

**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 Mandamus, Certiorari and
Prohibition in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

CA/WRIT/108/2021

1. Professional Surveyors Association,
49/116, 1st Lane,
Ramanayake Mawatha,
Hokandara South,
Hokandara.
2. Malavige Don Eranda,
382/6/2A, Meda Mawatha,
Habarakada,
Homagama.
3. Pulasthi Sanjaya Dissanayaka,
49/116, 1st Lane,
Ramanayake Mawatha,
Hokandara South,
Hokandara.
4. Trimadura Anjana Satharanga De
Silva,
No. 277/B, Bolatha,
Ganemulla.
5. Kariyawasam Siththarage Dilan
Rangana,
No. 391/5, Rubber Estate,
Thissamaharamaya.

PETITIONERS

Vs.

Land Survey Council,
Kirula Road,
Colombo 5.

RESPONDENT

Before: Sobhitha Rajakaruna J.

Counsel: Uditha Egalahewa, PC with Chathura Chamupathi for the Petitioners.

Nayomi Kahawita, SSC for the Respondent.

Argued on: 22.07.2024

Written Submissions: Petitioners - 05.08.2024

Respondent - -

Decided on: 16.10.2024

Sobhitha Rajakaruna J.

The 1st Petitioner- Professional Surveyors Association ('Association') is a body registered under the Companies Act No. 7 of 2007 and its membership consists of persons qualified as surveyors. The Petitioners contend that the members of the said Association are graduates from the Faculty of Geomatics of the University of Sabaragamuwa who have specialized in Survey Sciences. A copy of the list of members of the Association is marked as 'P10'.

The Respondent- Land Survey Council ('Council') has been established in terms of Section 26 of the Survey Act No. 17 of 2002. Among the other functions, it is the duty of the Council a) to recognize academic and professional qualifications in land surveying; b) establish practical experience requirements and c) conduct qualifying examinations and professional interviews, for candidates for registration surveyors and for the issue of annual practicing licenses.

The alleged grievance of the Petitioners is that they were not registered as surveyors by the Council although they have achieved their degree certificates and other qualifications. The Petitioners further contend that it is a breach of duty by the Respondent which eventually amounts to a breach of legitimate expectation of the Association and its members.

The scheme formulated for the purpose of recognizing the registration criterion which was published in Gazette 15.09.2016, was revoked on 11.11.2016. As such, the Petitioners assert that since 11.11.2016, the Council has failed to implement a fresh scheme. The Defense taken up by the Council to not register the Members of the Association has been limited to an excuse that the 'necessary requirements were not fulfilled as per the said Act' (Vide- 'P15'). Amidst several requests made by the Petitioners, the failure of the Council to process the applications of the members of the Association is viewed by the Petitioners as arbitrary, illegal, unlawful and ultra vires.

Section 39 of the said Act empowers the Council to register the Surveyors with such Council. The said section reads;

(1) From or after the date of commencement of this Act no person, other than a person who possesses the qualification specified in the Schedule hereto and has obtained registration with the Council and has been issued with a certificate of registration which is for the time being in force may engage in land surveying.

(2) Notwithstanding the provisions of subsection (1) a person who possesses the academic qualifications specified in the Schedule hereto and working under the supervision of a person issued with a certificate of registration under subsection (1), may engage in land surveying for the purpose of acquiring the practical qualification specified in the Schedule hereto, but shall not be eligible to be registered under this Act.

(3) An application for registration as a surveyor shall be in the prescribed form and shall be accompanied by the prescribed fee.

(4) The Council may, on an application received in that behalf by a person engaged in or proposing to engage in land surveying and on production of evidence of good character and payment of the prescribed fee, register such person where the Council is

satisfied that such person has the qualifications and experience and skills to engage in land surveying.

The schedule referred to in the above Section 39 is as follows;

Qualifications that entitles a person to be registered

(a) Academic qualifications:

- (i) Post Graduate Diploma in surveying or a higher qualification in surveying from a University or an Institute recognised by the Council; or
- (ii) Bachelors' Degree in Surveying from a University or an Institute recognised by the Council; or
- (iii) Diploma of Survey Technician (Advanced Level) from the Institute of Surveying and Mapping, Diyatalawa; and

(b) Practical experience:

- (i) For category (a) (i), Minimum of two years practical experience to the satisfaction of the Council.
- (ii) For category (a) (ii), Minimum of three years practical experience to the satisfaction of the Council.
- (iii) For category (a) (iii) Minimum of ten years practical experience to the satisfaction of the Council and a pass in the Junior Professional Examination conducted by the Survey Department, or Minimum of fifteen years practical experience to the satisfaction of the Council and a recommendation of the Surveyor- General that he is professionally competent to be registered under this Act.

The impact of the provisions of Section 40 of the Act is also vital. The said Section 40 reads;

- (1) Notwithstanding the provisions of section 39, every surveyor entitled to be issued with an annual licence under section 4 or section 6 of the Surveyors Ordinance on the date of commencement of this Act, shall be deemed to be registered under this Act.

(2) Every surveyor deemed to be registered under this Act, shall as soon as convenient submit to the Council the following particulars: -

(a) name and address of the Surveyor;

(b) the criteria or qualification, the possession of which entitled him to be issued with an annual licence under the Surveyor's Ordinance.

(3) Every surveyor registered with the Council under subsection (3) or (4) of section 39 or deemed to be registered under subsection (1), shall be issued with a certificate of registration and shall be referred to in this Act as a "registered surveyor".

The above Section 39 grants the Council the authority to register surveyors. It stipulates that after the commencement of the Act, only individuals with the required qualifications and registration, subject to the other provisions, can practice land surveying. The schedule referred to in that section outlines the academic qualifications (such as a Post Graduate Diploma, Bachelors' Degree or Diploma of Survey Technician- Advanced Level) and practical experience required, ranging from two to fifteen years depending on the qualification level. Section 40 of the Act ensures that surveyors holding an annual license under the previous Surveyors Ordinance, at the time the Act was enacted, are automatically considered registered under the new Act. Anyhow, such surveyors must submit their personal details and qualifications to the Council. All registered or deemed-to-be-registered surveyors will be issued a certificate of registration and referred to as "registered surveyors" under this Act. In the circumstances, the above statutory provisions have made it crystal clear that the Council ought to register the surveyors subject to the criteria specified in the said Act.

A close examination of the Respondent's Statement of Objections and the Affidavit affirmed by the Council's Acting Secretary reveals that the Petitioners have not provided detailed reasons for refusing to register the members of the Association. Instead, they emphasize that the Council is only obligated to register individuals who meet the necessary academic qualifications and practical experience required for the surveying profession. Therefore, I have no reason to disagree with the argument of the Petitioner that the Respondent has not divulged a legitimate reason to refuse to register the members of the Association.

Now I must advert to the claim of the Petitioners upon legitimate expectation. In ***Harshani S. Siriwardana v. Malsiri J. Seneviratne, Secretary, Ministry of Health, Indigenous Medicine, Social Welfare and Women's Affairs, Probation and Child Care and Council Affairs- Western Province- SC (FR) Application No. 589/2009 decided on 10.03.2011*** Dr. Shirani Bandaranayake J. (as she was then) has observed that;

“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before Court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.

Accordingly, the question that would have to be looked into would be as to whether there was a promise given to the petitioner or a regular procedure that future vacancies would be filled on the basis of a previously held examination on which there had been selections made on the results of the said examination.”

Dr. Shirani Bandaranayake J. (as she was then) in the same judgement has even referred to the following paragraph of ***Brennan, J., in Attorney General for New South Wales v Quinn ((1990) 64 Australian L.J.R. 327)***;

“The Court must stop short of compelling fulfillment of the promise or practice unless the statute so requires or the statute permits the repository of the power to bind itself as to the manner of the future exercise of the power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the Court out of review on the merits.”

It is important to note that the Petitioners in the instant Application primarily base their claim on the doctrine of legitimate expectation as embodied in the provisions of the said Act. A person who has met the basic qualifications such as obtaining the degree of Bachelor of Science (Surveying Licenses), naturally develops an expectation within him to engage in land surveying in this Country upon receiving a certificate of Registration. Under Sections 37 and 39 of the Act, the Council is obligated to register the Surveyors with the Council according to the provisions of the Act enabling them to engage in land surveying. Moreover, the provisions

of Section 40(1) also, in my view, reinforce this expectation as every surveyor who was entitled to be issued with an annual license under Section 4 or 6 of the Surveyors Ordinance on the date of commencement of the present Act, shall be deemed to be registered under the new Act.

As a result, the Petitioners' claim can be understood as asserting that their legitimate expectation was impacted by the Council's arbitrary use of power or its failure to implement the law properly.

I must now examine whether an authority's failure to implement statutory provisions directly impacts a person's legitimate expectations or particularly their rights. The said Act has been enacted under the legislative power prescribed in Article 75 of the Constitution by the Parliament. The Directive Principles of State Policy contained in Article 27 shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society. It is stipulated in Article 28 that the exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly, it is the duty of every person in Sri Lanka to uphold and defend the Constitution and the law. Section 4 of the Interpretation Ordinance No. 21 of 1901 provides that where any enactment or written law, whether passed or made before or after the commencement of the said Ordinance, confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. Laws are rules that apply to everyone in a community. They safeguard overall safety and protect the rights of a citizen from being violated by others, bodies, or even the government.

Considering the above, I am of the opinion that when an Administrative Authority arbitrarily exercises its power to prevent or circumvent the implementation of a valid law passed by Parliament or fails to exercise its duty, it affects a person's rights more significantly than their legitimate expectation. If the law imposes or authorizes a person or a body to make appointments; register or enrol someone; or issue permits/licenses etc., subject to the law, and fails to fulfil such duties would certainly amount to an abuse of power and can negatively impact the rights of another individual.

The development of judicial review has been closely tied to traditional remedies, but contemporary judicial practices have expanded beyond these conventional methods, with judges adopting new grounds for review. In Sri Lanka, the Constitution grants the Supreme Court the sole authority to hear and resolve issues related to the violation of Fundamental or Language Rights. However, this Court has, on several occasions, recognized that issuing writs when a person's rights are affected by a public authority's decision can be seen as judicial activism in the Review Court. This suggests that the Court of Appeal is gradually establishing a distinct jurisdiction with the power to provide remedies to those whose rights have been violated. Despite this progress, I am aware that there remains uncertainty about whether the Supreme Court or the Court of Appeal has explicitly acknowledged the public trust doctrine or violations of Fundamental Rights under the Constitution as a direct basis for review in writ jurisdiction.

Moreover, when authorities fail to give effect to written laws and their duties imposed by such laws, it undermines the Rule of Law and disrupts the stability of the legal system. Similarly, such actions can lead to several negative consequences such as erosion of public trust. When authorities do not enforce the laws fairly or arbitrarily, ignoring them would even lead to a perception of injustice and bias in governance leaving room for arbitrary use of power. This opens the door to abuse, favouritism and corruption further weakening governance. In addition to the above, the inconsistency in enforcing written laws and executing duties affects predictability and legal uncertainty making it difficult for people and institutions to plan and act with confidence.

A critical question arises: how long does a professional who has become qualified under the law need to stagnate until his or her appointment is made or their qualifications are duly recognized / registered? The Respondent has failed to show a genuine purpose or demonstrable effect of the provisions of the said Act for not exercising their duty to register the qualified surveyors. In the circumstances, the surveyors who achieved the necessary qualifications under the law have been affected by their rights being infringed due to the inaction of the Council. Additionally, their legitimate expectations have also been breached. However, this Court is not competent to assess whether the Petitioners have fulfilled all requirements to get them registered under Section 39 of the Act. Nevertheless, I hold that the

said Council has infringed the rights as well as breached the legitimate expectation of the individuals including one or more members of the Association, who have qualified under the said Act to engage in surveying in the country and who have not been registered under the law to date by the Council.

In light of the reasons given above a writ of Mandamus is issued compelling the Respondent-Land Survey Council to process the applications for the registration of surveyors of the members of the 1st Petitioner- Professional Surveyors Association and the other Petitioners in terms of Sections 37 and 39. Furthermore, a writ of Certiorari quashing the decisions reflected in the letter marked 'P15' is also issued.

It is noted that the Council is entitled, if they wish, to formulate a criterion for the purpose of registering surveyors. The said Association has expressed its willingness, in letter marked 'P22' to extend their cooperation in formulating a criterion to register surveyors who have met the qualifications required under the said Act. Several proposals made in that regard by the Association are reflected in the said 'P22'. In this backdrop, Court makes an observation that the Council may adopt a process to prolong formulating such criteria and that prolonging the same may affect the Petitioners in turn. Therefore, considering the special circumstances of this case and on careful consideration of the whole matter, I should exercise my discretion to make an order, allowing the Council, if the occasion reasonably requires, to delay the execution of the writ issued by this Court for a period not later than four months from the date of judgement.

Judge of the Court of Appeal