

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

C.A. MIS/05/2019

University Appeals Board No:
UNIVOTEC/UVB01/2018/02

In the matter of an appeal under and in terms of
Section 37 of the University of Vocational
Technology Act, No. 31 of 2008 read with Article
138 of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

B.M.T.D. Jayasekara

No. 1067/49A,
Pothuarawa Road,
Malabe.

APPELLANT

-Vs-

1. University of Vocational Technology

No. 100, Kandawala,
Ratmalana.

2. Prof. G.L.D. Wickramasinghe

Vice Chancellor,
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.

3. Dr. D.D.D. Suraweera, Dean,

Faculty of Industrial & Vocational Technology
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.

4. Mr. L.W.S. Kularatne, Dean,
Faculty of Industrial & Vocational Technology
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.
5. Mr. T.K. Malwatta,
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.
6. Mr. S.P.A.R.S. Jayathilake
University of Vocational Technology,
No. 100, Kandawala,
Ratmalana.
7. Mr. R. Ranepura
Secretary,
Ministry of Skills, Development & Vocational
Training,
“Nipunatha Piyasa”,
No. 354/2,
Narahenpita.
8. Mr. C. Jayasooriya
Additional Director General,
Department of Trade & Investment Policy of the
Ministry of Finance & Mass Media,
The Secretariat,
Colombo 01.
9. Mr. D.C. Dissanayake
Secretary,
Ministry of Higher Education & Highways,

No. 18, Ward Place,
Colombo 07.

10. Mr. P.N.K. Malasekara

Director General,
Department of Technical Education & Training,
Olcott Mawatha,
Colombo 10.

11. Eng. Lionel Pinto

Chairman,
Vocational Training Authority of Sri Lanka,
“Nipunatha Piyasa”,
No. 354/2,
Narahenpita.

12. Mr. Shehan Senerviratne

Chairman,
National & Industrial Training Authority.

13. Representative of Board of Investment of Sri Lanka

14. Eng. W.A.U. Gunawardena

Institute of Engineers Sri Lanka.

15. Eng. Javilal Meegoda

Institute of Engineers Sri Lanka,
Wijerama Mawatha,
Colombo 07.

16. Mr. Chandrarathne Vithanage

Senior Assistant Secretary General,
Ceylon Chamber of Commerce.

17. Mr. Rahula Senanayake

No. 186/2C,

Lumbini Lane, Wewalduwa,
Kelaniya.

18. Mr. S. Kulasinghe

Epitaha Watta,
Hiyare, Galle.

19. Ms. Rifha Musthafa

No. 23/2,
Tower 'A',
Royal Park Condominium,
Rajagiriya.

20. Mr. L.R.V. Vidyarthne

No. 76,
Dharamapala Mawatha,
Colombo 07.

RESPONDENTS

AND NOW BETWEEN

1. University of Vocational Technology

No. 100, Kandawala,
Ratmalana.

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Vice Chancellor,
University of Vocational Technology,
No. 100, Kandawala,
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University of Vocational Technology,

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No. 76,
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RESPONDENT-APPELLANTS

-Vs-

B.M.T.D. Jayasekara

No. 1067/49A,
Pothuarawa Road,
Malabe.

APPELLANT-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J (P/CA) &
Sobhitha Rajakaruna J.

COUNSEL : Suren Gnanaraj, SSC for the Respondent-
Appellants
Saliya Edirisinghe for the Appellant-Respondent

Argued on : 23.07.2020

Decided on : 30.11.2020

A.H.M.D. Nawaz, J. (P/CA)

When CA 05/2019 and 06/2019 came up before this Court, Mr. Saliya Edirisinghe, Counsel for the Appellant-Respondent raised a preliminary objection that the University of Vocational Technology (the UNIVOTEC-the Appellant) cannot maintain this appeal, as there is no right of appeal bestowed on it.

The learned Counsel premised his preliminary objection on section 37 of the University of Vocational Technology Act, No.31 of 2008.

As could be seen, the only provision that enables a person to appeal against the decision of a University Appeals Board is Section 37 of the University of Vocational Technology Act, No.31 of 2008, which goes as follows:-

“A person aggrieved by the decision of a University Appeals Board in respect of any appeal made under paragraph (a) of subsection (1) of Section 16, may appeal against such decision to the Court of Appeal within fourteen days of the date on which the decision and the reasons therefore were sent to that person by registered post, under Section (4) of Section 36”

The contention of the counsel is that the person referred to in Section 37 denotes a member of the staff of a University because it is to that member of the staff that the decision and the reasons are sent by registered post by virtue of Section 36(4) of the Act. Therefore the

“person” referred to in Section 37 cannot include a University. Mr. Suren Gnanaraj Senior State Counsel submitted that the operative part of Section 37 is a person aggrieved, which would include a University and so the University-the Appellant in the case, has the *locus standi* to prefer this appeal. The learned Senior State Counsel contrasted section 37 of the University of Vocational Technology Act, No.31 of 2008 vis-à-vis section 36(1)(a) of the Act. Section 36 (1) (a) of the Act states thus:-

“Where-

(a) *an appeal is made by any member of the staff of the University against an appointment, promotion, dismissal, suspension, disciplinary action taken against him or any salary anomaly; or*

(b)

the Board shall constitute a University Appeals Board consisting of three members, selected from and out of the persons appointed to the Panel of Inquiry and Investigation by the Minister under Section 35, to inquire into such appeal or to conduct such investigation, as the case may be.

This provision enables a member of the staff of the University to prefer an appeal against a decision against him to a University Appeals Board. What if this appeal results in a decision against the University? In other words, the member of this staff succeeds in his appeal and the University loses. The learned Counsel for the Appellant (the member of the Staff) argues that if the University loses in the appeal filed by the member of the staff, there is no right of appeal given by Section 37 of the University of Vocational Technology Act, No. 31 of 2008. Section 37, according to Mr. Saliya Edirisinghe, exclusively applies to a member of the staff who had listed his appeal before the University Appeals Board. He alone enjoys the right of appeal of the Court of Appeal by virtue of Section 37. If one were to crystallize the arguments of Mr. Saliya Edirisinghe, the member of the staff has two rights of appeal - *firstly*, to the University Appeals Board by way of Section 36(1)(a) and *second*, if he loses the appeal before University Appeals Board, a second right of appeal to the Court of Appeal.

According to him, if the University loses in the appeal filed by the member of the staff, the University does not enjoy a right of appeal to challenge the decision of the University Appeals Board. This is because no right of appeal has been granted by Section 37.

Mr. Suren Gnanaraj on the other hand contended that Section 37 speaks to a person aggrieved. It includes the University of Vocational Technology which is aggrieved by the decision of the University Appeals Board. Section 37 has to be interpreted in such a way as to enhance the right of appeal. Mr. Suren Gnanaraj, the learned Counsel for the State, also argued that the words "person aggrieved" has to be interpreted in terms of Section 2 of the Interpretation Ordinance, wherein the word "person" has been interpreted to include any body of persons corporate or unincorporated.

Thus what comes up for resolution before this Court is the interpretation of Section 37 of the University of Vocational Technology Act, No.31 of 2008.

Undoubtedly Section 36(4) states the modes of communicating the decision of the University Appeals Board to the parties before it.

To the Board of Governors of the University,

- 1) The Chairman of the University Appeals Board shall convey its decision and the reasons therefore, along with a report on such appeal or investigation.

To the person who preferred the appeal

- 2) A copy of the decision and of the reasons shall also be sent through registered post within one week of reaching such decision.

This dichotomy seen in the aforesaid section is relied upon by Mr. Saliya Edirisinghe for his contention that Section 37 applies exclusively to the person who preferred the appeal. Section 37 could be summoned up again:-

Section 37...

A person aggrieved by the decision of a University Appeals Board in respect of any appeal made under paragraph (a) of subsection (1) of Section 36, may appeal against such decision to the Court of Appeal within fourteen days of the days on which the decision and the

reasons therefore were sent to that person by registered post, under subsection (4) of Section 36.

It was argued that because Section 36(4) is referred to in the context of the dispatch of the decision and reasons to the member of the staff who preferred the appeal, the person aggrieved in Section 37 must mean the member of the staff and him alone. In other words it is the appellant staff member before the University Appeals Board who could appeal to the Court of Appeal and the University has not been bestowed with such a right of appeal. I am afraid I cannot agree with this interpretation that is sought to be placed on Section 37.

Indubitably, the right of appeal must be conferred by statute. But a synoptic reading of Sections 36(4) and Section 37 along with Section 2 supports the position that a right of appeal is also available to the University.

In my view, though at first blush the words “person aggrieved” read with the words “sent to that person by registered post, under subsections (4) of Section 36” appear to restrict it to a member of the staff who was the appellant, the Rules framed under the Act in regard to University Appeals Board explain what is meant by the words “convey to the board” its decision. The rules have been attached to the documents tendered to the Court and the rules make it a requirement that the final decision of the University Appeals Board shall be communicated to the parties by registered post, and a copy thereof shall be forwarded to the Chairman of the Board of Governors of University of Vocational Technology.

Expatiating the words “convey to the board its decision and the reasons therefore, along with a report on such appeal or investigation” in a such a manner as to insist on a mode of conveyance by way of registered post is not repugnant to Section 36(4) of the Act and it is how a parity of equality would be harmoniously read into Section 37 of the UNIVOTEC Act.

Even the Sinhala version of Section 36(4) of the UNIVOTEC Act makes it clear that a conveyance of the decision and the reasons by registered post to the University is an inescapable requirement.

Apart from the above, the expression 'Aggrieved Person' must be given a wide connotation and the persons directly or indirectly affected or even interested should be permitted to ventilate their grievances in an appeal. An 'Aggrieved Person' is one, who has a legal right to enforce a remedy. In *Goa Foundation v. Union of India* (2013) ALL (I) NGT REPORTER (Delhi) 234, the National Green Tribunal examined the ambit and scope of this expression while referring to various judgments of the Supreme Court of India - *Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something.*

In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977) 1 SCC 270, the Supreme Court of India observed that a legal injury creates a remedial right in the injured person. Further in the case of *Dr. Duryodhan Sahu v. Jithendra Kumar Mishra* (1998) 7 SCC 270, the Supreme Court of India held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Rohan Kumar* AIR 1976 SC 578, the Supreme Court of India held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. According to the appellant, the Environmental Clearance had been granted arbitrarily and in violation of the Notification of 2006. The appellant claimed to be a resident of that area and to have a direct interest in the environment of the area.

Furthermore, the appellant had been pursuing the cause of environment protection before various forums for a considerable time. The National green Tribunal was of the considered opinion that the person who had approached National Green Tribunal was covered within the ambit of the term 'Aggrieved Person' and once he is an 'Aggrieved Person' he would have the *locus standi* to file the appeal.

This Court had occasion to go into the question of who could be an aggrieved party in a partition appeal from the District Court of Avissawella in the case of *Padukka Vidanalage Gunasena and Another v V.R. Rupasinghe* CA 853/1999 (F) CA minutes of 08.06.2016, wherein I drew in aid the words of James L.J in the English case of *In re Sidebotham* (1880) 14 Ch.D.458. The dicta of James L.J which has since been followed in *Sevenoaks Urban DC v Twynam* (1929) 2 K.B 440 and *Ealing Corp v Jones* (1959) 1 Q.B. 384 goes as follows:

"But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which wrongly deprived him of something, or wrongly affected his title to something."

Thus I take the view that the legislature has not limited the right of appeal to the Court of Appeal only to "a member of the staff of the University" who prefers an appeal to the University Appeals Board. Thus, the words "a person aggrieved" by the decision of the University Appeals Board would include both the member of the staff who preferred the appeal and the UNIVOTEC.

Section 37 does confer a right of appeal on the UNIVOTEC and the words reasons therefor were sent to that person by registered post, under subsection (4) of Section 36" would also be apposite to the UNIVOTEC, as a conveyance of a decision by registered post to UNIVOTEC is an indispensable requirement by virtue of Section 36(4), and Section 37 of the UNIVOTEC Act, read with Section 2 of the Interpretation Ordinance. Section 36(4) of the UNIVOTEC Act in Sinhala and the rules framed under the UNIVOTEC Act in

relation to University Appeals Board fortify the interpretation which I reach on Section 37.

A slew of case law on interpretations cited by the learned Senior State Counsel favour the holistic interpretation I have reached.

S.N. Silva, J.{(P/CA) as he then was} in *Wickremaratne v Samarawickrema and Others*(1995) 2 SLR 212 at p.217 citing Maxwell, The Interpretation of Statutes, 12th Edition page 76 held:

"... Whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used."

In *Gartise v. I.R.C.* Lord Reid observed as follows:

"If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result."

In *Fry v. I.R.C.* Romer L. J. observed as follows:

"The court ... when faced with two possible constructions of legislative language, is entitled to look to the results of adopting each of the alternatives respectively in its quest for the true intention of Parliament."

In statutory interpretation there is a presumption that the Legislature did not intend what is inconvenient or unreasonable. The rule is that the construction most agreeable to justice and reason should be given. Maxwell (p 199) has stated this rule of interpretation as follows:

"In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available."

S.N.Silva, C.J. in *Omalpe Sobitha Thero v. Dayananda Dissanayaka and another*(2008) 2 SLR 121 at p.137 citing with approval the dicta of the Supreme Court of India in the case of *Bhatia International v Bulk Trading S.A*(11) at 1437 and 1438, stated as follows:

"The courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the court would adopt particularly in areas such as constitutional adjudication dealing with social and (sic) rights. Courts are therefore, held as "finishers, refiners, and polishers of legislatures which gives them in a state requiring varying degrees of further processing. If language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. In selecting out of different interpretations the court will adopt that which is just reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. "

In the circumstances, I proceed to hold that the UNIVOTEC enjoys a right of appeal to have and maintain this appeal before this Court. I thus overrule the preliminary objections and set this matter down for hearing on the merits.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna J.

I agree

JUDGE OF THE COURT OF APPEAL