

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 and
mandamus under and in terms of Article
140 of the Constitution

Sattambiralalage Don Mary Roshani,

8/2 St. Joseph's Street,

Moratuwa.

Petitioner

Case No. C.A. (Writ) 234/2017

Vs.

1. Sri Lanka Medical Council,
31 Norris Canal Road,
Colombo 10.

2. Prof. Carlo Foneka,
The Chairman,
Sri Lanka Medical Council,
31 Norris Canal Road,
Colombo 10.

2A. Prof. Colvin Goonaratne,

Sri Lanka Medical Council,

31 Norris Canal Road,
Colombo 10.

3. Dr. Terrance De Silva,
The Registrar,
Sri Lanka Medical Council,
31 Norris Canal Road,
Colombo 10.

Respondents

Before: Janak De Silva J.

Counsel:

Faiz Musthapha P.C. with Shantha Jayawardena and Niranjan Arulpragasam for the Petitioner

Manohara De Silva P.C. with Boopathy Kahathuduwa for the Respondents

Argued On: 12.03.2019

Written Submissions Filed On:

Petitioner on 14.05.2019 and 22.07.2019

Respondents on 31.05.2019 and 22.07.2019

Decided On: 26.05.2020

Janak De Silva J.

The Petitioner is the holder of a MBBS (Bachelor of Medicine and Bachelor of Surgery) degree from Dalian Medical University, China on 01.07.2016 (P6). She claims to have been registered with this University on 01.05.2010 (P5).

The Petitioner submitted an application to the Sri Lanka Medical Council (SLMC) to sit for the EPRM (Examination for Registration to Practice Medicine). However her application was rejected.

The Petitioner is seeking the following relief:

- (a) Writ of Mandamus directing the 1st and/or 2nd and/or 3rd Respondents to permit the Petitioner to sit the EPRM (Examination for Registration to Practice Medicine) in terms of Section 29(1)(b)(ii)(cc) of the Medical Ordinance (as amended);
- (b) Writ of Certiorari quashing the decision (if any) of the Respondents to reject the Petitioner's application to sit the EPRM (Examination for Registration to Practice Medicine) envisaged by Section 29(1)(b)(ii)(cc) of the Medical Ordinance (as amended).

The dispute between parties arise from a requirement imposed by the SLMC (P16) that those who enter foreign Medical Schools from 01 June 2010 onwards should have obtained passes in Biology, Chemistry and Physics/Mathematics with credits in at least two of these subjects at the GCE Advanced Level (Sri Lanka) or equivalent.

The Petitioner has sat for the Edexcel General Certificate of Education Advanced Level and obtained E for Biology, D for Chemistry and E for Physics (P3).

Parties on 12.03.2019 agreed to dispose the matter by way of written submissions. They were granted an opportunity of filing written submissions together and thereafter filing reply written submissions. All parties have complied.

The learned President's Counsel for the Respondent has raised a preliminary objection, namely that the Petitioner has suppressed and/or misrepresented material facts from Court and as such the application must be dismissed in limine. The suppression/misrepresentation is said to be informing Court that the Petitioner has registered with the Dailian Medical University on 01.05.2010 (P5) which is factually incorrect.

The learned President's Counsel for the Petitioner while denying that there has been any suppression/misrepresentation, contends that it is not a preliminary objection but is, if at all, a "defence".

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in *W. S. Alphonso Appuhamy v. Hettiarachchi* [77 N.L.R. 131 at 135,6]:

"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the *King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns* Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

This principle has been consistently applied by courts in writ applications as well. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R.275], *Collettes Ltd. v. Commissioner of Labour* [(1989) 2 Sri.L.R. 6], *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88], *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360], *Jaysinghe v. The National Institute of Fisheries* [(2002) 1 Sri.L.R. 277] and *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* [(2007) 1 Sri.L.R. 24].

In fact, in *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67] this Court held that if there is no full and truthful disclosure of all material facts, the

Court would not go into the merits of the application but will dismiss it without further examination.

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

“(1)A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.

(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make that fullest possible disclosure of all material facts within his knowledge.

(3) If there is anything like deception the Court ought not to go in to the merits, but simply say" we will not listen to your application because of what you have done."

(Emphasis added)

Hence where there is suppression and/or misrepresentation of material facts, the Court is entitled to dismiss the application without going into the merits of the application. Therefore, what has been raised by the learned President's Counsel for the Respondents is in my opinion a preliminary objection.

However, it must be borne in mind that the suppression and/or misrepresentation must be of a material fact. Let me consider whether the impugned fact alleged to have been suppressed and/or misrepresented is a material fact.

The Petitioner relied on two grounds in attempting to assail the decision taken by the SLMC. Firstly, it is submitted that the SLMC did not have the power to impose the requirement of obtaining passes in Biology, Chemistry and Physics/Mathematics with credits in at least two of these subjects at the GCE Advanced Level (Sri Lanka) or equivalent. Secondly, that in any event she was registered at the Dailian Medical University on 01.05.2010 (P5 and paragraph 21 of petition).

The suppression and/or misrepresentation is with regard to the second ground.

The Petitioner has categorically stated that she was registered at the Dailan Medical University on 01.05.2010 [P5, paragraphs 21 and 25(e) of the petition]. By this statement she has sought to convince Court that even if the requirement imposed by the SLMC (P16) is valid, it does not apply to her as she registered on 01.05.2010 whereas the requirement in P16 applies only to those who enter foreign Medical Schools from 01 June 2010 onwards.

The Respondents contend that the facts set out in P5 are false and refers Court to R2A which is the admission letter issued to the Petitioner by Dailan Medical University. It is dated 14.09.2010 and is a contemporaneous document which this Court can rely upon. Having informed the Petitioner that she has been enrolled at the University for the 6-year Medicine Course (MBBS) in English Medium, it goes on to state:

"Please note that ***you must register at the International Education College within the period between Sept. 15th - Sep. 30th, 2010.*** If you fail to register before the deadline without permission of the school, you will be regarded as abandoning this admission. All students are required to pay the school fee within 3 days since arrival. You may transfer the fee to the school bank account before coming to China. Draft is not acceptable."
(Emphasis added)

This letter clearly indicates that the registration process is between Sept. 15th - Sep. 30th 2010. Clearly the Petitioner could not then have registered 01.05.2010 as claimed by her (P5) and at paragraphs 21 and 25(e) of the petition. This is further corroborated by the application the Petitioner submitted to the SLMC (R9) dated 18.07.2016 and signed by her where item 10. states the *date of entry* to the Medical School as 14th September 2010. All these contemporaneous documents confirm the fact that the Petitioner was *registered or entered Dailan Medical University after 1st June 2010* by which time the requirement imposed by the SLMC was effective.

In order to meet these factual assertions of the Respondents, the Petitioner with her counter objections submitted a debit advice (P20) dated 03.09.2010 to establish that she paid her tuition fees on or about 03.09.2010. But according to R2A issued by the University, the tuition fees per annum is around \$4470 whereas P20 shows that a sum of \$1,172 has been debited. In

any event, even P20 does not support the assertions made by the Petitioner that she was registered on 01.05.2010.

The document P5 is dated 23.02.2017 which is close to the time this application was filed. It is not a contemporaneous document and to me appears to be one made for the purposes of this application. It contradicts R2A issued by the same University. In any event, as I have elaborated earlier, several contemporaneous documents submitted by the Petitioner herself shows that she was enrolled/registered after 01.06.2010.

In the foregoing circumstances, I hold that the Petitioner is guilty of suppression and/or misrepresentation of material facts. Court need not determine the validity of the requirements imposed by the SLMC by P16 in order to arrive at this conclusion. The authorities are clear that the Petitioner will be penalized without going into the merits of the case.

The Petitioner sought to assail the decision of the SLMC on a two-fold basis. The second ground was tainted with deceit aimed at misleading Court on a material fact. The quest of the Court to dispense justice is a formidable task given that it must be done on pleadings without the benefit of observing the testimony of witnesses. There is a duty upon litigants to assist Court in this endeavor by providing it with all the true material facts. Where they fail to do so, by suppressing and/or misrepresenting material facts, Court must dismiss the application in limine without going into the merits of the matter. There is no room for sympathy for such a litigant.

For all the foregoing reasons, I uphold the preliminary objection raised by the Respondents. The application is dismissed with costs fixed at Rs. 50,000/=.

Judge of the Court of Appeal