

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.

Sivapalan Francis Gnanapandithen
No. 562 A, Aluthmawatha Road, Colombo 15.

Petitioner

Case No. CA (Writ) Application 71/2009

Vs.

1. Dr. U. A. Mendis
- 1A. P. G. Mahipala
Director General of Health Services,
Ministry of Healthcare and Nutrition,
"Suwasiripaya", No. 385, Ven. Baddegama
Wimalawansa Thero Mawatha, Colombo 10.
- 1B. Dr. J. M. W. Jayasundera Bandara
Director General of Health Services,
Ministry of Healthcare and Nutrition,
"Suwasiripaya", No. 385, Ven. Baddegama
Wimalawansa Thero Mawatha, Colombo 10.
- 1C. Dr. Anil Jasinghe
Director General of Health Services,
Ministry of Healthcare and Nutrition,
"Suwasiripaya", No. 385, Ven. Baddegama
Wimalawansa Thero Mawatha, Colombo 10.
2. Dr. N. J. Nonis
- 2A. Dr. H. M. S. S. D. Herath (Acting)
- 2B. Dr. Terrance G. De Silva
The Registrar,
Sri Lanka Medical Council,
No. 6, Wijerama Mawatha, Colombo 07.
(New Address)
No. 31, Norris Canal Road, Colombo 10.
- 2C. Dr. Chandana Atapattu
The Registrar,
Sri Lanka Medical Council,
No. 31, Norris Canal Road, Colombo 10.
3. Dr. H. M. S. S. D. Herath
Assistant Registrar,
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- No. 31, Norris Canal Road, Colombo 10.
4. Dr. H. H. R. Samarasinghe
- 4A. Prof. Carlo Fonseka
The President,
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- 4B. Prof. Harendra De Silva
The President,
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5. Dr. Nandana Amarasekara
- 5A. Prof. Jennifer Perera
Member,
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6. Dr. Sarath Gamini De Silva
- 6A. Prof. M. D. Lamawansa
Member,
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- 6B. Dr. S. Shanmuganathan
Member,
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7. Prof. Jayantha Jayawardana
- 7A. Prof. Sarath Lekamwasam
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- 7B. Dr. I. V. Devasiri
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- 7C. Prof. Surangi G. Yasawardena
Member,
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8. Prof. Lalitha Mendis
- 8A. Dr. S. Raviraj
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- 9B. Prof. S. C. Wimalasurendra
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10. Dr. T. Wickramasinghe
- 10A. Prof. Nilanthi De Silva
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11. Prof. A. R. Wickramasinghe
- 11A. Prof. S. D. Jayarathne
Member,
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- 11B. Dr. D. S. Samaraweera
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- 12A. P. S. M. A. B. Padeniya
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13. Prof. T. R. Weerasooriya
- 13A. Prof. S. H. Siribaddana,
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- 14A. Dr. K. T. Sundaresan
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- 14B. Dr. H. M. N. P. Herath
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15. Prof. Malini Udupihille
- 15A. Dr. Upul M. Gunasekara
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16. Prof. Harsha Senevirathne
- 16A. Dr. C. L. K. Attapattu
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17. Dr. K. M. Zahir
- 17A. Dr. P. D. S. Ubaysiri
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- 17B. Dr. H. C. Pathirage
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18. Dr. A. M. L. Beligaswatte
- 18A. Dr. N. S. A. Senarathne
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- 18B. Dr. H. N. D. Soysa
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19. Dr. K. Sivapalan
- 19A. Dr. H. S. P. Bulathwela
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- 19B. Dr. J. A. V. P. Jayasinghe
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20. Prof. W. I. Amarasinghe
- 20A. Prof. Narada Warnasuriya
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21. Dr. Palitha Abeykoon
- 21A. Prof. Colvin Goonaratne
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- 21B. Dr. Asiri Abayagunawardena
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22. Dr. Ananda Samarasekara
- 22A. Prof. Rezvi Sheriff
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- 22B. Dr. A. N. Arulpragasam
Member,
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23. Dr. Lalantha Ranasinghe
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24. Prof. Dayasiri Fernando
- 24A. Prof. Ranjani Gamage
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25. Dr. E. A. Prasad D. Amarathunge
- 25A. VACANT
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26. Dr. B. Lalith Perera
- 26A. VACANT
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27. Dr. K. E. Karunakaran
- 27A. VACANT
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28. Hon. Nimal Siripala De Silva

28A. Dr. Rajitha Senarathne

Minister of Healthcare and Nutrition,

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29. Dr. H. A. P. Kahadaliyanage

29A. Dr. D. M. R. B. Dissanayake

The Secretary,

Ministry of Healthcare and Nutrition,

"Suwasiripaya", No. 385, Ven. Baddegama

Wimalawansa Thero Mawatha, Colombo 10.

29B. Wasantha Perera

The Secretary,

Ministry of Healthcare and Nutrition,

"Suwasiripaya", No. 385, Ven. Baddegama

Wimalawansa Thero Mawatha, Colombo 10.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Faisza Markar for the Petitioner

Manohara Jayasinghe SSC for the 1st, 28th and 29th Respondents

Chathura Galhena with M.L.G. Gunawardhana for the 2nd to 27th Respondents for the Respondents

Argued on: 02.07.2019

Written Submissions tendered on:

Petitioner on 06.05.2019 and 26.08.2019

2nd to 27th Respondents on 29.06.2018 and 26.08.2019

Decided on: 13.03.2020

Janak De Silva J.

The Petitioner is seeking to be registered as a Medical Practitioner in terms of Section 41(2) (c) of the Medical Ordinance No. 26 of 1927 as amended (Medical Ordinance). It reads as follows:

“(2c) Any estate dispenser whether he is employed on an estate or group of estates or ceased to be so employed may, on furnishing proof to the satisfaction of the Director-General of Health Services that -

- (i) (a) he being an estate dispenser, has had an aggregate period of at least twenty years of efficient and satisfactory service as an estate dispenser; or
(b) he, being a dispenser, has had an aggregate period of at least twenty years of efficient and satisfactory service as a dispenser on an estate or group of estates and in the public service; and
- (ii) he has within that period, served in one or more hospitals under one or more medical practitioners for an aggregate period of at least two years; and
- (iii) he has undergone a period of training prescribed for that purpose, be registered by the registrar on payment of the prescribed fee, as being entitled to practice medicine and surgery. The registrar shall maintain a register of the persons registered under this subsection and erase therefrom the name of any person ordered to be erased by the Medical Council under subsection (3) of this section.”

The Petitioner claims that he has fulfilled all the requirements necessary in terms of this section to be registered as a Medical Practitioner. The requirements to be fulfilled in so far as relevant to the Petitioner are:

- (a) Twenty years of satisfactory service as an estate medical dispenser;
- (b) He has within that period, served in one or more hospitals under one or more medical practitioners for an aggregate period of at least two years;
- (c) He has undergone a period of training prescribed for that purpose.

The initial application made by the Petitioner for registration as a Medical Practitioner is R1 wherein his period of service as an estate dispenser is given as October 1972 to July 1989 which is less than the required twenty (20) years. The Petitioner has signed the said application confirming that the information furnished is factually correct. This period of service has been

confirmed by the employer Ceylon Cold Stores Ltd. by letter dated 10.08.1992 (R2). On these facts the Petitioner is not entitled to be registered as a Medical Practitioner in terms of Section 41(2) (c) of the Medical Ordinance. By letter dated 02.12.1993 (P12) the Petitioner was informed that he was not eligible albeit on the incorrect assertion that he had worked as an estate dispenser only from October 1972 to May 1973.

The Petitioner has not specifically referred to R1 other than stating at paragraph 14 of the petition that he had in a previous application, mistakenly preferred to the Registrar of the Ceylon Medical Council seeking to be registered as a Medical Practitioner, by inadvertence misstated the period of employment at Ceylon Cold Stores. It certainly cannot be considered a mistake as the letter dated 10.08.1992 (R2) issued by the employer confirms the period said to have been misstated by the Petitioner. Nowhere in the petition does the Petitioner refer to the letter dated 10.08.1992 (R2).

In this context the Court must consider whether the Petitioner has been guilty of suppression and/or misrepresentation of material facts as that is a ground to dismiss any writ application without going into the merits of the application [*W. S. Alphonso Appuhamy v. Hettiarachchi* (77 N.L.R. 131 at 135,6), *Hulangamuwa v. Siriwardena* (1986) 1 Sri.L.R. 275 , *Collettes Ltd. v. Commissioner of Labour* (1989) 2 Sri.L.R. 6, *Laub v. Attorney General* (1995) 2 Sri.L.R. 88, *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* (1997) 1 Sri.L.R. 360, *Jaysinghe v. The National Institute of Fisheries* (2002) 1 Sri.L.R. 277, *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67, *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* (2007) 1 Sri.L.R. 24, *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* (2011) 2 Sri.L.R. 372].

However, the learned counsel for the Petitioner submitted that it is not a material fact and relied on *Fernando and 18 Others v. Commissioner General of Labour and Three Others* [(2009) B.L.R. 74] where it was held that the requirements of full disclosure applies only to material facts. However, the matters referred to above namely R1 and R2 are not immaterial or irrelevant facts. They go to the very foundation of the application of the Petitioner to be registered as a Medical Practitioner as they deal with the basic requirements to be registered.

The above finding is sufficient to dispose of the matter without going into the merits. However, for sake of completeness I will examine the merits of the application as well.

The Petitioner has produced letter dated 12th July 1994 (P5) issued by his former employer wherein it refers to his period of employment as 9th May 1973 to 30th April 1993. If this letter is factually correct Petitioner has fulfilled the requirements to be registered. However, this letter has also been signed by the same person who issued letter dated 10.08.1992 (R2). He does not state that R2 is withdrawn or is factually incorrect.

Here then the material facts are in dispute. In *Thajudeen v. Tea Board and Another* [(1981) 2 Sri.L.R. 471] it was held that where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue.

The Petitioner is seeking writs of certiorari to quash decisions embodied in P12, P20, P22 and P27. This application was instituted on 02.02.2009. The letter P12 is dated 02.12.1993. The letter P20 is dated 08.06.1999. The letter P22 is dated 20.11.2002. The letter P27 is dated 30.10.2008.

P27 is not a new decision but only a confirmation of an earlier decision contained in P20 dated 08.06.1999. The decision of the Sri Lanka Medical Council to reject the application of the Petitioner was communicated by P12 and P20 and are dated 02.12.1993 and 08.06.1999 respectively. There has been a period of 16 and 10 years respectively prior to the Petitioner seeking the intervention of this Court.

In *Biso Menike v. Cyril De Alwis and Others* [(1982) 1 Sri.L.R. 368 at 379] it was held that an application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law.

In this case the Petitioner has failed to satisfactorily explain the delay. What he has sought to do is to try and resurrect the decisions made earlier by subsequent communications in order justify his actions and assail the subsequent decisions reiterating the earlier decision. Such conduct will not entitle the Petitioner to overcome the delay on his part [*Gamaethige v. Siriwardena* (1988) 1 Sri.L.R. 384].

For all the foregoing reasons, the application is dismissed without costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal