

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

In the matter of an Application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for a Mandate in the nature of a Writ of Certiorari.

1. Janaka Lakshman Pallewela
198/4,
Heerassagala Road,
Kandy.
2. The Society of Registered and Assistant Medical
Officers (SRAMO)
SRAMO Centre,
266/2, Deans Road,
Colombo 10.

Case No: CA(Writ) 453/07

Petitioners

Vs.

1. Dr. Ajith U Mendis
Director General of Health Services,
Department of Health Services,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.
- 1(A). Dr. Palitha Maheepala
Director General of Health Services,
Department of Health Services,
Suwasiripaya,

385, Baddegama Wimalawansa Mawatha,
Colombo 10.

1(B). Dr. J.M.W. Jayasundara Bandara
Director General of Health Services,
Department of Health Services,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

1(C). Dr. Anil Jasinghe
Director General of Health Services,
Department of Health Services,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

2. Hon. Maithreepala Sirisena
Minister of Health and Nutrition,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

2(A). Hon. Rajitha Senarathne
Minister of Health and Nutrition,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

2(B). Hon. (Mrs.) Pavithra Devi Wanniarachchi
Minister of Health and Indigenous Medical
Services,
Ministry of Health,

Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

3. Dr. T.R.C. Ruberu
Secretary,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.
- 3(A). Mrs. Sudharma Karunathilake
Secretary,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.
- 3(B). Mr. Janaka Sugathadasa
Secretary,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.
- 3(C). Mrs. B.G.S. Gunathilake
Secretary,
Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.
- 3(D). Mrs. Bhdrani Jayawardena
Secretary of Health and Indigenous Medical
Services,

Ministry of Health,
Suwasiripaya,
385, Baddegama Wimalawansa Mawatha,
Colombo 10.

4. Hon. the Attorney General
Attorney-General's Department
Colombo 12.

Respondents

Before : Dhammika Ganepola, J.

Counsel : Saliya Pieris, PC with Savinda Jayawardena
for the Petitioners.
Nishadi Wickremasinghe for the 1st, 2nd and 3rd
Respondents.

Argued On : 26.09.2024

Written Submissions : 1C, 2A, 3B Respondents : 05.11.2024
tendered On

Decided On : 05.12.2024

Dhammika Ganepola, J.

The 1st Petitioner is an Assistant Medical Officer. the 2nd Petitioner is a Trade Union consisting of Registered and Assistant Medical Officers [RMOS and AMOs]. The

candidates who passed the Advance Level Examination with a minimum of four passes in the Biological stream could apply to be enrolled as Assistant Medical Officers. After successful completion of a 2½ to 3 years course conducted by the Medical Faculties of the relevant Universities, the candidates shall be awarded certificates of efficiency issued by the Sri Lanka Medical College Council. Later, the 1st Respondent Director General of Health appoints successful candidates as Assistant Medical Offices. After satisfying the relevant criteria, the Assistant Medical Offices can apply for registration as Registered Medical Offices. It is said that to obtain the confirmation in service both as RMOs and AMOs, such officers are required to complete the Efficiency Bar Examination conducted by the Department of Health. The Petitioners state that they are Government Medical Officers for all intents and purposes and that while discharging their duties as AMOs and RMOs they engage in *inter alia*

- a) clinical examination of patients at OPDs and inwards
- b) diagnosis of illnesses
- c) ordering the performance of necessary tests
- d) performing purpose
- e) prescribing medication to be administered
- f) issuance of medical certificates
- g) examination of and reporting on patients and/or persons produced before them for medico legal purposes.

It is pleaded that the RMOs and AMOs for several years issued Medico-Legal Examination Form [MLR] in respect of the persons produced before them to examine whether such persons are under the influence of drugs and /or alcohol. They carried out the above functions in their capacity as Government Medical Officers. It is claimed that to carry out the tests i.e. finger to nose test, walking on a straight-line test, sitting upright in a chair and blood alcohol test which are conducted to ascertain whether a person is under the influence of alcohol does not require any special expertise. The qualifications and the training of the RMOs and AMOs are more than adequate to carry out the same. However, the Government Medical Officers Association and the Consultant Judicial Officer Colombo objected to the RMOs and

AMOs conducting such tests. As such, the RMOs and AMOs have requested official recognition of their right to certify the test on the influence of alcohol or drugs. The Secretary to the Ministry of Health sought the advice of the Honorable Attorney General in respect of the above controversy. Other interested and relevant parties forwarded their observations and stances. Consequently, the 1st Respondent issued the Circular dated 06th February 2007 marked P13 accepting the due recognition to the Medical Reports produced by the RMOs and AMOs. Immediately thereafter, the Judicial Medical Officer Colombo objected to the issuance of the said Circular and requested for immediate withdrawal of the same. The Petitioners have requested the Respondent not to withdraw the Circular without allowing them to be heard. Regardless of the said request, the 1st Respondent proceeded to issue another Circular dated 05.04.2007 marked P16 cancelling the earlier Circular P13 with immediate effect. The Petitioners state that the decision to cancel the above Circular P13 is arbitrary, vexatious, capricious and unreasonable. Accordingly, the Petitioners are seeking a Writ of Certiorari quashing the decision of the 1st Respondent reflected in P16.

It is on the common grounds that Circular P13 had been issued. As evident by the letter dated 06.09.2006 marked P10, the Secretary, to the Ministry of Health and Indigenous Medicine, before the issuance of Circular P13 had sought legal advice from the Honorable Attorney General on whether there is any impediment on allowing RMOs/AMOs to perform their functions on offences committed under the Influence of Liquor (Special)Provisions Act No. 41 of 1979 and Motor Traffic Act. The Honorable Attorney General had been of the opinion that in view of the qualifications and training received by RMOs and AMOs, they are competent to certify whether a person is smelling of alcohol on the Medico-Legal Examination reports or not. Further, it was opinioned that the reports submitted by the RMOs and AMOs are admissible in Courts under Section 11(2) of the Influence of Liquor (Special) Provisions Act.

The said Circular P13 had been issued in terms of the relevant advice reflected in P10 given by the Hon Attorney General. It is observed that having heard that the arrangements are being made to cancel Circular P13, the Petitioners, by their letters marked P15(a), P15(b) and P15(c) have made requests to allow them to make clarifications to the Respondents in respect of the matter in issue. Further, the Petitioners have requested not to cancel or amend Circular P13 until such time.

Although the issuance of said Circular P13 had been initiated at the request of the RMOs and AMOs, they have not been allowed to be heard before cancelling the above by Circular P16. The Respondents do not deny their failure to give the Petitioners an opportunity to make representation before the issuance of Circular P16.

In D.K. Yadav v. J.M.A. Industries, [(1993) 3 SCC 259 : (1993 (2) LLJ 696.) the Indian Supreme Court has underlined the significance of the concept of natural justice as follows;

“The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice.”

In spite of such, the Respondents state that Circular P16 was issued as a temporary measure until the matter was fully and comprehensively considered. Anyhow, the Respondents stated that Circular P16 was issued pursuant to the outcry in the medical profession against Circular P13 and in view of the very valid concerns and observations made by the College of Forensic Pathologists of Sri Lanka and the Office of the Judicial Medical Office of Colombo. The conclusion that could be arrived at by such submission is that the relevant authorities had been allowed to forward their concerns by the Respondents and came to a conclusion that the concerns and the observations made by the said authorities are very valid without giving an opportunity to the Petitioners to speak for themselves. There is no material placed before this Court to come to a conclusion that the Respondents have informed their inclination to hear the Respondents in respect of the cancellation of Circular P13.

The Respondents assert that Circular P16 has no final effect which renders this application to be premature and not ripe for judicial review. Furthermore, the Respondents submit that as per Circular P16 it is evident that the Circular sought to be quashed is temporary and in no way a final decision. It merely specifies that the Circular P13 was suspended until further notice. Said Circular P16 reads as follows;

“සෞඛ්‍ය සේවා අධ්‍යක්ෂ ජනරාල්ගේ අංක ආර්/එම්බී/පී/03/2006 හා 2007.02.06 දිනකිව ඉදිරිපත් කරන ලද ඉහත මැයෙන් යුතු, පොදු වක්‍රලේඛ අංක 01-03/2007, නැවත දන්වන තුරු, වහාම මෙයින් අවලංගු කරමි.”

The words used above “අවලංගු කරමි” do not indicate the meaning of suspension. It indicates the meaning of cancellation. Further, it is an indefinite cancellation. No date or time period has been given as to how long Circular P13 will be suspended. Under such circumstances, I am not inclined to accept the stance of the Respondents that the decision reflected in Circular P16 is a temporary /provisional decision.

The Respondents have taken up the position that the qualifications of medical practitioners against RMOs and AMOs are wholly distinct and cannot be compared. Hence, RMOs and AMOs are not qualified to certify as to whether an individual is drunk or not. However, the matter pertaining to the application before this Court is whether the Petitioners had been given a fair opportunity to make representations and to explain their position before the cancellation of Circular P13 by Circular P16. As such, I am of the view that a necessity does not arise to consider such matters as to whether the RMOs and AMOs are qualified to perform the relevant duties under the instant application.

In the above premise, I conclude that the 1st Respondent has acted in contrary to the rules of natural justice while issuing Circular P16 to cancel Circular P13 by not affording a fair hearing to the Petitioners.

In ***General Medical Council v. Spackman, (1943) AC 627,644 Lord Wright*** held, "*If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision.*" The same principle was followed in the case of ***Sarath Amunugama and Others vs. Karu Jayasuriya, Chairman, United National Party and Others 2000(1) SLR 172.***

Based on the reasons and the circumstances given above, I am inclined to grant the relief (c) prayed for in the prayer of the Petition and to issue a Writ of Certiorari quashing the decision of the 1st Respondent contained in Circular P16. I order no cost.

Application is allowed.

Judge of the Court of Appeal