

**DAYARATHNA AND OTHERS**  
**v.**  
**MINISTER OF HEALTH AND INDIGENOUS**  
**MEDICINE AND OTHERS**

SUPREME COURT  
AMERASINGHE, J.,  
GUNASEKERA, J. AND  
WEERASEKARA, J.  
S.C. APPLICATIONS NOS. 513-528/98  
APRIL 1, 1999.

*Fundamental Rights – Legitimate expectation – Change of Government policy – Duty to act fairly and in the public interest – Denial of expectations – Violation of the right to equality – Article 12 (1) of the Constitution.*

By notification in the Gazette dated 10.05.1996 the Ministry of Health called for applications from persons desirous of following a course of training leading to the award of the certificate of competency as Assistant Medical Officers. Fifteen petitioners who were eligible for enrolment to follow the course of training applied in response to the notification and sat a competitive examination conducted on 27.12.1996; and they were so placed on the results of the examination as to be qualified to follow the course of training. According to the scheme published in the Gazette, the next step was the holding of an interview to check the qualifications, meaning the checking of (1) the birth certificate, (2) evidence of citizenship, and (3) certificates relating to educational qualifications. That interview was not held. Then, on 18.12.1997 the Secretary, Government Medical Officers' Association (GMOA) informed the Minister of Health and Indigenous Medicine that they desired the provision of employment to medical graduates and saw no justification "to restart the AMP training course"; and that their members "would not participate in any component of the training programme". Whereupon, on 11.03.1998 the Minister sought cabinet approval to fill the existing and future vacancies in the cadre of Assistant Medical Practitioners with Medical Graduates and to offer the petitioners the option

of following the course for para medical services/Public Health Inspectors, if they so desire; and by a circular letter dated 20.08.1998, the petitioners were invited to apply for training as Pharmacists, Medical Laboratory Technologists and Public Health Inspectors. The requisite qualifications for such training and the course subjects are less than what are required for the AMP course. Besides, persons serving in Para Medical Services and as Public Health Inspectors are not eligible to seek registration under the Medical Ordinance to practise medicine and surgery whilst Assistant Medical Practitioners are eligible to seek such registration, subject to certain conditions.

**Held:**

On the facts of the case, the petitioners had a legitimate expectation that they would, upon satisfying prescribed conditions, be provided with a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Practitioners. The decision effecting a change of policy which destroyed the expectation of the petitioners did not depend upon considerations of public interest. In deciding upon the conflicting interests of Graduate Medical Officers and Assistant Medical Practitioners, the 1st, 2nd and 3rd respondents (the Minister, his Secretary and the Deputy Director General Administration, respectively) considered the views of the GMOA and yielded to their pressure. Neither the views of the Assistant Medical Practitioners nor those of the petitioners were sought. Hence, rights of the petitioners guaranteed by Article 12 (1) of the Constitution were violated.

*Per Amerasinghe, J.*

"When a change of policy is likely to frustrate the legitimate expectation of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment, arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive."

**Cases referred to :**

1. *R. v. Hertfordshire C.C., ex P. Cheung* – The Times April 4, 1986.
2. *R. v. MAFF ex P. Hamble* (Offshore Fisheries Ltd.) (1995) 2 All ER 714, 723, 730, 731.
3. *R. v. Secretary of State for the Home Dept., ex P. Ruddock* (1987) 2 All ER 518, 531.
4. *Findlay v. Secretary of State for the Home Dept.* (1984) 3 All ER 801.

5. *Council of Civil Service Union v. Minister for Civil Services* (1984) 3 All ER 935, 949.
6. *Hughes v. Dept. of Health and Social Security* (1985) AC 776, 788.
7. *HTV Ltd. v. Price Commission* – 1976 ICR 170 at 185.
8. *Preston v. IRC* – 1985 2 All ER 327 at 340 – 1985 AC 835 at 865.
9. *Attorney-General for New South Wales v. Quin* (1990) 1 CLR 1, 23.
10. *Att-Gen of Hong Kong v. Ng Yen Shin* (1983) A.C. 629.
11. *Re Findlay* (1985) AC 318.
12. *Robertson v. Minister of Pensions* (1949) 1 K.B. 227.
13. *Lever Finance Ltd. v. Westminster (City) London Borough Council* (1971) QB 222.
14. *Associated Pictures Houses Ltd. v. Wednesbury Corpn* (1948) 1 KB 223.
15. *Rex v. Secretary of State of the Home Dept., ex. P. Khan* (1985) 1 ALL ER 40, 46.

APPLICATION for relief for infringement of fundamental rights.

*Romesh de Silva*, PC with *Geethaka Gunawardena* for the petitioner.

*Kolitha Dharmawardena*, DSG with *Viran Corea*, SC for the respondents.

*Cur. adv. vult.*

May 4, 1999.

**AMERASINGHE, J.**

Sixteen petitioners filed separate applications alleging the violation of their respective fundamental rights guaranteed by Article 12 (1) of the Constitution. Learned counsel for the petitioners and respondents submitted that, since these applications related to complaints arising from a single decision of the first, second and third respondents, the several applications may be heard together and that a single judgment would be applicable as far each of the sixteen petitioners and four respondents were concerned.

The Secretary of the Ministry of Health, Highways and Social Services by notification in the Government Gazette No. 923 of

10.05.1996, called for applications from citizens of Sri Lanka who were "desirous of following a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Officers". It is not disputed that each and every one of the petitioners possessed the stipulated qualifications to apply for enrolment to follow the course of training; that their applications were submitted in terms of the notification; that they sat the competitive examination conducted on the 27th of December, 1996; and that they were so placed on the results of the examination as to be qualified to follow the course of training.

Although in paragraph 10 of the scheme published in *Gazette* No. 923 of 10.05.1996 "the method of selection for training included an "interview to check the qualifications", meaning the checking of (1) the birth certificate; (2) evidence of citizenship; and (3) certificates relating to educational qualifications, no interview was held, despite several inquiries from the petitioners as to why the interview was not held.

Instead of proceeding with the advertised course of training for the examination leading to the award of the certificate of competency as Assistant Medical Practitioners for which the petitioners had applied, they were by a circular letter dated the 20th of August, 1998, (F1) invited to apply for training as Pharmacists, Medical Laboratory Technologists and Public Health Inspectors.

There are significant distinctions between Pharmacists, Medical Laboratory Technologists and Public Health Inspectors on the one hand and Assistant Medical Practitioners/Officers on the other both with regard to their standing and their training, and eligibility for selection to training courses. In terms of section 41 (2A) of the Medical Ordinance No. 26 of 1927 (as amended, from time to time, by Acts of the Legislature, including the Medical (Amendment) Act No. 30 of 1987 and the Medical (Amendment) Act No.13 of 1993),

an Assistant Medical Practitioner (formerly known as an 'Apothecary') on furnishing proof to the Director of Health Services that he or she being an Assistant Medical Practitioner has had an aggregate period of at least eight years' of efficient and satisfactory service as an estate Assistant Medical Practitioner or as an Assistant Medical Practitioner on an estate and in the public service, and has within that period served in one or more hospitals under one or more medical practitioners for an aggregate period of two years, is entitled to be registered to practise medicine and surgery. Section 41 (2B) of the Medical Ordinance states that a Government Assistant Medical Practitioner, whether he or she is in the service of the Government or has ceased to be in such service, on production of a certificate from the Director of Health Services to the effect that he or she (i) has had an aggregate period of four years of efficient and satisfactory service as a Government Assistant Medical Practitioner; (ii) has, within that period, served in one or more district or provincial hospitals under one or more medical practitioners for an aggregate period of at least three years; and (iii) holds a diploma conferred by the relevant authority, may be registered as being entitled to practice medicine and surgery.

On the other hand it is not in dispute that Pharmacists, Medical Laboratory Technologists and Public Health Inspectors as such are never eligible to be registered to practice medicine and surgery. Understandably, the basic educational qualifications required of those admitted to the course of training as Assistant Medical Practitioners on the one hand and those admitted to courses of training as Pharmacists, Medical Laboratory Technologists and Public Health Inspectors on the other are quite different.

The former –

"(a) should have passed the GCE (O/L) examination New/Old/  
Interim syllabus in 06 subjects including Sinhala/Tamil

Language, Mathematics and Science or should have passed the NCGE examination in six subjects at not more than two sittings with "B" grade passes for four subjects including First language, Mathematics and Science; and

- (b) should have passed the GCE (A/L) examination in four subjects including Chemistry and either Zoology or Botany at one sitting.

*Note* : A pass in English Language as a subject at the Senior School Certificate/GCE (O/L)/ (NCGE examination will be considered as an added qualification" : (*Gazette* No. 923 of 10.05.1996, paragraph 05).

The latter should have passed –

- "6.1 the Senior School Certificate or General Certificate of Education examination (Old syllabus) in six subjects, at not more than two sittings with Credit passes in Sinhala/Tamil Language or Literature/Sinhala Language & Literature/Tamil Language and Literature and Mathematics and in two Science subjects (ie Physics, Botany, Zoology, Biology or Chemistry); or
- 6.2 the General Certificate of Education (Ordinary Level) examination (New syllabus) in six subjects at not more than two sittings with Credit passes in Sinhala/Tamil Language or Literature/Sinhala Language and Literature/Tamil Language and Literature, Mathematics, General Science and one other subject.
- 6.3 the National Certificate of General Education in six subjects at not more than two sittings with "B" grade passes for First language, Mathematics, Science and Health Science or a Technical subject.

*Note* : Candidates who qualify under 6.1, 6.2, 6.3 above should have compulsorily passed at least 05 subjects at one sitting; (Gazette of 09.02.1996).

The schemes of training are also different. *Inter alia*, selected candidates for training as Assistant Medical Practitioners were "required to follow a 2 1/2 years' training course at the Medical Faculty, University of Sri Lanka and/or at the National Institute of Health Services, Kalutara and thereafter an internship of 06 months at a Provincial Base or District Hospital . . ." (Paragraph 11, *Gazette of 10.5.1996*).

According to information furnished by the AMP Co-ordinator, AMP Training Programme, Faculty of Medicine, Peradeniya, (Document A), which has not been controverted Assistant Medical Practitioner students followed courses in Anatomy, Physiology, Biochemistry (6 months); Nutrition, Pharmacology & Pharmacy, Microbiology, Parasitology, Pathology, Community Medicine (6 months); Medicine, Surgery, Paediatrics, Gynaecology and Obstetrics (18 months, including 8 weeks clinicals). Additionally, they also clerked for 2-4 weeks in "Otolaryngology, Ophthalmology, Chest Diseases, Venereal Diseases, Dental Surgery, Dermatology, Orthopaedic Surgery, Clinical Pathology, Out Patient Department, Hospital Administration, Pharmacy and Anti-Malarial Work." At the end of an Assistant Medical Practitioner's course of training it was envisaged that a successful trainee would "as a leader of a team" "be capable of –

01. preventing the spread and incidents of the listed pathological states in the community;
02. implementing family planning programmes;
03. preventing maternal and child mortality and morbidity in the community;

04. conducting a normal delivery;
05. diagnosing and treating individuals who are afflicted with the listed pathological states;
06. supervising continued treatment in individuals with the listed conditions;
07. detecting and referring patients with the listed clinical states or any other problem that he is unable to deal with to the closest hospital equipped to deal with such problems after providing appropriate initial treatment;
08. administering peripheral units and central dispensaries;
09. possess a scientific attitude;
10. assume responsibility for his own continued learning;
11. function efficiently in groups;
12. possess skills in good inter-personal relationship with patients and people."

It was not suggested that the training schemes for Pharmacists, Medical Laboratory Technologists or Public Health Inspectors equipped them with the knowledge and skills imparted in the training course for the examination leading to the award of the certificate of competency as Assistant Medical Practitioners.

Having regard to the superior educational qualifications required of those invited to apply for the course of training for the examination leading to the award of the certificate of competency as Assistant Medical Practitioners; and having regard to the comparatively superior nature of the training imparted to trainee Assistant Medical Practitioners,



ers in terms of content, duration and intensity; and having regard to the fact that the petitioners had at a competitive examination, subject to the verification of their certificates at an interview, qualified themselves to be admitted to the course of training leading to the award of the certificate of competency as Assistant Medical Practitioners, the invitation to them contained in the letter F1 dated the 20th of August, 1998 to apply for training as Pharmacists, Medical Laboratory Technologists or Public Health Inspectors was in my view tantamount to treating unequals equally, and therefore the conduct of the second and third respondents was manifestly unreasonable and unfair.

Moreover, having regard to the manner in which earlier applicants similarly situated were treated, there was discrimination between the petitioners and the earlier applicants. It is both a Constitutional requirement and a cardinal principle of good public administration that all persons in a similar position should be treated similarly: Cf. per Lord Donaldson, MR in *R. v. Hertfordshire C. C., ex P. Cheung*.<sup>(1)</sup> There must be certainty and predictability if the rule of law is to prevail, which Article 12 of the Constitution, among other things, is obviously intended to safeguard. Article 12 of the Constitution requires substantive as well as formal equality: laws, regulations and executive or administrative rules, procedures and schemes must not discriminate between individuals on invidious or irrational grounds; and officials are required to apply those laws, rules, procedures and schemes consistently and even-handedly unless a deviation can be objectively and reasonably justified on the grounds that a legitimate end is being pursued and that the means to achieve that end are proportionate.

The petitioners contend that their "legitimate expectations" have been disappointed, and by way of the 'just and equitable' relief the Court may grant or direct under the provisions of Article 126 (4) of the Constitution, they pray, among other things, for an order of this Court "revoking and/or annulling and/or setting aside the decision contained in the letter dated 20.8.98 and marked as "F1"; and

an order "directing the respondents to hold the viva/or interview within a reasonable time as contemplated in the *Gazette* notice marked 'B'; and to conduct the course of study for Assistant Medical Practitioners". Essentially, this is an appeal that the respondents should be required to act with fairness: Cf. per Sedley, J. in *R. v. MAFF, ex P. Hamble (Offshore Fisheries Ltd.)*<sup>(2)</sup>, Following *R. v. Secretary of State for the Home Dept., ex P. Ruddock*<sup>(3)</sup>.

In support of the reliefs sought, the petitioners submitted that, having regard to the promises or representations expressed or reasonably implied in the advertisement in *Government Gazette* No. 923 of 10.05.1996, as well as presentations implied from established practice based upon the past actions and settled conduct of the first, second and third respondents and their predecessors in office, the petitioners had a legitimate expectation of a substantive benefit, namely that they would, upon satisfying the requirements published in *Gazette* No. 923 of 10.05.1996, be provided with the training specified and publicised in that *Gazette* notification.

The respondents, through the affidavit of the Secretary, Ministry of Health and Indigenous Medicine, stated that :

- "(a) The need for Assistant Medical Practitioners arose at a time in the past, when there were insufficient Graduate Medical Officers for posting to hospitals in the country.
- (b) It is the Graduate Medical Officers who have been involved in training the said AMPs;
- (c) At present, there are approximately 800 Medical Officers graduating every year;
- (d) In the circumstances, the Government could only offer employment for these Medical Graduates for another 2 years;

- (e) In view of the foregoing, the Government Medical Officers' Association (GMOA) has taken up the position that they would not engage in the training of Registered AMPs in future.

I annex herewith marked 2R2, a copy of a letter dated 18th December, 1997, sent by the GMOA containing, *inter alia*, the said position.

I also annex herewith marked 2R3 a copy of the relevant recruitment criteria, which specifically states (in paragraph 3 thereof) that RMOs and AMPs would be placed under the supervision of Graduate Medical Officers upon recruitment.

- (f) In the foregoing context, it would not be possible to conduct suitable training for Registered Assistant Medical Practitioners."

Was there more than a mere expectation or hope that might have been entertained by a reasonable man or woman? Eg cf. *Findlay v. Secretary of State for the Home Dept*<sup>(4)</sup>. Was there a 'legitimate expectation' in the sense of an expectation that was worthy of protection – one that has consequences to which effect will be given in public law? Cf. *Council of Civil Service Unions v. Minister for Civil Service*<sup>(5)</sup>. There are many judicial decisions and publications of learned jurists that help us to understand what makes an expectation legitimate. I refrain from examining them here. However, I do wish to quote with respectful approval the following words of Sedley, J. in *R v. MAFF, ex P. Hamble (Offshore Fisheries)*, (*supra*) at 731:

"Legitimacy in this sense is not an absolute. It is a function of expectations induced by government and of policy considerations which militate against their fulfilment. The balance must, in the first instance, be for the policy-maker to strike; but if the outcome is challenged by way of judicial review, I do not consider that the Court's criterion is the bare rationality of the policy-maker's conclusion. While policy is for the policy-maker alone, the fairness of

his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern (as of course the lawfulness of the policy). To postulate this is not place the judge in the seat of the Minister. . . (1) is the Court's task to recognize the constitutional importance of ministerial freedom to formulate and to reformulate policy; but it is equally the Court's duty to protect the interests of those individuals whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it."

The respondents called for applications in the *Government Gazette* of the 10th of April, 1996. The competitive examination for selection was held on the 27th of December, 1996. And, then by their letter dated the 20th of August, 1998, the respondents suggested there was a change of the advertised conditions. Evidently, there had been a change of policy. In my view, although the executive ought not in the exercise of its discretion to be restricted so as to hamper or prevent change of policy, yet it is not entirely free to overlook the existence of a legitimate expectation. Each case must depend on its circumstances, but eventually, it seems to me, that the Court's delicate and sensitive task is one of weighing genuine public interest against private interests and deciding on the legitimacy of an expectation having regard to the weight it carries in the face of the need for a policy change.

In general, a Government has a right to change its policies. As Lord Diplock observed in *Hughes v. Dept. of Health and Social Security*<sup>(6)</sup> :

"Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our form of constitutional Government. When a change in administrative policy takes place and is communicated in a departmental circular. . . any reasonable expectations that may have been aroused . . .by any previous circular are destroyed."

This passage might be thought to suggest that no expectation can survive a change in policy. That is not so. As Sedley, J. observed in *R v. MAFF*, (*supra*), at 730 : "But it is also well-established that 'it is a misuse of power for (a public body) to act unfairly or unjustly towards the private citizen when there is no overriding public interest to warrant it'. (see *HTV Ltd. v. Price Commission*<sup>(7)</sup> at 185 per Lord Denning MR, cited with approval by Lord Templeman in *Preston v. IRC*<sup>(8)</sup> at 340.

I am mindful of the reluctance of some courts to accord legitimate expectations substantive as opposed to procedural protection on the ground that to do so might encounter the objection of entailing, what Mason, C.J. of Australia in *Att-Gen. for New South Wales v. Quin*<sup>(9)</sup> described as 'curial interference with administrative decisions on the merits by precluding the decision-maker from ultimately making the decision which he or she considers most appropriate in the circumstances'. Admittedly, the legitimate expectation which has been created may sometimes be no more than that a particular procedure will be followed. eg. see *Att-Gen. of Hong Kong v. Ng Yen Shiu*<sup>(10)</sup>. On the other hand in certain cases the Court may in considering a challenge to an executive or administrative decision based on legitimate expectations consider substantive issues. A change in policy can have a substantive impact, eg. see *Re Findlay*<sup>(11)</sup>; Cf also *Robertson v. Minister of Pensions*<sup>(12)</sup>; *Lever Finance Ltd. v. Westminster (City) London Borough Council*<sup>(13)</sup>. Thus, if it can be shown that a decision was based on irrelevant considerations or that improper purposes were being pursued; it will be struck down on ordinary *Wednesbury* criteria." (*Associated Picture Houses Ltd. v. Wednesbury Corp*<sup>(14)</sup>); P. P. Craig, *Legitimate Expectations: A Conceptual Analysis*, (1992) vol.108 LQR 79 at 94. Craig (*ibid.*) observed: "Now it is of course the case that the application of these criteria can involve the danger that the Court may indirectly substitute its judgment on the merits for that of the administrative agency. This is however, a general problem with the, review of administrative discretion which is not rendered more or less difficult by the fact that the origin of the applicant's standing is the concept of legitimate expectation.

On the cogency of the "no fettering" argument, it has been, in my view, correctly said that it has been overstated. Craig (op. cit. at 90) said:

"Policies must of course be allowed to develop, and in this sense it is correct to say that they cannot be fettered. One cannot, therefore, ossify administrative policy, which may alter for a variety of reasons, including experience gleaned from the operation of the previous policy, change of political outlook, or new technological developments. Nonetheless, the "no fettering" theme must be kept within bounds. Where a representation has been made to a specific person, or where conditions for the application of policy in a certain area have been published and relied on, then the public body should be under a duty to follow the representation or the published criteria. This does not prevent it from altering its general policy for the future, but it should not be allowed to depart from the representation or pre-existing policy in relation to an individual who has relied, unless the overriding public interest requires it, and then only after a hearing."

In the matters before me there was no *Gazette* notification nor a circular formally announcing a change of policy. There was no announced change of policy based upon a change of Government. Indeed, there was no change of Government between the calling of applications and on the alleged change of policy that took place later. What was the explanation then for the deviation between the notification in the *Gazette* dated 10. 05. 1996 and the letter of 20. 08. 1998?

According to the affidavit of the second respondent, the Secretary of Health and Indigenous Medicine, there was "a time in the past when there were insufficient Graduate Medical Officers for posting to hospitals on the country" a "need for Assistant Medical Practitioners". The "need for Assistant Medical Practitioners" was recognized by the legislature in 1993: Indeed, Assistant Medical Practitioners continue

to be statutorily recognized as eligible to be registered to practice medicine and surgery even to this day. And, if there was no "need" for them in 1996, why did the Ministry of Health, Highways and Social Services by advertisement in the *Government Gazette* of 10. 05. 1996 call upon "citizens of Sri Lanka", including, of course the petitioners, who were "desirous of following a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Officers" to make their applications, and make them sit an examination in December, 1996, for selection, and then in August, 1997, announce the results of that examination? Why did the respondents fail to hold the interviews for checking the documents of the petitioners, as promised? Why did they fail to provide the promised course of training? Were these failures due to a change of policy based on considerations of overriding public interest? Or were the failures due to the omission of the first to third respondents to consult stakeholders before the advertisement and before policy changes were effected?

On the 18th of December, 1997. the Secretary of the GMOA wrote to the Minister of Health and Indigenous Medicine as follows:

#### PROPOSAL TO START THE AMP TRAINING PROGRAMME

"Further to the discussion we had with you at the Monthly Meeting on 17.12.97, we wish to reiterate our Association's stand on the above matter.

As at present the Government is not in a position to assure employment to all medical graduates and the intention of the government is to post qualified doctors to the peripheries. Therefore we see no justification to restart the AMP training course and our members would not participate in any component of the training programme.

These decisions have been arrived at a Special General Meeting of the GMOA."

The Minister made a Minute on that letter on the 6th of January 1998, to one of the Directors-General as follows:

"Please report whether this training could be done without assistance of the GMOA members."

It would appear that on the 6th of January, 1998, the Minister had given no indication of a change of policy; indeed, he seems to have wanted to carry on with the proposed training course, if that was possible. However, on the 6th of January, 1998, the official responded with the following minute addressed to the Minister:

"Without the assistance and the co-operation of the members of the GMOA it is impossible to conduct the training as they are responsible for almost 95% both didactic/clinical training."

The next step was the submission of a Cabinet Memorandum dated the 11th of March, 1998, by the Minister. It stated as follows:

#### FILLING THE POSTS OF REGISTERED/ASSISTANT MEDICAL OFFICERS FROM THE GRADUATE MEDICAL OFFICERS

There are about 1500 Registered Assistant Medical Officers serving in the Institutions under this Ministry and Provincial Councils and at present there exist 92 vacancies. This Ministry invited applications to fill the above vacancies and an examination was held by the Department of Examinations for this purpose on 27.12.1996. The Ministry has already received the results of this examination.

02. In the past, these posts have been created at a time when the number of graduate Medical Officers was not adequate to be posted to the hospitals. The approximate number of graduate Medical Officers who pass out annually from the Medical Colleges in Sri Lanka is about 800. When the number of vacancies



of Medical Officers exist at present is taken into account it is observed that the Ministry could provide employment only for the next two years. It is the sole responsibility of the Government to provide jobs for the doctors who are produced by spending a huge amount of Government money. Similarly, it is also the duty and responsibility of those Graduate Medical Officers to serve their motherland.

03. Upto now, it was the Graduate Medical Officers and the Consultant Medical Officers who contributed in a large scale for the said training of Registered Assistant Medical Officers. However, the Government Medical Officers' Union has informed me in writing that they will not engage in the duties of training Registered Assistant Medical Practitioners in the future.
04. In the circumstances, I would like to state that it is much more appropriate to fill the existing vacancies of Registered Assistant Medical Practitioners in the institutions under this Ministry and the Provincial Councils from the Graduate Medical Officers, to enable to obtain the services of Graduate Medical Officers who pass out annually from the Medical Colleges instead of training a new batch spending an additional amount of money from the Government funds.
05. In addition, I could suggest that an opportunity be granted to the candidates who have obtained higher marks at the said examination to follow the training course for para medical services and Public Health Inspectors if they so desire.
06. Accordingly, Cabinet approval is sought –
  - i. to fill the existing vacancies and those that would fall vacant in the future Cadre of Registered Assistant Medical Officers from the graduate Medical Officers.

- ii. to grant an opportunity to the candidates who have obtained higher marks at the examination held on 27. 12. 1996 to recruit Assistant Medical Officers to follow the training course for para medical services/Public Health Inspectors if they so desire."

The "circumstances" which made it "more appropriate" to fill the vacancies of Registered Assistant Medical Practitioners with Graduate Medical Officers are less than clear. Was it because the Minister was of the view that by doing so Government would be better placed in fulfilling its "responsibility. . . to provide jobs for doctors who are produced by spending a huge amount of Government money"? Was it to provide Graduate Medical Officers the opportunity of discharging their "duty and responsibility . . . to serve their motherland"? Was it to save the Government the expense of training Registered Medical Practitioners? Was it because the "Government Medical Officers' Union" had informed the Minister that "they will not engage in the duties of training Registered Assistant Medical Practitioners in the future"?

In responding to the petitioners' averment that in terms of the *Gazette* notification an interview ought to be conducted to select candidates for the advertised course of training, the second respondent explained in his affidavit that the GMOA had "taken up the position that they would not engage in the training of Registered AMPs in future", and that "in the foregoing context it would not be possible to conduct suitable training for Registered Assistant Medical Practitioners". In responding to the petitioners' averments that "despite repeated assurances made by the first respondent and the second respondent, the respondents have upto now failed and neglected to hold a *viva* and/or interview for the selection of students for the said course, nor has the said course of study commenced", the second respondent in his affidavit stated, *inter alia*, that "having regard to the fact that there was an adequate number of Medical Graduates to fill the said vacancies, the 1st respondent submitted a Cabinet memorandum seeking Cabinet approval to fill the existing 92 vacancies with Graduate Medical Officers, and to grant

an opportunity to the candidates who sat for the examination held on 27.12.1966 to recruit AMPs to follow the training course for para medical services/Public Health Inspectors, if they so desire."

Learned counsel for the respondents, Mr. Dharmawardana, was as usual frank, free from bias and partiality and very candid: He helped to rescue us from the involved submissions of the first respondent to the Cabinet and the averments of the second respondent in his affidavit. He said that the real reason for Interrupting the process of recruitment and training was the impossibility of providing the promised course on account of the necessary resource persons for providing the supervision and training of aspiring Assistant Medical Practitioners being unwilling to assist. However, learned counsel for the respondents added that since there were sufficient Medical Graduates, the services of Assistant Medical Practitioners were no longer required and that steps were being taken to reflect that situation in the relevant legislation.

It comes to this : in terms of existing legislative policy, both Medical Graduates and Assistant Medical Practitioners are qualified in specified circumstances to practice medicine and surgery. Having regard to published information, representations and past executive practice which the petitioners relied on in applying for the course of training and sitting the prescribed examination, they had a legitimate expectation that they would, upon satisfying the prescribed conditions, be provided with "a course of training for the examination leading to the award of the certificate of competency as Assistant Medical Officers". The respondents decided that it was preferable or necessary to employ Graduate Medical Officers to fill the vacancies of Assistant Medical Officers and to offer the petitioners a course of training leading to their qualification as Pharmacists, Medical Laboratory Technologists – described by the Minister as "paramedical services" – or as mere Public Health Inspectors, thereby resiling from the advertised scheme, representations and established practices.

No opportunity was given to the petitioners to argue why the change of policy should not affect them: they were faced with a situation where a change of policy had been made without their knowledge and when it had been decided that they might apply for some other, inferior, course "if they so desire". It was perhaps an unsatisfactory way in which the petitioners were dealt with by the first to third respondents from an administrative point of view. Moreover, legally, the respondents failed to observe their duty. When a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably: cf. *R. v. Secretary of State of the Home Dept, exp. P. Khan*<sup>(15)</sup>; *R. v. MAFF, ex p. Hamble Fisheries (supra)* at 731. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive. "They focus on formal justice and the rule of law, in the sense that the rules of natural justice help to ensure objectivity and impartiality, and facilitate the treating of like cases alike. Procedural rights are also seen as protecting human dignity by ensuring that the individual is told why he is being treated unfavourably, and by enabling him to take part in that decision." Craig (op. cit.) 86.

In addition to the procedural opportunity required by law, there is a substantive requirement that there must be an overriding public interest if a change of policy were to set at nought an individual's prior expectation: *R. v. Secretary of State for the Home Dept. (ibid)*; *R v. MAFF, ex p. Hamble Fisheries (ibid)*. There was no such interest claimed in the matters before me. For all the involved explanations of the first respondent in his Cabinet memorandum and that of the second respondent in his affidavit, essentially the change of policy was based on the preference of the interests of one of two classes of persons recognized by the Legislature as entitled to practice medicine to the other. The conflicting interests were those of the Graduate Medical Officers and the Assistant Medical Practitioners. The first, second and third respondents, considered the views of the Trade

Union known as the General Medical Officers' Union on behalf of Graduate Medical Officers and yielded to their pressure of non-cooperation in the matter of conducting the advertised course of training. Neither the views of the Assistant Medical Practitioners nor those of the petitioners were sought. The decision of the respondents, and recommendations to the Cabinet effecting a change of policy did not depend either upon considerations of public interest weighed against private interests or even upon an informed consideration of conflicting private interests.

The change of policy, in the circumstances, may nevertheless affect the future, having regard to the fact that the legislature and executive are free to formulate and reformulate policy; however, it is the duty of this Court to safeguard the rights and privileges, as well as interests deserving of protection such as those based on legitimate expectations, of individuals. In my view, the legitimate expectations of the petitioners with regard to the "Scheme of Training" as described in paragraph 11 of the *Gazette* notification of 10.05.1996 survive the policy change that has taken place.

For the reasons stated in my judgment,

I declare that the fundamental rights of the petitioners guaranteed by Article 12 (1) of the Constitution have been violated by the second respondent;

I further declare that document F1 dated the 20th of August, 1998, is of no force or avail in law as far as the petitioners are concerned.

I make order that in respect of each and every one of the sixteen petitioners the first, second and third respondents shall –

- (a) hold the interview referred to in Government *Gazette* No. 923 of 10. 05. 96 within eight weeks from the date of this judgment; and

- (b) provide the scheme of training advertised in *Gazette* No. 923 of 10. 05. 96 commencing within a reasonable time but not exceeding six months from the date of this order.

I further make order that the State shall pay each of the petitioners a sum of Rs. 5,000 as costs.

GUNASEKERA, J. – I agree.

WEERASEKERA, J. – I agree.

*Relief granted.*