

**SAMARAKOON AND OTHERS  
VS  
UNIVERSITY GRANTS COMMISSION AND OTHERS**

SUPREME COURT,  
BANDARANAYAKE, J.  
JAYASINGHE, J AND  
FERNANDO, J  
SC (FR) APPLICATION NO. 307/2001  
OCTOBER 04TH AND 08TH 2004.

*Fundamental Rights - Petitioners who qualified to join Medical Faculty from Kandy District according to policy declared in Hand Book excluded - Legitimate expectations - Article 12(1) of the Constitution.*

According to the Hand Book for the academic year 2000/2001 published by the University Grants Commission (UGC) it was declared that 900 places will be available for intake of students to medical faculties of all the Universities in this country. Out of this number and as per the marking scheme, 54 places had to be allocated to the Kandy District. However, the UGC decided to admit only 865 candidates. In the result 09 petitioners were not admitted from the Kandy District although they had obtained the requisite marks.

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**Held :**

1. On the basis of the policy declared in the Hand Book, the petitioners had a legitimate expectation to be admitted to the Medical Faculty.
2. The failure to admit the petitioners was arbitrary and constituted an infringement of their rights under the Constitution.

*Per* Bandaranayake, J

"Legitimate expectation derives from an undertaking given by someone in authority and such an undertaking may not be expressed and would have to be known from surrounding circumstances."

**Cases referred to :**

1. *Council of Civil Service Union V. Minister for the Civil Services* (1985) AC 374.

**APPLICATION** for relief for infringement of fundamental rights.

*D. S. Wijesinghe, PC* with *J. C. Weliamuna* for petitioners.

*Shibly Aziz, PC* with *Senani Dayaratne* for 01st respondent.

*S. Rajaratnam*, Senior State Counsel for Attorney-General.

*Cur.adv.vult.*

25th October, 2004,

**SHIRANI BANDARANAYAKE, J.**

In the year 2000, students who belonged to two categories, sat for the General Certificate of Education (Advanced Level) Examination (hereinafter referred to as GCE [AL] Examination). They were the students who offered four subjects under the old syllabus and those who sat for three subjects and fell within the new syllabus. The 01st, 02nd, 04th and 09th petitioners in this application sat for the GCE (AL) Examination under the old syllabus offering Chemistry, Physics, Zoology and Botany whilst the 03rd, 05th, 06th, 07th and 08th petitioners sat under the new syllabus offering Chemistry, Physics and Biology. All the petitioners sat for the said Examination from the Kandy District. The petitioners submitted that on the basis of the admission policy of the University Grants Commission (hereinafter referred to as the UGC), which was brought to the notice of the petitioners by the publication of the Hand Book for the Academic Year 2001/2002 by the UGC, they had a legitimate expectation that on the results they had obtained that the petitioners would be selected to a Faculty

of Medicine to fulfil their lifelong ambition of passing out as qualified medical officers.

However, the petitioners allege that the 01st respondent had failed to apply the said policy contained in the Hand Book of the 01st respondent in calculating the minimum mark for admission to a Faculty of Medicine, which is commonly known as the 'cut off mark' for selections. By their action, the petitioners allege that the 01st respondent has violated their fundamental rights guaranteed in terms of Article 12(1) of the Constitution, for which this Court granted leave to proceed.

The UGC is the governing authority which plans and co-ordinates the University education in the country and thereby the Commission has as its objects, *inter alia*, the regulation of the administration of Higher Educational Institutions and the regulation of the admission of students to each Higher Educational Institution. The UGC carries out the admission of students to Universities on the basis of an 'admission policy' which is laid down from time to time by the UGC with the concurrence of the Government of Sri Lanka. This admission policy for each academic year is published by the UGC in one of their publications and is commonly known as the Hand Book on 'admission to undergraduate courses of the Universities in Sri Lanka' (hereinafter referred to as the Hand Book).

Clause 3.2 (B) of the Hand Book refers to the minimum requirements for admission and it is common ground that all the petitioners have fulfilled the requirement of having the minimum qualifications for admission to University. In terms of clause 3.2 (D) of the Hand Book, admission to a Faculty of Medicine would be made on a dual criteria, namely, on all island merit and merit on district basis. The Hand Book specifies the dual criteria on the following basis :

"Under All Island merit criteria :

- (i) upto 40% of the available places will be filled in order of marks ranked on an all island basis.

Under District Merit criteria :

- (ii) upto 55% of the available places in each course of study will be allocated to the 25 administrative districts in proportion to the total population of the district concerned to the total population of the country.

(iii) A special allocation upto 5% of the available places in each course of study will be allocated to the under-mentioned 13 educationally disadvantaged districts in proportion to the population, that is, on the ratio of the population of each such district to the total population of the 13 districts :

1. Nuwara Eliya
2. Hambantota
3. Jaffna
4. Kilinochchi
5. Mannar
6. Mulaitivu
7. Vavuniya
8. Trincomalee
9. Ampara
10. Anuradhapura
11. Polonnaruwa
12. Badulla
13. Monaragala

The number of places allocated on the district merit quota given in (ii) and (iii) above will be filled in order of marks ranked on the district basis."

The petitioners contended that in terms of the aforementioned process, a candidate would be given an island rank in the All Island Merit List or a District Rank in the District Merit List and such ranking given to a student would determine that student's chances of gaining admission to University. At the time the petitioners sat for the GCE (A/L) Examination, separate examinations were held for the candidates who were sitting for the new syllabus and for the candidates who were repeating the examination under the old syllabus. Whilst the new syllabus consisted of three subjects, the students who were sitting under the old syllabus had to sit for four subjects. In view of the difference of the number of subjects in the new syllabus (three subjects) and the old syllabus (four subjects) candidates who sat for the said Advanced Level Examination in the year 2000 were ranked on the all island merit and merit on district basis on the average of marks in one common list.

In terms of the marks obtained by the petitioners at the said examination, their respective average, All Island Ranks and the District Rank that was published by the UGC was as follows :

Table I

	Index No.	Average	Rank	
			District	Island
01st petitioner	2482827	70%	45	774
02nd petitioner	2485982	69.75%	46	807
03rd petitioner	2476576	69.66%	47	not known
04th petitioner	2486059	69.5%	48	856
05th petitioner	2513200	69.33%	49	892
06th petitioner	2485109	69.33%	49	892
07th petitioner	2513765	69.33%	49	892
08th petitioner	2588218	69.33%	49	892
09th petitioner	2634317	69.25%	53	919

The selection to different faculties and to respective Universities is carried out by the UGC on the basis of number of places that are available for each faculty and such numbers are given in the Hand Book prepared for the current academic year.

The petitioners contended that in terms of Clause 2 of the admission policy given in the Hand Book, approximately 900 places were available for the study of Medicine in all the Universities in the country. In fact their contention was that even for the previous academic year, viz. 2000/2001, there were 900 places allocated for the Faculties of Medicine. They submitted that commencing from the academic year 1993/1994 number of places in Faculties of Medicine had improved each year and the said improvement in number could be tabulated as follows (P3A and P3B) :

Table II

<i>Year</i>	<i>Proposed number of places</i>
1993/1994	769
1994/1995	856
1995/1996	889
1998/1999	893
1999/2000	896
2000/2001	900

On the basis of the aforementioned circumstances the petitioners contended that 40% of the places out of 900 that have been enumerated in the Hand Book in respect of the Faculties of Medicine would amount to 360 students being admitted on All Island Merit Basis from the All Island Merit List. Further the petitioners contended that on the basis of District Merit, 55% out of 900 places would bring in 495 students to the Faculties of Medicine.

To consider the number of places allocated to Kandy District, in terms of Clause 3.2(D)(ii) of the Hand Book it would be necessary to obtain the ratio of the population of the district concerned, to the population of the country. Notwithstanding the above the NOTE to Clause 3 of the Hand Book specified that,

“In selecting students for a given course of study, it will be ensured that the quota allocated to any district under (ii) and (iii) above will not be below the quota in the base academic year, namely 1993/1994.”

The reference to (ii) and (iii) is regarding the 55% and 5% under District Merit Criteria, which has been cited earlier.

The petitioners contended that the population ratio of any district is taken into consideration for the purpose of making selection of candidates to public bodies which would include the Universities. The ratio of the

Kandy District in relation to the population of the island at that time was 7.1%. Accordingly 35 places which is 7.1% out of 495 should be allocated to the Kandy District on the basis of District Merit. The submission by the petitioners therefore is that,

- (a) 19 candidates from the Kandy District should be selected from the All Island Merit List,
- (b) 35 candidates should be selected from the District Merit List ; and
- (c) A total of 54 candidates therefore should be selected for the Faculties of Medicine from the Kandy District.

Referring to their District Rank which was cited earlier in Table I, the petitioners claim that all of them should have been selected to Faculties of Medicine from the Kandy District as all of them are above the cut off point of 54.

Learned President's Counsel for the 01st respondent conceded that the total allocation for the Faculties of Medicine for the academic year 2001/2002 was 900. Moreover learned President's Counsel conceded that out of the 900 places allocated for the Faculties of medicine, 40% were to be filled on the basis of an All Island Merit quota, 55% to be filled on the basis of a District quota and 5% to be filled on the basis of a Disadvantaged District quota.

However, the 01st respondent has taken up the position that the contention of the petitioners that the aforementioned quotas should not only be filled on the basis of a base figure of 900, but also should be calculated on the basis of a base figure of 900 is erroneous and logistically impossible. **"The 01st respondent's position is that the relevant calculation for the allocation of the number of students for the Faculties of Medicine were not made on the basis of the total number of vacancies that were stated in the Hand Book, namely 900, but on a hypothetical figure rationally and reasonably determined by the 01st respondent"**. The 01st respondent's submission therefore is that the 900 vacancies stated in the Hand Book is the ultimate figure that would be arrived at by the UGC and that they had to decide on a hypothetical figure due to the following reasons :

- (a) Out of the total allocation of 900 places to Faculties of Medicine, 100 were reserved to be sent to the University of Jaffna. Due to the security situation which prevailed in the North at that time, the number of students that could be sent to University of Jaffna was limited to Tamil students from the Northern and Eastern Provinces ; and
- (b) The 'clustering' of students on the said mark would result in an anomalous situation where an excessive number of students would be selected to fill the available vacancies.

In view of the aforementioned position, the UGC was of the view that if the Merit and District quotas were calculated on the basis of a figure of 900, the incidence of 'clustering' would invariably result in a final figure in excess of 900 which was the maximum number of vacancies in the various faculties of Medicine in the country. Therefore the UGC had taken a decision that 900 should be the hypothetical base figure that should be taken into account for the calculation of allocations to select 900 students to study Medicine. Accordingly the UGC had arrived at the following figures.

**Table III**

Hypothetical intake		800
All Island Merit Quota of 40%	$800 \times 40\%$	320
District Quota of 55%	$800 \times 55\%$	440
Disadvantaged District Quota of 5%	$800 \times 5\%$	40

Learned President's Counsel for the 01st respondent submitted that the clustering of students on the same mark point resulted in the following final allocations :



Table IV

All Island Merit Quota	323
Aggregate of the District Quota and the Disadvantaged District Quota (which figure could not be less than the allocation for the academic year 1993/1994)	533
The allocation for the special categories	15
Total	871

The position taken up by the UGC is that at the time material to this application due to the prevalent unrest in the North out of a possible 100 students, only 70 students were admitted to the Faculty of Medicine of the University of Jaffna. It was contended on behalf of the UGC that although the selection of 70 students to the Faculty of Medicine in the University of Jaffna left 830 places to be filled (900 - 70) in reality inasmuch as 30 of those remaining vacancies were allocated strictly for the University of Jaffna (which had a total allocation of 100 places) and due to this reason there were only 800 vacancies to be filled in the Universities other than the University of Jaffna. (830 - 30 = 800).

Accordingly the UGC had submitted the number of students to be selected for medical studies in the Universities other than in the University of Jaffna calculated in the following manner :

Table V

Total allocation (calculated on the basis of a hypothetical base figure of 800)	856
Less : the allocation for the University of Jaffna	70
	786
Plus the allocation for the special categories	15
Total	801

The respondents therefore contended that the aforesaid calculation of 801 places for the Universities other than the University of Jaffna, clearly indicates that it is equivalent to the total allocation for the Faculties of Medicine in the Universities of this country.

It is common ground that the UGC had indicated in their Hand Book that 900 students would be admitted to the Faculties of Medicine. In terms of Clause 8.3 under the heading 'Biological Science Stream', the Hand Book states that,

"8.3.1 Medicine/Dental Surgery/Veterinary Science  
(Proposed Intake : Medicine - 900 ;  
Dental Surgery - 75 ;  
Vet. Science - 75)"

Notwithstanding the above the UGC has taken the view that, the intake to Faculties of Medicine has to be decided on a hypothetical figure which was 800 for the academic year 2001/2002. The Hand Book does not indicate any such hypothetical figure regarding the selection of students. Although the UGC refers to the prevalent situation in Jaffna at that time, no material has been produced to substantiate this position. More importantly it is to be noted that the UGC has not explained to this Court as to how they have arrived at the hypothetical figure of 800 to select the students. Although the UGC refers to the difficulties in admitting students to the University of Jaffna, they were aware of such difficulties at the time they had decided on the intake of 900 students to the Faculty of Medicine. Accordingly the decision of the UGC to select students on a hypothetical figure of 800 becomes unreasonable as well as a decision that is without any basis. The UGC has to be guided by their own admission policy which is contained in the Hand Book and such admission policy has no reference regarding the usage of a hypothetical figure in order to select the candidates.

The UGC being the authority which has been assigned the task to select the students for admission to undergraduate courses in the Universities, should be mindful of the competition which is prevalent in the country in gaining admission to a University of the Republic. In fact Clause 5 of the Hand Book is on 'competition for admission' and it reads as follows :

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“The admission to Universities is extremely competitive. The number selected as a proportion of the number sat the Advanced Level Examination has been only about 7% - 8% .....

Such being the situation in gaining admission to a university in Sri Lanka, the UGC should have been considerate of the expectations of the students who were awaiting to enter the University after the completion of the GCE (A/L) Examination. When the UGC has stated quite clearly in its Hand Book which was brought to the notice of the students in advance, that the proposed intake for the Faculties of Medicine is 900, now they cannot take up the position, without any supporting documents that they have adopted a hypothetical base mark of 800 to select 900 students to study Medicine.

Considering the submissions made by the learned President's Counsel for the UGC, it is their position that for the academic year in question the total allocation for the Faculties of Medicine was 871. However, it is to be noted that the said intake of 871 students is 25 students less than the intake for the academic year 1999/2000 where 896 students were taken into the Faculties of Medicine. There is no explanation given by the UGC as to the reduction of the number for the academic year 2000/2001.

Furthermore it is to be noted that Clause 3.2 of the admission policy which was referred to earlier, clearly enumerates that in selecting students for a given course of study that it will be ensured that the quota allocated to any district under District Merit Criteria which included 55% allocated to the 25 administrative districts and a further 5% as a special allocation to the 13 educationally disadvantaged districts will not be below the quota in the base academic year, namely, 1993/1994. Accordingly it is abundantly clear that the district quota for the Faculties of Medicine cannot be below the number that was stipulated in the academic year 1993/1994. According to the document marked P9, which gives the details of the undergraduate entrants classified according to academic streams, district and admitted category for the academic year 1993/1994 for the Kandy District the merit quota had been 30 and the district quota was 36.

According to the petitioners, only 32 candidates were selected from the Kandy District on the district merit list for the year 2001/2002 to enter

a Faculty of Medicine to follow a course in Medicine. If the scheme formulated in the admission policy was implemented considering the population ratio of the island *vis-a-vis* the Kandy District, 35 places should have been allocated to Kandy District. Moreover, from the all Island Merit List 19 students should have been selected whereby the total figure would have been 54 and making such figure the minimum district rank that is required for the admission to a Faculty of Medicine from the District of Kandy. It is to be borne in mind that all the petitioners are over and above the said minimum district rank of 54.

The petitioners expected to enter a Faculty of Medicine as the admission policy given in the UGC Hand Book had clearly stated that, the intake to the Faculty of medicine would be approximately 900 students. When such a figure is indicated as the number that would be admitted, any reasonable person would consider his chances in entering the University and especially a particular Faculty of student's choice, taking into account the said figure that is specified. Therefore, the number that would be taken into consideration would certainly be 900 and it is not possible for any one to consider either 800 or 1,000 as the number that would be taken into account in selecting the qualified candidates. Being the final authority in the selection of students to Universities and specified Faculties, the UGC should have been mindful that there is a strong possibility of having 'clustering of marks' when it comes to selections. It would not be incorrect therefore to state that when the UGC published their academic policy for the academic year in question, they were aware of such difficulties and had stated 900 would be taken for the Faculties of Medicine bearing all those factors in mind. In such circumstances, without giving any reasons and without rationalizing or substantiating their decision, it is not possible to accept that the base mark was taken as 800. The non consideration of 900 as the base mark and adopting a hypothetical mark of 800, therefore becomes an irrational and arbitrary decision which violated the petitioners' fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The petitioners complained that they had a legitimate expectation that the academic policy hitherto applicable (P1) would be applied to them for the selection of candidates to the different faculties in the Universities.

Legitimate expectation derives from an undertaking given by someone in authority and such an undertaking may not even be expressed and

would have to be known from the surrounding circumstances. Describing the meaning of legitimate expectation, Prof. Galligan (*Due Process and Fair Procedures, A Study of Administrative Procedures*, Clarendon Press, Oxford 1996, pg. 320) stated that,

“In one sense legitimate expectation is an extension of the idea of an interest. The duty of procedural fairness is owed, it has been said, when a person’s rights, interests, or legitimate expectations are in issue. **One might have no right or interest at stake, but because of something said or done by the authority, an expectation may be raised which should not be disappointed without following certain procedures.** An example is an alien seeking an extension of a visa to stay in the United Kingdom. Under English Law he has no right or legitimate interest in being allowed to stay ; but he might acquire a legitimate expectation from an undertaking or holding out that he will be allowed to stay (emphasis added).”

The petitioners’ position was that they were made aware by the UGC that there would be 900 places for the study of Medicine. Therefore the petitioners expected that on the basis of the 900 vacancies that existed in the University system, that they would be selected to follow a course in Medicine. It is apparent that there was no such undertaking given by the UGC for the petitioners that they would be selected to a Faculty of Medicine. However, although there was no such express undertaking given to the petitioners by the UGC, the petitioners have sought such an obligation by inference. The question as to the legal position with regard to legitimate expectation where there is no express undertaking given was discussed in *Council of Civil Service Unions v Minister for the Civil Service*<sup>(1)</sup>. Discussing on judicial review Lord Diplock referred to the aspects of legitimate expectations of persons and stated that,

“Civil servants employed at GCHO who were members of the National Trade Union had, at best ..... a legitimate expectation that they would continue to enjoy the benefit of such membership ..... So, ..... they were entitled, as a matter of public law under the head ‘procedural propriety’, before administrative action was taken on a decision to withdraw that benefit, to have communicated to the national trade unions ..... the reason for such withdrawal and for such unions to be given the opportunity to comment on it.”

This clearly indicates that a state of affairs that had persisted earlier could give rise to an expectation that it will continue even in the future and such an expectation is derived on the basis that there is an implicit undertaking by the authority that the previous position would remain.

Considering the steps that had been taken by the UGC, it is abundantly clear that there has been no basis for them to rely on a hypothetical mark of 800 for the selection of 900 students which was specified in the Hand Book for the academic year 2001/2002. As stated earlier, for the 900 vacancies only 856 students were selected. The reason for the non-selection of the complete contingency of 900 students, according to the UGC was the prevailing situation at the time material in the North and therefore the difficulty in sending students to the Faculty of Medicine of the University of Jaffna. However, the Hand Book does not refer to any such situation, but clearly states that,

- (a) proposed intake for Medicine will be 900,
- (b) in selecting students for a given course of study it will be ensured that the quota allocated to any district under District Merit Quota (55% and the 5% of the educational disadvantaged districts) will not be below the quota in the base academic year, that in 1993/1994. In the base academic year 36 students were taken from the Kandy District under the aforementioned categories.

On a consideration of the totality of the material before this Court it is apparent that the information given in the Hand Book prepared and distributed by the UGC has given rise to a legitimate expectation that 900 students would be taken in for Faculties of Medicine and the selections would be finalized on that basis. I am of the view that the UGC had acted arbitrarily and irrationally on the selection of students to the Faculties of Medicine for the academic year 2001/2002. I accordingly hold that the 01st respondent has violated the petitioners' fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The 01st respondent is directed to admit the petitioners who would now be interested in entering a Faculty of Medicine for the academic year which would be commencing in 2005. The admission of petitioners to the Faculties of Medicine for the academic year commencing in 2005 should

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not be taken into consideration by the 01st respondent in determining the intake of students to study medicine for that academic year, as the petitioners are considered in terms of the admission criteria that were applicable for 2001/2002 academic year. The 01st respondent is also directed to pay a sum of Rs. 30,000 to each of the petitioners, irrespective of the fact whether they decide to enter a Faculty of Medicine or not, as compensation and costs. These amounts to be paid within 03 months from today.

**JAYASINGHE, J.** - I agree

**FERNANDO, J.** - I agree.

*Relief granted.*

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