

**WANNIGAMA  
VS  
INCORPORATED COUNCIL OF LEGAL EDUCATION AND OTHERS**

COURT OF APPEAL.  
SRISKANDARAJAH. J.  
CA 588/2006.  
OCTOBER 31, 2006.  
NOVEMBER 13, 14, 21, 27, 2006.  
DECEMBER 6, 2006.

*Writ of Certiorari-Rules of the Council of Legal Education-Candidates to be selected for admission on their performance at the Entrance Examination and the number of vacancies-Marks granted to Tamil Medium students at an interview- Selection thereafter - Do the Rules provide for such procedure? - Admitting of reasonable number of students to the Tamil Medium intra vires ? Necessity - Severability of the decision - legitimate expectation.*

The petitioner who sat in the Sinhala Medium for the Law Entrance Examination obtained 66 marks. The cut off mark was 69. Four students who sat the examination in the Tamil Medium complained to the Supreme Court that only one candidate has been selected from the Tamil Medium, and sought a rescrutiny of their papers. The Commissioner General of Examinations was not agreeable. Thereafter the Principal, Law College -

3rd respondent called certain students-Tamil Medium - for an interview and the interview panel recommended 11 candidates to be admitted to the Law College.

The Petitioner contended that, marks cannot be granted at an interview for admission as it is not provided by the Rules, and further contended that if 11 candidates had been admitted according to the marks obtained, she ought to have been admitted as she would definitely fall within the first 11 candidates in order of merit.

The respondents contended that,

- (1) When the full list of candidates who are entitled for admission was produced it was revealed that only one student was being admitted to follow lectures in the Tamil Medium, and
- (2) As there was an alleged discrepancy in the question paper, a Committee was appointed for the purpose of identifying students who had been prejudiced by the alleged discrepancy in the question paper and awarding them necessary marks to off set the prejudice caused, and to select students to meet the object of the need of Attorneys-at-Law in the Northern and Eastern Provinces. It was further contended that marks would be given to the interviewee if he has been genuinely misled in comprehending the relevant questions and forming the correct answer and that it transpired that the relevant interviewee is likely to upon enrolment proceed to the North and East Provinces to practice the law in such area.
- (3) The decision to give additional marks to students who could genuinely point out the alleged discrepancy is a subjective test. It differs from candidate to candidate.

**HELD:**

Per Sriskandarajah. J :

"I do not know how a committee could determine the intention of a candidate, where the candidate will practice after passing out. Even if a candidate gives a declaration that he/she will practice in the

Northern and Eastern Provinces can it be accepted to give admission to one candidate and deny admission to another”.

- (1) It is illogical and unreasonable to give marks on the aforesaid basis. The Incorporated Council of Legal Education has no power or authority to add additional marks to a candidate by an interview.

The second basis on which the Council admitted the said 11 students was by giving additional marks to the alleged discrepancy in the main question after forming an opinion that the interviewee had been genuinely misled in comprehending the relevant question and forming the correct answer to the relevant question. The second basis under which the marks were added to make the candidate eligible for admission, through an interview process is illogical and *ultra vires*-this basis cannot be relied upon to make a valid decision to admit a candidate to Law College.

**HELD FURTHER :**

- (2) When a person/body makes a decision based on two independent basis one could be severable from the other and as one basis is not justifiable and the other is justifiable, the decision could stand as it was made on a valid justifiable basis.

The decision to admit 11 more candidates to the Tamil Medium and annually admit a reasonable number of students to the Tamil Medium-is *intra vires* and justifiable and is validly made. - the first basis.

**HELD FURTHER :**

- (3) As the Council is empowered under the rules to determine the vacancies in the Sri Lanka Law College depending on the need of attorneys-at-law and the resources available in Law College, the Council is empowered to determine the number of vacancies cumulatively in the Sinhala and Tamil Medium or to determine the number of vacancies separately in the Sinhala Medium and Tamil Medium.

- (4) The petitioner has sat the examination in the Sinhala Medium, and therefore is not entitled to get admission in the Tamil Medium, Therefore the petitioner cannot seek admission under the additional intake of 11 candidates to the Tamil Medium of the Law College. The petitioner has therefore no legitimate expectation or a legal right to seek admission on the marks obtained by her.

**APPLICATION** for a Writ of Certiorari.

**Cases referred to :-**

- (1) *Premachandra and Dodangoda vs. Jayawickrama and Bakeer Marker and others* 1993 2 Sri LR 294 at 308
- (2) *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation - (1948) 1 KB 223.*
- (3) *Warington U. in Short vs. Poole Corporation*
- (4) *Padfield vs. Minister of Agriculture, Fisheries and Food-1908 A1 997*
- (5) *Breen vs. Amalgamated Engineering Union* 1971 2QB 175 at 190

*M. A. Sumanthiran with Viran Corea, Harsana Vamadeva and U. A. Razee for petitioner*

*Yasantha Kodagoda DSG for 1-3 respondents.*

*N. R. Sivendran with C. R. Rasheed and P. J. Janangan for 4th respondent.*

*A. R. Surendran PC with K. V. S. Ganaesharajah and N. Kandeepan for 7-17 respondents.*

*Cur. adv. vult.*

December 13, 2006

**SRISKANDARAJAH J.**

The Petitioner is a candidate who sat in Sinhala Medium for the Law Entrance Examination held on 1st October, 2005 and obtained 66

marks, for admission into the Sri Lanka Law College to follow the course for admission as an Attorney at Law of the Supreme Court. The 1st Respondent is the Incorporated Council of Legal Education of Sri Lanka incorporated by Ordinance No. 2 of 1900. The said Law Entrance Examination was conducted as provided by the Rules of the Council of Legal Education. The relevant Rule that was published in the Gazette Notification No. 1003/1 dated 24th November 1997 is marked as P7. The Rule 23 (3) titled Entrance Examination is sub rule (vi) provides :

“Candidates shall be selected for admission to the Sri Lanka Law College in the order of merit based on their performance at the Entrance Examination and the number of vacancies available as determined by the Council. Provided no candidate who has obtained less than forty percentum of the maximum marks shall be selected for admission”.

Based on the Rules of admission the cut - off marks for the Sri Lanka Law College Entrance for the year 2005 was determined as 69 and 235 candidates were selected. The Petitioner submitted that she has become aware that four students who sat for the examination in the Tamil medium and had obtained above a particular mark had filed fundamental rights applications alleging that only one candidate has been selected from the Tamil Medium for the year 2006 from the said examination. They sought a re-scrutiny of their papers and the Supreme Court directed the Senior State Counsel to ascertain whether the Commissioner General of Examinations is agreeable to re-scrutinize the papers and she reliably understands that the Commissioner General of Examinations had declined to re-correct the answer scripts. Thereafter the 3rd Respondent by letter dated 1st March 2006, called certain students to be present at the Department of the Attorney General for an interview in relation to admission to Sri Lanka Law College. The Petitioner submitted that she came to know that of 21 candidates who were called for the interview, 11 candidates, namely the 7th to 17th Respondents had been admitted to Sri Lanka Law College. The Petitioner contended that if 11 candidates had been admitted to Sri Lanka Law College according to the marks obtained at the law entrance examination which is the determining criterion for admission, she ought to have been admitted as she would definitely

fall within the first 11 candidates in order of merit. The Petitioner further contended that marks cannot be granted at an interview for admission of students to the Law College which is not provided by the Rules of the 1st Respondent and admissions of students in consideration of marks awarded at an interview is flawed by procedural and substantial irregularity and it is liable to be quashed by writ of certiorari. The Petitioner contended that if there is an additional intake to the Sri Lanka Law College that decision has to be taken by the 1st Respondent Council and it ought to have been effected in compliance with the Rules 23 (vi) of the Rules of the 1st Respondent Council. The Petitioner further contended that the 7th to the 17th Respondent cannot be admitted to the Sri Lanka Law College without admitting the Petitioner. Therefore the Petitioner has sought a writ of mandamus on the 1st Respondent and the 3rd Respondent to admit the Petitioner to the Sri Lanka Law College.

The 1st, 2nd, 3rd, 5th and 6th Respondents filed a joint objection supported by the affidavit of the 3rd Respondent. The 4th Respondent had filed a separate objection to the Petitioner's application. The 3rd Respondent's affidavit and the 4th Respondent's affidavit filed with the said objections contain similar averments. These Respondents submitted that the Council of Legal Education was incorporated by Act of Parliament in 1990 by the enactment of the Council of Legal Education Ordinance No. 2 of 1990. By this Ordinance the Council was empowered with the concurrence of the Minister (Minister in charge of the subject of Justice) to make by-Laws, Rules and Orders for the purpose specified therein. Acting in terms of this provision the Incorporated Council of Legal Education promulgated Rules *inter-alia* providing for the admission of students to the Sri Lanka Law College. Under the Rules the Incorporated Council of Legal Education is empowered to decide on the number of vacancies for the admission to the Sri Lanka Law College. Following the conduct of the Entrance Examination, on the 14th of September 2005, the Incorporated Council of Legal Education considered the 'frequency list of marks' of the students who had presented themselves for the said examination and after considering the available material and resources the Council decided to draw the cut off point at 69 marks, which led to 239 students being entitled for admission to the Sri Lanka Law College. When the

full list of candidates who are entitled for admission was produced it was revealed that only one (1) student was being admitted to follow lectures in the Tamil Medium commencing January, 2006.

The said Respondents submitted at or about the time of the release of the marks certain representations had been made to the Sri Lanka Law College by certain candidates who had sat the Entrance Examination in Tamil Medium, that the main question or questions (as per the affidavit of the 4th Respondent) in the Question paper had been wrongly worded. The Petitioner had also brought to the notice of this court that several Fundamental Rights Applications were filed in this regard and in S. C. (F. R.) No. 38/06 the Supreme Court made an Order on 03.02.2006 (P4) to the effect; "Court requests Senior State Counsel to ascertain from 1A respondent whether considering the nature of the complaint that has been made, the 1A respondent would constitute a committee consisting of the Chief Examiner and three nominees of the Council of Legal Education for a re-scrutiny without releasing the answer scripts from the custody of the 1A respondent. If the 1A respondent is agreeable to such a course of action steps may be taken accordingly." These Respondents submitted that the 1A respondent in the above Fundamental Rights Application who is the 6th Respondent in this application has not agreed for the relevant answer scripts to be re-scrutinized by an independent committee in view of the prevailing practice of the Department of Education.

The said Respondents contended that the Incorporated Council of Legal Education was of the view that, students who could genuinely point out the alleged discrepancy, should be entitled to the addition of one mark to the number of marks already obtained. In view of these facts and circumstances and the need of the administration of justice in the North and Eastern Province of Sri Lanka, on the 28th of February 2006, the Incorporated Council of Legal Education appointed a committee comprising of the Honourable Attorney General (2nd Respondent), Mr. Kandiah Neelakandan, Attorney-at-Law (4th Respondent) and the Principal, Sri Lanka Law College (3rd Respondent) to interview twenty (20) candidates who had presented themselves for the Entrance Examination for the Tamil Medium and had scored over 60 marks. These Repondents further contended that the Committee is

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for the purpose of identifying students who had been prejudiced by the alleged discrepancy in the question paper and awarding them necessary marks to off set the prejudice caused, and to select students to meet the object of the need of Attorneys-at-Law in the Northern and Eastern Provinces.

The decision to give additional marks to students, who could genuinely point out the alleged discrepancy, is a subjective test-it differs from candidate to candidate. The lapse of time between the examination and the interview and the possibility of the candidates discussing the question and answers after the examination and the fact that these discrepancies were identified and it was disclosed in Fundamental Right applications would have had an adverse effect in the outcome of the said subjective test. On the other hand a student who was not in fact prejudiced by the alleged discrepancy in the question paper and had answered the question correctly and had got marks for that question not knowing or knowing that he/she had answered the question correctly could have pointed out the discrepancy and would have got additional marks for the same question. This cannot be verified by the interview committee as the answer scripts are not available with the interview committee. In case of a wrong question or discrepancy in a question the general rule that is adopted is an objective test and to give full marks to that question to all the candidates. In this instant the committee appointed by the 1st Respondent should have identified the question or questions that are wrongly worded and would have awarded full marks for those question to all the candidates who had sat for that paper.

The outcome of the said interview was given in document marked 3R1. The objections of the 1st to 3rd Respondents and the 4th Respondent and the affidavits of the 3rd and 4th Respondent had categorically stated in paragraph 14(b) and in paragraph 12(b) respectively *i. e.* "If it transpired that the relevant interviewee was likely to upon enrolment as an Attorney -at - Law proceed to the Northern or Eastern Province and practice the law in such area, appropriate number of marks were awarded and thereby added to the number of marks already obtained". Affidavits of the said Respondents clearly indicates that the marks that were given to the candidates who present



themselves for the interview was not only for the discrepancies that were pointed out by them but also considering the place of residence of the candidates their future intentions in relation to the practice of the profession and the place of practice. I do not know how a committee could determine the intention of a candidate, where that candidate will practice after passing out as an Attorney - at - Law. Even if a candidate gives a declaration that he/she will practice in the Northern and Eastern Provinces can it be accepted to give admission to one candidate and deny admission to another candidate. Even if one considers the place of residence to infer this intention it is misleading because most of the Tamil speaking candidates who are resident in Colombo are from the Northern or Eastern Province. The committee after interviewing candidates has decided to give marks on the basis —

- (a) that the interviewee had been genuinely misled in comprehending the relevant question and forming the correct answer ;
- (b) that it transpired that the relevant interviewee is likely to upon enrolment as an Attorney-at-Law proceed to the North or East Province and practice the law in such area.

It is illogical for the aforesaid reasons to give marks on the aforesaid basis. The said committee also had not identified the relevant marks given to each candidate to (a) and (b) above and it has also not given the actual marks obtained by each of the candidates but had added marks to make them eligible for admission. Therefore the decision to add marks to make certain candidates eligible for admission is unreasonable. Therefore it should not be relied upon in the admission of students.

In *Premachandra and Dodangoda vs Jayawickrema and Bakeer Marker and others*<sup>(1)</sup> at 308 K. Palakidner P/CA with S. N. Silva J and D. P. S. Gunasekera J issued a writ of certiorari to quash a decision which was considered as unreasonable. The court observed that the discretion must be exercised reasonably. A person entrusted with a 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. The Court further observed :

“ The standard of reasonableness is stated in the often quoted dictum of Lord Greene, MR in the case of *Associated Provincial Picture Houses Ltd. Vs Wednesbury Corporation*.<sup>(2)</sup> In later cases this dictum is commonly referred to as “Wednesbury’s unreasonableness” Lord Greene in that case considered the validity of certain conditions imposed by a local authority for the grant of a licence for cinematograph performances on Sundays. It was held that these conditions were imposed unreasonably. In the course of the judgment he dealt with the requirement that discretion should be exercised reasonably in the following way :

“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly 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 a 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”. Similarly, there may be something so absurd that no sensible person could ever dream that it lay - within the powers of the authority. *Warrington U. in Short vs. Poole Corporation*<sup>(3)</sup> gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one, sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.”

Dealing with the standard of reasonableness Professor H. W. R. Wade has in his book *Administrative Law, 1988 (6th Edition)* stated that it is not the standard of "the man on the Clapham omnibus". It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do (at p. 407). In a later section he has observed, dealing with the several grounds of unreasonableness, that "the one principle that unites them is that powers must be confined within the true scope and policy of the Act."

On the other hand the Incorporated Council of Legal Education has no power or authority to add additional marks to a candidate by an interview. The rules of the Incorporated Council of Legal Education provide that the admission to Sri Lanka Law College is based on the performance at the entrance examination and there is no provision to grant marks in an interview. Therefore the additional marks given to a candidate to make the candidate eligible for admission is *ultra vires* the powers of the Incorporated Council of Legal Education. Hence, it cannot be relied upon to grant admission to the Sri Lanka Law College.

*Administrative Law* by H. W. R. Wade & C. F. Forsyth Ninth Edition at 358. The authors when discussing the case of *Padfield vs Minister of Agriculture, Fisheries and Food* observed :<sup>(4)</sup>

**"But the distinction drawn by the House of Lords will show how a statute which confers a variety of discretionary powers may confer wider or narrower discretion according to the context and the general scheme of the Act. Translated into terms of the traditional rule that powers must be exercised reasonably, this means that the standard of reasonableness varies with the situation. The pitfalls which must always be avoided are those of literal verbal interpretation and of rigid standards."**

The importance of the House of Lords decision was underlined by Lord Denning MR in *Breen vs Amalgamated Engineering Union*<sup>5</sup> at 190 :

**“The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this. The statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. This is established by *Padfield vs Minister of Agriculture, Fisheries and Food (supra)* which is a landmark in modern administrative law.”**

The Sri Lanka Law College is the only professional training body for the Attorneys-at-Law in the country. Therefore the Council when determining the number of vacancies under Rule 23 (vi) has to take in to consideration the needs of the number of Attorneys-at-Law to the profession to cater to the needs of the country and the availability of the resources in the Sri Lanka Law College to provide such professional training. When such a number is determined in an overall basis of vacancies *i. e.* the vacancies in the ‘Sinhala Medium’ and ‘Tamil Medium’ together, the Incorporated Council of Legal Education has observed that, since lately, students being selected for admission to the Sri Lanka Law College whose vernacular is the Tamil language have been dwindling in numbers and has consequently led to the number of students selected to follow lectures in the Tamil Medium falling down rapidly and coming to a near zero.

It is common ground that there are two mediums of instruction at the Sri Lanka Law College namely : ‘Sinhala Medium’ and the ‘Tamil Medium’. The Counsel for the Petitioner contended that even though there are two mediums of instruction the candidates are free to sit the Entrance Examination in any language and to follow lectures in any language. But it has to be observed that the Rule 23(2) E specifically provides in the requirements for admission to the Law College that a candidate should have credit pass in either Sinhala or Tamil Language. Therefore the students who have credit pass in relevant language are only entitled to admission to the relevant medium when admission is considered for the relevant medium of instruction. It is submitted on

behalf of the above respondents that the Incorporated Council of Legal Education was conscious of the fact that, in the Northern and Eastern Provinces of Sri Lanka, the number of Attorneys -at -Law are fast dwindling and that unless new Attorneys - at - Law engage in the practice of law based in the said Provinces, serious and far reaching consequences would arise to the administration of Justice in the said Provinces. The Practice of Law in the said Provinces has to be necessarily engaged in the Tamil language in terms of the Constitution. Therefore the Incorporated Council of Legal Education had identified a pressing need to ensure that, students from the Northern and Eastern Provinces whose vernacular is the Tamil language are selected for admission to the Sri Lanka Law College and the Tamil Medium of study at the Sri Lanka Law College be kept open and running for the benefit of such students. These Respondents contended that in view of the foregoing facts and circumstances, *the Incorporated Council of Legal Education deemed it necessary and appropriate to take urgent measures to annually admit a reasonable number of students to the Tamil Medium of Sri Lanka Law College, who are likely to proceed after enrolment as Attorneys - at - Law of the Supreme Court to the Northern and Eastern Provinces and engage in the practice of the law in the said Provinces.* (Vide paragraph 9 of the affidavit of the 3rd Respondent the Registrar of the Council of Legal Education and the Principal of Sri Lanka Law College and paragraph 6 of the affidavit of the 4th Respondent a member of the Council of Legal Education). The aforesaid decision of the Incorporated Council of Legal Education to annually admit a reasonable number of students to the Tamil Medium is in accordance with the Rules of the Incorporated Council of Legal Education. In particular Rule 23(3) (vi) provides : “. . . the number of vacancies available as determined by the Council”. As the Incorporated Council of Legal Education is empowered under the rules to determine the vacancies in the Sri Lanka Law College depending on the need of attorneys-at-Law and the resources available in Law College, the Council is empowered to determine the number of vacancies cumulatively in the Sinhala Medium and Tamil Medium or to determine the number of vacancies separately in the Sinhala Medium and Tamil Medium. The Council has felt the urgent need to admit annually a reasonable number of students to the Tamil Medium and as the

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necessary resources are available at Sri Lanka Law College to train a reasonable number of students in the Tamil Medium the Council has legally and justifiably made the said decision to annually admit a reasonable number of students to the Tamil Medium of Sri Lanka Law College.

In keeping with this decision the Council in the exercise of its powers determined to admit 11 more candidates to the Tamil Medium.

The learned Deputy Solicitor General who is appearing on behalf of the 1st to 3rd and 5th and 6th Respondent contended that the admission of the 11 additional intake to the Tamil Medium is on two different basis : one is on the basis that the students being selected for admission to the Sri Lanka Law College whose vernacular is the Tamil language have been dwindling in number and consequently the number of students admitted to Tamil Medium in the Sri Lanka Law college is coming to near zero and as it is essential to have Attorneys-at-Law who are trained in Tamil Medium to practice in the Northern and Eastern Provinces as the language of court in those areas are Tamil the Council decided to admit 11 more candidates to the Tamil Medium. He further contended that in effect the Incorporated Council of Legal Education acted with the view to realizing the object for which the said Council has been formulated, acted in conformity with the law and the relevant Rules, and acted in the best interest of the administration of justice.

The second basis on which the Council admitted the said 11 students was by giving additional marks to the alleged discrepancy in the main question of the Entrance Examination Question Paper (Tamil Medium) to each candidate after ascertaining whether the relevant interviewee had been genuinely misled in comprehending the relevant question and forming the correct answer to the relevant question. As I have already analysed, the second basis under which the marks were added to make the candidate eligible for admission through an interview process is illogical and *ultra vires* and this basis cannot be relied upon to make a valid decision to admit a candidate to Sri Lanka Law College.

When a person or body makes a decision based on two independent basis *i. e.* one could be severable from the other and one basis is not justifiable and the other is justifiable the decision could stand as it was made on a valid justifiable basis. Likewise the Incorporated Council of Legal Education arrived at a decision to admit 11 more candidates to the Tamil Medium relying on two independent basis. Namely : (1) to annually admit a reasonable number of students to the Tamil Medium of Sri Lanka Law College (2) adding marks in an interview. As the 2nd basis of adding marks at an interview is unreasonable and *ultra vires* it cannot be relied upon to arrive at a valid decision. But as the said decision to admit 11 more candidates is based on the 1st basis and this basis is *intra vires* and justifiable hence the said decision to admit 11 additional candidates to the Tamil Medium is validly made on the first basis. In other words the Incorporated Council of Legal Education has made the decision to admit 11 more candidates namely 7th to the 17th Respondent to the Tamil Medium is to give effect to the decision of the Incorporated Council of Legal Education to annually admit a reasonable number of students to the Tamil Medium of the Sri Lanka Law College.

The Petitioner has sat the entrance Examination in the Sinhala Medium and as I have discussed above the Petitioner is not entitled to get admission in the Tamil Medium. Therefore the Petitioner cannot seek admission under the additional intake of 11 candidates to the Tamil Medium of the Sri Lanka Law College. Hence, the Petitioner cannot have a legitimate expectation or legal right to seek admission to the Sri Lanka Law College on the marks obtained at the Entrance Examination held in October, 2005.

For the above reasons the Petitioner is not entitled to seek a *mandamus* from this Court to admit her on her performance at the Entrance Examination. As this application was considered on its merits and as the petitioner is not entitled for any of the reliefs prayed for in the Petition the preliminary objections raised by the Respondents are not considered in this judgment. This application is dismissed without costs.

*Application dismissed.*