

**WANASINGHE AND OTHERS
(CITIZENS MOVEMENT FOR GOOD GOVERNANCE)
VS.
UNIVERSITY OF COLOMBO AND OTHERS**

COURT OF APPEAL.
SRISKANDARAJAH.J.
CA 1261/2004.
MAY 22, 2006.

Writ of Certiorari - Universities Act, No. 7 of 1985, Act No. 1 of 1995, Act No. 7 of 1985-section 86 - Persons directly affected seeking remedy provided - Person not directly affected seeking a prerogative writ - Locus standi - Public Interest Litigation - Sufficient Interest-Position in Sri Lanka and India.

Petitioners sought a Writ of Certiorari to quash the decision to appoint 8-9-10 respondents to the post of Lecturer (Probationary) Law and a Writ of Mandamus to direct the University to readvertise the post.

It was contended that the appointments are in violation of the scheme of recruitment embodied in the governing circular.

The Petitioners filed the application on the basis that they are citizens of Sri Lanka and are the President and the Secretary of Citizens Movement for Good Governance (CIMOGC) consisting of group of persons who have held high positions in public life - and is filed in the public interest.

The respondents contended that, the petitioners have no *locus standi* to maintain this application.

HELD:

- (i) In India anyone could seek judicial review on illegal governmental and administrative action. No link with the dispute or grievance need to be established. So long as the applicant comes before Court in good faith, standing will be allowed. The focus being the issue or injustice canvassed and not on the interest of the applicant.;

In Sri Lanka the *locus standi* requirement is based on "sufficient interest" in the matter in dispute.

- (3) The Sri Lankan Courts have not relaxed the standing as in India but our Courts have given standing to individuals and movements who have a special link or experience in relation to the subject matter of the dispute.

HELD FURTHER:

- (2) When the impugned order is challenged by persons directly affected in the appropriate forum provided by law and when the matter is under consideration by the said Authority - in this case the University Services Appeals Board - another person or body of persons who are not directly affected cannot claim *locus standi* to challenge the said order on the basis of public interest.

Per Sriskandarajah. J. :

"If the person who has been directly effected by an illegal order of a public authority has challenged the said order in the appropriate forum then there is no need for the Court to permit persons and organizations to challenge the same order by public interest litigation ".

APPLICATION for a Writ of Certiorari/Mandamus.

Cases referred to :-

- (1) *Fertilizer Corporation Kanagor Union vs. Union of India* 1981 AIR SC 344
- (2) *Environment Foundation Ltd. vs. Wickramasinghe* 1997 2 Sri LR 306
- (3) *Consumers Association of Lanka Vs. Telecommunications Commission of Sri Lanka and Others* 2006 1 Sri LR 175
- (4) *In Re National Olympic Committee* CA 1312/2004 BASL News August 2004
- (5) *In Re Green Movement of Sri Lanka* CA 2047/2004 CAM 06.06.2006
- (6) *S. P. Gupta vs. Union of India* 1981 Supp SCC 87 at 210.

Elmore Perera for petitioner.

Sathya Hettige ASG with Uresha de Silva SC for 1st, 2nd, 6th and 7th respondents.

Dr. Almeida Gunarathne PC for 3rd and 4th respondents

Gamini Hettiarachchi for 9th respondent.

Shantha Jayawardena for 8th and 10th respondents.

Cur. adv. vult.

July 6, 2006

SRISKANDARAJAH. J.

The Petitioners in this application have sought a writ of Certiorari to quash the decision to appoint the 8th, 9th and 10th Respondents to the post of Lecturer (Probationary) in law and a writ of Prohibition preventing the said appointment. The Petitioners have also sought a writ of mandamus to direct the 2nd Respondent the Vice Chancellor to re-advertise the post of Lecturer (Probationary) in Law.

The Petitioners submitted that the appointment to the post of Lecturer (Probationary) is governed by the University Grants Commission (UGC) Circular No. 721 dated 21.11.1997 (P3) and as described therein, this circular permits those with a Second Class (Lower Division) degree to be considered for appointment only if applicants with First Class or Second Class (Upper Division) degrees are either not available or have been evaluated and considered as unsatisfactory. This criterion for appointment for the post of Lecturer (Probationary) was communicated by a memo dated 02.09.2003 (P4) issued by the Registrar of the 1st Respondent University to all prospective applicants. The Petitioners contend that when the post of Lecturer (Probationary) in Law was advertised on 04.09.2003. there were 25 applicants. Apart from the 8th, 9th, and 10th Respondents who submitted their application, there were a least 4 Second Class (Upper Division) degree holding applicants and according to the said Circular these 4 candidates had necessarily to be evaluated and considered unsatisfactory before any of the others could even be considered.

The Petitioners further contend that out of the 25 candidates 8 candidates were invited for the interview and the Selection Committee which met on 20.11.2003 considered the said 8 candidates and in this process four candidates with Second Class (Lower Division) degree were considered prior to the finding of the candidates who had obtained Second Class (Upper Division) were found as unsatisfactory. Therefore

the Petitioners submitted that the selection, and the decision to appoint the 8th, 9th and 10th Respondents in this process are a clear violation of the Scheme of Recruitment embodied in the said Circular, No. 721 (P3).

The 1st, 2nd, 6th and 7th Respondents submitted that the selection Committee interviewed 8 applicants on 20.11.2003. They were evaluated based on their academic qualifications, publication, knowledge and experience, extra curricular activities, personality, communication skills and presentation. The Selection Committee after evaluation recommended four applicants namely : T. L. Seneviratne, J. Niriell, P. H. N. Sampath and M. A. M. Hakeem. Out of the four, P H. N. Sampath had obtained a Second Class (Upper Division) Honours Degree and the other three persons who were selected had obtained Second Class (Lower Division) Honours Degree. These Respondents submitted that though the other applicants had obtained Second Class (Upper Division), they were considered and found as unsatisfactory and further, their performance at the Selection Committee interview was very poor.

In the background of the above facts I consider the preliminary objections raised by the Respondents in this application.

The Respondents' 1st preliminary objection is that the Petitioners have no *locus standi* to have and maintain this application.

The Petitioners filed this application on the basis that they are citizens of Sri Lanka and are respectively the President and the Secretary of CIMOGG, the Citizens Movement for Good Governance, consisting of group of a persons who have held high positions in public life. The Constitution of CIMOGG is marked as P1 and Article 3 of the said Constitution contains the objects of CIMOGG. The objects *inter - alia* includes, to act as a pressure group on those holding public office on the need for good governance, recognizing, *inter - alia*, the imperatives of transparency and accountability in all public dealings (Article 3.3) and to engage in public interest litigation (Article 3.10).

This is an application filed by the Petitioners in public interest. Unlike in India the *locus standi* requirement in Sri Lanka is based on "sufficient interest" in the matter in dispute.

In India anyone could seek judicial review on illegal governmental and administrative action. No link with the dispute or grievance need to be established. So long as the applicant comes before the court in good faith, standing will be allowed. The focus here is on the issue or injustice canvassed, not on the interest of the applicant.

In Fertilizer Corporation Kamgar Union V Union of India ⁽¹⁾ Justice Krishna Iyer observed ;

"Restrictive rules of standing are an antithesis to a healthy system of administrative law. If a plaintiff with a good cause is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that contrary to public interest. Litigants are unlikely to spend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged? Effective access to justice is the most basic human requirement- Most basic human rights - of a system which purports to guarantee legal rights".

Even though the Sri Lankan Courts have not relaxed the standing as in India but our Courts have given standing to individuals and movements who have a special link or experience in relation to the subject matter of the dispute. The standing of the Environmental Foundation Ltd. in matters relating to the environment was accepted in *Environmental Foundation Ltd. v. Wickremanayake* ⁽²⁾ because of their special expertise in the area of environmental protection.

A, association or group seeking to represent some or all of its members were also said to have standing in relation to the matters

affecting the interest of their members; *Consumer Association of Lanka v Telecommunications Regulatory Commission of Sri Lanka and Others*.⁽³⁾

A person who has a long standing association and interest in a particular field such as sports was given standing to challenge an appointment of the Chef De Mission for Olympic Games. The *National Olympic Committee Case*⁽⁴⁾.

A movement called *Green Movement of Sri Lanka*⁽⁵⁾ was given standing where the Green Movement of Sri Lanka having the objects of preserving the environment and natural resources of Sri Lanka, instituted proceedings on the complaint of the villagers who are directly affected but do not have sufficient resources to present their grievance before a court of law.

The Courts entertained public interest litigation in order to prevent a government agency from violating the law as it is contrary to public interest, when the person affected or a class of persons affected are unable to approach the Court for any relief by reason of poverty, helplessness or disability or being placed in socially or economically disadvantaged position.

The Supreme Court of India in *S. P. Gupta v. Union of India*⁽⁶⁾ at 210 observed :

“Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or legal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially economically disadvantaged position unable to approach the court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ in the

High Court... seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons”.

In the instant application the decision to appoint the 8th, 9th, and 10th Respondents to the post of Lecturer (Probationary) are challenged as this decision was made in violation of the Scheme of Recruitment. In arriving at this decision the selection Committee had interviewed eight applicants. The applicants who faced the said interview and not appointed to the said post are directly affected by the aforesaid decision. Two unsuccessful applicants among them have appealed against the said order to the University Services Appeals Board.

The Universities Act as amended by Act. No.07 of 1985 and Act, No. 1 of 1995 in Section 86 provides the powers and functions of the University Services Appeals Board. It provides as follows :

86. The Appeals Board shall have and may exercise the following powers, duties and functions. -

(a) to conduct investigations into appointments and promotions alleged to have been made to the staff of the Commission and to Higher Educational Institutions in contravention of the schemes of recruitment and the procedures for appointment in force at the time such appointments or promotions were made or alleged to have been made and into allegations that appointments or promotions have not been made to posts when vacancies have arisen in such posts.

(b)

(c)

(d)

Under the above provisions the two unsuccessful applicants have made appeals and the University Services Appeals Board is inquiring into this appeal. The two unsuccessful applicants have chosen the procedure provided by law to challenge the said decision. The 11th

Respondent has submitted that it has not granted the approval sought by the 1st Respondent to make the appointments to the post of Lecturer (Probationary) Law and decided to await the decision of the University Services Appeals Board.

When the impugned order is under challenge by persons directly affected by the said order in the appropriate forum provided by Law and when the matter is under consideration by the said authority, another person or body of persons who are not directly affected cannot claim *locus standi* to challenge the said order on the basis of public interest. As I have discussed above the Courts have encouraged public interest litigation to keep the public authorities within the law. If the person who has been directly affected by an illegal order of a public authority has challenged the said order in the appropriate forum, then there is no need for the Court to permit persons and organisations to challenge the same order by a public interest litigation.

The persons affected by the legal wrong complained of in this application are law graduates and they have filed an appeal complaining against the said legal wrong to the University Services Appeals Board and it is under consideration. In these circumstances the Petitioners who belong to an Organisation called Citizens Movement for Good Governance have no standing to complain the same legal wrong to this court on the basis of public interest litigation.

For the above reasons the Court upholds the preliminary objection of the Respondents that the Petitioners have no *locus standi* to have and maintain this application. Therefore the Court dismisses this application without costs.

Preliminary objection upheld.

Application dismissed.