

R.I.K. DE SILVA
v.
THE UNIVERSITY GRANTS COMMISSION
AND OTHERS

SUPREME COURT
S.N. SILVA, C.J.,
EDUSSURIYA, J., AND
YAPA, J.
SC (FR) APPLICATION No. 642/2002
9 SEPTEMBER, 2002.

Fundamental Rights – Request of student selected to Arts Faculty for a mutual transfer to the Law Faculty of the University – Discriminatory and unlawful rejection of the request – Non compliance with the rules for filling vacancies – Article 12(1) of the Constitution.

The petitioner was a Colombo District candidate at the G.C.E. (A Level) Examination. She obtained two "A"s and two "B"s at that examination with a "Z" score of 1.6517 but failed to secure admission to the Law Faculty but gained admission to the Arts Faculty of the University of Colombo. However, she applied for a mutual transfer to the Law Faculty with a candidate who had been admitted to the Law Faculty who was agreeable to join the Arts Faculty. This application was recommended by the Deans of the Faculties of Law and Arts. However, the appropriate authority, the 1st respondent University Grants Commission ("The UGC") rejected the petitioner's application.

Event though the UGC rejected the petitioner's application it permitted a student who had been admitted to the Arts Faculty who had a lower "Z" score than the petitioner to be admitted to the Law Faculty on the ground that the student had excelled in the sport "kabadi" which allegedly permitted her to be so admitted to the Law Faculty according to the conditions for admission. The UGC also permitted the student who had agreed to a transfer from the Law Faculty to the Arts Faculty to join the Arts Faculty without much ado.

At the time the petitioner's application to join the Law Faculty was rejected, there were several vacancies in the Law Faculty due to the fact that out of the total number of students who had been admitted to that Faculty some had failed to register.

Held:

1. The rejection of the petitioner's application for a transfer to the Law Faculty was discriminatory and constitutes an infringement of her rights under Article 12(1) of the Constitution, particularly for the reason that the request of the student who applied for a transfer from the Law Faculty to the Arts Faculty was allowed.
2. The ground on which a student with a lower "Z" score than the petitioner was admitted to the Law Faculty, namely, that the student excelled in "Kabadi" did not provide a sufficient guideline for such admission. The guideline was vague and left an absolute discretion in the hands of the UGC. In any event admission of students on special consideration should be permitted if at all at the commencement of the admission process.
3. The denial of the petitioner's application for a transfer to the Law Faculty where there were vacancies was contrary to the conditions applicable to the filling of vacancies.

APPLICATION for relief for infringement of fundamental rights.

D.S. Wijesinghe, P.C. with Dhammadika Dharmadasa for petitioner

R.K.W. Goonesekera with S. Hewamanna for the 1st and 2nd respondents

U. Egalahewa, State Counsel for 3rd and 4th respondents.

Cur.ad.vult.

January 30, 2003

SARATH N. SILVA, C.J.

The Petitioner has been granted leave to proceed in respect of the alleged infringement of Article 12(1) of the Constitution. She sat for the G.C.E. (A Level) examination in the year 2001 and obtained grades of two A's and two B's with an "Z" score 1.6517. She sought admission to the Faculty of Law, but being a candidate from the Colombo District failed to secure admission, failing short

by a few marks. Instead, she gained admission to the Faculty of Arts in the University of Colombo.

The Petitioner subsequently learnt that there were vacancies in the Faculty of Law and that a student in that Faculty wanted to join the Faculty of Arts. On the basis of that information she wrote letter dated 17.10.2002 (the original of which has been produced marked 3R2) to the 4th Respondent being the Dean, Faculty of Arts. The letter refers to the matters stated above with regard to vacancies and concludes with the following sentences.

"In the circumstances I am willing to exchange place with this student. I am very keen on getting a degree in law as it is my chosen career. Therefore I kindly request you to consider my case sympathetically and release me to do the law degree."

From the endorsement appearing on the letter and the affidavit filed in Court, it is clear that this request was supported by the Dean, Faculty of Law and the Dean, Faculty of Arts being the 3rd and 4th Respondents. The Dean, Faculty of Law has stated in his affidavit as follows:

"I sent the letter (being the request of the Petitioner) with an endorsement to the following effect, that I learnt that names of 14 students had been sent for registration but only 9 have so far registered, that time was running out with regard to the students' attendance requirement, and that we have permitted mutual transfer in the past, if I remember correct. I also requested the Additional Secretary (Admissions of the University Grants Commission – the 1st Respondent) whether he could consider the Petitioner's appeal favourably at his earliest."

After the Petitioner's request supported by the Deans of the respective Faculties was sent to the University Grants Commission (UGC), letter dated 22.10.2002 (produced marked X9 and 3R5) was sent by the Commission to the Dean, Faculty of Law stating that another student already registered with the Faculty of Arts should be admitted to the Faculty of Law. This student is also one that sat for the same G.C.E. (A Level) examination as the Petitioner from the Colombo District, but secured a 'Z' score lower than the Petitioner. The Petitioner's 'Z' score was 1.6517, as noted above

and the student whose admission was ordered by the UGC by X9 had an 'Z' score of only 1.6109. The admission was ordered by the UGC not on the basis of the performance at the G.C.E. (A Level) examination and the respective marks that had been secured, but on the basis that the latter student had done well in the sport of "Kabadi". The Dean, Faculty of Law has referred this matter in his affidavit as follows:

"I was compelled to admit a student from the Faculty of Arts on the basis that the said student had excelled in the sport "Kabadi". It is also observed that the 'Z' score of this student is 1.6109 which is lower than that of the Petitioner. I annex herewith a copy of the letter marked 3R5."

The request of the Petitioner was refused by the UGC by letter dated 5.11.2002 (X13). It appears that the student who was registered in the Faculty of Law and who sought a transfer to the Faculty of Arts had that request granted without much ado. According to the affidavit of the Dean, Faculty of Arts that student's request was considered at the 176th Faculty Board meeting and the student was allowed to register in the Faculty of Arts in October 2002.

It is in this context that the Petitioner has alleged an infringement of her fundamental right to equality guaranteed by Article 12(1) of the Constitution, on the part of the Respondents. The Petitioner relies mainly on two grounds to establish her allegation of unequal treatment –

1. that a student similarly circumstanced having sat for the same examination from the same District and registered in the same Faculty of Arts has been permitted to register in the Faculty of Law although she had a lower 'Z' score.
2. that a student registered in the Faculty of Law has been permitted to transfer to the Faculty of Arts although she has been denied an opportunity of her request being considered on the basis of any applicable criteria.

The UGC has strenuously resisted the grant of any relief to the Petitioner although the Dean, Faculty of Law has stated in his

affidavit that there is yet a vacancy in that Faculty. In the circumstances it is necessary to examine the matter of admission further.

The intake to the Faculty of Law of the University of Colombo has been fixed at 200 students for the year 2002/2003. By document X11 the UGC decided on the allocation of places in respect of the total intake of 200 students. 79 places were allocated on the all island merit quota and 121 on the district quota, making a total of 200. On that basis the cut off point in the 'Z' score for each District was notified by XII. It is clear that the UGC did not make any reservation for special admissions, including for students who have excelled in fields other than studies, as provided in Part Two of the Handbook issued by the UGC in respect of admissions (R1). By letter dated 18.09.2002 the Deputy Registrar Examinations of the University of Colombo, informed the UGC that there are 15 vacancies in the Faculty of Law resulting from selected students failing to seek registration. This letter produced as X4 bears the endorsement "*very urgent*" and requests that immediate action be taken to fill these vacancies. The sense of urgency on the part of the University authorities is understandable, since the academic programme in the Faculty of Law was due to commence on 07.10.2002. In response, the UGC sent the letter dated 10.10.2002 giving the names of 14 students to fill the vacancies. The explanation of the UGC is that one place from the vacancies was reserved for a special admission.

The UGC claims that the action taken to fill the vacancies is strictly in accordance with the provisions in the Handbook (R1). In view of the firm stand taken by the UGC in this regard, it is necessary to examine the claim carefully in the light of the relevant provisions of the Handbook. Part II of the Handbook which deals with special admissions in paragraph 18(b) states as follows:

"(b) Students who have excelled in fields other than studies: 0.5% of the places in each course of study has been reserved for candidates who have achievements at national or international levels in such fields as sports, cultural activities (e.g. dancing, painting, music and literature), scouting and cadetting, social work and other extra curricular activities in and after 1998, but have failed to gain admission under the normal intake because of the short fall of a few marks....."

It has to be observed at the outset that the criteria set out in this provision is vague and it purports to reserve a power to the UGC to make selections at its sole discretion. The provision does not contain adequate guidelines to ensure that the power reserved by the UGC to itself would not be exercised arbitrarily. The UGC has selected a candidate who is from the same District as the Petitioner but who has got a lower 'Z' score on the basis of her performance in the sport of 'Kabadi'. The level of her performance in the sport is not disclosed. Whilst the UGC may be under the impression that skill in the sport of "Kabadi" is a useful attribute to the study of law, it has to be noted that such a course of action is inconsistent with the equal protection of the law guaranteed to every person by Article 12(1) of the Constitution. If any reservation for a special admission is to be made, that should be done on the basis of rational criteria, related to the overall objective of selecting the most competent student with the highest aptitude for the particular course of study. In that respect the provision relied on by the UGC falls far short of the required standard. It's application, seen from the facts of this case, makes it worse and demonstrates the danger in reserving to an authority discretionary power without adequate guidelines as to its exercise. I do not want to go into this matter further since the student selected from her performance in "Kabadi" is not a party to this application. From the Petitioner's perspective, she has been plainly denied the equal protection of the law guaranteed to her by Article 12(1) of the Constitution. Her application for a transfer to the Faculty of Law which had been supported by the Deans of the respective Faculties evoked a negative response from the UGC. Whereas the UGC has permitted a similar transfer, which has not been supported by the Deans of the respective Faculties, according to the material available, in respect of a student with a lower "Z" score on a ground that cannot be supported.

When one delves into the matter further, it is seen that a place for special admission should, if at all, be "reserved" at the commencement of the admission process. In this instance, the UGC did not make a reservation for any special admission, but allocated all 200 places on the district and the all island merit quotas as seen in the document XII. The UGC has purported to order

the registration of a student as a special admission in the process of filling of vacancies that resulted from non-registration of selected students. Filling of vacancies is dealt with in paragraph 12 of Part I of the Handbook whereas reservation for special admissions is provided for in paragraph 18 in Part II of the Handbook. Since the UGC has strenuously contended that the filling of vacancies was ordered strictly in accordance with the relevant provisions, I would reproduce the entirely of paragraph 12 –

Vacancies may arise as a result of non-registration of students selected under the normal intake. These are filled on the following basis:

- (a) Vacancies due to non-registration of students under the merit quota will be filled on an all island merit basis.
- (b) Vacancies due to non-registration of students selected under the district quota will be filled on a district merit basis. Vacancies in a particular district will be filled with students from the same district.
- (c) When an additional number of students have been selected over and above the quota due to clustering of students at the same mark point, such additional number will be deducted from the number of vacancies and only the balance will be filled.
- (d) Vacancies in any course of study will not be filled after the commencement of the academic programme of the university concerned.
- (e) In terms of 9.4 above candidates once registered in a course of study on the basis of the results of the GCE (A/L) Examination held in 2001 should accept the course of study to which he/she would be elevated according to the higher preference indicated by him/her in the application for admission, when filling vacancies.

On a plain reading it is seen that no place can be reserved for a special admission in the process of filling of vacancies. I am compelled to note that the UGC has conveniently skipped from paragraph 12 in Part I to paragraph 18(b) in Part II of the Handbook to order the registration of the student with a lower "Z" score than

the Petitioner on the basis of her performance in sport. Thus the reservation of one place for a special admission in the process of filling vacancies is clearly illegal.

To proceed further on the matter of filling of vacancies, as noted above, the Deputy Registrar Examinations of the University of Colombo informed the UGC of 15 vacancies in the Faculty of Law by letter dated 18.09.2002 (X4) which was marked "very urgent". The urgency lay in the fact that the academic programme of the Faculty of Law was due to commence on 07.10.2002. Paragraph 12(d) of the Handbook, reproduced above states clearly that vacancies will not be filled after the commencement of the academic programme of the University. The UGC violated its own rule by sending the 14 names by letter dated 10.10.2002, after the academic programme commenced on 07.10.2002. When 5 students of the 14 failed to register, the UGC sent another list on 5.11.2002 (X7) and yet another list on 21.11.2002 (X8). This is in addition to the special admission on the performance in sport ordered by letter dated 22.10.2002 (X9). All these lists have been sent in contravention of the provisions of paragraph 12(d) referred above. Therefore the strenuous claim of the UGC that it has acted strictly in accordance with the provisions of the Handbook in filling of vacancies, ends up in smoke when subjected to a close scrutiny.

A more alarming fact that emerges from the foregoing account of the process of admission is that 15 students out of the 200 (7.5%) originally selected dropped out at the stage of registration itself. There are further drop outs as the academic programme goes on. This demonstrates the inherent weakness of a selection process based solely on statistics churned out by computers. There is a live question whether such a process by itself will produce students with the required aptitude and the real capacity to engage in undergraduates studies in a given field. This question addresses a matter of policy, formulation which is outside the purview of the jurisdiction of this Court.

Reverting specially to the facts of this case, the action of the UGC is best epitomized by the following paragraph in the affidavit filed by the Dean, Faculty of Law.

13. "I further state that if the action of the 1st and 2nd Respondents (the UGC and its Chairman) are transpar-

ent, complaints of this nature could have been minimized. I am of the view that the University Grants Commission should publish openly every year its admission policy, criteria adopted to select candidates, each candidate's marks and ranking, each one's choice of courses/disciplines, their choice of university and the selection made by the University Grants Commission. Transparency will not only make candidates to trust the institution and the decision making process but also cause the institution to be responsible and accountable."

The answer of the UGC is that the University of Colombo should be the proper party in the case and not the Deans of the respective faculties. I find it difficult to comprehend this objection. The Dean is the administrative head of the Faculty. The request of the Petitioner for a transfer to the Faculty of Law was addressed to the Dean, Faculty of Arts, who submitted it to the Dean, Faculty of Law who in turn recommended it to the UGC. By X13 addressed to the Dean, Faculty of Law the UGC refused that request. The special admission on the basis of performance in sport, regarding which much has been said above, was notified by the UGC to the Dean, Faculty of Law. When there is an alleged infringement of a fundamental right this Court has to examine the process of the impugned executive or administrative action. In that respect the proper parties involved in the impugned administrative process are before Court and I accordingly overrule the ground of objection.

For the reasons stated above, I hold that there has been an infringement of the fundamental right of the Petitioner guaranteed by Article 12(1) of the Constitution resulting from action on the part of the University Grants Commission. I allow to the Petitioner the relief prayed for in prayers (B) and (C) of the prayer to the petition.

The 1st Respondent will pay a sum of Rs. 15,000/- as costs to the Petitioner.

EDUSSURIYA, J. — I agree.

YAPA, J. — I agree.