
FERNANDO
vs.
UNIVERSITY GRANTS COMMISSION AND OTHERS

COURT OF APPEAL.

SRIPAVAN, J.

BASNAYAKE, J.

CA 2524/2004.

AUGUST 03, 2005.

DECEMBER 16, 2005.

Writ of Certiorari - University Grants Commission - Selected to follow a course in Bio Science - Registered - Following year qualified for admission to follow a course of study in Medicine - Application refused - Unreasonable ? - Legality ?

The petitioner was selected to follow a course in Bio Science for the academic year 2003/2004 and got himself registered with the University of Jayawardanepura. Thereafter the petitioner sat the Advanced Level Examination and became provisionally qualified to follow a course of Study in Medicine. The application made by the petitioner to follow the said course, was refused by the respondents for the reason that he had already registered to follow a course of study in a Higher Educational Institution and he has not de-registered within approximately 30 days from the last date of registration. The petitioner sought to quash the said decision.

HELD :

Per Sripavan J.

“According to the respondents, the petitioner should have de-registered himself for the Bio Science course within a period of thirty days from the last date of the registration. This would mean that the petitioner before knowing the results of the Advanced Level Examination for the subsequent year should have withdrawn his registration. Isn't this a mere gamble or does the University Grants Commission expect the petitioner to try the luck in a manner which finally results in restricting access to higher education.”

- (1) The Bio Science course has neither commenced nor even scheduled to commence in the near future. The refusal of the respondents to consider the petitioner's application for admission to follow Medicine is unreasonable. A rule becomes unreasonable if it is manifestly absurd or if it is outrageous in its defiance of logic.

- (2) Whether or not a particular decision is or is not unreasonable is often nothing more than a question of opinion and degree.

APPLICATON for Writs in the nature of Certiorari or Mandamus.

Cases referred to :

1. *Nadeika Hewage vs. University Grants Commission and Others* - SC 627/2002 - SCM 08.08.2003
2. *M. K. S. de Silva vs. University Grants Commission and others* - CA 2525/2004 - CAM 22.09.2005
3. *M. K. S. de Silva vs. University Grants Commission* - SC Spl LA 239/05-SCM 07.11.2005

Elmore Perera for petitioners.

K. Arulanandan DSG for respondents.

Cur. adv. vult.

April 24, 2006.

SRIPAVAN, J.

The petitioner who was an advanced level student from Alutgama Maha Vidyalaya sat the G. C. E. A/L exam in August 2003 and obtained the following grading. Physics - A, Chemistry - B and Biology - C. In January 2004 the petitioner was informed by the ninth respondent that he has been selected to follow a course in Bio Science for the academic year 2003/2004. Accordingly, the petitioner got himself registered with the University of Sri Jayawardenapura to follow the said course of study. The petitioner in paragraphs 6 and 14 of the petition alleges that up to the time of instituting this application, the course in Bio Science neither commenced nor the petitioner had been instructed to follow any lectures. These averments were simply denied by the respondents in their statement of objections without indicating the date on which the said course in fact commenced. Thus, this court accepts the version of the petitioner that the Bio Science course did not in fact commence as on 15th December 2004.

The petitioner having registered himself with the University of Sri Jayawardenapura in February 2004, submitted his application to sit the G. C. E. Advanced Level Examination as a private candidate in May 2004 from the Kalutara District. In August 2004, as evidenced by P4, the petitioner became aware that he passed the said exam with the following gradings. Physics - B, Chemistry - A, Biology - B, Thus the petitioner became

provisionally qualified for admission to university as he obtained a Z-score of 1.9135. It was not disputed that the required Z-score for admission to University from the Kalutara District for the course of study in medicine was 1.8809. Though the petitioner made an application to follow a course of study in medicine, he was informed by the eighth respondent of the University Grants Commission by letter dated 25th October, 2004 marked P6 that the petitioner's application had been rejected for the reason that he had already registered to follow a course of study in a Higher Educational Institution. Accordingly, the petitioner moves to quash the letter dated 25th October 2004 marked P6 and a writ of mandamus to direct the respondents to admit the petitioner to a course of study in medicine.

Learned Deputy Solicitor General relied on Rule 6.2 of the University Admissions Handbook titled "Admission to Undergraduate Course of the Universities in Sri Lanka" for the academic year 2003/2004 and argued that a student who has already registered for a particular course of study at a university for the academic year 2003/2004 on the basis of the results of the G. C. E. Advanced Level Examination could apply for admission to another course of study based on the results of a subsequent examination, only if he has withdrawn his earlier registration within a period of thirty days from the last date for such registration. Thus, the learned D. S. G. contended that the importance of imposing a time period of thirty days for the purpose of de-registration arises as a result of the University Grants Commission having to finalise the filling of vacancies which arise due to selected students not taking up their places in universities **before the commencement of the academic session** (emphasis added). No material has been placed by the respondents to show that the course in Bio Science at the Sri Jayawardenapura University had commenced when letter dated 25th October 2004 marked P6 was sent to the petitioner. On the contrary, the petitioner in paragraph 14 of the petition specifically states that the Bio Science course has neither commenced nor even scheduled to commence in the near future. Therefore, the refusal of the first respondent to consider the petitioner's application for admission to a course of study in medicine for the academic year 2004/2005 is unreasonable. Whether or not a particular decision is or is not unreasonable is often nothing more than a question of opinion and degree. A rule becomes unreasonable if it is manifestly absurd or if it is outrageous in its defiance of logic. Mark Fernando, J in the case of *Nadeeka Hewage vs. University Grants Commission and Others*¹ made the following observations with regard to Rule 6.2 :

"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 of 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".

According to the submissions of the learned D. S. G. the petitioner should have de-registered himself from the Bio-Science course within a period of thirty days from the last date of the registration. This would mean that the petitioner before knowing the results of the G. C. E. A/L examination for the subsequent year should have withdrawn his prior registration. Isn't this a mere gamble or does the University Grants Commission expect the petitioner to try his luck in a manner which finally results in restricting access to higher education ? This court in the case of *M. K. K. S. de Silva Vs. University Grants Commission and Others*² remarked that the admission rules read with Article 12 confer a right on a duly qualified candidate to get himself admitted to the University. The University Grants Commission being a body set up by a statute and performing public functions using public funds has a public duty upon a candidate who has obtained the required standard to gain admission to a university" and directed that the petitioner in that application be admitted to a course of study in Engineering for the academic year 2004/2005. The Special Leave to Appeal sought by the first respondent against this order of the Court of Appeal was refused by the Supreme Court³

In the circumstances set out above, the court is of the view that since the petitioner has obtained the required Z-score, a writ of certiorari is issued to quash the refusal to consider the petitioners' application for admission to a course of study in medicine marked P6. A writ of mandamus is issued directing the respondents to admit the petitioner to a course of study in medicine for the academic year 2004/2005. If the said course has already commenced, the petitioner would be entitled to follow a course of study in medicine which would commence the following year. The petitioner's application is therefore allowed. The petitioner would be entitled to a sum of Rs. 10,000 as costs payable by the first respondent.

BASNAYAKE, J. — I agree.

*Application allowed.
Writ of mandamus issued.*