# SANNASGALA
# V.
# UNIVERSITY OF KELANIYA AND MEMBERS OF THE UNIVERSITY SENATE

SUPREME COURT.
AMERASINGHE, J., KULATUNGA, J. AND
DHEERARATNE, J.
S. C. APPEAL NO. 47/87.
C.A. NO. 91/83.
JULY 04, 1991

*Mandamus - University of Ceylon Act, No. 1 of 1972 section 81(7) - Higher Education Act, No. 20 of 1966 - Validity of rules made on 28.12.1962 under the Vidyalankara University Act, No. 45 of 1958 - Universities Act, No. 16 of 1978 - Was power to confer degrees under the 1962 rules kept alive? - Promissory estoppel - Can it legitimate an act which is ultra vires? — Articles 118 and 127 of Constitution — Point being raised for the first time in appeal.*

The Faculty of Arts of the Vidyalankara Campus provisionally registered the petitioner as a candidate for the award of the D. Lit. Degree. The Examiners approved the granting of the Degree to him on his thesis entitled "Sinhala Vocables of Dutch Origin". However, further steps were not taken to confer the degree sought, but the petitioner was informed that action had been stayed on the direction of the Vice-Chancellor until regulations were formulated by the Senate for the conferment of degrees.

The Petitioner filed an application for the issue of a writ of mandamus.

Section 81(7) of the University of Ceylon Act, No. 1 of 1972 saved only the rules made after the coming into operation of the Higher Education Act, No. 20 of 1966. The rules approved on 28.12.1962 by the Senate of the Vidyalankara University established under the Vidyodaya and Vidyalankara Universities Act, No. 45 of 1958 suffered a statutory demise with the repeal of the Act of 1958 by the Higher Education Act, No. 20 of 1966. With the enactment of the Universities Act, No. 16 of 1978 (s. 139), Vidyalankara Campus was deemed to be a University established under the Act, No. 16 of 1978 and given the name University of Kelaniya.

Section 81(7) of Act, No. 1 of 1972, preserved only the rules made under the provisions of Act, No. 20 of 1966. The rules made in 1962 were repealed along with its enabling Act, No. 45 of 1958 and were not revived by s. 81(7) of Act, No. 1 of 1972.

Although the Vidyalankara Campus registered the petitioner as a candidate for D. Litt Degree on 02.07.1976 and his thesis on "Sinhala Vocables of Dutch Origin" was approved by the examiners, still the action of the University in staying the conferment of the degree until regulations were formulated by the Senate for the conferment of degrees did not put the University in breach of any statutory obligation as the rules made in 1962 had no statutory force in 1976.

In the absence of rules, the only statutory basis for the petitioner's application for a degree in 1976 is s. 4 (h) of Act, No. 1 of 1972 which empowers the University to confer degrees on persons who are employed on the staff of the University, therefore the most that the petitioner would be entitled to by way of a Writ of mandamus will be a direction to the University of Kelaniya to consider his application for a degree since all those taken under the rules of 1962 have to be disregarded as invalid. The petitioner however insists that he is entitled to a degree and all that the University has to do is to confer the degree. Accordingly the petitioner has failed to establish that the respondents are subject to any public or statutory duty which entitles him to mandamus.

Per Kulatunge J: "I am inclined to the view that even if the rules marked 'A' (rules of 1962) have statutory force the petitioner has no such absolute right to a degree as he claims, to the exclusion of any discretion exercisable by the competent body in that regard".

The argument based on promissory estoppel was raised at the hearing without notice to the other side. Articles 118 and 127 of the Constitution enable the Supreme Court to allow an appellant to urge before it grounds of appeal other than the one on the basis of which the Court of Appeal granted leave if the material on record warrants the determination of the same, subject however to the limitation that it may not permit a party to raise a new point if the other party had no proper notice of the new ground, or would suffer grave prejudice by the belated stage at which it is raised. No notice has been given and it would also cause prejudice.

Per Kulatunge J:

" It (promissory estoppel if applied) would create a situation where the University would be compelled to confer a degree by estoppel. It would not

be in the general interest of University education; and even if estoppel is relevant such a situation is undesirable and should preferably be avoided".

Promissory estoppel is based on a clear promise or assurance on the basis of which one party has acted to his detriment in respect of the legal relations between the parties. Once this happens the person who gave the promise or assurance cannot revert to their previous legal relations but he must accept their relations subject to the qualification which he himself has so introduced. This doctrine applies to public authorities. One of the qualifications to this doctrine is that the promisor can resile from his promise on giving reasonable notice, giving the promisee a reasonable opportunity of resuming his position.

As early as June 1977 the authorities had given the petitioner notice that they were resiling from the promise if any, given to the petitioner - the reason being the absence of rules. This was reasonable notice of lack of authority to consider the petitioner's case.

Estoppel cannot legitimate *ultra vires* action.

**Cases referred to:**

1. *Attorney-General of Hong Kong v. Ng. Guen Shin* [1983] 2 All ER 346, 351
2. *R v. Secretary of State for the Home Department ex parte Khan* [1985] 1 All ER 40.
3. *Albert v. Veeriahpillai* [1981] 1 Sri LR 40

APPEAL from the judgment of the Court of Appeal.

*H. L. de Silva* P.C. with *Gomin Dayasiri* and *N. M. Musafer* for petitioner.

*Douglas Premaratne* Addl. Solicitor-General with *Sri Skandarajah* State Counsel for respondents.

(N.B. Counsel for respondents was not heard as admittedly written submissions had not being filed in terms of Rule 35 (b) of the S.C. Rules)

*Cur. adv. vult.*

SEPTEMBER 05,1991

**Kulatunga, J.:**

The petitioner-appellant (hereinafter referred to as the petitioner) appealed to the Court of Appeal for an order in the nature of a writ of mandamus directing the respondents (The University of Kelaniya and the Members of the Senate of that University) to take steps necessary for the conferment of the degree of Doctor of Letters on him. The petitioner was a member of the academic staff of the former Vidyalankara Campus of the University of Sri Lanka established under the provisions of the University of Ceylon Act, No. 1 of 1972 (now University of Kelaniya under the provisions of the Universities Act, No. 16 of 1978). Pursuant to an application made by the petitioner on 25.01.1976 the Faculty of Arts of the Vidyalankara Campus provisionally registered him on 02.07.1976 as a candidate for the award of D. Litt. Degree on his thesis titled "Sinhala Vocables of Dutch Origin". Prof. J. Honda of the University of Utretcht Holland and Prof. Heinz Bechert of Gottingen University West Germany were appointed examiners to evaluate the petitioner's thesis. At the request of Prof. Bechert the petitioner submitted his other research works and publications for the purpose of evaluating his candidature for the D.Litt. Degree. On 11.10.76 Prof. Honda approved the granting of the Degree on the petitioner. This was followed by the approval of Prof. Bechert on 19.04.77.

Notwithstanding the recommendations of the two examiners, further steps were not taken to confer the degree sought; but by his letter dated 09.06.1977 (Exhibit 'G') President of the Vidyalankara Campus informed the petitioner that action had been stayed on the direction of the Vice-Chancellor until regulations are formulated by the Senate for the conferment of degrees. This was followed by numerous representations by the petitioner to the then University of Ceylon and thereafter to the University of Kelaniya. He contended that the University

was both competent and obliged to confer the degree but the authorities of these Universities failed to do so. Consequently, the petitioner made this application to the Court below.

The University of Ceylon was empowered by s·4(h) of Act, No. 1 of 1972 to confer on persons who are employed on the staff of the University, degrees in accordance with the procedure prescribed by rules made by the authorities and other bodies of the University in terms of the provisions of s. 36; and according to the records of the Vidyalankara Campus the Committee of the Sinhala Department considering the petitioner's application for the D.Litt. Degree decided on 10.03.1976 that —

> "The Senate had approved and published rules and regulations regarding the procedure to be followed for the conferment of the Degree of Doctor of Letters. Accordingly as only printed books and articles of outstanding research work will be considered for the award of this Degree, such printed publications should be forwarded to the Examinations and Academic Branch".

The relevant rules relied upon by the petitioner have been produced marked 'A'. These are rules approved on 28.12.1962 by the Senate of the Vidyalankara University established under the provisions of the Vidyodaya and Vidyalankara University Act, No. 45 of 1958. It is common ground that the said rules were repealed with the repeal of that Act by the Higher Education Act, No. 20 of 1966; there is also no provision in the repealing Act to keep alive the rules approved under the repealed Act. It was under these rules that all the steps for the examination of the petitioner for the D.Litt. Degree were taken.

The Court of Appeal held that the rules produced marked 'A' had no legal validity in 1976 and the Vidyalankara Campus when it purported to accept the application of the petitioner for the D.Litt. Degree in 1976 was acting outside the

powers given to it under the statute; that as such the University was not under a legal duty or obligation to confer a degree and the petitioner had no legal right in that regard, enforceable by mandamus.

The petitioner contended that the rules marked 'A' have force by virtue of s. 81 (7) of Act, No. 1 of 1972 which reads —

81 — "Subject to the provisions of this Act and of any appropriate instrument, the following provisions shall apply as from the date on which an old University and the Secretariat of the National Council of Higher Education become a section of the University-

.....

.....

(7) All statutes, ordinances and rules made by the Authorities of the old Universities and the National Council of Higher Education shall be deemed to be statutes, ordinances and rules made by the Universities"

The petitioner took up the position that s.81(7) of the Act resuscitated the rules made in 1962. This would require the expression "old Universities" in s.81(7) to be interpreted to include the Universities which existed at any time prior to the enactment of the University of Ceylon Act, No. 1 of 1972. If that interpretation is correct then s.81(7) would revive the rules marked 'A'; and the University had acted within its powers and incurred a statutory obligation to proceed with the steps for confering the degree sought by the petitioner.

It was argued that with the enactment of the Universities Act No. 16 of 1978 the obligation so incurred devolved on the University of Kelaniya in terms of the provisions of s.139 and s.141(3) of the Act. Under s.139 Vidyalankara Campus is deemed to be a University established under this Act and it is given the name "University of Kelaniya". Under s.141(3) all obligations incurred by the old University shall be deemed to

be incurred by a Higher Educational Institution established under this Act which in the instant case will be the University of Kelaniya. The petitioner also invoked the provisions of s.6(3) (b) and (c) of the Interpretation Ordinance (Cap.2) in favour of the continuity of the obligation.

The Court of Appeal rejected the petitioner's interpretation of s.81(7) of Act, No. 1 of 1972 in view of the definition of "old University" in s.87 in terms of which it means any University established or deemed to be established under Act, No. 20 of 1966. The Court was of the view that "rules" saved by s.81(7) of Act, No. 1 of 1972 are those made by such a University after the coming into operation of Act, No. 20 of 1966 and that s.81(7) did not revive the rules marked 'A' made in 1962 which were therefore devoid of statutory force; there was statutory demise of these rules after which no fresh rules were made under the provisions of Act, No. 20 of 1966; and in the absence of any rules in the matter, the University did not incur a statutory obligation in 1976 towards the petitioner and hence no obligation devolved on the University of Kelaniya to complete the incompleted steps for the conferment of a degree on the petitioner. In the result the Court of Appeal dismissed the petitioner's application but gave leave to appeal to this Court on the question whether under s.81(7) of Act, No. 1 of 1972 the rules made by the Authorities of the Vidyalankara University even prior to 1966 were deemed to be rules made by the University of Ceylon established under Act, No. 1 of 1972.

At the hearing before us it was pointed out that the respondents had failed to file written submissions and in terms of Rule 35(b) they are therefore not entitled to be heard. Mr. P. L. D. Premaratne, learned Additional Solicitor-General for the respondents stated that he has no explanation for the failure to file written submissions except to state that when they were due the brief was not with the Attorney-General. Accordingly, we only heard the submissions of Mr. H. L. de Silva PC, learned Counsel for the appellant. He reiterated the petitioner's submissions made before the Court of Appeal and drew

our attention to s.87 of Act, No. 1 of 1972 which defines "old University" as any University established or **deemed to be established** under Act, No. 20 of 1966. He submitted that the Vidyodaya University established under Act, No. 45 of 1958 is an old University contemplated by s. 81(7) of Act, No. 1 of 1972; that on an interpretation of this section the rules made in 1962 by the Vidyodaya University are deemed to be rules made under Act, No. 1 of 1972; and that the section refers to rules made before and after 1966. He submitted that this was deliberate because there were no rules made under Act, No. 20 of 1966.

In the alternative the learned President's Counsel raised a new ground in support of the petitioner's claim which ground he conceded has not been urged in the application for leave to appeal. He invokes the doctrine of promissory estoppel which is derived from a principle of equity of ancient origin. He submits that inasmuch as the University of Ceylon held out to the petitioner in 1976 that there were rules approved by the Senate governing the procedure for the conferment of the D.Litt. Degree, the University of Kelaniya is now estopped from declining to complete steps in that regard on the ground that no such rules had been made. He cited Halsbury Vol. 16 4th Ed. p.1017; *Attorney-General of Hong Kong v. Ng Yuen Shiu* (1) and *R. v. Secretary of State for the Home Department, ex parte Khan* (2).

On the question of the interpretation of s.81(7) of Act, No. 1 of 1972, I agree with the opinion of the Court below that it only contemplates rules made after the coming into operation of Act, No. 20 of 1966. That interpretation is in accord with the plain meaning of words used in the enactment. If as submitted by Counsel Parliament intended to resuscitate the rules made even prior to the enactment of Act, No. 20 of 1966 Parliament would have employed words which are clear and unambiguous. In the absence of such language I hold that s.81(7) preserved only those rules which were made under the provisions of Act, No. 20 of 1966; and that the rules marked

'A' made in 1962 which were repealed along with its enabling Act, No. 45 of 1958 were not revived by that section. As such the said rules have no statutory force in 1976 and the University incurred no statutory obligation when it purported to entertain the petitioner's application for a degree in terms of these rules.

In the absence of rules, the only statutory basis for the petitioner's application for a degree in 1976 is s.4(h) of Act, No. 1 of 1972 which empowers the University to confer degrees on persons who are employed on the staff of the University; therefore the most that the petitioner would be entitled to by way of a writ of mandamus will be a direction to the University of Kelaniya to consider his application for a degree since all those steps taken under the rules marked 'A' have to be disregarded as being invalid. But Mr. de Silva PC informed us that the case for the petitioner is that he is entitled to a degree; that all that is left for the University to do is to confer the degree which is a ministerial act; and that the petitioner prays for a direction accordingly ordering the respondents to proceed to confer the degree. In the light of my findings the petitioner has failed to establish that the respondents are subject to any public or any statutory duty which entitles the petitioner to the order he seeks to obtain. I am inclined to the view that even if the rules marked 'A' have statutory force the petitioner has no such absolute right to a degree as he claims, to the exclusion of any discretion exercisable by the competent body in that regard.

I now come to the other ground for relief namely, promissory estoppel which was urged for the first time before us. In *Albert v. Veeriahpillai* (3) it was held that the cumulative effect of Articles 118 and 127 of the Constitution enable the Supreme Court to allow an appellant to urge before it grounds of appeal other than the one on the basis of which the Court of Appeal granted leave, if the material on record warrants the determination of the same, subject however to the limitation

that it may not permit a party to raise a new point if the other party has had no proper notice of the new ground, or would suffer grave prejudice by the belated stage at which it is raised. The appellant has not given any notice to the respondents of the point he now raises. It seems to me that in the circumstances of this case it would also cause much prejudice to the respondents if they are directed on the basis of this point to confer a degree on the petitioner. It would create a situation where the University would be compelled to confer a degree by estoppel. It would not be in the general interest of University education; and even if estoppel is relevant such a situation is undesirable and should preferably be avoided. I am therefore of the view that this Court should not entertain the new ground. But as we have heard Mr. de Silva PC on it I would like to examine the merits of his submission.

Promissory estoppel is based on a clear promise or assurance given on the basis of which one party has acted to his detriment in respect of the legal relations between the parties. Once this happens the person who gave the promise or assurance cannot revert to their previous legal relations but he must accept their relations subject to the qualification which he himself has so introduced. This doctrine applies to public authorities. Halsbury Vol. 16 4th Ed. p. 1017; Wade Administrative Law 6th Ed. p.261. One of the qualifications to this doctrine mentioned by Halsbury is that the promisor can resile from his promise on giving reasonable notice giving the promisee a reasonable opportunity of resuming his position.

It was on 09.06.1977 that the petitioner was informed of the suspension of action on his application until regulations are formulated by the Senate for the conferment of degrees; but the petitioner was not prepared to accept this position. He persisted in his demand that he is entitled to the degree and continued his correspondence even after the enactment of Act, No. 16 of 1978. In a reply dated 11.03.1982 (Exhibit S.(1) the Vice - Chancellor of the University of Kelaniya informed the petitioner as follows.:

"The Senate of the University of Kelaniya has not yet formulated rules governing the award of the Degree of Doctor of Letters.

The former Senate House also did not have such regulations on which to judge the award of such degree and which were acceptable to the Senate.

Whilst not detracting from your ability and competence as a scholar, you must realise that I am bound by the regulations and rules of conduct laid down by the Senate".

Thus the authorities had as early as June 1977 given notice to the petitioner that they were resiling from the promise, if any, given to the petitioner. That was done on a serious ground namely the absence of rules. I am inclined to the view that this was reasonable notice in view of the fact that in the absence of rules the University lacked the power to consider the petitioner's case. The petitioner did not insist on rules being made but persisted in his demand for the conferment of a degree and eventually complained to the Court below. In all the circumstances, I do not think that the petitioner can invoke the doctrine of promissory estoppel against the respondents.

The decisions in *Attorney-General of Hong Kong v. Ng Yuen Shiu* (1) and *R. v. Secretary of State for the Home Department, ex-parte Khan* (supra) cited by the Counsel for the petitioner are of no assistance. In the first case an order for the removal of the petitioner from Hong Kong under its immigration laws was challenged and in the second case an order refusing the entry of a foreign child to the United Kingdom for adoption was challenged. The ground of challenge was that these orders had been made without giving a proper hearing in breach of an undertaking by the authorities as to the procedure they would follow giving rise to a legitimate expectation in that regard. These decisions have no application

to the instant case where the defence of the respondents relates not to the petitioner's right to be heard but to the lack of statutory authority to confer degrees. In fact in the first of the decisions cited the Privy Council held that a public authority is bound by its undertakings as to the procedure it would follow, **provided those undertakings did not conflict with its statutory duty** (1983) 2 All ER 346 at 351)

There is also the qualification that estoppel cannot legitimate ultra vires action. Thus Wade Administrative Law 6th Ed. p.262 observes —

> "In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority power which it does not in law possess. In other words no estoppel can legitimate action which is *ultra vires*".

For the foregoing reasons, I affirm the judgment of the Court of Appeal and dismiss the appeal. In the circumstances of this case, I am of the view that each party should bear his costs and hence make no order as to costs.

**Amerasinghe, J.** — I agree.

**Dheeraratne, J.** — I agree.

*Appeal dismissed.*