

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

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

**CA (Writ) Application No:  
451/2020**

Karunakalage Sanumi Tarinya De Silva  
No. 24, Nambimulla Road, Ambalangoda.

**PETITIONER**

**-VS-**

1. Prof. G.L. Peiris  
Hon. Minister of Education,  
Ministry of Education,  
'Isurupaya", Battaramulla.

1A. Dinesh Gunawardane  
Hon. Minister of Education,  
Ministry of Education,  
'Isurupaya', Battaramulla.

1B. Hon. Achchige Don Susil Premajayantha,  
Hon. Minister of Education,  
Ministry of Education,  
'Isurupaya', Battaramulla

2. Prof. Kapila C.K. Perera  
Secretary, Ministry of Education,  
'Isurupaya', Battaramulla.

2A. Nihal Ranasinghe,  
Secretary, Ministry of Education,  
'Isurupaya', Battaramulla.

3. University Grants Commission  
No. 20, Ward Place, Colombo 07.
4. Senior Professor Sampath Amaratunga  
Chairman  
University Grants Commission  
No. 20, Ward Place, Colombo 07.
5. B. Sanath Poojitha  
Commissioner General of Examination  
Department of Examination,  
Pelawatta, Battaramulla.
- 5A. H.J.M.C. Amith Jayasundara  
Commissioner General of Examination  
Department of Examination,  
Pelawatta, Battaramulla.

### **RESPONDENTS**

**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:** Migara Doss with Dinesh De Silva and Ms. Ushani Bombuwala for the  
Petitioner.

N. Wigneshwaran, DSG with Ms. Shemanthi Dunuwille, SC for the  
Respondents.

**Written submissions tendered on:**

27.07.2023 by the Petitioner.

28.08.2023 by the Respondents.

**Order delivered on:** 18.01.2024

**S.U.B. Karalliyadde, J.**

This Order is pertaining to two preliminary legal objections raised on behalf of the Respondents about the maintainability of the Writ Application. The learned Counsel appearing for the Petitioner informed Court that he would be confining his submissions in respect of prayers (d) and (e) of the Petition. By this Writ Application, the Petitioner is seeking reliefs, *inter alia*, to issue a mandate in the nature of a Writ of Prohibition prohibiting one or more or all of the Respondents from adopting the District Merit-based quota system of selecting 55% of candidates for higher education institutions and universities from the G.C.E. Advanced Level Examination here onwards as more fully reflected in P4A and mandate in the nature of a Writ of Mandamus directing one or more of the Respondents to formulate new admission criteria of selecting students for higher education Institutions and Universities from the G.C.E Advanced Level Examination held in 2019 and onwards according to law.

On behalf of the Respondents, two preliminary legal objections were raised by the learned DSG appearing for the Respondents about the maintainability of the Application. As recorded by the Court, those objections are based on the following facts;

1. That the Cabinet of Ministers being necessary parties have not been made parties

2. In view of the decision of the Cabinet of Ministers not being challenged in these proceedings, the Application is futile.

The facts of the case briefly are that the Petitioner to this Writ Application sat for the General Certificate of Education (Advanced Level) Examination (hereinafter referred to as G.C.E. A/L Examination) in Biology Stream in the year 2019 and the Petitioner is one of the first batch of students to sit for the Exam under the new syllabus introduced in 2017. It is stated in the University Admission Handbook (marked as P4) published by the University Grants Commission (the 3<sup>rd</sup> Respondent), that following the Order of the SC (FR) 29/2012 case the UGC has decided to consider the students sitting under the old and new syllabuses as two distinct populations and would be allocated separate island and district ranks and the admission to the State Universities would be decided on the composite average percentage which would be based on the results of the previous five years. Thus, the said criteria would place the students who sat for the G.C.E. A/L Examination in 2019 at a greater disadvantage compared to the ones who sat for the said Exam under the old syllabus. In terms of P4, 55% of the candidates would be admitted to State Universities based on the District Merit Quota basis (marked as P4A). The Petitioner has restricted the prayers to the Petition to challenge the legality of the District Merit Quota system in selecting students to the Universities from the G.C.E. A/L Examination.

According to the Publication of the University Grants Commission dated 9<sup>th</sup> November 2020 (marked as P5) which provides a detailed description of the University admission for eligible candidates sitting for the G.C.E. A/L Examination in 2019, 43% of the admissions should be under the new syllabus and 57% should be under the “All Island Merit Basis” to follow the course of Medicine. In terms of P5, for the Academic year 2019/2020 only 27% of students qualified to get admitted under the new syllabus and 73% under the old syllabus based on District Merit to follow the course of Medicine from the District of Galle under which the Petitioner sat for the Examination resulting in only 14 students under the new syllabus and 38 students under the old syllabus qualified to follow the course of Medicine. As a result of adopting the above-mentioned method, the Petitioner suffered a great disadvantage and was unable to get admission to follow the course of Medicine in the State Universities despite obtaining a Z score of 2.0062. The Petitioner further states that due to the aforementioned admission method, students from other Districts who obtained lower Z scores and students under the old syllabus who obtained lower Z scores than the Petitioner were entitled to get admitted to follow the course of Medicine in the State Universities while the Petitioner was deprived of the same. The Petitioner alleges that the adoption of such admission criteria resulted in manifest discrimination for the students who sat for the Examination under the new syllabus. However, according to the Cabinet Decision dated 10.05.2021 (R4), the Secretary to the Ministry of Education has been directed to send the list of next immediate qualified students to get admitted to follow the Medicine course in the

State Universities to the Vice Chancellor of the Kotelawala Defence University, consequently to which the Petitioner was admitted as a Medical student at the Kotelawala Defence University.

The first preliminary objection taken up by the Respondents is that the District Quota System was implemented under the national policy set down by the Cabinet of Ministers and failure to include the Cabinet of Ministers in the instant Application as necessary parties is fatal.

The learned DSG appearing for the Respondents in the written submissions has submitted that the national policy on University admission set out by the Cabinet of Ministers should be complied with by the UGC and the said national policy is embodied in the Cabinet Memorandum dated 07.12.1994, Cabinet decision dated 21.12.1994, Cabinet Memorandum dated 06.03.1995 and Cabinet decision dated 17.03.1995. Citing section 20(1) of the Universities Act, No. 16 of 1978 (the Act), the learned DSG appearing for the Respondents argues that the UGC must comply with the directions of the Minister embodied in the national policy and the UGC is bound by law to comply with the national policy on University admissions. Section 20(1) of the Act reads thus,

*20. (1) (a) The Minister may from time to time issue to the Commission such general written directions as he may deem necessary in pursuance of national policy in matters such as finance, university places and medium of instruction, to enable him to discharge effectively, his responsibility for*

*university education and the administration of this Act. Every such direction shall as soon as possible be tabled in Parliament.*

*(b) The Commission shall comply with such directions and the governing authority of every Higher Educational Institution shall afford such facilities, and furnish such information, to the Commission or any member or officer thereof as may be necessary to enable the Commission to comply with such directions.*

In terms of Section 20(1) (a) empowers the Minister from time to time to issue “written directions” as he deems necessary in pursuance of national policy in matters such as finance, university places and medium of instruction, to enable him to effectively discharge his responsibility for university education and such directions should be tabled before the Parliament. When such directions are issued, UGC is bound to comply with such directions under Section 20(1) (b) of the Act. When considering Section 20(1) it is clear that it only gives the Minister the power to issue written directions in pursuance of national policy and the instant Application neither any direction has been issued by the Minister regarding the number of students to be admitted to State Universities nor the Act stipulate that the UGC must follow the national policy on University admission.

The Petitioner argues that in terms of Section 15(vi) of the Act, the UGC has the power to select the number of students for University admission. Section 15(vi) of the Act reads as follows;

*15. (vi) to determine, from time to time, in consultation with the governing authority of each Higher Educational Institution, the total number of students which shall be admitted annually to each Higher Educational Institution and the apportionment of that number to the different courses of study therein;*

The learned Counsel appearing for the Petitioner has drawn the attention of this Court to the judgement *Pathiratne Vs UGC*<sup>1</sup> where Shirani Bandaranayake J. held that “*The UGC is therefore, the only authority vested with power to admit students to Universities in Sri Lanka. Admittedly there is no other authority in the country vested with such power.*”

When considering the above-stated provisions of the Act and authority it is evident that the UGC has the power to select the number of students to be admitted to the Universities and the Minister has the power to issue written directions to the UGC about university places in under national policy, which should also be table before the Parliament. This does not stipulate that UGC must follow the national policy when deciding the number of students to be admitted to the Universities. Therefore, this Court

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<sup>1</sup> SC FR Application No. 618/2002, SC Minutes of 05.08.2003.



is of the view that not naming the Cabinet of Ministers as necessary parties to this Application is not fatal. Nevertheless, this Court has to consider the second preliminary objection raised by the learned DSG appearing for the Respondents, which is that the Application is futile as the decision of the Cabinet of Ministers has not been challenged in these proceedings. Even though the Act does not stipulate UGC to follow the national policy on University admissions in deciding the number of students to be admitted to the State Universities, according to the University Admission Handbook marked as P4, under section 1.1 which is about the admission policy for State Universities and Higher Educational Institutes, states that the total number to be selected for a course of study is based on a national policy. Section 1.1 of P4 reads thus;

“කිසියම් අධ්‍යයන පාඨමාලාවකට තෝරා ගන්නා මුළු ශිෂ්‍ය සංඛ්‍යාව ජාතික ප්‍රතිපත්තියක් අනුව තීරණය කෙරේ.”

Therefore, it is clear that UGC has relied on the national policy in deciding the number of students to be admitted to the Universities. In the instant Application, the Petitioner is seeking a Writ of Mandamus directing the Respondents to formulate a new admission criterion in selecting students for higher education institutions and Universities from the G.C.E Advanced Level Examination 2019 and onwards according to law. It is the view of this Court that since UGC has based on the national policy in deciding the number of students for University admission, not challenging the national policy which

has prevailed for a considerable period will render the Application futile. Hence, I hold that the Petitioners are not entitled to maintain this Writ Application.

Thus, I dismiss the Writ Application without costs.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**