IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Razik Rafeekdeen,
No. 73/25, Pansalahena Road,
Meetotamulla.

PETITIONER

C.A. Case No. WRT/0734/24

Vs.

1. The Incorporated Council of Legal Education,
   No. 244,
   Hulftsdorp Street,
   Colombo 12.

2. Mr. Prasantha Lal de Alwis,
   President's Counsel,
   Principal, Sri Lanka Law College,
   No. 244,
   Hulftsdorp Street,
   Colombo 12.

3. Mr. S. Prabakaran,
   Unit Head,
   Student Registration Unit,
   Sri Lanka Law College,
   No. 244,
   Hulftsdorp Street,
   Colombo 12.

4. Minister of Justice,
   Ministry of Justice, Public Administration,
   Home Affairs, Provincial Councils, Local
   Government and Labour,
   No. 19,
   Sri Sangaraja Mawatha,
   Colombo 10.

5. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Kasun Liyanage with Thilakkana Indunil instructed by Fathima Nushra Zarook for the Petitioner.

Manohara Jayasinghe, DSG with Panchali Witharana, SC, for the Respondents.

ARGUED ON : 07.07.2025

DECIDED ON : 03.09.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. The petitioner, an LL.B. graduate from the Buckinghamshire New University, has submitted an application to be admitted to the Sri Lanka Law College. The said application is marked P-15 and P-18. The same had been rejected by the Incorporated Council of Legal Education, the 1st respondent, and the 2nd respondent, the Principal of the Sri Lanka Law College conveyed the same by email dated 26.09.2024 (*vide*

P-17). The petitioner, by prayer *(c)*, is seeking a writ of *certiorari* to quash the said decision; by prayer *(e)*, is seeking a writ of *mandamus* directing the 1st and/or the 2nd respondent to approve the petitioner's application for admission as *an Attorney-at-Law student* and by prayer *(f)* is seeking a *mandamus* directing the 1st and/or 2nd respondent to afford an opportunity to the petitioner to place before the 1st respondent material to satisfy the said respondents to justify his eligibility. Those being the writs sought, the petitioner, by paragraphs *(d)* and *(g)*, are also seeking an Order calling for all the minutes of the 1st respondent, in relation to the consideration of the petitioner's application, and also a direction that the 1st and/or the 2nd respondent to file in Court such minutes.

2. Learned Deputy Solicitor General Manohara Jayasinghe appeared for the 1st and the 5th respondents. The objections of the said respondents were tendered on 18.03.2025. Thereafter, as directed by Court, the minutes of the meetings held on 27.08.2024 of the 1st respondent, and that of the Board of Studies dated 12.03.2024, were tendered along with a motion dated 03.07.2025, copies of which were made available to the petitioner. The counter affidavit of the petitioner was filed prior to that on 01.04.2025. This was taken up for argument on 05.06.2025, and 07.07.2025. Both parties were permitted to file their post-argument written submissions which the petitioners filed on 06.08.2025 and the respondents filed on 05.08.2025. Accordingly, this judgement is now pronounced.

3. As to the facts; the petitioner, upon obtaining his LL.B., has preferred the application P-15 and P-18 seeking admission to the Sri Lanka Law College. According to the said application, the petitioner has disclosed, under item 8, that he had been charged or convicted for a criminal matter and that the High Court Judge has imposed 01 year's imprisonment each for offences under Sections 120 and 291B of the Penal Code. The said sentence was suspended for 2 years together with Rs. 1500 State costs, in Case No. HC 2973/2021, so concluded on

26.04.2022. It is common ground that the rejection of the application was in view of the said criminal matter. The original indictment contained a charge under Section 3(3) read with Section 3(1) of the ICCPR Act, No. 56 of 2007, and a second charge under Section 291B of the Penal Code. However, upon the service of this indictment, as the petitioner had agreed to conclude this matter by pleading guilty, the State Counsel had amended the 1st count and substituted the same with a charge under Section 120 of the Penal Code. The petitioner had then pleaded guilty. The learned High Court Judge upon considering the submissions, had imposed sentences of 01 year's rigorous imprisonment for each of the counts and also imposed Rs. 1500 State cost for Count No. 1. The respective jail sentences have been suspended for 2 years, acting under 303 of the Code of Criminal Procedure Act. The learned High Court Judge has specifically stated that the sentence imposed on the 1st count will have no effect on his *law degree*, and then stated that the sentence should not be an impediment to the obtaining of the law degree and functioning as an Attorney-at-Law in the future. Finally, it is also ordered that the 1st accused, namely the petitioner in this matter, be released upon payment of the State cost and also made ordered that the petitioner be fingerprinted [*vide* P-14 (c)].

4. It was thus submitted that in view of the said order and the provisions of Section 303 (2) of the Code of Criminal Procedure Act, the pleading guilty and the concluding of the matter in that manner should not affect or be an impediment to his admission to the Sri Lanka Law College. It was also the submission that whilst the petitioner admits making the relevant utterances as alleged in the charges, the same was made in 2013 and immediately thereafter he has expressed his regret and sought forgiveness, which clearly demonstrates that he was genuinely repenting, and has reformed himself, which entitled him and his application be accepted notwithstanding the said criminal matter.

5. As opposed to that, the respondents' position, as submitted by the learned DSG, is that the petitioner does not have a right to be admitted to the Sri Lanka Law College and the said decision to reject and not to accept this application was a decision taken by the 1st respondent Council of Legal Education. In support of which, copies of the relevant Council minute were tendered. The learned DSG submitted that admission to the Law College is a matter exclusively within the purview of the 1st respondent and the fact that the petitioner was indicted in respect of a serious offence and he admitting liability and pleading guilty to the amended charges by itself is a relevant matter notwithstanding the imposition of the suspended sentence and State cost.

6. In the written submissions of the petitioner, it is submitted that the document (minutes) tendered along with a motion should not be accepted or considered, as they are not supported by any affidavit. The petitioner prayed that this Court call for and obtain the said minutes *[vide* prayers *(d)* and *(g)]*. In view of which, this Court did direct so and the respondents did submit the same with a motion dated 03.07.2025. The petitioner did have notice of this when the matter was taken up for further argument on 07.07.2025. No objection was raised as to these two documents then. They were referred to and adverted to in the course of the arguments.

7. However, as the petitioner raised the said objection in the post-argument written submission, the parties were appraised of this issue when this was mentioned for judgement on 02.09.2025. The learned Counsel for the petitioner did reiterate the objection. Accordingly, the respondents were permitted and directed to tender an affidavit in support of the said minutes, tendered along with the motion dated 03.07.2025. An affidavit of the 2nd respondent, the current Principal, was submitted in support of the said minutes. Accordingly, the said minutes can now be considered and acted upon. In these

circumstances, the said two documents (minutes) are produced to this Court in view of the application made by the petitioner. Thus, I see no merit in the belated objection taken in the written submission. Accordingly, the same is rejected and disregarded.

8. Entering the Sri Lanka Law College is for the purpose of finally seeking enrolment and admission as an Attorney-at-Law. The sole discretion and power to admit and enrol Attorneys-at-Law is vested with the Supreme Court by virtue of the provisions of Section 40 of the Judicature Act, which reads as follows:

> ***"40. Attorneys at law.***
>
> *(1) The Supreme Court may in accordance with rules for the time being in force admit and enrol as Attorneys at law persons of good repute and of competent knowledge and ability."*

However, a person may be so considered only if such person has duly passed the Attorney-at-Law Examinations held by the Sri Lanka Law College, and is of good repute, of competent knowledge and ability. The governing body of the Sri Lanka Law College is the Incorporated Council of Legal Education. Under Article 136 (1) (g) of the Constitution, the Chief Justice, with three Judges of the Supreme Court nominated by His Lordship, is empowered to make rules in respect of the admission, enrolment, suspension, and removal of Attorneys-at-Law. Correspondingly, the Incorporated Council of Legal Education is empowered to make regulations with the concurrence of the Minister under Section 7 of the Council of Legal Education ordinance.

9. These rules and statutes provide for the process by which Attorneys-at-Law obtain their required qualification and seek enrolment and admission to the legal profession. The process that culminates in the admission and enrolment commences with the admission of such person to the Sri Lanka Law College. The professional qualification and the academic qualification in the field of law are clearly different and

distinct. Sri Lanka Law College provides the professional qualification required to enrol as an Attorney-at-Law.

10. The petitioner's complaint is that his application to gain entrance to the Sri Lanka Law College had been rejected without him being heard. The material placed before this Court clearly establishes that the petitioner has submitted an application on the prescribed form, disclosing a criminal matter that which is relevant. According to the minutes of the Incorporated Council of Legal Education meeting held on 12.03.2024, the Principal of the Sri Lanka Law College has placed before the Council the issue of the suspended sentence to consider the eligibility and if the applicant is qualified to enter the Law College. The clarification sought is "*whether the High Court can decide on the applicants eligibility for the Sri Lanka Law College*" and if "*the offence/suspended sentence of one-year imprisonment lead the applicant to be unqualified to enter Sri Lanka Law College.*"

11. It is apparent that a copy of the indictment, the judgement, and other relevant proceedings have been made available to the Council at this juncture. The Council had adverted to the fact of the Character Certificates tendered along with the application, and also raised the question as to whether such a student could take oaths, and also noted that it is a matter for the Supreme Court. The Council had also considered and adverted to the fact of the seriousness of the charge in the indictment. Upon so deliberating the Council had been of the view, *that this student should not be admitted as a student.* To that extent, it is clear and apparent that the decision to reject and not accept the application of the petitioner had been made upon considering the relevant material. It is further relevant to note that prior to the decision of the Incorporated Council of Legal Education, the Principal of the Sri Lanka Law College has also placed this matter for consideration by the Board of Studies of the Incorporated Council of Legal Education who had directed the Principal to obtain the material and submit it to the

Council. Accordingly, upon the decision of the Incorporated Council of Legal Education (*vide* minute dated 12.03.2024), the Principal has conveyed the same to the petitioner.

12. As stated above, the substantive complaint of the petitioner is the failure to afford him an opportunity to be heard, i.e., the denial of his right to be heard. It is no doubt a cardinal principle of administrative law that no person shall be condemned without a hearing; the *audi alteram partem* rule being "*the first and foremost principle of natural justice.*" (***Kanda v. Government of Malaya*** [1962] AC 322 at 337, per Lord Denning: "*If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him.*") However, it is equally settled that this rule does not apply in its full rigour to every situation. According to Tucker LJ, in ***Russell v. Duke of Norfolk*** [1949] 1 All ER 109, 118:

> *"The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."*

13. The Sri Lankan courts have also applied the same principle, where Mark Fernando, J., in ***Karunadasa vs. Unique Gemstones Ltd. and others*** [1997] 1 Sri L.R. 256 held (at page 2..) as follows:

> *"To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents."*

Further, Janak de Silva, J., in ***Eco Life (Pvt) Ltd v. Rangana Fernando*** CA Writ 256/14 (CAM 18.10.2019) observed that:

> *"The application of the rules of natural justice can be excluded from the administrative decision-making process. The duty to act fairly may be satisfied in different ways depending on the circumstances of the case."*

His Lordship relied on ***Saeed v. Minister for Immigration and Citizenship*** [(2010) HCA 23; 241 CLR 252] where the High Court of Australia held that "*Natural justice is flexible and adaptable to the circumstances of the particular case."* In the present matter, the petitioner himself disclosed in his application the fact of his indictment and conviction. The record also demonstrates that the Council had before it the indictment, the sentencing order, and the character certificates of the petitioner when deliberating his eligibility (*vide* minutes dated 27.08.2024 and 12.03.2024). Then, in ***R. v. Gaming Board for Great Britain, ex parte Benaim & Khaida*** [1970] 2 QB 417, Lord Denning MR at page 430 remarked that administrative bodies engaged in determinations of character and fitness are not required to conduct hearings like courts of law; rather, factual fairness may be satisfied through alternative means.

> *"They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office (**Ridge v. Baldwin** 1964 AC 40), or depriving him of his property, as in **Cooper v. Wandsworth Board of Works** (1863 14 CB (NS) 180). After all, they are not charging him with doing anything wrong. They are simply inquiring as to his capability and diligence and are having regard to his character, reputation and financial standing. They are there to protect the public interest, to see that persons running the gaming clubs are fit to be trusted."*

14. The petitioner's substantive grievance is the denial of an opportunity to explain orally, so to say. Yet, the relevant matters were disclosed by the petitioner himself, and the Incorporated Council of Legal Education had before it the relevant order and indictment when making its decision. The Incorporated Council of Legal Education was not inquiring into any dispute nor making any adjudication or any competing or contentions between parties. It was deciding on the acceptance of an application. When all the relevant material is before such body, there is nothing else

that is required. In such circumstances, the failure to afford an additional oral hearing does not cause any prejudice or amount to any procedural unfairness. It is so, when the relevant material was in fact before the deciding authority. To my mind, the requirement of affording a hearing is no more than to give an opportunity to place the position and relevant matters by such person who may be affected by such decision. In the current context, the relevant issue is the fact of the petitioner promptly making amends and exhibiting remorse and the fact that he has now reformed himself. The petitioner, in his written submissions, has adverted to several Indian authorities, where attorneys disbarred or disenrolled on disciplinary grounds in view of criminal acts or convictions have been reconsidered to be restored. Accordingly, it is submitted that the petitioner himself, after the lapse of several years of the alleged incident, has now demonstrably reformed himself. As narrated above, these facts were placed before the Incorporated Council of Legal Education. When considering the nature of the offending act, which is in the form of pre-determined and calculated utterances, as opposed to a hot-blooded act in the spur of the moment, it does demonstrate a certain inherent propensity of the petitioner and also of a pre-planned act.

15. The learned High Court Judge has purported to pronounce that the sentence will not affect the petitioner's law degree or his functioning as an Attorney-at-Law in the future. This is based primarily on the premise of Section 303 of the Criminal Procedure Code. No doubt, this provision does provide that a sentence that which is suspended will not affect the employment or retirement benefits of such person. However, considering the nature of being a member of the legal profession and the considerations, the fact of being charged for a serious criminal offence and pleading guilty thereto, or a conviction, to my mind, is necessarily relevant, notwithstanding as to what sentence has been imposed. The provisions of Section 303 would not have a direct bearing on the decision as to the suitability and entitlement of such person to enter into the legal

profession or enrolment as an Attorney-at-Law. It is the gravity, nature, and act alleged and admitted or proved that is of paramount relevance.

16. Admission to the Sri Lanka Law College as stated above, is the commencement of the process which finally culminated in seeking enrolment and admission as an Attorney-at-Law. Admission to the legal profession stands on a different plane from the admission to any other profession. In the American context, the "right" to practice law had been held to be different and not like the right to engage in the ordinary business of any other occupation; it is said to be a "privilege" and a lawyer is also considered a quasi-public official [***In re Gibbs***,, 35 Ariz. 346, 278 Pac. 371 (1929), ***In re Cox***, 164 Kan. 160, 188 P.2d 652 (1948) and ***In re Thatcher***, 190 Fed. 969 (N. D. Ohio 1911)]. Correspondingly, in the Sri Lankan context too, Attorneys-at-Law are deemed to be Officers of Court. When the Supreme Court admits and enrols a person as an Attorney-at-Law, he is held out as being a person of good repute and of competent knowledge and ability, to whom matters of litigants and clients of an extremely personal and sensitive nature may be entrusted with confidence. That is the standard which a person is expected to possess to be considered for enrolment. In that context, the decision to disallow the acceptance of the application of the petitioner, cannot, to my mind, be considered as being irrational and unreasonable by the *Wednesbury* standard or otherwise. It is certainly one of the reasonable inferences or conclusions that may be arrived at on an objective consideration of the alleged act, even when considered with the subjective conduct of the petitioner that followed thereafter.

17. In the above context, all relevant materials had been placed before the Incorporated Council of Legal Education for their consideration. According to the minutes, it is apparent that upon discussion and considering this material, the Council has come to this impugned determination and conclusion. As aforestated, when considered in conjunction with the subsequent conduct and other matters placed before this Court, the impugned decision not to accept the application

is certainly not unreasonable. Considering in the context of the end result being the admission as an Attorney-at-Law, the serious offences, as depicted in the charges to which the petitioner has pleaded guilty, are clearly sufficient grounds to lawfully refuse and reject such application.

18. The petitioner has failed to satisfy this court of any lawful ground that entitles him to the relief as prayed for. Accordingly, I see no basis in law or otherwise to grant the relief as prayed for by the petitioner.

19. In the above premises, I am left with no option but to refuse and reject this application. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL