

**GOVERNMENT REGISTERED MEDICAL
OFFICERS ASSOCIATION AND ANOTHER**
v
JOHN SENEVIRATNE
MINISTER OF HEALTH AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
C.A.1498/2000
JULY 1, 2003
AUGUST 7, 2003
SEPTEMBER 16, 2003
NOVEMBER 18, 2003

Writ of certiorari – Medical Ordinance section 29(2)(b)(iii)b – Amended by Act No. 3 of 1987 – Section 19(c)-Registered Medical Officers (R.M.O) – To follow MD Degree – Russian Medical Academy recognized – De-recognition thereafter. Validity? – Doctrine of ultra vires.

The Sri Lanka Medical Council (SLMC) (4th respondent) recognized a Medical Academy in Russia to enable R.M.O's to follow M.D.Degree offered by the Academy. Thereafter the SLMC de-recognized the M.D.Degree offered by the said Academy.

The petitioner sought to quash the said decision.

Held:

- (i) The procedure to be followed when withdrawing the recognition of qualifications granted by recognized Universities is spelt out in section 19(c) of the Medical Ordinance. The standard of medical education of St.Petersburg can only be assessed in terms of the standards prescribed by the Minister. No regulations have so far been framed by the Minister.
- (ii) The 4th respondent SLMC can only recommend to the Minister that the M.D.Degree course of standing shall not be recognised for the purpose of registration under the Medical Ordinance.
- (iii) The SLMC – 4th respondent does not have the power or authority to derecognise the MD Degree course of St.Petersburg.

Per Sripavan, J.

“The ultra vires doctrine is not limited to cases of excess of power, it governs decisions arrived at by following wrong procedures if the administrative act of anybody created by a statute is proved to be unlawful or unauthorised by law, such an act is ultra vires and the courts have a duty to quash it.”

APPLICATION for a *Writ of Certiorari*.**Case referred to:**

- 1 *Government Agent, Superintendent of Police v Suddhana et al* – 1905 Thambiya reports 39

Romesh de Silva P.C., with *Hiran de Alwis* and *Amarasiri Panditharatne* for petitioners.

Y.J.W.Wijayatilake, D.S.G., for 1st, 2nd and 3rd respondents.

Shibly Aziz P.C., with *Ms.Priyanthi Gunaratne* for 4th and 5th respondents.

Cur.adv.vult

February 24, 2004

SRIPAVAN, J.

The first petitioner is the “Government Registered Medical Officers Association”, a trade union registered under the provisions of the Trade Unions Ordinance. The second petitioner is a Registered Medical Officer who has been registered as a person entitled to practice medicine and surgery in Sri Lanka in terms of a certificate issue by the fourth respondent. The members of the first petitioner union and the second petitioner in order to explore the possibilities of advancing

their career and to obtain an M.D.degree or its equivalent from a recognized university persuaded the then Minister of Health to have negotiations with the St.Petersburg State Medical Academy (hereinafter referred to as St.Petersburg) in Russia to enable them to follow the M.D.Degree offered by the said academy. Accordingly, the fourth respondent recognized the St.Petersburg as evidenced by the document marked P25 which contains a list of medical schools recognized by the fourth respondent. Presumably, this recognition would have been done in terms of sec.29 (2) (b) (iii) (bb) of the Medical Ordinance as amended by Act, No.30 of 1987 having regard to the standard of medical education at St.Petersburg. The petitioners in C.A.application No. 1499/99 and the second petitioner in this application who are Assistant Medical Officers and Registered Medical Officer respectively were given leave to follow the course offered by St.Petersburg. However, it would appear that the fourth respondent by a notice published in the Daily News paper of 6th August 2000 de-recognized the M.D.degree of the St.Petersburg. The petitioners, by this application seek to quash:-

- a) The decision of the fourth respondent to de-recognize the M.D.degree of St.Petersburg in respect of students admitted to the said institution after 1st January 1998 and published in the Daily News paper of 6th August 2000 marked P40; and
- b) the letters dated 1st November 2000 sent by the fifth respondent to the petitioners refusing to recognize the said degree.

On 1st July 2003, this court directed Mr.Aziz to produce the original letter by which St.Petersburg was initially recognized by the fourth respondent in terms of sec.29 of the Medical Ordinance as amended in order to ascertain the duration of the course leading to the M.D.degree. However, no such letter was produced to court.

Sec.19(c) of the Medical Ordinance as amended by Act, No.30 of 1987 in PART IIIA provides as follows:-

- (1) Where the Medical Council is satisfied, on a report made to it under subsection (3) of section 19A or any information furnished to it under section 19B that the courses of study provided by a recognized university or institution leading to the grant or conferment of a medical qualification or the degree of proficiency required by such university or institution at any examination held

for the grant or conferment of any such qualification or that the staff accommodation and equipment provided by such university or institution for the purpose of such course of study, do not conform to the **prescribed standards** it may recommend to the Minister that such qualification shall not be recognized for the purpose of registration under this ordinance.

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(2) Upon receipt of a recommendation under subsection (1) in respect of a recognized university or institution, the Minister shall send a copy of such recommendation to such university or institution and invite it to make its comments thereon within a specified period.

(3) Where the Minister is satisfied, after examining the comments, if any, made under subsection (2) by a university or institution, and after making such further inquiry as he considers necessary, that-

(a) the course of study provided, by such university or institution leading to the grant or conferment of a medical qualification,

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(b) the degree of proficiency required at examinations held by such university or institution for the grant or conferment of such qualification, or

(c) the staff equipment, accommodation and facilities provided by such university or institution for such course of study,

do not conform to the **prescribed standards**, he shall, declare by regulation, that any provision of this Ordinance which enables the holder of that qualification to be registered under this Ordinance shall cease to have effect in relation to such university or institution or in relation to any institution affiliated to such university, from such date as is specified in such regulation.

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The procedure to be followed when withdrawing the recognition of qualifications granted by recognized universities or institutions is spelt out in the aforesaid section. Thus, the standard of medical education of St.Petersburg can only be assessed in terms of the standards prescribed by the Minister under sec.19. Mr.Aziz conceded that up to date no regulations have been framed by the Minister specifying the standards required for medical education at universities and other institutions conferring medical degrees. In any event, the aforesaid section

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empowers the fourth respondent only to recommend to the Minister that the M.D.degree course of study shall not be recognized for the purpose of registration under the Medical Ordinance. The fourth respondent does not have any power or authority to de-recognize the M.D.degree course of St.Petersburg.

Where the statute prescribes the manner in which the statutory power has to be exercised, the power must be exercised in that manner alone; if the exercise of power is in utter violation of the mandatory procedure laid down in sec.19(c), it cannot be regarded as an action done in pursuance of Act, No.30 of 1987. The *ultra vires* doctrine is not limited to cases of excess of power. It governs decisions arrived at by following wrong procedures. Accordingly, if there has been some procedural failing such as a false or an incorrect step in the procedure, the act may be condemned as unlawful. The administrative act of any body created by a statute is proved to be unlawful or unauthorized by law, such an act is *ultra vires* and the courts have a duty to quash it. In the circumstances, I hold that the impugned decision of the fourth respondent without following the procedure prescribed in sec.19(c) is illegal, invalid and is of no force or avail in law. 90

The learned President's Counsel for the fourth and fifth respondents sought to argue that PART IIIA of Act, No.30 of 1987 dealing with the "Powers of Medical Council" does not apply to foreign universities or institutions conferring medical degrees. I am unable to agree with this submission. The interpretation given in sec.19(e) to the words "recognized university or institution" means any university or institution which grants or confers a medical qualification. Thus, no distinction is drawn between foreign universities and local universities granting medical degrees. The court can only take the intention of Parliament from the words used in the Act and apply them as they stand however unreasonable or unjust the consequences would be. Justice A.R.B. Amerasinghe in his book titled "Judicial Conduct, Ethics and Responsibilities" at page 284 states thus:- 100 110

"The function of a judge is to give effect to the expressed intention of Parliament. If legislation needs amendment, because it results in injustice, the democratic processes must be used to bring about the change. This has been the unchallenged view expressed by the Supreme Court of Sri Lanka for almost a hundred years. In *Government Agent, Superintendent of Police v Suddhana et al.*,¹ Chief

Justice Layard said, at a time when the privy council was the country's apex tribunal:

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If we wrongly construe the law the remedy is by appeal to His Majesty in Council. If on the other hand we rightly construe the law and the law is unpalatable to any section of the community, the remedy of that section of the community to endeavour, if possible, to have the law amended. Such endeavours, however, should be constitutional."

Therefore, the submission of Mr. Aziz that these words are capable of a more limited construction is untenable and cannot be accepted. Mr. Aziz urged that in the notice dated 6th August 2000 marked P40 there had been an unfortunate and erroneous use of the term "de-recognition". Counsel submitted that the question of "de-recognition" does not arise since "recognition" which is the condition precedent to "de-recognition" had not in any event been granted in respect of a three year course. In the absence of any documentary evidence to establish that recognition was in fact granted in respect of a six year course, this court cannot arrive at a finding that the fourth respondent recognized a six year course and not a three year course. It may be relevant to mention that the first, second and third respondents did not file any objections to this application. For the reasons stated, a *Writ of Certiorari* is issued quashing the decision of the fourth respondent contained in the notice published in the Daily News paper of 6th August 2000 marked P40 and the letters dated 1st November 2000 sent by the fifth respondent to the petitioners refusing to recognize the said degree. A writ of *Mandamus* is issued directing the fourth respondent to take steps in terms of the law to duly recognize the M.D. degree awarded to the second petitioner and other members of the first petitioner union.

I make no order as to costs.

Application allowed.