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

In the matter of an application for mandate in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Republic of Sri Lanka

Court of Appeal Writ
Application No:

CA/WRT/085/2026

CA/WRT/093/2026

CA/WRT/099/2026

CA/WRT/102/2026

CA/WRT/107/2026

1. Chanuth Thihansa Pathirage,
   No.159/C, Weda Mawatha,
   Thumbowila,
   Piliyandala.

And 02 Others.

PETITIONERS

vs

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

And 03 Others.

RESPONDENTS

Before: Justice N. R. Abeysuriya PC (P/CA)

Justice K. P. Fernando

Counsel: Harsha Fernando PC with Yohan Cooray, C. Senanayake, T. Samarasinghe, R. Weerasinghe instructed by K. Kaneshayogan for the Petitioners (CA/WRT/085/26)

Viran Corea PC with Thilini Vidanagamage instructed by K. Kaneshayogan for the Petitioner (CA/WRT/093/26)

Faisz Musthapha PC with Faisza Markar PC and Zainab Markar instructed by Dilini Gamage for the Petitioners (CA/WRT/099/26)

Suren Fernando with Shiloma David for the Petitioner (CA/WRT/102/26)

Suren Gnanaraj with A. Dharmasena instructed by Amila Kumara for the Petitioners (CA/WRT/107/26)

Sumathi Dharmawardhena PC SASG with Rajika Aluvihare SC and Abigail Jayakody SC for the Respondents

Supported On: 26.02.2026

Decided On: 11.05.2026

N. R. Abeysuriya, PC, J. (P/CA),

The Petitioners in these writ applications are a group of law college students who have admittedly obtained the LL.B degree from recognized private universities. The Petitioners' primary grievance is that the decision of the Incorporated Council of Legal Education which was taken on 17th July 2025 is arbitrary, capricious and unreasonable. The issue which is the subject matter of these writ applications is as to whether upon consideration of the relevant rules formulated by the Incorporated Council of Legal Education, the

Petitioners are required to sit for the preliminary, intermediate and final examinations of Sri Lanka Law College or whether they are exempted from any one or more of the aforesaid examinations. It is the contention of the Petitioners that they ought to sit only for the final examination and are exempted from the other two.

In the instant matters before this Court the various Petitioners have prayed for reliefs which are identical in nature. The Court decided to consolidate all these writ applications and consider the same in totality.

The said reliefs, inter *alia,* are as follows;

a. Writ of *Certiorari* quashing the decision of the 1st and/or 2nd Respondent and/or 3rd Respondents or any one or more of them which makes it mandatory to sit for the 1st and 2nd year examinations of the Sri Lanka Law College.
b. Writ of Prohibition against the 1st and/or 2nd Respondent and/or 3rd Respondents or any one or more of them from acting in violation of rule 32A by requiring the petitioners to sit for the 1st and 2nd year examinations as a condition precedent to sitting the final year examination of the Sri Lanka Law College.
c. Writ of *Mandamus* to direct the 1st and/or 2nd Respondent and/or 3rd Respondents or any one or more of them to register and permit the petitioners to sit only for the final examination.

It is an admitted fact in these proceedings that Sri Lanka Law College previously known as Ceylon Law College was established by the Council of Legal Education to offer formal legal education for those aspiring to become legal professionals. The regulatory authority known as the “Council of Legal Education” was incorporated by Ordinance No. 2 of 1900 subsequently amended by Law No. 6 of 1974 and Act No. 33 of 1993 *(hereinafter referred to*

as the Act). The Council under the said enactment is empowered to make by-laws and rules pertaining to an array of subjects which are specified in Section 7(1). Section 7 in its entirety is reproduced below,

7 (1) *It shall be lawful for the Incorporated Council of Legal Education, with the concurrence of the Minister, to make such by-laws, rules and orders as to it shall seem necessary for any of the following purposes:-*

(a) for convening the ordinary or any special meetings of the Council and fixing the number of ordinary meetings to be held each year, and the dates on which such meetings shall be held ;
(b) for prescribing the manner in which the seal of the Council shall be affixed ;
(c) for prescribing the course of studies and examinations to be observed by such law students and the payments to be made therefore ;
(d) for the appointment of lecturers and examiners, and fixing the salary or fees to be paid to such lecturers and examiners respectively ;
(e) for fixing the minimum number of marks to be earned by candidates at the several examinations ;
(f) for the appointment and removal of such secretary, librarian, officers, clerks, and servants as the Council may deem useful or necessary ;
(g) and generally for carrying out the objects for which the Council is incorporated into full force and effect.

(2) *Every by-law, rule or order made by the Council shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the by-law, rule or order, as the case may be.*

(3) *Every by-law, rule or order made by the Council shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any by-law, rule or order which is not so approved shall be deemed to be*

rescinded as from the date of disapproval, but without prejudice to anything previously done there under. Notification of the date on which any by-law, rule or order made by the Council is so deemed to be rescinded shall be published in the Gazette.

The Petitioners have tendered and marked the rules which are currently in force as P2(a). These rules have been amended from time to time and underwent further amendments by virtue of several gazettes.

As per the rules, the enrolment of students to Sri Lanka Law College is by way of a General Entrance Examination or a Special Entrance Examination (Rule 23(2)). The rules provide for an exemption from the preliminary and intermediate examinations to graduates who have obtained LL.B degree from state universities established under the Universities Act No. 16 of 1978.

Rule **23(4)(a)** is reproduced below;

23(4)(a) *Any person who is eligible under sub rule (1) and (3) and who has obtained a Bachelor of Laws Degree (LLB) from any university established or deemed to be established under the Universities Act, No. 16 of 1978 where the university admission is determined based on the Z-score or any other criteria, adopted by the University Grants Commission for the time being at the General Certificate of Education (Advanced Level) Examination shall be exempted from the General and Special Entrance Examinations and the Preliminary and Intermediate Examinations conducted by the Sri Lanka Law College and shall be directly admitted to the Sri Lanka Law College to sit the Final Examination conducted by the Sri Lanka Law College to qualify himself as an Attorney-At-Law of the Supreme Court of Sri Lanka*

As per rule 23(4)(b) students who have obtained LL.B degrees from the Open University of Sri Lanka or Kotelawala Defence University shall at the discretion of the Council be entitled to these exemptions at the discretion of the Council. The Special Entrance Examinations (SEE) was introduced to enroll students who have obtained the degree from recognized private universities. According to the submissions of the Respondents, 140 students were enrolled as students of Sri Lanka Law College subsequent to passing the SEE. The 11 Petitioners are amongst those 140 students. In the proceedings before this Court, Rule 32A came under intense scrutiny due to the reason that since it is this particular rule which has given rise to the matter in dispute.

The said Rule 32A is reproduced below;

32A. *Notwithstanding anything to the contrary in rule 30, 31 and 32, a graduate referred to in sub rule (6) and (7) of rule 23, who has been successful at the special entrance examination referred to in rule 23(2) and (12) may at any time after his admission as a student of the Sri Lanka Law College upon payment of all fees due, be admitted to the Final examination, subject to other relevant conditions as determined by the Council.*

The instant matter pertains to a decision taken by the Council with regard to the education qualifications required for the purpose of being admitted and enrolled as Attorneys at Law. In other words, the issue to be determined is as to which subjects should be offered at the relevant examinations for the Law students seeking admission and enrolment as Attorneys at Law. As contended by the Respondents, a decision has been taken to the effect that candidates who have passed the SEE must nevertheless demonstrate the requisite knowledge and competence by successfully completing all 3 examinations conducted by the Sri Lanka Law College in order to qualify for admission and enrolment as Attorneys at Law. (i.e. Preliminary, Intermediate, and Final year examinations)

I wish to reproduce in its entirety the decision of the Council taken on 17th of July 2025 as reflected in the minutes of the said meeting which were tendered to Court by the Respondents as an attachment to their written submissions dated 23rd of March 2026, marked "A".

The Council decided to re-visit the decision taken at the last meeting and after much deliberation it was decided that the decision of the last meeting be amended as follows;

As per Rule 32A (as amended by Gazette No, 2332/02 dated 15th May 2023) that an applicant who has passed the Special Entrance Examination "be admitted to the Final Year subject to other relevant conditions as determined by the Council".
Since the special entrance examination does not test the knowledge of any subject included in the curriculum of the Sri Lanka Law College in full, and in as much as all those who are enrolled as Attorneys-at-law needs to have sufficient knowledge on the laws of Sri Lanka taught at the Sri Lanka Law College, the Council unanimously decided that under the powers vested within the Council in terms of rule 32A, the Council can impose other relevant conditions on such students admitted to the Final Examination. In exercising the said power it was decided that such students have to pass all the subjects of the Preliminary and Intermediate years.

Accordingly, the students who are selected from the Special Entrance Examinations has to pass all the subjects of the Preliminary, Intermediate and Final Examinations upon being admitted to the Final Year and will be eligible to be admitted as Attorneys-at-Law only after passing all the subjects required to be passed at the said three examinations.

Such students can sit for all the subjects in the Preliminary, Intermediate and Final examinations together or in consecutive sittings without any requirement of attendance subject to any other applicable Rules.

The third paragraph of the minutes provides the justification for the decision taken by the Council with regard to the SEE. In my view, this decision was taken in order to address an issue which would arise unless it is resolved at the stage of law students obtaining professional qualifications. It is imperative that every single Attorney-at-Law who wishes to enter the legal profession be adequately grounded in the various enactments containing both procedural and substantive law, legal principles, judicial authorities and other aspects of the Sri Lankan legal system. These are not subjects which are offered to students in foreign or foreign affiliated universities. Without acquiring even a rudimentary knowledge on these matters, Attorneys-at-law who are admitted and enrolled would be "half-baked Attorneys-at-Law". If such persons are admitted and enrolled, it would be to the detriment of the legal profession, and in that context the decision taken by the Council is, in my view, timely and commendable.

The minutes of the Council meeting discloses that, for the category of students to whom the aforementioned decision of the Council is applicable would not be subjected to any requirements of attendance unlike the internal students of Sri Lanka Law College.

The issue to which the attention of this Court was drawn to by the Petitioners is as to whether the rules permit the Council to impose additional requirements and conditions on students who have successfully passed the SEE.

Relying on certain provisions contained in Section 7 of the Act, the Petitioners have submitted that with regard to such additional conditions, there is a limitation of the powers of the Council based on retrospective effect and

contended that such additional qualifications should be applicable only to students who are due to sit for the SEE in future. The Petitioners have based this contention on the provisions contained in sub section 2 of Section 7 of the Act which is reproduced elsewhere in this order. According to the said provisions, every by-law, rule or order made by the Council must be published in the Gazette and the operative date of such rules or by-laws would be the date of publication of the said Gazette. Based on the submissions of the learned counsel for the Petitioners, two aspects of this issue warrant consideration.

(a) Was there a requirement for the impugned decision of the Council to be published in the Gazette?

(b) Should the effective date of the aforesaid decision of the Council be prospective?

Upon the consideration of the impugned decision of the council taken on 17/07/2025, I am of the view that the said contention of the Petitioners with regard to the requirement of publishing in the Gazette is devoid of any merit. Although the said decision specifically alludes to Rule 32A, the Council by its decision did not amend or vary the said rule. In other words, the council has left Rule 32A **intact.** Due to this reason the requirement of publishing in the Gazette would not arise with regard to the impugned decision. There is no necessity to publish **every** decision of the Council in the gazette.

The latter part of Rule 32A contains the phrase ***subject to such other conditions as may be determined by the council.***

I am of the view that there is no ambiguity with regard to the legal and literal effect of the said phrase. As correctly decided by the Council, it can impose other relevant conditions on such students admitted to the final examination. I hold that the decision of the council is salutary and is not *ultra vires* the provisions of the act or the rules.

At this juncture, I wish to advert to another contention advanced by the Respondents which is to the effect that the subject matter of this application falls within the purview of the Supreme Court and therefore this Court lacks jurisdiction. This argument is premised on Article 136(1) of the Constitution.

It is the contention of the Respondents that all matters pertaining to admission and enrolment of Attorneys-at-Law is within the purview of the Supreme Court and therefore the Respondents further submitted that obtaining the requisite educational qualifications is an integral part of the "*process of determining a candidate's eligibility and suitability for admission as an attorney-at-law*" (*vide* written submissions of the Respondents dated 23rd of March 2026).

Article 136(1) of the Constitution, *inter alia*, contains the following provisions;

"*Subject to the provisions of the Constitution and of any law, the Chief Justice with any three judges of the Supreme Court nominated by him may, from time to time, make rules regulating generally the practice and procedure of the Court, including .....*
(g) the admission, enrolment, suspension and removal of attorneys-at-law and the rules of conduct and etiquette for such attorney-at-law "

The attention of Court was also drawn to Rule 67 and Rule 68 of Supreme Court Rules of 1978 which pertain to "Admission, Enrolment, Suspension and Removal of Attorneys-at-Law"

In this regard I wish to cite the Judgment in **Razik Rafeekdeen vs. The Incorporated Council of Legal Education and Others**[1]. In the said case Gihan Kulathunga J has succinctly analysed the distinction between academic

[1] CA/WRT/0734/24 delivered on 03/09/2025

qualifications and professional qualifications with regard to an Attorney-at-Law. I wish to cite the following two paragraphs from the said judgment.

"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 enroll 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 enroll 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 Article136(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.

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 related to enroll as an Attorney-at-Law"

I agree with the observations of Kulathunga J. With regard to the professional qualifications of an Attorney-at-Law, it is the Incorporated Council of Legal Education which governs Sri Lanka Law College which is the ultimate authority. However with regard to the matters such as enrolment and admission of an Attorney-at-Law, the Supreme Court which is headed by His Lordship the Chief Justice is the ultimate authority.

Furthermore, I have considered several decisions of the Supreme Court in which writ applications filed in the Court of Appeal pertaining to decisions of the Incorporated Council of the Legal Education were reviewed. In none of these matters, the jurisdiction of the Court of Appeal was challenged.

[See; **Wannigama vs. the Incorporated Council of Legal Education and Others**[2], **Amal Seneviratne and Others vs. the Incorporated Council of Legal Education and Others**[3]]

Upon the consideration of all these authorities, I hold that this Court is vested with jurisdiction to hear and determine the instant writ applications.

I wish to advert to the document marked P2(d) which is the gazette bearing no 2332/02 dated 15/05/2023 which contains the amendments to the rules of the Council.

Rule 23(4)(a) is of relevance to the instant matter. It reads thus,

"*Any person who is eligible under sub rule (1) and (3) and who has obtained a Bachelor of Laws Degree (LL.B) from any university established or deemed to be established under the Universities Act No. 16 of 1978 where the university admission is determined based on the Z Score or any other criteria, adopted by*

[2] [2007] 2 Sri L.R Page 281
[3] SC Appeal 163/2015 decided on 01/04/2021

the University Grants Commission for the time being at the General Certificate of Education (Advanced Level) Examination shall be exempted from the General and Special Entrance Examinations and the Preliminary and Intermediate Examinations conducted by the Sri Lanka Law College and shall be directly admitted to the Sri Lanka Law College to sit the Final Examination conducted by the Sri Lanka Law College to qualify himself as an Attorney-at-Law of the Supreme Court of Sri Lanka"

Rule 23(4)(b) reads as follows;

"*Any person who is eligible under sub rule (1) and (3) and who has obtained a Bachelor of Laws Degree (LL.B) from the Open University of Sri Lanka or the Kotelawala Defence University shall, at the discretion of the Council, be entitled to the exemption referred to in paragraph (a) of this sub rule or to the exemption referred to Rule 75(2)(a). The Council may, from time to time, subject to the provisions of sub rule (5) review its discretion to grant such exemption*"

As evinced from the rules reproduced above, law students who have obtained a Bachelor of Laws Degree (LL.B) from a state university established under the Universities Act No. 16 of 1978 have been granted a complete exemption with regard to the Preliminary and Intermediate Examinations and need to sit only for the Final Examination conducted by the Sri Lanka Law College to qualify himself as an Attorney-at-Law of the Supreme Court of Sri Lanka. Similarly, LL.B graduates of the Open University of Sri Lanka and the Kotelawala Defence University may be exempted at the discretion of the Council. However, no such exemptions have been specifically granted to the Law Students who were enrolled at the Sri Lanka Law College after successfully sitting for the SEE. If the intention of the drafters of the rules was to grant a similar exemption to the SEE students, there ought to have been provisions similar to Rule 23(4)(a) applicable to such students.

There was also a contention advanced by the Petitioners with regard to legitimate expectation. The stance of the Petitioners was that, by the conduct and certain representations of the Council made to the Petitioners particularly at the point of enrolling, that those generated a legitimate expectation to the effect that the Petitioners would be required to sit only for the Final Examination and would be exempted from the other two examinations. Assuming that there was in fact such an expectation generated, it is my view that, that fact alone would not be sufficient for the Petitioners in the instant matter to succeed. As I have observed elsewhere in this order, the primary concern of the Council when it took the impugned decision on 17/07/2025 was to raise the quality and competence of Attorneys-at-Law. In other words, this was the overriding consideration of the Council.

Several judicial authorities have held that even in situations in which a legitimate expectation may have been generated, the Court may take cognizance of any overriding public concerns which compelled the relevant authority to act in a particular manner. In this regard, I am guided by the following judicial authorities;

1. **Thirimavithana vs Urban Development Authority and Others**[4] Sisira De Abrew J held that, *the public authorities are bound by its undertaking/promises provided (1) that they do not conflict with its statutory duty (2) that there is an overriding public interest justifying the departures from the earlier undertakings or promises and if a public authority decides to act contrary to its published policy or decisions to frustrate Legitimate Expectation created among the individuals by way of promise or undertaking such decisions, unless there is an overriding public interest are liable to be quashed by way of Writ of Certiorari.*

[4] [2010] 2 Sri L.R Page 262

2. In the case of **Amal Seneviratne and Others vs The Incorporated Council of Legal Education and Others**[5], Malalgoda J cited with approval the following passage from **"Administrative Law" by Wade and Forsyth**[6] "*It is not enough that an expectation should exist; it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy of law*".

   In the same case Malalgoda J cited with approval the judgment in **Ram Pravesh Singh vs State of Bihar[7]** in which it was held that "*A legitimate expectation even when made out, does not always entitle the expectant to a relief, Public interest. Change in policy, conduct of expectant or another valid bona fide reasons given by the decision maker, may be sufficient to negate the legitimate expectation*"

Taking into consideration the facts of the instant matter to which I have alluded to above, I hold that the Petitioners have failed to establish that the impugned decision of the Council violated their legitimate expectation taking into consideration the overriding interest cast on the Council.

Another aspect of the instant matters warrants consideration at this juncture. It is with regard to the competence of this Court to determine matters such as educational and professional qualifications required to be enrolled as an Attorney at Law.

The Respondents strenuously contended that upon the consideration of judicial and other authorities the exercise of writ jurisdiction *in matters relating to education must be undertaken with great caution and restraint. Courts have*

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[5] (*Supra*)
[6] Administrative Law by H.W.R. WADE and C.F. FORSYTH 10th Edition Page 449
[7] (2206) 8 SCC 381

consistently recognized that academic bodies and regulatory authorities possess the necessary expertise and institutional competence to make determination relating to academic standards, examinations and qualifications. Such matters are inherently specialized and are best left to the discretion of the relevant educational authorities. (*Vide* the written submissions of the Respondents dated 23.03.2026)

The composition of the Council is laid down in Section 2(a) of the Act. Accordingly the Council shall consist of the following members,

(a) The Chief Justice, who shall be the Chairman of the Council;

(b) The Secretary to the Ministry charged with the subject of Justice;

(c) The Attorney-General;

(ca) Two Judges of the Supreme Court nominated by the Chief Justice;

(cb) The Solicitor-General;

(cc) Two members nominated by the Bar Association of Sri Lanka (hereinafter referred to as "nominated members ") from among its members;

(d) Six other members appointed by the Minister (hereinafter referred to as " appointed members"), from among persons of standing in the legal profession or persons who hold or have held judicial office or who-are or have been engaged in the teaching of law or legal research or who have secured academic distinction in law or made contributions to legal knowledge.

In my view the aforesaid composition represent the *crème de la crème* of the legal profession of Sri Lanka headed by no lesser person than His Lordship the Chief Justice. I am in agreement with the contention of the Respondents with regard to the prudence of deferring to the decision of the Council with regard to

matters pertaining to the requisite educational qualifications of Attorneys at Law.

The concept of "deference" is not alien to administrative law. Number of judicial and other authorities has discussed this aspect extensively. In many instances Courts were not reluctant to hold that notwithstanding the conformant of jurisdiction of judicial review of administrative decisions when dealing with matters which require technical or specialized knowledge to take decisions with regard to higher educational streams of studies such as Law, Medicine, Economics etc, it is best to entrust such matters to the competent experts.

While Courts possess the authority to ensure that statutory powers are exercised within legal limits, they do not ordinarily possess the competence and technical knowledge required to resolve, at first instance, disputes that depend upon detailed technical evaluation. It is for this reason that legislatures entrust the primary responsibility to specialized administrative authorities and, where necessary, provide mechanisms through which expert determination may be sought.

This Court has previously recognized this limitation in several matters such as cases involving the determination of product classification for the purpose of customs duty (HS Code Classifications).

In **T & J Pharma Imports (Pvt) Ltd vs. Director General of Customs and Others**[8] the Court of Appeal observed that it is not inclined, in the exercise of writ jurisdiction, to undertake the task of deciding the "correct" HS Code, particularly where such determination demands technical expertise and familiarity with the interpretative practices of customs administration. That recognition is not an abdication of responsibility; it is an acknowledgment of institutional competence.

[8] CA/WRT/210/2018 decided on 16th November 2020

In the aforesaid judgment, Obeyesekere J has expressed the following views.

I must say that this Court does not have the expertise to engage in the classification of a good imported to the country, nor would it attempt to do so in the exercise of its Writ jurisdiction. That expertise lies with Sri Lanka Customs, and its Nomenclature Committee, as well as with the World Customs Organisation. In instances where Courts lack such expertise, Courts would defer to the views of such expert bodies.

Furthermore, Obeyesekere J has considered under what circumstances a Court exercising writ jurisdiction should defer to the findings of an administrative body in circumstances in which the said Court lacks expertise and competence.

The Court has expressed the view that "*Although Courts do show deference to the views of expert bodies, that would however not prevent this Court from examining the reasonableness of the decision taken by Sri Lanka Customs with regard to the classification of a good.*"

Obeyesekere J has cited with approval the following passage from Administrative Law by Wade & Forsyth.[9]

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority.....

Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits."

[9] 11th Edition, Oxford University Press 2014 page 302

Courts routinely defer to the expertise of specialized administrative bodies, especially in technical or scientific matters, provided the decision is within the bounds of reasonableness and legality.

In **Mount Vernon Mini Hydro Power Project Vs Central Environment Authority**[10] which pertains to certain environmental regulations, the Court held thus;

It is well beyond our institutional competence to make such a determination... our supervisory role is circumscribed to the ordinary grounds of judicial review. In the absence of an allegation of the same, we cannot step into the shoes of an expert.

In the aforementioned **T & J Pharma Imports**[11] case, the Court made the following observations.

"In instances where Courts lack such expertise, Courts would defer to the views of such expert bodies... Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers..."

However, I wish to add that while Courts recognize "a margin of deference" to such matters as the decisions of the executive in economic and policy matters this doesn't shield decisions that are manifestly unreasonable, arbitrary or in breach of trust. A five-judge bench of the Supreme Court in **Dr. Athulasiri Kumara Samarakoon vs. Ranil Wickremesinghe**[12] having considered the Indian Supreme Court decision in **Ugar Sugar Works Ltd. vs Delhi Administration and others**[13] Court held thus,

"In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference to the Executive... This is not to state that the

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[10] CA/WRT/ 129/20 decided on 23/09/2022
[11] Supra
[12] SC/FR/212/2022 decided on 14/11/2023
[13] (2001) 3 SCC 635

Court will not provide a margin of deference to the relevant decision makers in implementing national economic policies. However, such decisions should be considered decisions, for the long-term sustainable development and for the public benefit."

It should be noted that deference is however not a shield for decisions that are illegal, irrational, unreasonable, or procedurally improper. Courts will intervene where administrative action is "outrageous in its defiance of logic" or violates natural justice.

This issue was once again considered by a five-judge bench of the Supreme Court in **Visuvalingam and Others vs. Liyanage and Others**[14] and held that,

"It is a well established rule that in reviewing the exercise of discretion the Court must not substitute its own opinion for that of the Competent Authority. If his decision is within the bounds of reasonableness, it is not the function of the Court to look further into the merits"

Similarly the Court of Appeal in **Colonel U. R. Abeyratne v. Lt. Gen. N. U. M. M. W. Senanayake**[15] citing H. W. R. Wade and C. F. Forsyth in Administrative Law[16] held thus,

"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority .....

[14] (1984) 2 SLR 311
[15] CA/WRT/239/2017 decided on 07.02.2020
[16] [11th Edition, 2014] Oxford University Press, page 302

Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits."

The Courts ought to be cautious in interfering with academic or professional standards, deferring to expert judgment unless there is illegality or procedural unfairness.

I have also considered the decisions of the Supreme Court in cases such as **Dr. Karunananda v. Open University of Sri Lanka**[17] and **Prof. Priyani Soyza v. Rienzie Arsecularatne**[18].

I am also guided by the judgment of the Court of Appeal in **Abeysundara Mudiyanselage Sarath Weera Bandara vs. University of Colombo and Others**[19] delivered by Nawaz J with Surasena J (P/CA) (as he was then) agreeing. In the said judgment their Lordships have cited with approval the following passage from **"Administrative Law" by Wade and Forsyth**[20] with regard to academic or pastoral judgments.

"The courts will, in any case, be reluctant to enter into 'issues of academic or pastoral judgment which the University was equipped to consider in breadth and in depth but on which any judgment of the Courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified'."[21]

I also wish to cite the following paragraph from the aforesaid judgment which has succinctly emphasized judicial thinking on this issue,

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[17] (2006) 3 SLR 225
[18] (1999) 2 SLR 179
[19] CA/WRT/844/2010 decided on 08/06/2018
[20] Oxford, Eleventh Edition, page 537
[21] *Sedley LJ, Clark v. University of Lincolnshire and Humberside (2000) 1 WLR 1988*

"The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinise and judge the merits and/or demerits of such decisions."

Upon the consideration of the authorities cited above, I am of the view that judicial deference in Sri Lanka is context-dependent, not absolute. Courts defer to administrative, executive, and legislative decisions where appropriate especially in technical, policy, or discretionary matters but will intervene where there is illegality, irrationality, procedural impropriety, or a violation of fundamental rights. The principle is best summarized by the Supreme Court's repeated assertion that there are no absolute or unfettered discretions in public law; all power has legal limits.

The Petitioners in their Petitions have prayed for Writs of *Certiorari*, *Mandamus* and Prohibition.

Halsbury[22] defines *mandamus* as follows,

"The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from High Court of justice, directed to any person, corporation or inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of public duty. Its purpose is to remedy the defects of justice, and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing the right and it may issue in

[22] Halsbury's Laws of England, 4th Ed., Vol.1, para 89, p.111

cases where although there is an alternative legal remedy yet the mode of redress is less convenient, beneficial and effectual"

The essentials of a Writ of *Mandamus* may be laid down as follows,

I. The Petitioner must have a legal right
II. The Respondent should have a legal duty
III. The Petitioner has no other efficacious alternative remedy
IV. There had been demand and refusal of the legal right
V. The Petition is filed *bona fide*

A Writ of *Mandamus* is issued to compel a public authority or official to perform a legal duty which they have refused or neglected to perform. The purpose is to enforce performance of public or statutory duty.

It is also important that a person seeking the Writ of *Mandamus* must come to Court with clean hands and with *bona fide* intention but it cannot be issued to gratify personal malice or ill-will.[23]

In **Kumara Edward Weerasinghe and another vs. Minister of Labour and Foreign Employment**[24], Sasi Mahendran J referring to ***Administrative Law, Eleventh Edition, H.W. Wade and C.F. Forsyth, page 528,*** *made the following observations with regard to the requirement of demand and refusal;*

"It has been said to be an 'imperative rule that an applicant for a mandatory order must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. But these formalities are usually fulfilled by the conduct of the parties prior to the application, and refusal to perform the duty is readily implied from conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expected it to do, so that it might decide at its own option whether to act or not.

[23] A.N.Shastri V State of Punjab AIR 1988 SC 404
[24] CA/WRT/821/23 decided on 30.09.2024

The court does not insist upon this condition where it is unsuitable.

As Channell J said: The requirement that before the court will issue a mandamus there must be a demand to perform the act sought to be enforced and a refusal to perform it is a very useful one, but it cannot be applicable to all possible cases. Obviously it cannot apply where a person has by inadvertence omitted to do some act which he was under a duty to do and where the time within which he can do it has passed.

An obvious case where no demand need be made is where a mandatory order is used as a substitute for a quashing order to quash a decision, as explained in the preceding section."

In ***King v. Revising Barrister for the Borough of Hanley*** *and* ***King v. The Town Clerk of Stoke on Trent, (1912) 3 KB 518 at 531****,*

His Lordship Channell J. held that: "Those being the facts which I assume, a question of some difficulty arise as to whether that mistake can be set right. In my opinion it can, under a doctrine of this Court, which is an extremely useful one, and which was established by a majority of the judges in the Court of Exchequer Chamber in Mayor of Rochester v. Reg. (1) The principle laid down in that case is well established and has to my knowledge been acted upon frequently. The principle is that a mandamus will lie to compel the performance of a public duty by a public officer although the time prescribed by statute for the performance of it has passed; and if the public officer to whom belongs the performance of that duty has in the meantime quitted his office and been succeeded by another person, the writ may be directed to the successor, and it is his duty to obey it; and where there is no successor, but the person who ought to have performed the duty has become functus officio, the latter may be ordered to perform it, though the time within which he could of his own motion have performed it has passed. It is a most useful jurisdiction which enables this Court to set right mistakes. That principle, it seems to me, is applicable to the present case, and it is applicable not only to the non performance of duties which the

person who ought to have performed them has refused upon demand to perform, but also to cases where the non performance arises from mere inadvertence, where he cannot have had his attention directed to the matter and cannot have refused upon demand to perform them. The requirement that before the Court will issue a mandamus there must be a ***demand to perform the act*** *sought to be enforced and* ***a refusal to perform*** *it is a very useful one, but it cannot be applicable in all possible cases.*

Obviously it cannot apply where a person has by inadvertence omitted to do some act which he was under a duty to do and where the time within which he can do it has passed." (Emphasis Added)

In the instant matter, the Petitioner has prayed for a Writ of *Mandamus* directing the relevant Respondents to register and permit the Petitioners to sit only for the Final Examination.

In **Vineeta Kumari vs Secretary, Ministry of Education and Others, Justice Wickum Kaularachchi**[25] held thus;

A condition that has to be fulfilled before filing a writ of mandamus is that the person or persons affected by the neglect of performance of duty should have asked the public authority concerned to perform that duty and the public authority should have refused to perform that duty. If the public authority wrongfully refused or neglected to perform the duty only, the affected party could seek a writ of mandamus.

In **Credit Information Bureau of Sri Lanka vs. Messers Jafferjee & Jafferjee Pvt Ltd**[26], J. A. N. De Silva J made the following remarks.

There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedents the issue of Mandamus appears to be:

[25] CA/WRT/334/2019 decided on 16.05.2023
[26] (2005) 1 SLR 89

(a) *The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (R v Barnstaple Justices[27]) The foundation of Mandamus is the existence of a legal right (Napier Ex parte[28])*

(b) *The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.*

(c) *The legal right to compel must reside in the Applicant himself (Ft v Lewis ham Union[29])*

(d) *The application must be made in good faith and not for an indirect purpose*

(e) *The application must be* ***preceded by a distinct demand for the performance of the duty***

(f) *The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.*

(g) *The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.*

(h) *The conduct of the Applicant may disentitle him to the remedy.*

(i) *It would not be issued if the writ would be futile in its result.*

(j) *Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.*

The issue to be determined is as to whether the Petitioners made any demand to the Council and a subsequent refusal of the same by the Council. The Petitioners have failed to establish the fact that they made a demand to the Council to consider their propositions. There's no proof submitted to Court with regard to any demand made to the Council and a subsequent refusal.

In the aforesaid circumstances this Court is of the view that there is no justification in issuing a Writ of *Mandamus* in the instant matter.

[27] (1937) 54 TLR 36

[28] 1852 18 QB, 692 at 695

[29] (1897) I QBD 498

Upon the consideration of all matters alluded to above, I hold that the Petitioners have failed to establish sufficient grounds warranting the issuance of formal notices on the Respondents.

Applications are dismissed *in limine.*

No order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL