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**SARATHCHANDRA  
VS.  
DHARMADASA**

COURT OF APPEAL  
SRIPAVAN. J,  
ERIC BASNAYAKE. J,  
CA 1473/2006 (WRIT),  
DECEMBER 11, 2006.

*Writ of Certiorari - Students remaining in school after sitting Ordinary Level Examination for a second time - Is it permissible?—Legitimate expectation - Remaining until re-correction results were released - Eligibility to be provisionally admitted to the Advanced Level class?—Education Ordinance, section 37(d)—Abuse of the legal powers of Court?*

The student (Petitioner) has not been successful in obtaining a pass in Mathematics in any of the G. C. E. 'O' Level sittings in 2004/2005. He had sought a re-correction in Mathematics on the 2005 results, and was permitted to stay in school and followed A Level Classes, and was also permitted to represent the school in Rugby during this period.

The Petitioner sought to quash the letter by the 1st respondent, Secretary, Ministry of Education, addressed to the principal (4th respondent) intimating that it is contrary to Circular X3 to allow a student to remain in school after sitting for the O/L Examination for a second time.

**Held :**

- (i) Rule 18 of the Circular issued in terms of section 18 of the Education Ordinance requires six passes at the G. C. E. 'O' Level including language and Mathematics with three Credit Passes to admit students to the G. C. E. 'A Level classes.

A student who obtains five passes including three Credits and one compulsory subject (either language or Mathematics) will be eligible to be provisionally admitted to the A/L class provided he obtains the sixth pass at the next sitting.

- (2) If a student fails to obtain five passes with three Credits in the first sitting he will not be eligible to be admitted to the A/L. class and in that event after the results of the first sitting such student should leave school.

Held further :

- (3) The petitioner did not obtain the minimum qualification at the first sitting - 2004 December,.Therefore the petitioner could be allowed to remain in school only until the 2004 December results were released.

The student was allowed to remain in school in violation of Rule 18.

Per Eric Basnayake. J.

"When this application was supported the 4th respondent (Principal) was represented. It appeared from the student that the 4th respondent was supporting the cause of the petitioner; the petitioner was able to stay in school up till now with the approval of the 4th respondent"

- (5) The 4th respondent had failed to give effect to the Circular  
(6) The legitimate expectation is based on the result of the re-correction of the Mathematics answer script. The results were sent to the 4th respondent on 25.09.2006 (the case was filed on 27.09.2006).  
Once the result is known the petitioner would lose all ground to remain in school any longer.

Per Eric Basnayake. J. :

"By considering all the circumstances the only conclusion that this Court can arrive at is that the petitioner was aware of the re-correction result at the time of filing this case in Court. This case was filed to enable the petitioner to stay in school longer. The petitioner therefore sought refuge in a writ application. I am of the view that this is a clear instance of abuse of the legal powers of Court.

**APPLICATION** for a Writ of Certiorari.

*Faiz Musthapha PC with, J. C. Weliamuna, Ms. Faizer Mustapha Marker and Tushani Machado for petitioner.*

*Sathya Hettige PC Additional Solicitor General with Janak de Silva SSC for 1st, 2nd, 3rd, and 5th respondents.*

*Viran Corea for 4th respondent.*

*Cur. adv. vult.*

December 14, 2006.

### **ERIC BASNAYAKE J.**

This application is concerning A. A. Niroshana Atigala, (hereinafter referred to as the petitioner) a student educated at Isipatana College, Colombo 05. The petitioner had sat for the G. C. E. (O/L) Examination in the years 2004 and 2005 and obtained the following results as evident from P1 and P2.

<i>December 2004:</i>	Sinhala Language	....	Credit
	Social Studies	....	Ordinary Pass
	Dancing	....	Credit Pass
	History	....	Ordinary Pass
	Development Studies	....	Ordinary Pass

<i>December 2005:</i>	Buddhism .	....	Ordinary Pass
	Sinhala	....	Credit Pass
	Science and Technology	...	Ordinary Pass
	Social Studies	...	Credit Pass
	Dancing	...	Credit Pass
	Business Studies and A/C	...	Ordinary Pass

The student has not been successful in obtaining a pass in Mathematics in any of the sittings. He had sought a re-correction in Mathematics on the results obtained in the December 2005 Examination. When this case was supported in open court on 11.12.2006, the learned President's Counsel submitted that he was not aware of whether the results had been released at the time. At present the petitioner is following classes in the G. C. E. (A/L).

The student is seeking to quash a letter issued by the 1 Respondent dated 20.09.2006 marked P10 addressed to the Princip of Issipatana College (4th Respondent) intimating that it is contrary the Circular marked P 3 to allow a student to remain in school aft sitting for the O/L examination for a second time. The petitioner allege that the letter marked P10 is illegal, null and void and of no force avail in law due to the reasons set out in the petition.

### **Interpretation of the Circular P3**

This case involves the interpretation of the Circular marked P3. paragraphs 2, 7, 10 and 10 a-d, 17 and 18 of the petition and th corresponding paragraphs in the affidavit the petitioner had place reliance on this Circular. The whole case rests on the Circular. Th petitioner states that the Circular was issued in terms of Section 3 (d) of the Education Ordinance. The documents P1 to P10 too wer produced in support of the Circular and especially Rule 19 (e) i and

### **Rule 18**

The said Rule 18 requires six passes at the G. C. E. (O.L) includir Language and Mathematics with three credit passes to admit studen to the G. C. E. Advanced Level Class. A student who obtains five passes including three credits and one compulsory subject (eithr Language or Mathematics) will be eligible to be provisionally admitte to the Advanced Level class provided he obtains the sixth pass at th next sitting.

Therefore it is clear that a student will be given the opportunity completing the examination only in the event of obtaining five passe with three credits including one of the compulsory subjects. If a stude fails to obtain five passes with three credits on the first sitting he w not be eligible to be admitted to the Advanced Level class and in th event after the results of the first sitting such student should leave schoo

In this case the petitioner did not obtain the minimum qualificatio at the first sitting which was in 2004 December. Therefore the petition could be allowed to remain in school only until the 2004 results wer

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released. However the petitioner was allowed to remain in school in violation of rule 18 of the Circular.

### **Re-correction**

The petitioner averred in the petition that he made an application for re-correction of his answer script on Mathematics. He averred that it is the practice in schools to permit students to remain in school until the results of the re-correction have been released. It is also evident from P8 that the petitioner sought permission to remain in school until the results of the re-correction were released. The petitioner was permitted to represent the school in rugby during this period.

The Petitioner averred that he had a legitimate expectation that he would be permitted to remain in school until he obtained the re-correction results.

When this case was called to support in court on 11.12.2006, the learned Additional Solicitor-General intimated to court that the results of the re-correction have been released and that the 4th Respondent was informed of same on 25.09.2006. The learned Additional Solicitor-General was armed with documentary evidence of the results and the fact of informing of same to the 4th Respondent on 25th September 2006. The learned President's Counsel for the petitioner, amazingly, objected to the production of this document on the basis that it is a new document. However the learned President's Counsel did not controvert the position taken by the learned Additional Solicitor-General. The result was the same at the re-correction and the petitioner failed in Mathematics.

The present application was filed on 27.09.2006. This application was originally supported in court on 29.09.2006. When this application was supported in court on 29th September 2006 the 4th Respondent was represented. It appeared from the start that the 4th Respondent was supporting the cause of the petitioner. The petitioner was able to stay in school up till now with the approval of the 4th Respondent. The 4th respondent had failed to give effect to P10. Furthermore the 4th Respondent has volunteered to give an undertaking to court not to act

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on P10 until the next date which was extended till to date. The petitioner was able to stay in school till the present on the strength of this undertaking.

The 4th Respondent in an affidavit filed on 05.10.2006 declared that the result of the re-correction had not yet been released. When the learned Additional Solicitor- General pronounced in open court that the results had been released, the learned President's Counsel appearing for the petitioner was not keen to know what the result was. He did not want to know whether the petitioner had passed or failed. The learned President's Counsel for the petitioner assisted court by saying that he had no instructions on this awaited result. When he was invited by court to obtain instruction from his client he declined.

The legitimate expectation of the petitioner is based on the result of the re-correction of the Mathematics answer script. The learned Additional Solicitor - General intimated to court that the result of the re-correction was sent to the 4th Respondent on 25.09.2006. This case was filed in court on 27.09.2006.

Once the result is known the petitioner would lose all ground to remain in school any longer. Therefore it is to the advantage of the petitioner not to know the result or to pretend not to know. By considering all the circumstances the only conclusion that this court can arrive at is that the petitioner was aware of the re-correction result at the time of filing this case in court. This case was filed to enable the petitioner to stay in school longer. The petitioner therefore sought refuge in a writ application. I am of the view that this is a clear instance of abuse of the legal process of this court.

### **Circular P3 - Ultra Vires?**

This case took another turn when the learned President's Counsel for the petitioner began to attack the Circular that he himself was relying on. The learned counsel submitted that the Circular is *ultra vires* and has no validity. Contrary to this submission the petitioner averred in the petition that the Circular was issued in terms of section 37(d) of the Education Ordinance. The petitioner sought to quash P10

on the basis that it is contrary to the Circular especially Rule 18. The petitioner stated that P10 is illegal, null and void and of no force in as much as it was without jurisdiction etc. The petitioner never sought to quash the Circular marked P3. The petitioner never alleged that the Circular was *ultra vires*. Therefore the submission that the Circular P3 is *ultra vires* is without any legal basis.

On the above reasons I am of the view that there is no merit in this application. Therefore notice is refused.

**Sripavan J.** —*I agree.*

*Notice refused.*