

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

SUPREME COURT  
DR. SHIRANI BANDARANAYAKE  
AMARATUNGA, J.  
BALAPATABENDI, J.  
SC 20/2007  
SC SPL LA 9/2007  
CA WRIT 588/2006  
MAY 4, 2007  
JUNE 12, 2007

*Writ of Certiorari – Administration of Sri Lanka Law College – Council of Legal Education – Public body? – Legal right to the performance of a legal duty by party against whom mandamus is sought – Material – Legitimate expectation – Could a prerogative writ be refused on the ground of administrative inconvenience?*

The appellant who sat the entrance examination in the Sinhala medium was informed that he had obtained only 66 marks, and that he had not been successful at the entrance examination as 69 was the cut off mark and 239 candidates were selected on that basis. The appellant contended that 21 students who had sat the examination in the Tamil medium were called for an interview and 11 candidates had been admitted to the Sri Lanka Law College, and alleged that they had been admitted, not according to the marks obtained at the entrance examination but according to their performance at the interview. Alleging that the process employed for the selection of the 7th - 17th respondent was *ultra vires* the rules of the Council of Legal Education, the appellant and 8 others challenged the decision of the 1st respondent. The appellant's application was dismissed by the Court of Appeal.

In the Supreme Court, it was contended by the appellant that, the Court of Appeal misdirected itself in fact and law in holding that there are two mediums of instructions in the Sri Lanka Law College – Sinhala and Tamil, and the Court of Appeal was wrong in denying relief to the appellant, on the

basis that his credit pass in the G.C.E. O' Level examination is in the Sinhala language and that he sat for the entrance examination in the Sinhala language.

The respondents contended that the appellant had failed to establish a specific right as a prerequisite for the Writ of *Mandamus* to be issued and that there was no basis for legitimate expectation and that the relevant authority would have to encounter administrative inconvenience, if relief was to be granted.

**Held:**

- (1) It is a pre-entry requirement that the candidates should possess a credit pass in the English language and Sinhala or Tamil language. Considering the pre-entry requirements, the students, who have a credit pass in the relevant language are only entitled to admission to the relevant mediums, when admission is considered for the relevant medium of instructions.

In the circumstances, there were two mediums of instructions at the Sri Lanka Law College.

The appellant could not have been considered along with the students, who had sat for the entrance examination in the Tamil medium and called for the interview for a special selection process.

**Held further:**

- (2) For the appellant to insist that, *Mandamus* be issued to direct Sri Lanka Law College to admit him to follow its programme, he should have fulfilled the basic requirement for the said writ by indicating that he has a legal right as he had obtained over and above 69 marks. The appellant has obtained only 66 marks, thus has no legal right for admission, on the basis of the results. When the appellant has no such legal right there cannot be any legal duty for the 1st respondent to admit the appellant to the Sri Lanka Law College.

The appellant could not have any legitimate expectation on the basis of his marks obtained at the entrance examination. The intervening circumstances, was the selection of a group of students who had sat for the entrance examination in the Tamil medium. The appellant did not belong and could not have belonged to that group. It is not possible to rely upon a legitimate expectation, unless such expectation is founded upon either a promise or an established practice.

- (5) A writ may be refused not only upon the merits, but also by reason of the special circumstances of the case. The Court will take a liberal view indicating whether or not the writ will issue. It is apparent that to admit the appellant – would lead to several

administrative difficulties. Writ of mandamus will not be issued when it appears that it is impossible of performance, by reason of the circumstances.

**APPEAL** from the judgment of the Court of Appeal reported in 2006 - 3 Sri LR 287.

**Cases referred to:**

1. *Vasana v Incorporated Council of Legal Education and others*. 2004 1 Sri LR 163.
2. *Maha Nayake Thero, Malwatte Vihare v Registrar General* 1937 3 Sri LR 186.

*M.A. Sumanthiran with Viran Corea, Sharmaine Gunaratne, H. Vamadeva, Suresh Fernando and Erimza Tegal* for the petitioner-appellant.

*Shavindra Fernando DSG with Nerin Pulle SSC and S. Barrie SC* for respondents.

*Cur.adv.vult.*

September 11, 2007

**DR. SHIRANI BANDARANAYAKE, J.**

This is an appeal from the judgment of the Court of Appeal dated 13.12.2006. By that judgment, the Court of Appeal refused to issue a writ of *mandamus* and dismissed the petitioner-appellant's (hereinafter referred to as the appellant) application. The appellant filed an application before this Court on which Special Leave to Appeal was granted on the following questions:

1. Has the Court of Appeal misdirected itself in fact and law in holding that there are two mediums of instruction in the Sri Lanka Law College, namely Sinhala and Tamil?
2. Was the Court of Appeal wrong in denying relief to the petitioner on the basis that his credit pass in the G.C.E. Ordinary Level Examination is in the Sinhala language and that he sat for the entrance examination in the Sinhala language?
3. Whether in any event the relief sought in this application is futile?

The facts of this appeal, *albeit* brief, are as follows:

The entrance examination for admission to the Sri Lanka Law College to follow the course for admission as Attorneys-at-Law of the Supreme Court was held on 01.10.2005 and the appellant was a candidate for the said examination who sat in the Sinhala medium. The entrance examination was conducted by the 6th respondent at the request of the Incorporated Council of Legal Education in terms of its Rules.

In December 2005, the appellant had received the result sheet indicating that he had obtained 66 marks and that he had not been successful at the entrance examination (P4 in X2) as it had been decided by the Incorporated Council of Legal Education to select students, who had obtained over and above 69 marks at the said examination and 239 candidates were selected on that basis.

The appellant thereafter had become aware that four (4) students, who had sat for the said entrance examination in the Tamil medium had filed fundamental rights applications alleging that only one candidate has been selected from the Tamil medium for the year 2006 from the said entrance examination for admission to Sri Lanka Law College. Those petitioners had sought to re-scrutinize their papers.

According to the appellant this Court had directed the Senior State Counsel to ascertain whether the Commissioner General of Examinations was agreeable to constitute a committee consisting of a Chief Examiner to re-scrutinize the answer scripts without releasing the answer scripts from the Commissioner General of Examinations and if he was agreeable to such a course of action steps were to be taken accordingly and proceedings in those applications were terminated on that basis (P6 in X2). However the 6th respondent had declined to re-correct the answer scripts as the results sheet had specifically stated that no re-scrutinizing would be carried out.

Following the said order, the 3rd respondent, by his letter dated 01.03.2006 had called certain students to be present at the Chambers of the Hon. The Attorney-General on 08.03.2006 for an interview in relation to admission to Sri Lanka Law College

(P7 in X2). Thereafter the appellant had become aware that out of the 21 students, who were called for the interview, eleven (11) candidates, namely 7th to 17th respondents, had been admitted to Sri Lanka Law College. They had been admitted, not according to the marks obtained at the entrance examination to the Law College, but according to their performance at the interview.

The appellant submitted that several students, who were admitted after the said interview had obtained lower marks than the appellant who had obtained 66 marks, whereas others, who were so selected had got only 60, 62 or 65 marks. Further the appellant stated that he was aware that there were students in the Tamil medium who had received more marks than the 7th to 17th respondents at the entrance examination to the Sri Lanka Law College, but were not admitted.

In the circumstances, the appellant stated that the entire process of admission of 7th to 17th respondents had lacked transparency and that they were selected outside the criteria of the Rules of the Incorporated Council of Legal Education. According to the appellant, the scheme for the admission to Sri Lanka Law College is only based on the applicant's performance at the entrance examination and there is no provision to grant marks at interviews. The said interviews were made only for the selected few and there was no public notification of such an interview and therefore the 2nd, 3rd and 4th respondents had acted *ultra vires* the Rules of the Incorporated Council of legal Education in conducting the said interview.

Accordingly eight (8) candidates, who sat for the entrance examination and the appellant had filed writ applications seeking *inter alia* mandates in the nature of *writs of mandamus* and *certiorari* challenging the admission of the 7th to 17th respondents and the non-admission of those 8 candidates and the appellant and stating that the process employed for the selection of the 7th to 17th respondents to Sri Lanka Law College was *ultra vires* the Rules of the Council of Legal Education, was unreasonable, arbitrary, lacking transparency and was flawed by procedural and substantive irregularity

All nine (9) applications were taken up together for hearing before the Court of Appeal. Out of these, seven (7) applications were allowed and the two (2) applications filed by the appellant and another student, both of whom had sat for the entrance examination in the Sinhala medium, were dismissed. Being aggrieved by the said decision the appellant filed a Special Leave to Appeal application.

Having stated the facts of this appeal let me now turn to consider the appeal based on the questions on which Special Leave to Appeal was granted by this Court.

**1. Has the Court of Appeal misdirected itself in fact and law in holding that there are two mediums of instruction in the Sri Lanka Law College, namely Sinhala and Tamil?**

Learned Counsel for the appellant in his application to this Court for Special Leave to Appeal, had specifically stated that the learned Judge of the Court of Appeal had dismissed the application filed by the appellant in the Court of Appeal *inter alia* for the reason that there were only two mediums of instructions at the Sri Lanka Law College, namely Sinhala and Tamil media and therefore he sought for Special Leave to Appeal *inter alia* on the question whether it was a misdirection to hold that there are only those two mediums of instruction.

Learned Judge of the Court of Appeal had stated in his judgment that there are two mediums of instructions at the Sri Lanka Law College. However, it is interesting to note that this fact had been common ground and the Judge has clearly stated so in the judgment, which reads thus:

"It is common ground that there are two mediums of instructions at the Sri Lanka Law College, namely: 'Sinhala medium' and the 'Tamil medium'."

It is therefore apparent that this has been the view taken not only by the learned Counsel for the respondents, but also by the learned Counsel for the appellant. Otherwise it cannot be considered to be a fact by the Court of Appeal to be common ground at that stage. Moreover, as contended by the learned

Deputy Solicitor General for the 1st and 3rd respondents it is clear that the learned Judge of the Court of Appeal had formed such an opinion purely on the basis of the submissions made by the learned Counsel for the appellant.

This position is strengthened, when one reads the following paragraphs of the judgment, where the learned Judge of the Court of Appeal had stated that,

**"The counsel for the petitioner contended that even though there were two mediums of instructions the candidates are free to sit the Entrance Examination, in any language and to follow lectures in any language (emphasis added)."**

Be that as it may, it is not disputed that the admission to the Sri Lanka Law College and the conduct of academic activities are governed by the Rules of the Incorporated Council of Legal Education. Accordingly it is a pre-entry requirement that the candidates should possess a credit pass in the English language and Sinhala language or Tamil language.

Learned Deputy Solicitor-General for the respondents contended that 'it is the practical reality that at the Sri Lanka Law College there are the Sinhala and Tamil mediums of instruction'. Considering the pre-entry requirements and the medium of instruction at the Sri Lanka Law College it cannot be found to be in correct that the learned Judge of the Court of Appeal had come to the conclusion that 'the students, who have a credit pass in the relevant language are only entitled to admission to the relevant mediums, when admission is considered for the relevant medium or instruction'.

In the circumstances, since it had been quite clearly common ground that there were two mediums of instructions at the Sri Lanka Law College it is imperative that this question has to be answered in the negative.

- 2. Was the Court of Appeal wrong in denying relief to the petitioner on the basis that his credit pass in the G.C.E. Ordinary Level Examination is in the Sinhala language**

**and that he sat for the entrance examination in the Sinhala language?**

Admittedly the appellant sat for the entrance Examination for the admission to Sri Lanka Law College in the Sinhala medium. It is also not disputed that the appellant had obtained a credit pass in the Sinhala language and that he had not offered Tamil language as a subject for the Ordinary Level Examination. It is thus apparent that whilst all the candidates, who were later selected on the basis of an interview had been from the Tamil medium, the petitioner was the only such candidate, who had sat for the entrance examination in the Sinhala medium.

The appellant had not contended that he had the ability and that he was deprived from sitting for the said entrance examination in the Tamil medium. In the circumstances it is apparent that the appellant had selected Sinhala medium as his choice of medium for the purpose of sitting for the entrance examination.

Learned Deputy Solicitor General for the 1st and 3rd respondents contended that the said respondents had made a clear distinction between those who sat for the entrance examination for admission to Sri Lanka Law College in the Sinhala medium and Tamil medium in order to redress a grievance relating to a mistake in the question paper and certain problems that were found by the teaching and practice of law in the Tamil language.

Learned Deputy Solicitor General submitted that the Incorporated Council of Legal Education had also adopted a policy decision to increase the intake to the Tamil medium of the Sri Lanka law College in order to redress the problems of inadequacy of qualified Attorneys-at-Law, who could practice in the Tamil language in the Northern and Eastern Provinces of the country. Since there was no established procedure to follow in such a situation, the Incorporated Council of Legal Education had selected students from amongst the candidates, who had obtained high marks in the Tamil medium by following an interview process.



The contention of the learned Counsel for the appellant was not on the correctness of the process that was adopted by the Incorporated Council of Legal Education, but to elaborate the reasons for the non-consideration of the appellant along with that group of students, who had sat for the entrance examination in the Tamil medium, for admission to Sri Lanka Law College. However, it is to be noted that the learned Counsel for the appellant had not contended that the appellant could either pursue his studies at the Sri Lanka Law College in the Tamil medium or that he was capable of engaging in the profession as an Attorney-at-Law in the Tamil language. In such circumstances, the appellant could not have been considered along with the other students, who had sat for the entrance examination in the Tamil medium and called for the interview for a special selection process.

Accordingly this question also has to be answered in the negative.

### **3. Whether in any event the relief sought in this application is futile?**

The contention of the learned Counsel for the appellant was that the appellant had prayed for a writ of mandamus to grant him admission to the Sri Lanka law College. Learned Counsel for the appellant strenuously contended that the technical objections raised by the learned Deputy Solicitor General to the grant of the writ of mandamus will not apply in this case. Learned Deputy Solicitor General for the respondents however contended that it was necessary for the appellant to establish a specific legal right as a pre-requisite for the writ of *mandamus* to be issued and also that it is incumbent on the appellant to demonstrate, that the respondents are 'beholden by a public duty' to admit the appellant to the Sri Lanka Law College. Learned Deputy Solicitor General referred additionally that there was no basis for legitimate expectation and that the relevant authority would have to encounter administrative inconvenience, if relief was to be granted in this appeal.

I would accordingly consider these contentions separately.

(a) The question of legal right and public duty.

Learned Counsel for the appellant relying on the decision in *Vasana v Incorporated Council of Legal Education and others*<sup>(1)</sup> stated that it was clearly stated by Amaratunga, J. that the Incorporated Council of Legal Education is indeed a public and statutory body and there is a legal duty to perform in enrolling the students to the Sri Lanka Law College. Learned Deputy Solicitor General for the respondents also relied on the decision in *Vasana (supra)* and stated that the Court of Appeal in that case had unequivocally laid down that,

"In order to succeed in an application for a writ of mandamus the petitioner has to show that he or she has a legal right ...."

The writ of mandamus has been described as an order, which is of a most extensive remedial nature and is a command directed to any person, Corporation or inferior tribunal requiring him or them to do some particular thing, which is in the nature of a public duty (Halsbury's Laws of England, 4th Edition, Vol.1, para 89, pg. 111). Referring to the conditions precedent to issue of mandamus, it is stated in Halsbury's Laws of England (*supra*, para 120, pg 131) that,

"The applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought, or alternatively that he has a substantial personal interest in its performance."

It is therefore apparent that, as has been clearly and correctly pointed out in the decision in *Vasana* by Amaratunga, J. (*supra*), the appellant must show that he has a 'legal right to the performance of a legal duty' by the party against whom the mandamus is sought; viz. the Incorporated Council of Legal Education.

It is common ground that the appellant had obtained only 66 marks at the entrance examination and did not qualify for admission to the Sri Lanka Law College. As stated earlier 239

candidates were selected for admission to the Sri Lanka Law College who had obtained over and above 69 marks. A writ of mandamus would be issued only if a person can clearly show that he has a legal right to insist on such performance. Accordingly, for the appellant to insist that mandamus be issued to direct the Sri Lanka Law College to admit him to follow its programme, he should have fulfilled the basic requirement for the said writ by indicating that he has a legal right as he had obtained over and above 69 marks at the entrance examination. The appellant who had admittedly obtained only 66 marks, at the entrance examination to the Sri Lanka Law College thus has no legal right for the admission to the Sri Lanka Law College on the basis of the result of that examination. When the appellant has no such legal right, there cannot be any legal duty for the Incorporated Council of Legal Education to admit the appellant to the Sri Lanka Law College.

The next ground, which was strenuously contended by the learned Counsel for the appellant was that the appellant had a legitimate expectation that he would be admitted to the Sri Lanka Law College along with the 7th to 17th respondents as he too had obtained marks over and above 60.

Legitimate expectation, in general terms, was based on the principles of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. As has been pointed out by D.J. Galigan (*Due Process and Fair Procedures. A Study of Administrative Procedure, 1996, Pg. 320*),

"In one sense legitimate expectation is an extension of the idea of an interest. The duty of procedural fairness is owed, it has been said, when a person's rights, interests, or legitimate expectations are in issue."

Discussing the concept of legitimate expectation, David Foulkes (*Administrative Law, 8th Edition, Butterworths, 1995, pg. 290*) has expressed the view that a promise or an undertaking could give rise to a legitimate expectation. In his words,

"The right to a hearing, or to be consulted, or generally to put one's case, may also arise out of the action of the

authority itself. This action may take one or two, or both forms, a promise (or a statement or undertaking) or a regular procedure. Both the promise and the procedure are capable of giving rise to what is called a legitimate expectation, that an expectation of the kind which the courts will enforce.\*

The procedure followed by the Sri Lanka Law College was to select the students for admission in the order of merit based on their performance at the entrance examination and the number of vacancies available as determined by the Incorporated Council of Legal Education.

Accordingly as stated earlier, the students, who had obtained over and above 69 marks were selected for admission. The appellant, when he became aware that he had obtained only 66 marks, knew quite well that, in terms of the practice and the procedure followed by the Incorporated Council of Legal Education in admitting students to the Sri Lanka Law College, that he was not qualified for admission.

In such circumstances it is evident that the appellant could not have had any legitimate expectation to have been selected to the Sri Lanka Law College on the basis of his marks obtained at the entrance examination. The intervening circumstances, as referred to earlier, was the selection of a group of students, who had sat for the entrance examination in the Tamil medium. As examined earlier, the appellant did not belong to and could not have belonged to that group. It is not possible to rely upon a legitimate expectation unless such expectation is founded upon either a promise or an established practice. It is abundantly clear that the appellant has no such grounds to rely on and in such circumstances it becomes futile for him to have any claim on the basis of legitimate expectation.

The final ground on which submissions were made was based on administrative inconvenience.

Learned Deputy Solicitor General for the 1st and 3rd respondents contended that any order, which directs the Sri Lanka Law College to admit the appellant would lead to several administrative difficulties as there are a large number of other applicants, who

have obtained higher marks than the appellant. Learned Deputy Solicitor General submitted that if an order is given to admit the appellant considering fair procedure, all those applicants, who would exceed one thousand in number, will have to be admitted. He further contended that, the Sri Lanka Law College is not equipped to accommodate over one thousand students in a given batch. Accordingly, relying on the decision of Soertsz, J. in *Maha Nayake Thero, Malwatte Vihare v Registrar General*(<sup>2</sup>), it was contended that the harm to the appellant, **who did not qualify for admission to the Sri Lanka Law College** is not sufficiently significant to outweigh the administrative inconvenience that would undoubtedly follow in the event a decision is taken to admit the appellant to the Sri Lanka Law College. In *Maha Nayake Thero, Malwatte Vihare (supra)*, Soertsz, J. had stated that,

“... the writ may be refused not only upon the merits, but also by reason of the special circumstances of the case. The court will take a liberal view in determining whether or not the writ will issue.”

This position has been considered by many other authorities. For instance, in Halsbury's Laws of England (4th Edition, Vol.1, page 125, page 134), it is clearly stated that the writ of mandamus will not be issued when it appears that it is impossible of performance, by reason of the circumstances and the writ will normally be refused **'if the party against whom it is prayed does not, for some other reason, possess the power to obey'**.

Considering all the aspects examined hereinbefore, it is thus apparent that the relief sought by the appellant in this appeal is futile and I answer the 3rd question in the affirmative.

In the circumstances, questions No. 1 and No. 2 are answered in the negative and question No. 3 is answered in the affirmative.

For the reasons aforesaid, this appeal is dismissed and the judgment of the Court of Appeal dated 13.12.2006 is affirmed.

I make no order as to costs.

AMARATUNGA, J.                    -           I agree.  
BALAPATABENDI, J.               -           I agree.

*Appeal dismissed.*