

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

*In the matter of an Application for
Mandate in the nature of writs of
Certiorari and Mandamus under and in
terms of Article 140 of the Constitution.*

**CA (Writ) Application No.
203/2021**

**Kaluthara Vithanage Gimhani
Udeshika Senarathne,**
No.156/6, Kurunduwatta,
Meegoda.

PETITIONER

1. Institute of Chartered Accountants
of Sri Lanka.
2. **Pradeep Alexandar,**
Director,
School of Business.
3. **K. H. G.U. Kariyawasam,**
Registrar, School of Accounting and
Business
4. **Prasanna Liyanage,**
Secretary,
The Council of Chartered
Accountants of Sri Lanka.

1st to 4th above,

ALL OF:
The Institute of Chartered
Accountants of Sri Lanka,
No.30A, Malalasekera Mawatha,
Colombo 07.

5. **Bandula Gunawardene,**
MP
Hon. Minister of Higher Education,
Technology and Innovation,
No.18, Ward Place, Colombo 07.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALIYADDE, J.

Counsel:

Chrismal Warnasuriya with Prabudda Hettiarachchi, instructed by
I. Wijesinghe for the Petitioner.

Dr. Romesh de Silva PC with S. V. Niles, instructed by Julius and
Creasy for the 1st to 4th Respondents.

Argued on : 18.05.2023, 29.05.2023

Written Submissions on : 02.11.2023 (by Petitioner)
01.11.2023 (by 1st – 4th Respondents)

Decided on: 21.03.2024

MOHAMMED LAFFAR, J.

The Petitioner in this Application is seeking a direction to the 1st to 3rd Respondents to present all records and documents which they rely on, to arrive at the marks which had been awarded to the Petitioner (in the OB and ME subjects in her continuous assessments her 5th Semester in the year 2020 as depicted on document dated 26.01.2021 marked 'P10'; A mandate in the nature of Writs of *Certiorari* quashing the impugned purported determination of the 1st to 4th Respondents to deny the Petitioner her entitlement to information of her Assessments and End Semester Examinations for the subjects OB and ME in the 5th Semester in the year 2020 (communication

dated 04.03.2021 marked P17) and the results sheet containing the purported marks for her Continuous Assessments and End Semester Examinations for OB and ME for the 5th Semester in the year 2020, as contained in document dated 26.01.2021 marked 'P10' and A mandate in the nature of a Writ of *Mandamus* directing the 1st, 2nd and 3rd Respondents to act in accordance with the law and disclose to the Petitioner information of the marking of her Continuous Assessments and End Semester Examinations in the OB and ME subjects for the 5th Semester in the year 2020, as reflected on the result sheet dated 26.01.2021 marked 'P10'.

During the hearing of the matter, by Order dated 18.05.2023 this Court has permitted the Petitioner to proceed only against the 1st and 3rd Respondents as the 2nd and 4th Respondents ceased to hold office and the Petitioner did not take steps to amend the caption.

According to the Petitioner, the crux of the matter pertains primarily to the withholding of information and absence of transparency by the 1st Respondent Institute concerning the Petitioner's examinations and their outcomes. The Petitioner submits that these actions have profound and enduring ramifications on her future prospects, both within the academic realm and within her elected vocation as an Accountant since the computed final "Grade Point Average" (GPA) serves as the determinant for the categorization of her Degree Award, dictating whether she attains an Honours Degree with First or Second-Class distinction.

The 1st Respondent Institution has been established in terms of the *Institute of Chartered Accountants Act No. 23 of 1959* which is the Professional Body in Sri Lanka with the authority to award the title 'Chartered Accountant' to its members. The School of Accounting and Business (SAB) has been established in 2013 in terms of Section 25A of the *Universities Act No. 16 of 1978* and is a "Degree Awarding Institution" in terms of the Law. On 20.03.2018 the Petitioner enrolled as a 1st year student at the said School of Accounting and

Business (SAB) under Registration No. SAB/BSc/2018/A/ 46, to read for the course leading to the award of 'B.Sc in Applied Accounting'.

It is submitted that the Petitioner has attained and consistently upheld an exemplary academic standing throughout, as evidenced by her performance in all four semester examinations. Notably, she was one of only two students to receive 'A's across all her subjects during the 4th semester examination conducted on 15.10.2020 (referenced in documents marked 'P3 to P6').

The end-of-semester examinations have been held on 12.09.2020, 19.09.2020, 03.10.2020 and 07.03.2021 respectively. The final grading has been determined by combining the results of continuous assignments (40%) and the examination results (60%), as outlined in document 'P8'. The assignments were due for submission between June and August 2020. The Petitioner asserts that she duly submitted them, specifically for the subjects of Organizational Behavior (OB) and Managerial Economics (ME), which are the subjects under dispute. The submissions were made promptly along with those for Audit & Assurance (AA) and Strategic Management (SM), as evidenced in documents 'P7(a)' to 'P7(f)'. Around the 20.12.2020, the Petitioner has been informed by the Student Coordinator of the 1st Respondent to resubmit her assignment for ME, as it had purportedly been misplaced. This communication is documented in emails marked 'P9(a)' and 'P9(b)'.

The final grades for the subjects OB and ME, among others, were disclosed on or about the 26.01.2021. The Petitioner has then observed that her results were significantly lower than anticipated and inconsistent with her previous academic performance. Specifically, she had received a grade of B+ for OB and a C+ for ME, as indicated in the contested results sheet marked 'P10'.

Expressing concern, the Petitioner has sought clarification via email dated the 26.01.2021, requesting the 2nd and 3rd Respondents to conduct a reassessment of her assignments and end-of-semester examination papers for

the aforementioned subjects. It was argued, with reference to evidence from comparable institutions both domestically and internationally, that such reassessment is a prerogative accorded to undergraduate students.

On or about the 03.02.2021, the 3rd Respondent declined the Petitioner's plea for reassessment which was communicated to her via email. The response asserted the absence of a procedure for reassessment at the 1st Respondent Institute. This stance is vigorously contested by the Petitioner.

The disputed marks of 24 for OB and 20 for ME were issued to the Petitioner by the 1st Respondent. Subsequently, these marks were verified by the relevant lecturers responsible for the respective subjects (documents 'P12(a)' and 'P13'). The validity of these marks, along with the underlying procedure, is brought into question before this Court.

It is asserted by the Petitioner that the denial of the right to reassessment is arbitrary and unreasonable, particularly considering that the final result determines the overall GPA and consequently impacts the Petitioner's prospects of achieving a favorable grade for the ultimate award of the BSc degree (documents 'P14' to 'P15(b)').

On or about 16.02.2021, the Petitioner made a formal Demand to the 4th Respondent, reiterating her request for reassessment of her assignments and final semester examinations for the subjects of Organizational Behavior (OB) and Managerial Economics (ME). Additionally, she demanded the disclosure of the marking scheme used to calculate the final grades (referenced in document 'P16'). The response received around 04.03.2021, from the 4th Respondent persisted in denying the requested reassessment, purportedly citing the absence of a procedural framework for such action, a contention which is disputed. Furthermore, there was a refusal to disclose the marking guidelines, a stance also contested (document 'P17').

In the said background the Petitioner asserts that the impugned decisions, along with the entirety of the conduct in question, are alleged to be illegal, irrational, procedurally improper, and in violation of legitimate expectations.

The primary contention of the Respondents in this regard is that the consistent practice of the 1st Respondent has been to withhold or not release or reveal information concerning the evaluation of assessments and/or examinations. Additionally, they have never provided students with access to the records or documents utilized in determining final marks. Furthermore, they assert that there exists no formalized procedure within the institution for the reconsideration or re-evaluation of assessments i.e. 're-assessment' and therefore, the Respondents are of the view that the Petitioner is not entitled to any such re-assessments.

The Respondents also plead that the Petitioner has wrongfully suppressed that previously she has got a "C" grade and B grades for several subjects. However, the Petitioner's position is that she has obtained sufficient 'A' grades for a higher results depending on the outcome of the results impugned in this Application.

Attention of this Court is drawn towards the impugned determinations marked P10 & P17 which the Petitioner claims to be Irrational (or Unreasonable) and also Procedurally Improper (failed to observe the Rules of Natural Justice)

In the decision of **Dr. C. J. A. Jayawardena Vs University of Colombo (CA (Writ) Application No: 137/2018 decided on: 22nd June 2020)** Arjuna Obeyesekere, J, observed as follows:

*"This Court is therefore of the view that while due recognition will be given to the view of the decision maker, **whether the decision relates to academic matters or otherwise, this Court can, and will, in the exercise of the jurisdiction vested in it by Article 140 of the Constitution,***

*examine whether the impugned decision of the 1st Respondent is tainted with **illegality, irrationality or procedural impropriety**"*

In **Dr. Karunanada Vs. Open University of Sri Lanka and Others (2006) 3 SLR 225)** Shirani Bandaranayake J. states as follows:

"Although there may be cautionary remarks indicating reluctance to enter into academic judgment, I am not in agreement with the view that academic decisions are beyond challenge."

The Petitioner has instituted this action in particular, claiming that she is entitled to exercise her right to know how those marks were arrived at and to subject it to a process of reassessment as a student of a "degree awarding institution" governed under Sri Lankan law. While the Respondents plead that they have no established procedure and/or practice to facilitate 're-assessment of exam results as per the existing guidelines, the Petitioner also submits that even the mother institution of the 1st Respondent University, University of La Trobe (Australia) has an established procedure for re-assessment (marked 'P8' p.43 and 'A1') and therefore the conduct of the Respondents are unreasonable and irrational. This court observes that while the Respondents state that they have no particular procedure, they have failed to justify as to why such procedure is not in place.

De Smith's Judicial Review (8th Edition, 2018 Sweet and Maxwell, p.605) reads as follows:

*"It is observed that **"Irrationality may also sometimes be inferred from the absence of reasons.** When reasons are required, either by statute or by the growing common law requirements, or where they are provided, even though not strictly required, those reasons must be both "adequate and intelligible"."*

The process of "re-assessment" is a standardized procedure and practice acknowledged within "degree awarding institutions" established and regulated under the University Grants Commission according to the provisions of the Universities Act No. 16 of 1978. Particularly the UGC Circular No. 978 dated 09.04.2012, all universities and higher educational institutes are mandated to incorporate provisions for the re-examination of marks and grades in undergraduate studies (marked 'P25').

It is also submitted that all universities and Higher Education institutions in Sri Lanka which are subject to the by-laws, regulations and circulars of the University Grant Commission are expressly required to incorporate a procedure for 're-scrutinization of marks in relation to internal as well as external undergraduate degree programmes. Further attention of court was drawn to the system in place for re-scrutiny of marks at University of Peradeniya and also G.C.E Ordinary and Advanced Level Examinations and the Grade 5 Scholarship Examination,

This Court observes that access to have one's results reassessed has become a standard practice in all institutions of learning, and it is practiced by many establishments governed under the laws of Sri Lanka, particularly where widespread recognition and implementation of the right to reassessment across various educational and professional settings is acknowledged and given effect to.

In ***Dr. Kaunanada's Case (Supra) Shirani Bandaranayake J***, observes as follows:

"Procedural fairness, in my view, cannot be regarded as a matter which is unimportant. Procedural safeguards should be the cornerstones of individual liberty and their right to equality. Referring to the importance of procedural fairness, Justice Frankfurter in McNabb v. United States stated that the history of liberty has largely been the history of the observance of procedural safeguards. A decade later, considering an

issue on the same lines, Justice Jackson in Shaughnessy v. United States stated that "Procedural fairness and regularity are of the indispensable essence of liberty. Several substantive laws can be endured if they are fairly and impartially applied."

Thus, considering all facts analysed above including the conduct and past performance of the student and importance for a cogent system of re-scrutiny within established degree awarding institutions of the University Grants Commission, I am of the view that the Petitioner is entitled to a re-assessment as identified herein.

In the aforesaid circumstances, this Court is obliged to direct the 1st and 3rd Respondents to present all records and documents which they rely on, to arrive at the marks which had been awarded to the Petitioner (in the OB and ME subjects in her continuous assessments for her 5th Semester in the year 2020) as depicted on document dated 26.01.2021 marked 'P10'; and this Court is inclined to grant a Writ of Certiorari quashing the impugned purported determination of the 1st to 4th Respondents to deny the Petitioner her entitlement to information of her Assessments and End Semester Examinations for the subjects OB and ME in the 5th Semester in the year 2020 as depicted in communication dated 04.03.2021 marked 'P17'; a Writ of Certiorari quashing the results sheet containing the purported marks for her Continuous Assessments and End Semester Examinations for OB and ME for the 5th Semester in the year 2020, as contained in document dated 26.01.2021 marked 'P10' and a mandate in the nature of a Writ of Mandamus directing the Respondents to disclose to the Petitioner information of the marking of her Continuous Assessments and End Semester Examinations in the OB and ME subjects for the 5th Semester in the year 2020, as reflected on the result sheet dated 26.01.2021 marked 'P10'.

Accordingly, the Petitioner is entitled to the reliefs as prayed for in the prayer of the Petition. The Application is allowed with cost fixed at Rs. 60,000/- payable by the 1st, 2nd, 3rd and 4th Respondents to the Petitioner.

Application allowed with Costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL