

**THE SURVEYORS' INSTITUTE OF SRI LANKA**  
**v.**  
**ACTING SURVEYOR-GENERAL**

COURT OF APPEAL  
DR. RANARAJA, J.  
C.A. 55/97  
C.A. 303/97  
04TH, JULY 1997.

*Writ of Certiorari and Mandamus – Institute of Surveying and Mapping (ISM) – Act No. 21 of 1969 – Doctrine of ultra vires – Distinction between ultra vires and acting without jurisdiction – Surveyors' Ordinance.*

The ISM set up by Act, No. 21 of 1969 conducted three year Diploma course (Advanced Level), or a Degree course with a three-year residential requirement or a six-year residential cum training course. The ISM also conducted Higher Diploma Course of one year's duration, Diploma for Cartographic Technicians, Diploma for Photogrammetric Technicians, Diploma for Remote Sensing Technicians, Diploma for Air Photo Lab Technicians and several short-term training programmes and refresher courses.

The ISM also trained surveyors for the award after three years of a Diploma (Advanced Level).

A selection test scheduled to have been held to fill vacancies in Cl. III Grade III of the Sri Lanka Survey Service published in the Government *Gazette* was cancelled by the Secretary, Ministry of Agriculture, Lands and Forestry by order made on July 08, 1996 and the Acting Surveyor-General made a decision to call for applications for a training course in surveying at the ISM. These officers would be employed to assist the Title Registration Programme and would not be trained as surveyors.

The petitioners contended that the only courses provided in law for training of surveyors at the ISM was the Diploma and/or Degree in surveying sciences. Hence the cancellation of the *Gazette* notice calling for applications for post of Surveyors in Class III Grade III was illegal, unreasonable and arbitrary. The Surveyor-General acted in excess of his powers when he called for applications for the purported training course in surveying to train Survey Assistants.

**Held:**

- (1) In essence the doctrine of *ultra vires* permits the Courts to strike down decisions made by bodies exercising public functions which they have no power to make. Acting *ultra vires*, and without jurisdiction have essentially the same meaning although in general the term "vires" has been employed when considering administrative decisions and subordinate legislative orders and "jurisdiction" when considering judicial decisions or those having a judicial flavour.
- (2) Under the Surveyors' Ordinance it is the Minister who has the right to frame regulations for the holding and conduct of examinations of candidates for annual licences. But the regulations framed have not been followed with the establishment of the ISM which had as one of its functions the provision of instruction in surveying, levelling and mapping.
- (3) The ISM was elevated to a degree awarding institute. If the ISM could grant degrees to graduates who passed out at the Institute, there is no reason why it cannot grant certificates to persons who successfully complete the course in surveying especially when the Surveyor-General has given the assurance that those persons will be employed to assist the title registration programme only and will not be undergoing training as surveyors.

Further the Secretary has assured the President of the Surveyors' Institute that the Ministry intends to initiate action to call for applications for the recruitment of surveyors to Class III Grade III of the survey service in due course.

- (4) In the above circumstances no relief by way of certiorari or mandamus is called for.

**APPLICATIONS** for writs of certiorari and mandamus.

*R. K. W. Gunasekera* for petitioner.

*Elmore Perera* for Interveniient petitioner.

*S. Sri Skandarajah, SSC* for respondent.

*Cur. adv. vult.*

JULY 04, 1997.

**DR. RANARAJA, J.**

**Introduction:**

The Surveyors' Institute of Sri Lanka, the petitioner in C.A. 55/97, is a statutory body incorporated by the Surveyors' Institute of Sri Lanka Act, No. 22 of 1982. The Institution of Survey Engineers, Sri Lanka, the petitioner in C.A. 303/97, was incorporated on 10th April, 1984, as a company with limited liability, under licence issued by the Registrar of Companies. Both petitioners claim to have as one of their objects the maintenance of high standards of competence in the professional conduct and general conduct of their members. Both applications have been filed *inter alia*:

- (1) for writs of certiorari to—
  - (a) quash the decision dated 8.7.96 of the Secretary, Ministry of Agriculture, Lands and Forestry, to cancel the selection test scheduled to have been held to fill the vacancies in class III grade III of the Sri Lanka Survey Service published in the *Gazette* No. 890 dated 22.9.1995, as amended by the *Gazette* No. 919 dated 11.4.1996, published in the *Gazette* of 26.7.1996.
  - (b) quash the decision of the Acting Surveyor-General to call for applications for a training course in surveying at the Institute of Surveying and Mapping communicated in the *Gazette* notice dated 27.9.1996, and;
- (2) a writ of mandamus directing the Secretary, Ministry of Agriculture, Lands and Forestry and the Surveyor-General to proceed with the recruitment of candidates to Class III Grade III of the survey service as per the said *Gazette* notice and resume forthwith the Bachelor's Degree Course in surveying services at the Institute of Surveying and Mapping (I.S.M) Diyatalawa.

Since the relief claimed is identical in both applications, a single judgment will bind parties in both applications.

### **The Institute of Surveying and Mapping (ISM):**

The I.S.M. was established by Act No. 21 of 1969, (a) to provide instruction in surveying, levelling and mapping, (b) to hold examinations for the purpose of ascertaining the persons who have acquired proficiency in surveying, levelling and mapping, (c) to grant diplomas to persons, who have pursued approved courses of study in the Institute and who have passed the examinations of the Institute.

Since 20th February, 1971, the I.S.M. has been administered by an officer appointed by and under the directions of the Surveyor-General. By order under section 25(A) of the Universities Act, No. 16 of 1978, published in the *Gazette Extraordinary* No. 620/4 of 24/7/90, the I.S.M was recognized as a degree awarding institution.

The Deputy Surveyor-General by notice published in the *Gazette* of 8.11.91, called for applications for admission to the Degree course in surveying from those who had obtained passes in Pure Mathematics, Applied Mathematics, Physics or Chemistry at the G.C.E. (Advanced Level) held in 1987, 1988 or 1989 or passes in at least three (3) of the above subjects with not less than 25% in the 4th subject in one sitting with an aggregate of 180 marks or more and to fill the vacancies in class III grade III of the Sri Lanka Surveyors' Service. It appears that three batches of undergraduates have been admitted to the I.S.M. since then till the notice was published calling for applicants to fill the vacancies in class III grade III of the Sri Lanka Surveyors' Service (S.L.S.S.). Those appointed were to undergo a three- year period of training, of which not less than two were to be at I.S.M and the balance one year in practical training. Those who successfully completed the training and passed the **Diploma of Survey Technician** (Advanced Level) were to be confirmed in service. The **Degree Course** which was conducted earlier was either (a) a three year residential course or (b) joining the S.L.S.S. as a surveyor in class III grade III, following the first two years of the residential course, to be followed by three years of field service and returning in the sixth year to follow the third year of the residential course. Thus the I.S.M. conducted three year Diploma course (Advanced Level) for those recruited to the S.L.S.S. at class III grade III level, or a Degree course with a three-year residential requirement or a six-year residential cum training course for those recruited to that grade of the S.L.S.S.

The I.S.M. has also conducted Higher Diploma Course of one year duration, Diploma for Cartographic Technicians, Diploma for Photogrammetric Technicians, Diploma for Remote Sensing Technicians, Diploma for Air Photo Lab Technicians and several short-term training programmes and refresher courses for employees of the Survey Department.

The I.S.M. has also trained surveyors for the award after three years of a Diploma (Advanced Level) for several Government departments and statutory boards.

A distinction has therefore to be drawn between the courses conducted by the I.S.M. to train persons as surveyors and others for imparting knowledge in surveying and allied subjects at a higher or lower level than the courses to be successfully completed by a person seeking to obtain a licence to practise as a surveyor.

#### **Training Course in Surveying at ISM:**

By notice dated 2.9.96 published in the *Gazette* of 27.9.96 (P6), the Acting Surveyor General called for applications for a training course in surveying at the I.S.M. The educational qualifications required for following course were: (1) a pass at the S.S.C. or G.C.E. (O/L) examination in 6 subjects in not more than 2 sittings with credit passes in Language or Literature, Mathematics, Science and in one other subject and a pass at the G.C.E. (A/L) examination in 4 subjects in one sitting with Pure Mathematics (with special consideration being given to those having a pass in Physics), (2) for those employed in the Survey Department, a pass at the S.S.C. or G.C.E. (O/L) Examination with Language and Mathematics.

A certificate was to be issued to those completing the 15 month residential training course. By a notice published in the newspapers (P7), the Acting Surveyor-General informed the public that the officers undergoing training under the programme **will be employed to assist the Title Registration Programme only and that they will not be undergoing training as surveyors.**

### **Complaint of the petitioners:**

The petitioners state that surveying is a learned profession, which need basic educational and intelligence levels to acquire competence. At present, the only courses that are provided in law for training of surveyors at the I.S.M. is the Diploma and/or Degree in Surveying Sciences. The Secretary's purported cancellation of the *Gazette* notice calling for applications for the posts of surveyors in class III grade III is illegal, unreasonable and arbitrary. Since the only courses that are provided in law for training of surveyors at the I.S.M. are the Diploma and/or Degree in surveying sciences, the conduct of training courses in surveying is *ultra vires* and the Surveyor-General has acted in excess of the powers vested in him by law when he called for applications for the purported training course in surveying to train Survey Assistants. It is alleged that until 1991 'Survey Assistants' were designated "Survey Labourers" and the only training they received was on the job which was more than sufficient for the efficient discharge of their duties and any formal training in excess of two weeks will be a waste of time, scarce resources and public funds.

It is also submitted that the selection of departmental employees holding positions such as Technical and Administrative Officer, Draughtsman, Programmetric Technical Officer, etc. and granting them full pay leave for a period of 15 months to be trained as Survey Assistants is contrary to the provisions of the Establishments Code and therefore *ultra vires* the powers of the Secretary and the Surveyor General.

The petitioners have alleged that 115 applicants, 43 of whom are Survey Department employees, have been selected to follow the course which was to commence on 31.3.97.

The question that arises is whether either the Secretary or the Surveyor-General acted without legal authority in (a) cancelling the notice calling for applications to fill the posts of surveyors in class III grade III and (b) commencing a training course in surveying at the I.S.M.

### **The Doctrine of Ultra Vires:**

In essence, the doctrine of *ultra vires* permits the Courts to strike down decisions made by bodies exercising public functions which

they have no power to make. Acting *ultra vires*, and acting without jurisdiction have essentially the same meaning, although in general the term "vires" has been employed when considering administrative decisions and subordinate legislative orders, and "jurisdiction" when considering judicial decisions, or those having a judicial flavour – De Smith, Woolf and Jowell – **Judicial Review of Administrative Action**, 5th Ed. p. 229.

The simple proposition that a public authority may not act outside its powers (*ultra vires*) might fitly be called the central principle of administrative law – Wade & Forsyth – **Administrative Law 7th ed. p. 41**. A public authority that has acted unlawfully has acted in a way that is *ultra vires* or beyond its powers or to use another phrase, the body has acted without jurisdiction. A decision will be *ultra vires* where the public body has exceeded the scope of the powers vested in it by statute, or has breached one of the recognized principles developed by the Courts to govern the exercise of discretionary power. Clive Lewis – **Judicial Remedies in Public Law – p 128**.

An administrative decision is flawed if it is illegal. A decision is illegal if (a) it contravenes or exceeds the terms of the power which authorises the making of the decision or (b) it pursues an objective other than that for which the power to make the decision was conferred. The task for the Courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the power in order to determine whether the decision falls within its "four corners". De Smith (*Ibid*) p 295.

Any administrative act or order which is *ultra vires* or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because an order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no leg to stand on. The Court will then quash it or declare it to be unlawful or prohibit any action to enforce it. – Wade & Forsyth (*Ibid*) p 43.

The invalidity of an act must be established and cannot be presumed, and the Court may refuse to assist an individual in establishing that invalidity. Even if invalidity could potentially be established there are circumstances where the Court will not intervene to quash the act. Rules governing standing, and the time limits for bringing applications for judicial review, may prevent a particular

individual from establishing the invalidity of an act. In addition, the Courts have a wide discretion to refuse a remedy. In the words of Professor Wade, "the truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances" – Clive Lewis (*Ibid*) p132.

### **Submissions of Petitioners:**

It is admitted that under the Surveyors' Ordinance, which was enacted to provide for licensing of surveyors, it is the Minister, who has the right to frame regulations for the holding and conduct of examinations of candidates for annual licences (section 7). The only regulations that have been *gazetted* in terms of the Ordinance are in P1. However, those regulations have not been followed with the establishment of the I.S.M. which had as one of its functions the provision of instruction in surveying, levelling and mapping (section 3 (a)). It is submitted that clause (c) of section 3 must be read with clauses (a) and (b) and therefore the I.S.M. has the authority to grant only Diplomas to those who pass the examinations of the Institute. This argument is contradictory to the averments of the petitioners that the I.S.M. was elevated to a degree awarding institute. If the I.S.M. could have granted degrees to graduates who passed out of the institute, there is no reason why it cannot grant certificates to persons who successfully complete the course in surveying at the I.S.M., especially when the Acting Surveyor General has given the assurance that those persons will be employed to assist the Title Registration Programme only and will not be undergoing training as surveyors (P7). Similarly, the Secretary by letter dated 17.1.97 (P9) has stated that the trainees will not function as surveyors, nor would they be recognized or treated as surveyors, as they are not recruited in terms of the "Surveyors' Minute". The Surveyors' Ordinance provides that the Surveyor General has the right to grant annual licences to practise as a land surveyor to persons who have passed the prescribed examinations in surveying. Where he has made a public announcement that the persons who are alleged to have commenced training as survey assistants will not be undergoing training as surveyors, the petitioners whose object is *inter alia*, to protect and promote the interests, welfare, rights and privileges of the land surveying profession in Sri Lanka (Section 4 (L) of the Surveyors' Institute of Sri Lanka (Incorporation) Act, No. 22 of 1982), need have no fear that, that object will be put in jeopardy.



The petitioners, on whom the burden of proving that either the Secretary or the Surveyor-General had no authority to commence the training course complained of, have been unable to point to any specific provision of law which prevents such a course being conducted at the I.S.M. On the other hand, section 3 (a) provides such authority to the Surveyor-General to administer and discharge the functions of the I.S.M. (section 4 (3) ). It is to be noted that the Surveyor-General himself is a member of the Surveyors' Institute of Sri Lanka (section 3 (b) ). He, as the authority who grants annual licences to surveyors, will no doubt refuse to issue licences to those not qualified.

It is submitted that the decision to discontinue the Degree course in surveying sciences is contrary to all recommendations made and decisions taken from time to time and irreparable harm will be caused to the profession of surveying unless the decision to discontinue the Degree course in surveying sciences and/or the Diploma course is quashed.

The letter of the Secretary dated 17.01.97 (P9) cuts across the allegation that the Degree/Diploma course has been discontinued. In that letter, the Secretary has assured the President of the Surveyors' Institute of Sri Lanka, that "This Ministry intends to initiate action to call for applications for the recruitment of surveyors to class III grade III of the survey service in due course. All those who forwarded applications for admission to class III grade III of the surveyors' service in respect of the *Gazette* notification No. 890 of 22.9.95 will be made eligible to apply for the new examination and they will be exempted from the payment of examination fees if they have already paid such fees". This statement has been reiterated in the affidavit filed by the Secretary. Thus what was decided at the meeting on "Future training of surveyors" held on 5.7.96 is of no relevance.

In this instant too the petitioners have failed to prove that the respondents have acted without authority in cancelling the earlier notice calling for applicants to fill vacancies in class III grade III of the S.L.S.S.

**Conclusion:**

The petitioners have failed to make out a case for relief by way of certiorari or mandamus. The petitioners have no statutory right to the latter relief, in any event. Thus their applications have to fail. There appears to be some apprehension that the Secretary and the Surveyor-General will renege on the assurances given and that the entire exercise is a subterfuge to recruit surveyors "through the back door". Public officials who have given assurances and sworn affidavits affirming facts to the contrary in Court, should think twice before they consider breaching them.

The applications are dismissed without costs.

*Applications dismissed.*

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