

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

In the matter of an Application for the grant of  
Writs of Mandamus, Certiorari & Prohibition,  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA (Writ) Application No: 26/2017**

1. Maparalalage Sahan Madhawa Somathilake,
2. Leon Mario Ekanayake
3. Panawennage Sachini Hansika
4. D.C. Gunawardene
5. Jazoor Zakie Mohamed
6. D.M. Akhila Kumara Dineshkan
7. Hettige Don Asiri Kalhara Gunasekera
8. Pramod Dilshan Igalagamage
9. Damith Sudarshana Wijesinghe
10. Horadugoda Gamage Sampath Sagara
11. Hettige Kasun Chathuranga Perera.
12. Don Pramuditha Paul Samaraweera
13. TM Kusal Sharindra Thennakoon
14. Anupama Udeni Bandara
15. Bambarendage Kasun Udayange
16. H.T.M. De Silva
17. Paththinikuttige Pathuni Sulakshana Nonis
18. Merengnege Nipuni Virasha Fernando
19. J.A. Pasindu Madusha Perera
20. Herath Mudiyanseelage Nadun Sameera Bandara
21. Handuwalage Don Kuwan Kanishka Kumarasiri
22. Thalpehewage Rasindu Kumaj Gunasena
23. Weerasinghe Dawundage Nuwan Prasad
24. Sanduni Thathsarani De Silva
25. Tharindu Sampath Kodikara
26. W.N.R. Roshan Madushanka
27. M. M. Nilantha Bandara Dissanayake
28. Asela Supun Sahabandu
29. Godapita Gamage Namal Kanchana

- 30.Haputhanththrige Don Pasindu Kavinda Jinasena
- 31.Pattiwilage Jathra Jayangani
- 32.L. Romesh Madushan Perera
- 33.Inoj Sameendra Gamage
- 34.Shehan Mendis
35. A.M.Dimuthu Nuwan Bandara Abeysinghe
- 36.K.R Nuwan Kumara
- 37.M.M. Sameera Dilshan
- 38.D. G. Merusa Sanjeewa
- 39.T.M.N.L. Wijesekara
- 40.Geethal Isuru Dharmaratne
- 41.Malith Sooriyaarachchi
- 42.D.D. Sameera Madusanka
- 43.Subashini Lakmali Gunawardene
- 44.N.J.A. Resila Madushani
- 45.Biniesha Ambepitiya
- 46.R.A.R.T.S. Rathnaweera

**Petitioners**

Vs.

1. Institution of Engineers, Sri Lanka,  
No. 120/15, Wijerama Mawatha, Colombo 7
2. IESL College of Engineering (Private) Limited.  
No. 07, Hector Kobbekaduwa Mawatha, Col 7.
3. Eng. Jayavilal Meegoda
4. Eng. Wimalasena Gamage
5. Eng. (Prof.) Mrs. N. Ratnayake
6. Eng. (Prof.) D A R Dolage
7. Eng. W J L S Fernando
8. Eng. (Dr) Kamal Laksiri
9. Eng. (Prof.) S.B.S. Abayakoon
- 10.Eng. J.A. Granie R. Jayalath
- 11.Eng. A.P Ranjith De Silva
- 12.Eng. T.M.R. Dissanayake
- 13.Eng. S.S. Gunawardana
- 14.Eng. K.G.H. Kodagoda

- 15.Eng. M.N.A. Samad
- 16.Eng. Kosala Kamburadeniya
- 17.Eng. (Lt. Col) Dr. C.D. Gamage
- 18.Eng. A. Manamperi
- 19.Eng. K.P.I.U. Dharmapala
- 20.Eng. (Prof.) T.M. Pallewatta
- 21.Eng. (Mrs) S.H. Gunawardana
- 22.Eng. I.R.P. Gunatilaka
- 23.Eng. P. Thangamayil
- 24.Eng. M.K. Hapuarachchi
- 25.Eng. P.C. Jinasena
- 26.Eng. M.D.S Wijayabandara
- 27.Eng. M.R. Ranatunga
- 28.Eng. D. Dharmaratne
- 29.Eng. K.S. Mangala Silva
- 30.Eng. S.A.P.C. Siriwardana
- 31.Eng. M.G. Hemachandra
- 32.Eng. A.P.K. Mutunayake
- 33.Eng. P.A. Samira Anuradha
- 34.Eng. H.D.B.P. Herath

3<sup>rd</sup> to 34<sup>th</sup> Respondents of  
Institution of Engineers Sri Lanka,  
120/15, Wijerama Mawatha, Colombo 7.

- 35.Eng. (Dr) Jagath Peiris
- 36.Eng. (Prof.) L.L. Ratnayake

37.Eng. R.J. Gunawardana  
CEO/Director General,  
IESL College of Engineering (Pvt.) Ltd.

35<sup>th</sup> – 37<sup>th</sup> Respondents at No. 7, Hector  
Kobbekaduwa Mawatha, Colombo 7.

38. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

### **Respondents**

**Before:** Arjuna Obeyesekere, J

**Counsel:** J.C.Welihamuna, P.C., with Pulasthi Hewamanne for the Petitioners

Uditha Egalahewa, P.C., with N.K.Ashokbharan for the 1<sup>st</sup>, 3<sup>rd</sup> – 6<sup>th</sup>, 8<sup>th</sup> – 12<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup> – 20<sup>th</sup>, 24<sup>th</sup>, 26<sup>th</sup> – 34<sup>th</sup> Respondents

Priyantha Gamage for the 2<sup>nd</sup>, 36<sup>th</sup> and 37<sup>th</sup> Respondents

Harsha Fernando with Chamith Senanayake for the 22<sup>nd</sup>, 23<sup>rd</sup> and 25<sup>th</sup> Respondents

Sanjay Rajaratnam, P.C., Acting Solicitor General with Ms. Chaya Sri Nammuni, Senior State Counsel for the Hon. Attorney General as *Amicus Curiae*

**Written Submissions:** Tendered on behalf of the Petitioners on 17<sup>th</sup> December 2018

Tendered on behalf of the 3<sup>rd</sup> – 6<sup>th</sup>, 8<sup>th</sup> – 12<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup> – 20<sup>th</sup>, 24<sup>th</sup>, 26<sup>th</sup> – 34<sup>th</sup> Respondents on 14<sup>th</sup> December 2018

Tendered on behalf of the 22<sup>nd</sup>, 23<sup>rd</sup> and 25<sup>th</sup> on 10<sup>th</sup> December 2018

Tendered on behalf of the Hon. Attorney General on 9<sup>th</sup> January 2019

**Decided on:** 6<sup>th</sup> March 2020

**Arjuna Obeyesekere, J**

This application, which had been filed on 25<sup>th</sup> January 2017, had been supported for notice and interim relief on 6<sup>th</sup> February 2017. On that date, this Court, having heard the learned President's Counsel for the Petitioners had issued formal notice of this application on all Respondents. This Court had also issued the following interim orders:

- (1) An interim order restraining the Respondents from taking any steps whatsoever to suspend, revoke or otherwise discontinue or reduce the efficacy of the courses that have been offered thus far by the 2<sup>nd</sup> Respondent to present and prospective students.
- (2) An interim order directing the Respondents to maintain the status quo in respect of all study programs and other activities conducted by the 2<sup>nd</sup> Respondent until the final determination of this case.

When this matter was mentioned on 17<sup>th</sup> February 2017, this Court had made an order requesting the Hon. Attorney General to assist this Court in the determination of this matter as *Amicus Curiae*.

This matter was taken up for argument on 9<sup>th</sup> May 2019, on which date all learned Counsel moved that this Court pronounce its judgment on the written submissions that have already been filed. This Court thereafter requested all parties to tender clarifications on four issues raised by this Court, which has been complied with.

The 1<sup>st</sup> Respondent is the Institution of Engineers, Sri Lanka, which has been incorporated by the Institution of Engineers Act No. 17 of 1968, as amended, with the objective, *inter alia*, of promoting the study of engineering and to encourage original research with a view to facilitate the scientific and economic development and the conservation of the resources of Sri Lanka.<sup>1</sup>

The 2<sup>nd</sup> Respondent is the IESL College of Engineering (Private) Limited, a company which was registered in 2011 under the provisions of the Companies Act No. 7 of 2007. The sole shareholder of the 2<sup>nd</sup> Respondent is the 1<sup>st</sup> Respondent.

While the 1<sup>st</sup> – 4<sup>th</sup> Petitioners are prospective students who had applied for the 2017 intake of the Graduate Diploma in Engineering programme conducted by the 2<sup>nd</sup> Respondent, the rest of the Petitioners are students who have registered for the said programme in the following years:

Petitioner	Year of registration	Status	Year of graduation
5 <sup>th</sup> – 11 <sup>th</sup>	2016	Full time	2020
12 <sup>th</sup> – 14 <sup>th</sup>	2015	Full time	2019
15 <sup>th</sup> – 18 <sup>th</sup>	2015	Part time	2020
19 <sup>th</sup> – 31 <sup>st</sup>	2014	Part time	2019
32 <sup>nd</sup> – 42 <sup>nd</sup>	2013	Part time	2018
43 <sup>rd</sup> – 46 <sup>th</sup>	2012	Part time	2017

The facts of this application very briefly are as follows.

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<sup>1</sup> Vide Section 3(c).

It is not in dispute that since its incorporation, the 1<sup>st</sup> Respondent has been conducting examinations to promote the study of engineering. The structure of the examinations had been amended in 2002, and successful candidates had been allowed to enter the field of engineering, as well as were entitled for Associate Membership of the 1<sup>st</sup> Respondent. In 2008, a decision had been taken to establish a College for the purpose of continuing with the educational programmes that was conducted by the 1<sup>st</sup> Respondent. The shortcomings that the 1<sup>st</sup> Respondent sought to overcome by the establishment of a College of Engineering has been explained in detail in the Policy paper prepared in 2008.<sup>2</sup>

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have entered into a Memorandum of Understanding dated 5<sup>th</sup> December 2012 (MOU), annexed to the petition marked 'P18', in terms of which the 1<sup>st</sup> Respondent has transferred the responsibility of conducting engineering courses hitherto conducted by the 1<sup>st</sup> Respondent, to the 2<sup>nd</sup> Respondent. Accordingly, in terms of 'P18' the 2<sup>nd</sup> Respondent was required to continue to conduct the engineering courses which had hitherto been conducted by the 1<sup>st</sup> Respondent.

The Petitioners state that in keeping with the MOU 'P18', the 2<sup>nd</sup> Respondent has been conducting professional courses in the field of engineering since 2012. The programme that is the bone of contention in this application is the *Graduate Diploma in Engineering*, which is a four year course offered since 2012 to students including school leavers with three passes at the Advanced Level Examination.<sup>3</sup> It is admitted between the parties that upon successful completion of the said diploma programme, diplomates are entitled for

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<sup>2</sup> Vide document annexed to the petition marked 'P16b'.

<sup>3</sup> The newspaper advertisements calling for applications in 2012, 2013, 2014 and 2016 have been annexed to the petition marked 'P8a' – 'P8d', respectively.

Associate Membership of the 1<sup>st</sup> Respondent and entry to the Engineering profession.

The Petitioners have annexed to the petition marked '**P11**', an extract from the history page of the web site of the 1<sup>st</sup> Respondent, which sets out the following rationale for the conducting of the said programme of study:

*"The IESL, being the premier engineering body in Sri Lanka is called upon to represent the profession at many national forums and contribute to national development. In order to cater to the demand for professionally qualified engineers in the Country, **and to open an alternative route for those aspiring to become qualified engineers** but were unable to gain admission to a University Engineering Faculty, IESL established the College of Engineering as a subsidiary entity, **which conducts an engineering study program for school leavers** and those employed in engineering or technical organisations with suitable entry qualifications to become qualified engineers."*

In paragraph 42 of its Statement of Objections, which is reproduced below, the 1<sup>st</sup> Respondent has elaborated on the necessity to conduct the said Graduate Diploma Programme, as follows:

*"(a) Basic academic qualification required for corporate membership of the IESL (Chartered Engineer) is a four year full-time Degree in Engineering obtained from a reputed and recognized university after qualifying at the GCE (A/L) in the Physical Sciences stream.*



- (b) *To facilitate practitioners involved in Engineering at various other levels (Technicians, Technologists, etc), without the above basic qualification, to upgrade themselves to the level of an Engineer recognized by IESL, the IESL has a technical instruction and evaluation mechanism called IESL examinations (namely IESL, Part I, Part II & Part III) conducted by the IESL Secretariat. With a view to upgrade this process, the IESL College of Engineering was established in 2012 as a limited liability company wholly owned by the IESL, intending to award 'Graduate Diplomas' (which is not a degree) as an equivalent academic qualification recognized for corporate membership.*
- (c) *With the advent of the IESL College of Engineering, the composition of the student clientele shifted from a majority of originally intended 'practitioners in engineering fields seeking upgrading' to 'school leavers without experience seeking alternate qualifications to embark on a career'.*

At this stage, it would be relevant to refer to the fact that in 2008, the Government of Sri Lanka contributed a sum of Rs. 10 million towards the construction of a new building for the 1<sup>st</sup> Respondent. Paragraph 2.1.1 of the Cabinet Memorandum seeking approval for the said contribution, annexed to the petition marked 'P14', explains in the following manner the rationale for the Government of Sri Lanka making the said contribution, as well as granting tax concessions to those donors who wished to contribute towards the construction of the said building:

*"The education arm of the IESL is conducting a degree equivalent engineering course which **provides a much needed alternative career path to students who drop out at the GCE Advance Level exam** by providing them with an avenue for further education and for job opportunities in Sri Lanka and abroad, the entry requirements of which are the same as those required by the engineering faculties of local universities. **The Course is much sought after by those students who have successfully completed the Advance Level examination** in the mathematics stream but do not get admission to the Universities because of the limited number of places available. This Course is becoming increasingly popular among the school leavers and others already employed as middle grade technicians. Because of the limited facilities available in the existing building, IESL finds it difficult to cope with the growing demand for more enrollment. To cater to this requirement, IESL has planned to expand its building complex at Colombo 7."*

Thus, it is not in doubt that the 1<sup>st</sup> Respondent commenced the said Diploma Programme focusing on two groups of students but that the demand for the said programme was from school leavers who had successfully completed the Advanced Level examination. It is also clear that the 1<sup>st</sup> Respondent took advantage of this fact, as '**P14**' has identified it as a 'much needed alternative career path' to school leavers with Advanced Level qualifications, and obtained financial support and tax benefits from the Government, for the construction of its new building.

The incident that has given rise to this application is a resolution dated 2<sup>nd</sup> September 2016 proposed by 118 Corporate Members, 128 Associate

Members and 3 Student Members of the 1<sup>st</sup> Respondent, titled 'Resolution to discontinue IESL College of Engineering'. The impugned resolution, annexed to the petition marked '**P24**', reads as follows:

*"As all of us are aware that the College of IESL was started several years back. It is conducting engineering courses in several disciplines. Its certificate is treated by the IESL as equivalent to the engineering degrees awarded by the three engineering faculties and the Universities of Peradeniya, Moratuwa and Ruhuna.*

*We have following four concerns with regard to establishing the College of IESL.*

- 1. Was there any request from our general membership to conduct this type of engineering course or a College by IESL?*
- 2. Was there any requirement in the country to conduct this type of engineering course by IESL?*
- 3. Is it ethical to conduct such a college directly by the regulatory body itself?*
- 4. Where did the funds for construction of college come from?*

*In our point of view, the answer for the 1<sup>st</sup> three questions is 'No' and for the last question the IESL is answerable to its members.*

*Further, regarding the College of IESL, our views are as follows:*

1. *Conducting of such a college, definitely creates a Conflict of Interest, as IESL is the sole body (to) regulate (the) Engineering Profession in Sri Lanka. Also IESL is empowered to provide Accreditation and Recognition of Engineering degrees in Sri Lanka under Washington Accord full membership status.*
2. *If the country needs more Engineers, IESL shall discuss that matter with the Government and Universities to increase the intakes of State Universities by enhancing resources and facilities.*
3. *Conducting Engineering Course (Part I & Part II) for Engineering Diploma holders (NDT, NDES, HNDE) has been accepted worldwide as an alternative route for acquiring the engineering qualifications. Those who seek qualification from this alternative route may have missed the Engineering facility entrance due to high competition prevailing in the GCE (A/L) exam and selected to enter such courses on merit basis. Further, they have an engineering background and most of them starts following IESL Part I and Part II after having certain field experience.*
4. *The general public has made open remarks on IESL saying that the College of IESL is another "Fake Degree Shop" and the aim of IESL is to make profits. Hence reputation of all members of IESL is indirectly being affected.*
5. *There are plenty of opportunities available in the country to obtain Engineering Degrees utilizing private funding where regulation is utmost important to protect general public from fake engineers.*

*Considering above facts, we propose that:*

- 1. The College of IESL should be discontinued.*
- 2. Rights of the present students of the College is to be reserved and future enrolments should be separately assessed by IESL following the degree recognition process before providing any membership class to them."*

When this Court considers the averments contained in the Statement of Objections filed by the 1<sup>st</sup> Respondent, as well as extracts of its 'history' taken from its web site, both of which have been referred to earlier in this judgment, it is clear to this Court that those who subscribed to 'P24' were completely unaware of, or chose to ignore the circumstances under which the 2<sup>nd</sup> Respondent was established and the manner in which the various study programmes including the Graduate Diploma programme were offered by the 1<sup>st</sup> Respondent, and the rationale for doing so.

Pursuant to the receipt of the said resolution, the 1<sup>st</sup> Respondent had published the following notice dated 6<sup>th</sup> December 2016, annexed to the petition marked 'P26a':

*"The Council at its meeting held on 2<sup>nd</sup> December 2016 endorsed that new intakes to the IESL College of Engineering with only GCE Advanced Level qualifications, have been suspended by the Board of Directors of IESL College of Engineering as per a board decision taken on 1<sup>st</sup> December 2016."*

Aggrieved by the above two documents 'P24' and 'P26a', the Petitioners filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision reflected in 'P26a';
- b) A Writ of Certiorari to quash the resolution marked 'P24' and/or any other decision taken by the 1<sup>st</sup> Respondent to discontinue the 2<sup>nd</sup> Respondent.
- c) A Writ of Prohibition preventing the Respondents from discontinuing or reducing the efficacy of any of the courses offered by the 2<sup>nd</sup> Respondent as well as discontinuing the 2<sup>nd</sup> Respondent.

In its Statement of Objections, the 1<sup>st</sup> Respondent has taken up the following positions<sup>4</sup>:

- a) There is no intention whatsoever on the part of the Respondents to discontinue the 2<sup>nd</sup> Respondent;
- b) The only intention is for the 1<sup>st</sup> Respondent to disassociate itself from the 2<sup>nd</sup> Respondent due to the obligations that the 1<sup>st</sup> Respondent had undertaken in terms of the Washington Accord;
- c) The 1<sup>st</sup> Respondent has only endorsed the decision taken by the 2<sup>nd</sup> Respondent to suspend any further admission of students with Advanced Level qualifications;

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<sup>4</sup> The identical position has been taken up by the 2<sup>nd</sup> Respondent.

- d) The rights of the present students are not affected in manner by the said decision.
- e) The 2<sup>nd</sup> Respondent shall continue to admit lateral entry students – i.e. practitioners involved in Engineering or various other levels such as Technicians, Technologists etc.

The 2<sup>nd</sup> Respondent has reiterated the above position, and stated that the decision to suspend new intakes of students with Advanced Level qualifications was a decision taken by the 2<sup>nd</sup> Respondent, and that the 1<sup>st</sup> Respondent only endorsed such decision. No explanation however has been offered by the 2<sup>nd</sup> Respondents as to why it decided to exclude school leavers with Advanced Level qualifications. The 2<sup>nd</sup> Respondent has also stated that the existing students of the 2<sup>nd</sup> Respondent and their legitimate expectations shall not be affected in any manner.

The complaint of the Petitioners to this Court is two-fold. Firstly, as students of the 2<sup>nd</sup> Respondent College of Engineering, the Petitioners claim that they have a legitimate expectation that the 2<sup>nd</sup> Respondent shall continue to function, and award them the Graduate Diploma in Engineering, as held out at the time of enrolment. This Court fully understands the concerns and apprehensions that the 5<sup>th</sup> – 46<sup>th</sup> Petitioners have expressed through this application, with regard to the continuity of their course of study, and would go to the extent of stating that the said Petitioners have a legitimate expectation that the 1<sup>st</sup> Respondent, being a responsible and respected professional body, would ensure the continuity of the said Diploma Programme through the 2<sup>nd</sup>

Respondent, as represented to the said Petitioners at the time of entry, until the said Petitioners graduate.

Although the resolution 'P24' has moved that the 2<sup>nd</sup> Respondent shall be discontinued, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have stated in their Statements of Objections that the said resolution was never debated or approved by the 1<sup>st</sup> Respondent and have stated in unequivocal terms that the 2<sup>nd</sup> Respondent shall not be closed down. This Court must observe further that the resolution 'P24' too recognises that the rights of the present students shall be 'reserved'. This, together with the assurance given to this Court by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the rights of the present students shall not be affected, is sufficient assurance for this Court that the 5<sup>th</sup> - 46<sup>th</sup> Petitioners shall be permitted to continue with their studies and graduate, upon the successful and timely completion of the relevant examinations. This Court cannot insist upon the 1<sup>st</sup> Respondent continuing with the 2<sup>nd</sup> Respondent in perpetuity and can only address the concerns of those who are before this Court. For the reasons set out above, this Court is of the view that the concerns of the Petitioners have been addressed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. In view of this assurance by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the necessity for this Court to issue a Writ of Certiorari quashing the decision to discontinue the 2<sup>nd</sup> Respondent, and a Writ of Prohibition preventing the 2<sup>nd</sup> Respondent from being discontinued, does not arise.

The second complaint of the Petitioners is that the decision to deny entry to school leavers with three passes at the Advanced Level examination is unfair. Those who are affected by this decision in 'P26a' are the 1<sup>st</sup> to the 4<sup>th</sup> Petitioners. It is the position of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the decision



not to allow any further intake of students who only have three passes at the Advanced Level examination was taken by the 2<sup>nd</sup> Respondent and that the 1<sup>st</sup> Respondent only endorsed such decision. As observed earlier, no rational explanation has been offered for this decision.

Be that as it may, the 2<sup>nd</sup> Respondent is a limited liability company and although the 1<sup>st</sup> Respondent is its sole shareholder, the 2<sup>nd</sup> Respondent is not carrying out any statutory function nor do its decisions have any statutory flavor. Thus, decisions of the 2<sup>nd</sup> Respondent, taken by its Board of Directors, shall not be subject to judicial review. The necessity for the decision of the 2<sup>nd</sup> Respondent to be endorsed by the 1<sup>st</sup> Respondent did not arise, and the decision of the 2<sup>nd</sup> Respondent can stand alone. In these circumstances, this Court is of the view that it does not have the jurisdiction to consider the prayer for a Writ of Certiorari with regard to a decision of the 2<sup>nd</sup> Respondent or to consider a Writ of Prohibition in respect of the 2<sup>nd</sup> Respondent.

In any event, this Court does not have the competence to decide on the entry qualifications for programmes conducted by the 2<sup>nd</sup> Respondent, nor does it have the competence to decide on the programmes that the 2<sup>nd</sup> Respondent should be conducting. This Court observes that the decision to exclude those with Advanced Level qualifications only affects the 1<sup>st</sup> – 4<sup>th</sup> Petitioners, who had sought admission for the 2017 programme. However, in view of the interim relief issued by this Court, this Court assumes that those who registered for the 2017 intake continued with their programme of study unhindered, and would be eligible to graduate upon successful completion of the programme of study and the examinations.

There are two other matters that this Court wishes to advert to. The first is that the 1<sup>st</sup> Respondent has stated that its decision to disassociate itself from the 2<sup>nd</sup> Respondent was taken in view of a possible conflict of interest arising from its commitment to the Washington Accord, which, according to the 1<sup>st</sup> Respondent, is an international agreement between bodies responsible for accrediting engineering degree programmes, consisting of 25 signatory countries. The 1<sup>st</sup> Respondent has submitted that it became a full signatory to the said Accord on 13<sup>th</sup> June 2014, and that *as per the said Accord, the signatory and its accreditation/recognition should be independent of educational service providers delivering accredited/recognized programmes within the Jurisdiction*. The 1<sup>st</sup> Respondent states that for that reason, it can no longer, through the 2<sup>nd</sup> Respondent, conduct engineering programmes, and/or recognize and accredit such programmes, as there can be a conflict of interest.

The learned Counsel for the 22<sup>nd</sup>, 23<sup>rd</sup> and 25<sup>th</sup> Respondents, who are Council members of the 1<sup>st</sup> Respondent, and who have objected to direct school leavers being excluded from the Graduate Degree programme, has contradicted the position of the 1<sup>st</sup> Respondent. The Hon. Attorney General too has pointed out that the *Respondents argument that it is compelled to disassociate due to the provisions of the Washington Accord is fraught with conjecture and is not altogether the correct position*. Although the 1<sup>st</sup> Respondent has raised this issue, the assurance given to this Court that the 2<sup>nd</sup> Respondent will not be closed down, confirms that even if there is a conflict, such conflict will be managed.

The second matter that this Court wishes to advert to is the endorsement by the 1<sup>st</sup> Respondent of the decision of the 2<sup>nd</sup> Respondent to exclude school

leavers with three passes at the Advanced Level examinations from the said programme. It is clear from the Cabinet Memorandum marked 'P14' that the decision of the Government of Sri Lanka to contribute a sum of Rs. 10 million towards the construction of a new building to be used for educational purposes, was influenced by the fact that the 1<sup>st</sup> Respondent was admitting students with Advanced Level qualifications who had not been successful in getting into State Universities, thus easing the burden on the State. This fact has been reiterated in the 1<sup>st</sup> Respondent's own web site. Thus, for the 1<sup>st</sup> Respondent to endorse the decision of the 2<sup>nd</sup> Respondent, as evidenced by 'P26a' does not appear to be proper. Furthermore, this Court does not see any nexus between the decision in 'P26a' to shut out school leavers with three passes at the Advanced Level examination, and the conflict of interest issue raised by the 1<sup>st</sup> Respondent, as the 2<sup>nd</sup> Respondent will continue to function, and offer the said programme to other students. This Court is of the view that the 1<sup>st</sup> Respondent must act in a responsible manner. Therefore it is the expectation of this Court that the 1<sup>st</sup> Respondent would re-consider its decision, and arrive at a decision which is not only reasonable but would be in the best interests of the Country.

This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**