RATHNAYAKE AND OTHERS

v

UNIVERSITY GRANTS COMMISSION AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
SISIRA DE ABREW, J.
CA 1689/2006
FEBRUARY 6, 8, 2007

Writ of certiorari – Quashing decision rejecting application for University admission already registered to follow a Course – Applicability of Rule 6.2 of the rule of the University Grants Commission – Is there a last date for registration? – Decision arbitrary or unreasonable – Rules must not be partial and unequal among students belonging to the same class/category.

The petitioners sought to challenge the decision of the 1-3 respondents rejecting the application for University admission. The petitioners were registered in July 2006 to follow a Course of study (NDT) at the Institute of Technology of the University of Moratuwa (ITUM) on the basis of the results of the examinations held in 2005 (A' Level). As they obtained better results at the examination held in 2006, they submitted their applications seeking admision to Universities for the academic year 2006/07,and before doing so they got their registrations at the ITUM cancelled in October 2006. The respondents refused to accept the applications on the basis that, they had violated Rule 6.2 of the U.G.C.

It was contended by the respondents that, since the petitioners had not withdrawn their registration of the ITUM within a period of 30 days from the last date for the registration of the NDT course the applications have to be rejected.

Held:

(1) According to Rule 6.2 a student who is already registered for a particular Course of study at a Higher Educational Institute set up under the Universities Act No.16 of 1978 could apply for admission to another course of study on the basis of the results of the G.C.E. (A/L) examination held in a later year to another course of study only if he/she had withdrawn his/her registration within a period of 30 days from the last date for registration.

(2) The ITUM has not specified a last date for registration of students for the NDT course registration had been done on various dates – Rule 6.2 does not contemplate 'last dates' it only specifies 'a last date'. The Rule does not state that the student must withdraw his registration within a period of 30 days fromthe last date of his registration.

(3) The Rule in its application must not be partial and unequal among students who belong to the same class or category.

Thus there is no violation of Rule 6.2.

(4) The 1st - 3rd respondents did not consider whether the petitioners had in fact violated Rule 6.2. The impugned decision of the 1-3 respondents is arbitrary and unreasonable.

APPLICATION for a *Writ of Certiorari.*

Cases referred to:

1. *Nadeeka Hewage* v *UGC* SC No. 627/2002 SCM 8.8.2003.
2. *Fernando* v *University Grants Commission* CA 2524/2004 CAM 24.4.2006.
3. *Wheeler* v *Leicester City Council* 1985 AC 1054 (HC).
4. *Rex* v *Tynemouth District Council* 1896 2 QB 219.
5. *Regina* v *Birmingham Licensing Planning Committee* 1972 QB 140.
6. *Associated Provincial Picture House Ltd.* v *Wednesbury Corporation* 1948 1KB 223d 229.

Dulinda Weerasuriya with *Amila Vithana* for petitioners.
Kumar Arulananthan DSG for respondents.

February 22, 2007

SISIRA DE ABREW, J.

This is an application for a *writ of certiorari* to quash the decision of the 1st to 3rd respondents rejecting the applications of the petitioners for university admission. The petitioners further seek a *writ of mandamus* directing the 1st to 3rd respondents to consider the applications of the petitioners when making selection for admission to universities for the academic year 2006/2007.

The petitioners got themselves registered in July 2006 to follow a course of study known as National Diploma in Technology (hereinafter referred to as NDT) at the Institute of Technology of the University of Moratuwa (ITUM) for the academic year 2006/2007 on the basis of the results that they obtained at the GCE Advanced Level (AL) Examination held in 2005. The petitioners, who obtained better results at the GCE (AL) Examination held in 2006, submitted their applications to the 1st respondent seeking admission to universities for the academic year 2006/2007. However before doing so they got their registrations at the ITUM cancelled in October 2006. The 1st to the 3rd respondents have refused to accept/or entertain the said applications of the petitioners seeking admission to universities for the academic year 2006/2007 on the basis that they had violated rule 6:2 of the rules of the University Grants Commission printed in the Hand Book titled "*Admission to Undergraduate Courses of the Universities of Sri Lanka*" (hereinafter referred to as rule 6:2) marked as 2R2. Learned Counsel for the petitioners contended that the said decision of the 1st to 3rd respondents was *ultra vires* and an error on the face of the record. Learned Counsel further contended that the 1st to 3rd respondents had acted in violation of the rules of natural justice since the petitioners were not given an opportunity to explain as to why rule 6:2 was not applicable to them. Learned DSG for the respondents, in reply, contended that since the

petitioners had not withdrawn their registrations at the ITUM within a period of thirty days from the last date for the registration of the NDT course the applications of the petitioners had been rightly rejected. He further contended that the petitioners had violated rule 6:2. Learned Counsel for the petitioners, however, contended that there was no last date for the registration of the NDT course since the registration had been done at various stages as evidenced in P5(a), P5(b), P10, P11, P15 and P16.

The dates of registration in the said letters issued by the ITUM run from 15.7.2006 to 30.11.2006.

I now turn to these contentions. In order to appreciate the said contentions, it is necessary to consider rule 6:2 in detail which is reproduced below:

"A student who is already registered for a particular course of study at a Higher Educational Institution/Institute set up under the Universities Act No. 16 of 1978 including the institutes mentioned in paragraph 1.4 above could apply for admission to another course of study on the basis of the results of a GCE (A/L) examination held in a later year, only if he/she had withdrawn his or her registration within a period of 30 days from the last date for registration. Candidates who have not withdrawn their registration within the stipulated period of time given by the respective Higher Educational Institution/Institute will not be eligible for admission as they come under 6.1(b) above. The 30 day concession stated herein will not be given to candidates who will get selected to fill a vacancy and who will be selected to any course of study under paragraph 18(a) (b) (c) (d) (e) and 19 of this handbook."

The ITUM is included in paragraph 1.4 of 2R1. According to rule 6:2 a student who is already registered for a particular course of study at a Higher Educational Institution/Institute set up under the Universities Act No. 16 of 1978 could apply for admission to another course of study only if he/she had withdrawn his/her registration within a period of 30 days from the last date for registration. The words "within a period of 30 days from the last date for registration" need consideration. Was there a last date for registration for the NDT course at the ITUM? The

learned DSG placing reliance on paragraphs 4 of P5(a), P5(b), P10, P11, P15, and P16 contended that the dates given in those letters should be considered as last dates for registration. Paragraph 4 of the said letters reads as follows: "If you do not register on this date, the place offered to you will be given to another applicant in the waiting list." As I pointed earlier the registration of students for the NDT course had been done on various dates. How can, then. there be a last date for registration? Can it be contended that in respect of one student the last date for registration is 15.7.2006 and for another 30.11.2006? One should not forget, in this connection, the date for registration given in P15 is 30.11.2006 and in P5(a) it is 15.7.2006. It is significant to note that rule 6:2 does not contemplate "**last dates**" it only specifies "**a last date**". If the contention of the learned DSG that the dates given in letters P5(a), P5(b), P10, P11, P15, and P16 should be considered as last dates, then one student has been given time till 15.8.2006 to withdraw his registration whilst the other student has been given time till 30.12.2006. In between 15.8.2006 and 30.12.2006, if the cut off mark of the Z-score is released, then the student who has been given time till 30.12.2006 will be on an advantageous position than the other student who may sometimes have obtained better results than the other one. In this way a student placed at a lower level of Z-score can get selected to universityover a student placed at a higher level of Z-score. From the above observations it appears that there is no uniformity in the application of the last date for registration by the ITUM. The last date for registration varies from one student to another. The rule of certainty is that in order to be binding on the parties it should not be ambiguous. The rule 6:2 contemplates only on one date to be given by the Higher Educational Institution as the "last date for registration". This rule does not permit different dates being given to different students. The rule in its application must not be partial and unequal among students who belong to the same class or category. Therefore, in my view, the impugned decision of the 1st to 3rd respondents is unrasonable. Under these circumstances can it be said that rule 6:2 has been applied uniformly to all students. The answer is no. Further what rule 6:2 says is that the student must withdraw his/her

registration 'within a period of 30 days from the last date for registration. But it does not say that the student must withdraw his/her registration within a period of 30 days from the last date **of his registration**. For these reasons, I am unable to agree with the contention of the learned DSG. Learned DSG tried to argue that 20.9.2006 should be considered as the last date for registration since the Inauguration Ceremony and the Orientation Course have commenced on 19.9.2006 and 20.9.2006 respectively. (Vide 4R2). But this argument is negated by the decision of the ITUM to register students even after 20.9.2006. This is evidenced by P15 by which the ITUM has invited one student to register himself on 30.11.2006 to follow the NDT course. It has to be noted that the student referred to in P15 has been invited not to fill a vacancy. Therefore it is seen that the ITUM has continued to register students even after the commencement of the Orientation Course. This shows that the ITUM has not specified a last date for registration for the NDT Course. Thus the contention which the learned DSG tried to advance should fail. Considering all these matters, I hold the view the ITUM has not specified a last date for registration for the NDT course. In this regard it is appropriate to consider a passage from the judgment of His Lordship Justice Mark Fernando delivered in the case of *Nadeeka Hewage* v *University Grants Commission and others*[1]: "Assuming that the existing rule 6:2 is valid, it is nevertheless necessary to remember that access to higher education is a right won by a small minority of students by their sustained effort over a considerable period of time, and not by luck or by chance. ....Rule 6:2 must be read as conferring a right or option to a registered student in respect of access to higher education for a subsequent year, and not as providing a mere gamble; and as enhancing access based on merit rather than restricting access. It follows, that a student must be given all relevant information subject to any reasonable requirement of confidentiality, necessary for the exercise of his option by means of an informed and reasoned decision as to his prospects of success. Rule 6:2 must not be reduced to the level of a chance to try his luck."

The above passage was considered by Sripavan J. in *Fernando* v *University Grants Commission*[2]. Considering the above observations, I hold the view that the impugned decision of the 1st to 3rd respondents is unreasonable. Having considered all these matters, it is safe to conclude that the ITUM had not specified a last date for registration of the NDT course and as such there is no violation of rule 6:2 by the petitioners. Therefore in my view the 1st to the 3rd respondent came to the wrong conclusion that the petitioners had violated rule 6:2. This, in my view, is an error on the face of the record. The petition of the petitioners should be allowed on this ground alone. Learned DSG contended that the students mentioned in P5(a), P5(b), P10, P11, P15 and P16 were invited to register for the NDT course to fill vacancies and as such dates mentioned in these letters should be considered as last dates. But he failed to submit the last date for registration of the NDT course given by the ITUM. Further P5(a), P5(b), P10, P11, P15 and P16 do not state that the students mentioned therein were invited to fill vacancies. If the argument of the learned DSG is correct then the 30 day concession given in rule 6:2 will not be applicable to the petitioners. The Senior Assistant Secretary of 1st respondent, by 4R10, made inquiries inquiries from the Director of the ITUM whether the petitioners had withdrawn their registration within a period of thirty days from the last date for registration. This means the 1st respondent has admitted that 30 day concession was applicable to the petitioners. Then the argument of the learned DSG that the petitioners were invited to fill vacancies also fails. For these reasons I reject the contention of the learned DSG. Considering the above matters I hold the view that the impugned decision of the 1st to 3rd respondents is arbitrary and unreasonable. What happens when the decision of the respondents is arbitrary and unreasonable?

In the case of *Wheleer* v *Leicester City Council*[3], (House of Lords) "a city Council had refused, contrary to its previous practice, to allow a local rugby football club to use the city's sports ground because three of its members had played in South Africa." The House of Lords held that it was unreasonable to punish the club for not conforming to the Council's political

attitudes. The Council's decision was quashed. Lord Templeman in the above case remarked thus: "A private individual or a private organization cannot be obliged to display zeal in the pursuit of an object sought by a public authority and cannot be obliged to publish views dictated by a public authority. ..... The council could not properly seek to use its statutory powers of

management or any other statutory powers for the purposes of punishing the club when the club had done no wrong."

In the case of *Rex* v *Tynemouth District Council*[4] Lord Russell CJ held as follows. "A Local Authority was not entitled, as a condition of approving building plans, to stipulate that the

applicant should provide and pay for sewers outside his own property." Issuing the *writ of mandamus* against the Council, Lord Russell CJ further held that this decision of the Council was utterly unreasonable.

In the case of *Regina* v *Birmingham Licensing Planning Committee*[5], "An elaborate system had been set up by the statutory licensing planning committee in Birmingham to deal with the licences relating to the many public houses destroyed in the Second World War. With Home Office approval and for some twenty years they had refused to approve applications unless the applicant purchased outstanding licences sufficient to cover his estimated sales. The main object of the policy was to relieve the city of the cost of compensating the holders of the outstanding licences. At the current market price of these licences the proprietors of a large new hotel would have had to pay over 14000 pounds. At their instance the Court of Appeal condemned the whole system as unreasonable." Lord Denning MR said: "I think it is unreasonable for a licensing planning committee to tell an applicant: 'we know that your hotel is needed in Birmingham and that it is well placed to have an on-licence, but we will not allow you to have a license unless you buy out the brewers.' They are taking into account a payment to the brewers which is a thing they ought not to take into account."

Lord Greene MR in the case of *Associated Provincial Picture House Ltd.* v *Wednesbury Corporation*(6) at 229 stated thus: "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably."

In the present case, did the 1st to 3rd respondents call their attention to the matters which they were bound to consider? Did the 1st to 3rd respondents consider whether the petitioners had in fact violated rule 6:2. I think not. On this ground alone the impugned decision of the 1st to 3rd respondents will have to be quashed.

For the reasons set out in my judgment. I, issuing a *writ of certiorari*, quash the decisions of the 1st to 3rd respondents refusing to accept/or entertain the applications of the petitioners for admission to universities and I direct the 1st to 3rd respondents by way of *mandamus* to consider the applications of the petitioners for admission to universities for the academic year 2006/2007.

SRIPAVAN, J. - I agree

Application allowed.