of the members of the new panel of Examiners appointed (51st to 55th Respondents) could not have been appointed in terms of the settlement entered before the Supreme Court, as the 54th Respondent, has not completed 7 years since completing her MD to qualify as an Examiner, and the others have issued letters in favour of the Petitioners in the Supreme Court case. In the said backdrop, the 3rd to 5th and the 239th Respondents submit that no inferior Court can examine a question as to non-compliance with a judgement of a Superior Court, nor any inferior Court could interpret such judgement of a Superior Court.

I am mindful of the scope of the jurisdiction of this Court. It is my view that, under the instant application, any examination of non-compliance with the Supreme Court settlement or any interpretation of such settlement does not arise. It appears that the issue involved in the instant application goes beyond such consideration of non-compliance and interpretation. As per the settlement entered before the Supreme Court (P26), the Supreme Court directed the Board of Management to appoint a new panel of Examiners and to ensure that the new Panel so appointed is impartial in the conduct of the said examination. It is observed that the said appointment has to be effected by the relevant authority in accordance with the terms laid down under the aforesaid settlement. The specific procedure to be adopted is laid down by the Supreme Court in its aforesaid order. I hold the view that the procedure followed in the appointment of the new panel of Examiners by the relevant authority is an administrative process which could be reviewed by this Court under a writ application. It cannot be considered as an act of interference or a process of interference with the functions of the Supreme Court. Hence, I am not in agreement with the submission made on behalf of the Counsel for the Respondent that this Court lacks jurisdiction to entertain the instant application challenging the process of such an appointment made subsequent to a settlement entered before the Supreme Court.

Allegation of Partiality of the Newly Appointed Panel of Examiners

The Petitioner claims that the newly appointed examiner, Dr. Samaranayake (54th Respondent), has not completed seven years after completing her MD in order to qualify as an examiner. Accordingly, it is claimed that her appointment to the Panel of Examiners is a violation of the PGIM rules. Anyhow, the said examiner, 54th Respondent, had been removed from the Panel of Examiners on 26.01.2015 before the examination was conducted. It was further submitted that, since the 51st, 52nd, 53rd and 55th Respondents who were appointed as new examiners are persons who have given letters (letters marked P30(a) and P30(b)) on behalf of the Petitioners of the SCFR 354/2014 case, said Respondents were bias towards the Petitioners of the said Supreme Court case. Nevertheless, the Petitioner has failed to satisfy this Court as to how

the contents of such a document show partiality towards the Petitioners of the above Supreme Court case. Merely giving or signing letters does not make the authors of such affidavits/letters partial towards such employees. The Petitioner further complained that the new panel of Examiners had not obtained the concurrence of the Board of Study for the appointment of a new Panel of Examiners. It must be noted that the appointment of new panel members in this instance is an exceptional situation, which had been done in accordance with the Supreme Court Order for the purpose of this special examination. The settlement does not refer to any requirement of obtaining concurrence from the Board of Study for the appointment of a new Panel of Examiners. As per the settlement entered before the Supreme Court, the requirement was to ensure impartiality of the examiners and the Board of Study in conducting the said examination. It appears that no complaint has been made against the new panel of Examiners regarding their integrity in conducting the examination. Therefore, my view is that there are no sufficient grounds to conclude that the new panel so appointed was impartial or that their appointment is illegal or irregular.

Futility

Although the Petitioner, in his amended Petition, has sought for Writs of Certiorari to quash the Clinical Examination (OSCE) held on 06.02.2015 and Portfolio Viva held on 09.02.2015 for the MD (Family Medicine) Examination 2013, and its results as reflected in P39, it is important to observe that the Petitioner does not pray for any relief moving this Court to quash any alleged irregular appointment of a new panel of Examiners for the same examination. Hence, even in a circumstance where this Court is satisfied that there had been any irregularity or illegality in the appointment of the new Panel of Examiner, the hands of this Court are tied in granting any relief to set aside such alleged irregular appointment where the same has not been specifically pleaded in the prayer to the Petition.

Under such circumstances, even if this Court quashes the MD (Family Medicine) special Examination held in February 2015 for the purpose of MD (Family Medicine) Examination 2013 and its results reflected in P39 as

prayed for by the Petitioner, the same Panel of Examiners shall remain in office. Thus, this Court views that the granting of the reliefs (c), (d), (e) and (i) as prayed for in the prayer to the Petition by the Petitioner, shall become futile as the only ground upon which the Petitioner challenges the aforesaid exam is on the composition of its panel of examiners. Moreover, it is observed that the granting of the said reliefs would stand in the way of the Respondents giving effect to the settlement arrived at before the Supreme Court.

Accordingly, even if this Court looked into the process of appointment of a panel of Examiners, this Court will not be able to grant any relief reviewing such an appointment based on the composition of the panel of examiners. The Latin phrase *“lex nil frustra facit”* translates to state that *'the law does not perform acts or pronounce decrees which are useless or without practical effect'*. Relying upon the legal spirit of the aforesaid Latin maxim, this Court does not wish to engage in any such futile effort.

In **Ratnasiri and others v. Ellawala and others (2004) SLR 180, Marsoof, PC.** J(P/CA) 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. The court has 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.” See, P.S. Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board. (61 NLR 491, 496).”

In the circumstances and for the reasons given above, I am not inclined to grant any of the reliefs prayed for in prayers (c), (d), (e) and (i) of the amended Petition.

The Decision Reflected in the Letter marked P40

The Petitioner, by his letter dated 04.02.2015 (P35), has informed the 4th Respondent of his intention not to participate in the said examination as he is concerned about the composition of the newly appointed Panel of Examiners for the purpose of holding the MD (Family Medicine)

Examination 2013 in February 2015. The Petitioner further requested that he be not considered as a candidate for the above MD (Family Medicine) Examination to be held in February 2015, and requested that he be permitted to sit for the subsequent examination, considering the same as his first attempt. Thereafter, the Petitioner had applied to sit for the MD (Family Medicine) Examination scheduled for April 2015. The 4th Respondent by his letter dated 18.03.2015 (P40) had informed the Petitioner that the Board of Management of the PGIM has decided that as the Petitioner did not sit for the special examination for MD (Family Medicine) held in February 2015, the examination he will be sitting in April will be considered as his second attempt and that he is required to sit for all components of the examination. The Petitioner moves that the said letter marked P40 be quashed.

The 3rd to 5th and the 239th Respondents state that the Board of Management of the PGIM in its meeting No. 2003/02 held on 08.02.2003 has decided that if a candidate does not sit for a PGIM examination without due reasons, it will be counted as an attempt. Extract of the Minutes of the said meeting marked as R20 has been annexed with the Statement of Objections. The above Respondents contend that since the Petitioner did not sit for the MD (Family Medicine) Examination 2013 held in February 2015 without a valid reason, the Board of Management decided that the same should be considered as an attempt, and the Petitioner would have to sit for all components of the next scheduled examination (P40/R21).

Upon careful consideration of the letter marked P35, it appears that the Petitioner, on his own, has decided that the MD (Family Medicine) Special Examination 2013 to be held in February 2015 is illegal and has decided not to participate in the same.

"I am of the view that the Board of Examiners named by the PGIM for the above-mentioned exam is illegal.

Therefore, I do not intend to participate in the illegal examinations to be conducted by PGIM in this February as aforesaid.

Therefore, please do not consider me as a candidate for the above-mentioned examination this time and permit me to sit for the subsequent exam which will be conducted under a properly constituted Board of Examiners next time, as my first time.” (P35)

However, as per R20 (decision of the Board of Management of PGIM) decision as to whether the reasons given by the Petitioner for not sitting for the examination could be considered as an acceptable excuse or not has to be decided by the Board of Study. For ease of reference, the said portion of the said document R20 is reproduced as follows:

*“ 2. If a candidate withdraws his/her application after the closing date of applications and before the commencement of the examination for a reason acceptable to the Board of Study-
-attempt is not counted”*

Under the instant application, no evidence has been placed before this Court to conclude that the Board of Study has taken a decision on whether the reasons given by the Petitioner could be considered as acceptable. As per the letter marked R21, such a decision has been taken by the Board of Management. The Petitioner relies on the decision in **Kaluhath Ananda Sarath De Abrew v. Chanaka Iddamalgoda and Others**, reported in **Supreme Court Law Reports 2016 S.C. F/R No.424/2015**, in which the Supreme Court, quoting **Wade and Forsyth**, stated that,

“ An element which is essential to the lawful exercise of powers is that it should be exercised by the authority to whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconveniences, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally, the Courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute.

One aspect of this principle is the rule that the participation of non-members in the deliberations or decisions of a collective body may invalidate its acts.” (Wade and Forsyth-Administrative Law, 11th edition, at p.259)

The 3rd to 5th Respondents avers in their Statement of Objections (see paragraph 43 of the Statement of Objections of the 3rd to 5th Respondent) that the policy decisions with regard to whether a candidate should sit for all components of a particular examination or only for the failed components, is generally set out in the respective prospectuses of the specialty. Further, the Respondents concede that some prospectuses are silent on this issue. It appears that Family Medicine is one of such prospectuses which is silent as to the above. In such a situation, an exemption could be made upon the recommendation of the Board of Study upon an application to that effect being made by the candidate. (The contents of the documents marked R24 and R25 further support the said procedure.) In the instant application, it appears that the Board of Management has taken its decision requiring the Petitioner to sit for all the components without consulting the Board of Study.

Therefore, I hold that the Board of Management of the PGIM has arrived at the aforesaid decision reflected in P40/R21 without having due authority to arrive at such a decision and usurping the lawful powers of the Board of Study. Hence, the decision taken by the Board of Management of the PGIM reflected in the P40/R21 is arbitrary and had been taken without any legal authority. Accordingly, based on the reasons given above, I quash the decision reflected in the document marked P40 and issue Writs of Certiorari prayed for in the prayers (f), (g), and (h) in the amended Petition.

The Petitioner further seeks in the nature of Writs of Mandamus directing Respondents not to consider the Examination held in February 2015 as an attempt of the Petitioner, to treat as the Petitioner has successfully completed the 'Written Examination' and 'Dissertation Viva' components of the MD(Family Medicine) Examination conducted by the PGIM and allow the Petitioner to sit only for the Clinical Examination(OSCE) and Portfolio Viva components of the above examination scheduled for 2015 for the purpose of completing the MD(Family Medicine) Examination 2013. (*vide* Prayers (j), (k) and (l) of the amended Petition). In my view, decisions with regard to the aforementioned Writs of Mandamus have to be taken by the PGIM in consultation with the Board of Study at the first

instance. In the present circumstance, as I mentioned above, the Board of Study has not been involved in arriving at the decision reflected in P40/R21. Therefore, there is no valid decision available before this Court to review. This Court only possess the power to review any irregularity, illegality or arbitrariness in a decision taken by a decision-making authority and not the power to make decisions on behalf of such decision-making authority. As such, I am of the view that this Court cannot get into the shoes of the either the Board of Study or the PGIM and make a decisions on their behalf as to whether the Examination held in February 2015 should be considered as an attempt of the Petitioner, whether the Petitioner has successfully completed the 'Written Examination' and 'Dissertation Viva' components of the MD(Family Medicine) Examination conducted by the PGIM or as to whether the Petitioner should only be required to sit for the Clinical Examination(OSCE) and Portfolio Viva components of the above examination scheduled for 2015 for the purpose of completing the MD(Family Medicine) Examination 2013. Hence, I am not inclined to issue the aforesaid Writs of Mandamus as prayed for in the prayers (j), (k) and (l) of the amended Petition.

However, since this Court has now quashed the decision reflected in document marked P40, I view that this decision of the Court should not stand in the way of PGIM making an appropriate decision with the recommendation of the Board of Study in respect of the reliefs prayed for in the prayers (j),(k) and (i) of the amended Petition. Accordingly, the application is partly allowed. I order no cost.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal