

VASANA
v
INCORPORATED COUNCIL OF LEGAL EDUCATION
AND OTHERS

COURT OF APPEAL
FERNANDO J. AND
AMARATUNGA, J.
C.A. 406/2002
MAY 8 and 20 and JUNE 17
and JULY 4, 2002

Writ of mandamus – Admission of student to Law College – Student informed that admission was provisionally approved for registration – Payments made – Mix up of marks – Subsequent withdrawal by Council – Legitimate expectation – When does it arise?

The petitioner sat the Law College Entrance Examination and was informed that her admission has been provisionally approved for registration and was also directed to deposit a sum of money to the credit of the Council of Legal Education. Later the Council had informed her that due to an error, her marks had been entered as 70 when it was in fact 56, and as the cut off mark was 70, she is not qualified for admission.

The petitioner contends that she had a legitimate expectation that she would be admitted to the Law College.

Held:

- (i) The legitimate expectation of any candidate sitting for the Law Collage Entrance Examination is that if at the examination he scores the minimum mark necessary to gain admission to the Law College, he would be admitted; accordingly earning the necessary minimum mark is the foundation on which the legitimate expectation of a candidate rests.
- (ii) If he fails to get the necessary minimum mark the legitimate expectation cannot exist any longer.

Per Amaratunga, J.,

“When the basic ingredient necessary for the formation of a legitimate expectation is marks over and above the cut off point is lacking the petitioner cannot rely on a document which contains a provisional decision which has been subsequently found to be a decision based on erroneous factual data submitted to the Law College due to an inadvertant error committed by an examiner.”

APPLICATION for a writ of certiorari.

Romesh de Silva P.C., with Sugath Caldera for petitioner.

Bimba Jayasinghe Tilakaratne, Deputy Solicitor-General with *Janak de Silva*, State Counsel and *Milinda Gunatilake* State Counsel for respondents.

Cur. adv. vult

March 22, 2004

GAMINI AMARATUNGA, J.

The petitioner has filed this application with the ultimate object of obtaining from this Court a mandate in the nature of a writ of *Mandamus* directing the Incorporated Council of Legal Education – an incorporated body – to admit the petitioner to the Sri Lanka Law College as a law student. 01

The facts relevant to this application are as follows. The first respondent Council is a body incorporated by statute for the purpose of supervising and controlling the legal education of law students who desire to qualify to be admitted as attorneys-at-law of the Supreme Court empowered to practise law in all Courts in Sri Lanka. Section 7 of the Ordinance (cap 276 C.L.E. 1956 Revision) as amended by sub- 10

sequent amendments, empowers the Council to make by laws, rules and orders that are necessary for carrying out the object for which the Council was established.

In pursuance of this statutory authority, the Council has made the necessary Rules and a copy of those Rules applicable during the period relevant to this application has been produced by the 2nd respondent marked 2R6. Rule 23(1) of the said Rules is as follows.

“No person shall be admitted to qualify himself as an attorney-at-law of the Supreme Court unless... he has passed the entrance examination referred to in Rule 23(2) except where the Council decides not to hold the Entrance Examination in respect of any year.”

As explained by the material placed before Court and the submissions made at the hearing, the Council decides the number of students to be admitted to the Law College for any particular year. If the number of applications for admission for that particular year do not exceed the number of students to be taken for that particular year, the Council has the power under the aforesaid Rule to admit them to the Law College without an entrance examination, provided that the applicants possess the other qualifications necessary to be admitted as Law College students. If the number of applicants exceeds the number to be admitted for that year, an examination is conducted to select the students to be admitted.

There were 2167 persons seeking admission in 2002. Therefore on 16/9/2002 an Entrance Examination was held to select the students to be admitted in 2002. The Council has entrusted the task of conducting this examination to Professor Mrs.Swarna Wijetunga, Education Consultant and the Dean of the Faculty of Education in the University of Colombo. After conducting the examination and getting the answer scripts marked, she has entered the marks in the marks sheets and submitted those marks sheets to the Sri Lanka Law College. The Council having considered the marks has decided to admit all candidates who have scored 70 marks and above at the Entrance Examination held in 2001.

There were 344 candidates who have received 70 marks and above. The 2nd respondent who is the Principal, Sri Lanka Law College, has thereafter sent letters, similar to the letter produced

marked P1, informing those 344 persons that they have been provisionally selected to be admitted to the Sri Lanka Law College. The petitioner Miss.K.A.S.Vasana was a candidate who sat for the Entrance Examination held on 16/9/2002. Her index number was 4565. She was among the 344 candidates who have received communications from the Principal, Sri Lanka Law College, informing them that they have been provisionally selected to be admitted to the Sri Lanka Law College. The communication received by the petitioner has been produced before this Court, marked P1. The 2nd respondent, Principal, Sri Lanka Law College, in his affidavit filed in this Court, has admitted that he has sent document P1 to the petitioner. It is pertinent at this stage, to quote verbatim, paragraphs 1 and 2 of P1. Those two paragraphs read as follows.

1. "This is to inform you that your application for admission to Sri Lanka Law College has been *provisionally approved for registration* subject to confirmation by the Incorporated Council of Legal Education and subject to verification of the educational certificates and other documents etc furnished by you"
2. *Please note if it is discovered that you do not possess the requisite qualifications for admission to Sri Lanka Law College, your student registration will be cancelled.* (emphasis added)

The petitioner in her petition has stated that along with document P1, she received document P2, signed by the Principal, Sri Lanka Law College, which states that K.A.S.Vasana, Index No.4565 has 70 marks obtained at the Entrance Examination and has been "provisionally selected." The 2nd respondent, in his affidavit filed in this Court has admitted that he has sent document P2 to the petitioner.

The petitioner in her petition has stated that by document P1 the Principal, Sri Lanka Law College has directed that she should deposit a sum of Rs.4575/- in the named Bank to the credit of the Incorporated Council of Legal Education and that in compliance with this direction she deposited Rs.4575/-in the named Bank to the credit of the Incorporated Council of Legal Education. The petitioner has submitted to this Court proof of her payment (P3) made on 21/12/2001. The petitioner in her petition has stated that when she went to the Sri Lanka Law College on 6/1/2002, the Registrar of the College, Mr.Ranasinghe, surreptitiously and fraudulently took the letter

dated 10/12/2001 (Document P1) from her and informed her that she would be notified by another letter regarding her registration as a law student. The petitioner has stated that a letter in the form of P1 which contains phrases "provisionally selected" and "subject to confirmation" is in fact and in truth a letter informing the candidate that such candidate had been successful at the entrance examination and that in the past all candidates who had received such letters had been admitted to the Law College. The petitioner has stated that in view of the past practice followed by the Law College she had a legitimate expectation that she would be admitted to the Law College. She has stated that the action of the Law College refusing to admit her as a student was in violation of her legitimate expectation that she would be admitted to the Law College and accordingly the refusal to admit her to the Law College was unreasonable, arbitrary, capricious and unjust. She has accordingly sought a *writ of certiorari* quashing the decision of the Incorporated Council of Legal Education refusing the petitioner's admission to the Sri Lanka Law College and a *writ of mandamus* directing the Incorporated Council of Legal Education to admit her to the Sri Lanka Law College. 90 100

The Principal Sri Lanka Law College, who is also the Registrar to the Council of Legal Education has filed objections to the petitioner's application. He has set out the manner in which the Entrance Examination was conducted, the decision taken by the Council to admit candidates who have received 70 marks and above and the fact of sending P1 to the petitioner. Those particulars gathered from the affidavit of the 2nd respondent have been set out in the earlier part of this judgment. 110

The 2nd respondent in his affidavit, supported by relevant documents, has set out the events that took place after he sent letters similar to P1 to 344 candidates provisionally selected for admission. According to the 2nd respondent's affidavit after he sent those letters similar to P1 he received a fax dated 27/12/2001 (2R9) from one Mr. Jayasekara Weerakody stating that he had sent pass marks to a candidate who did not sit the Entrance Examination. After receiving this fax message he immediately caused an investigation to be made by comparing the marks sheets with the answer scripts and found that there were several mistakes in the marks sheets made by the Examiner when marks were entered. The 2nd respondent has 120

described those mistakes in detail in paragraph 12(h) to (m) of his affidavit. It is not necessary for the purpose of this application to set out all those matters in detail and I shall only deal with the mistake relevant to the case of the petitioner.

When entering the marks the examiner has mixed up two marks sheets, namely the marks sheet starting with Index No.4451 with the marks sheet starting with Index No 4551. The Examiner had inadvertently entered the marks that should have been entered on the marks sheet starting with Index No. 4451 in the marks sheet starting with Index No. 4551 and vice versa. Due to this mix up the marks received by candidate who had Index No. 4465 had been entered against Index No. 4565 which was the Index number of the petitioner. The marks received by candidate who had Index No. 4566 had been entered against Index No. 4466. Soon after this error was detected a letter dated 8/1/2002 (2R43) was sent to the petitioner informing her that she had in fact received 56 marks but due to an error her marks had been entered in the marks sheet as 70. The petitioner was accordingly informed that since the cut off point for admission was 70 she was not qualified for admission. The petitioner was also invited to attend the office of the Law College and examine her answer script and the relevant marks sheet. It is pertinent to note here that in her petition, presented to this Court on 25/2/2002, the petitioner has not disclosed that she received the letter dated 8/1/2002 (2R43). Even in her counter affidavit she has not denied having received that letter.

The 2nd respondent in his affidavit has stated that in response to that letter the petitioner, on or about 9th January 2002 visited his office along with a lady who was introduced as her mother and two attorneys-at-law Mr. Hemanth Boteju and Mr. E.N.D. Upali and examined her answer script and satisfied herself that she had received only 56 marks. The petitioner has not disclosed this in her affidavit and not denied this fact in her counter affidavit.

The 2nd respondent in his affidavit has stated that when he discovered the mistakes contained in the marks sheets he immediately informed the Chairperson of the Council of Legal Education of the situation and that he was directed to correct all mistakes. Thereafter the petitioner's father Mr. Wijayadasa Kulatunga attorney-at-Law, addressed communication dated 24.1.2002 (P6) to His Lordship the

Chief Justice who is the Chairman of the Council of Legal Education. This letter was placed before the Council on 31/1/2002 and the Council then appointed a Committee consisting of Mr. C.R. de Silva, PC. Solicitor General, Mr. L. C. Seneviratna PC. and Mr. Ajantha Atukorala, President, BASL to look into the complaint of Mr. Wijeyadasa Kulatunga and report to the Council (2R50). The Committee having given a hearing to Mr. Kulatunga has reported to the Council on 28/2/2002 that when the Committee met Mr. Kulatunga, it was explained to him that the error in regard to the results of his daughter had been due to a bona fide mistake on the part of the Examiner. Thereafter Mr. Kulatunga had asked for a guarantee that his daughter would be admitted to the Law College at least at some future date but the Committee had informed him that it was unable to give such an undertaking. This is reflected in the copy of the Minutes of the Council for 28/2/2002 marked and produced 2R51. The same Minutes indicate that the Council having noted that the petitioner has filed a case in this Court has resolved to await the decision of this Court with regard to the petitioner's matter. 170

Professor Mrs. Swarna Wijetunga who was entrusted with the task of conducting the Entrance Examination and entering the marks, by letter dated 30/1/2002, addressed to the Principal Law College, has accepted full responsibility for errors contained in the final marks sheets of the Entrance Examination held in 2001. (2R47) She has also given an affidavit accepting full responsibility for those mistakes. (2R48) 180

The 2nd respondent has produced before this court, marked 2R 49, a true copy of the petitioner's answer script at the Entrance Examination, 2001 under Index No 4565. At the hearing before us, we directed the 2nd respondent to produce in Court the original answer script of the petitioner and in response to that direction the learned Deputy Solicitor General produced in Court the petitioner's original answer script. In open Court it was examined by the petitioner and her lawyers. Having examined the answer script, the petitioner before us in open Court admitted that it was her answer script and that she had earned only 56 marks. We have earlier referred to the decision of the Council of Legal Education to admit to the Law College, for the year 2002, those students who have received 70 marks and above at the Entrance Examination held in September 2001. Thus it is conclusive- 190

ly established that at the Entrance Examination held in September 2001, the petitioner has received only 56 marks, less than the minimum of 70 marks required for admission in terms of the decision of the Council of Legal Education. 200

After carefully considering the averments contained in the 2nd respondent's affidavit and the documents produced with it we are satisfied that entering the petitioner's marks in the marks sheet as 70 was an inadvertent error committed by the Examiner and that steps have been taken to rectify that error after a proper investigation, in the course of which the petitioner had been given an opportunity to peruse her answer script and satisfy herself about the correct marks 210 she had obtained at the Entrance Examination. We are also satisfied that the 2nd respondent has addressed P2 to the petitioner in view of the error contained in the marks sheet of which he had no notice at the time he sent P1. After the 2nd respondent has ascertained the true position he has addressed the letter dated 8.1.2002 (2R43) to the petitioner, informing her that she was not qualified to be admitted to the Law College. In those circumstances we are unable to hold that the decision of the Sri Lanka Law College not to admit the petitioner as a law student was unreasonable, arbitrary capricious or unjust .

After the petitioner examined her answer script in open court and 220 accepted that she had received only 56 marks, the argument proceeded on this factual basis. The learned President's Counsel argued that after the petitioner received P1 she had a legitimate expectation that she would be admitted to the Law College. The petitioner's contention was that in the past candidates who have received communications similar to P1 have been admitted to the Law College notwithstanding the fact that those letters contained the phrases 'provisionally selected' and subject to confirmation' and that P1 is a notification, infact and in truth and in reality a notification of her success on which the petitioner's legitimate expectation is based. 230

With respect we are unable to accept this argument for three reasons. Firstly the very words used in P1 indicate that it conveys a provisional decision and not a final, conclusive and an irrevocable decision. In the earlier part of this judgment I have quoted paragraphs 1 and 2 of P1. For the purpose of emphasizing the provisional nature of P1, I quote again those two paragraphs.

1. "This is to inform you that your application for admission to the Sri Lanka Law College has been provisionally approved for registration subject to confirmation by the Incorporated Council of Legal Education and subject to verification of educational certificates and other documents etc furnished by you". 240
2. "Please note if it is discovered that you do not possess the requisite qualifications for admission to Sri Lanka Law College your student registration will be cancelled."

The above paragraph 2 clearly indicates that even after registration, it is liable to be cancelled if it is found that the student had no qualification to be admitted to the Law College. Therefore without doing violence to the language of those two paragraphs it is not possible to hold that P1 conveys an irrevocable and a conclusive decision. 250

Secondly, the 2nd respondent in his affidavit has set out details of instances where candidates to whom communications similar to P1 have been sent had been subsequently refused admission when it was discovered that they did not possess the requisite qualifications. Therefore the petitioner's contention that in the past those candidates who have received communications similar to P1 had been invariably admitted to the Law College cannot be accepted as an absolute rule or a practice.

Thirdly it is our view that the fact (ground) relied on by the petitioner to say that she had a legitimate expectation that she would be admitted to the Law College was not the sole ground upon which a proper legitimate expectation could have come into being. The candidates who had appeared for the written examination had legitimate expectation to be considered of their claims according to the Rules then in vogue. The legitimate expectation of any candidate sitting for the Law College Entrance Examination is that, if at the Examination he scores the minimum marks necessary to gain admission to the Law College, (as decided by the Council) he would be admitted to the Law College. Accordingly earning the necessary minimum marks is the foundation on which the legitimate expectation of a candidate rests. If a person fails to get the necessary minimum marks at the Entrance Examination, the legitimate expectation cannot exist any 260 270

longer. There is no doubt that a candidate who has sat for the Entrance Examination and received a letter similar to P1 is entitled to presume thereby that his legitimate expectation has become a reality. However if it is proved that P1 has been sent due to an error and that the candidate has not received the minimum marks necessary, the foundation on which the legitimate expectation rested ceases to exist. In such a situation, although the particular candidate can continue to have an expectation, the law cannot consider it as a legitimate expectation. When the basic ingredient necessary for the formation of a legitimate expectation i.e. marks over and above the cut off point for admission to the Law College, is lacking the petitioner cannot rely on a document which contains a provisional decision which has been subsequently found to be a decision based on erroneous factual data submitted to the Law College due to an inadvertant error committed by the Examiner. 280

We have already held that the decision of the 2nd respondent that the petitioner was not qualified for admission to the Law College, conveyed to her by letter dated 8/1/2002, was not unreasonable and not arbitrary. Accordingly we refuse to issue a *writ of certiorari* quashing the decision contained in document 2R43. 290

A *writ of mandamus* is available against a public or a statutory body performing statutory duties of a public character. In order to succeed in an application for a *writ of mandamus* the petitioner has to show that he or she has legal right and the respondent corporate, statutory or public body has a legal duty to recognize and give effect to the petitioner's legal right. In the instant case the Council of Legal Education has decided to admit to the Law College in 2002 all those candidates who have scored 70 marks and above at the Entrance Examination held in September 2001. The petitioner who has obtained only 56 marks at the said Examination has no legal right to be admitted to the Law College on the results of the said Examination. Accordingly there is no corresponding legal duty on the Council of Legal Education to admit the petitioner to the Law College. 300

The most important principle to be observed in the exercise of jurisdiction by Mandamus which lies at the very foundation of rules and principles regulating the use of this extra ordinary remedy is based on the distinction between duties of mandatory nature and those which are discretionary in character. The respondents having 310

acted fairly, reasonably and in accordance with the principles of natural justice in affording an opportunity to the petitioner to examine her answer script will not be compelled to admit the petitioner to Law College by this Court in the exercise of its discretionary jurisdiction. In the result the petitioner's application for a *writ of mandamus* also fails.

The incident which has given rise to this application was very unfortunate. Human error was at the root of the whole incident. We can understand the mental pain and suffering the petitioner and the members of her family had to undergo. But as pointed out earlier there is no legal basis for us to grant the relief she has prayed for. We accordingly dismiss this application without costs. 320

FERNANDO, J.

– I agree.

Application dismissed.