

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

In the matter of an Application under and in  
terms of Articles 17 and 126 of the Constitution  
of the Democratic Socialist Republic of Sri Lanka

Liyanaarachchige Samurddhi Chakra  
Tillekeratne,  
"Rajasri", 879 /30,  
Waragoda Road,  
Singharamulla,  
Kelaniya

*- Petitioner-*

S.C.(F.R.) Application No. 653/2009

Vs.

1. The University Grants Commission,  
No. 20, Ward Place,  
Colombo 7.
2. The University of Sri Jayawardenapura,  
Gangodawila,  
Nugegoda.
3. The University of Colombo,  
"College House",  
94, Cumaratunga Munidasa Mawatha,  
Colombo 3.
4. Thirani Gimhani Pathirana,  
No. 44, Athurugiriya Road,  
Homagama.
5. Hon. Attorney-General,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

*- Respondents -*

Before : **J.A.N. de Silva, C.J.**  
**K.Sripavan, J.,**  
**Chandra Ekanyake, J.**

Counsel : D.S. Wijesinghe, P.C., with Priyantha Jayawardana and K. Molligoda for Petitioner.

Arjuna Obeysekera, SSC for 1<sup>st</sup> to 3<sup>rd</sup> & 5<sup>th</sup> Respondents.

Asitha Devendra for the 4<sup>th</sup> Respondent.

Argued on : 09.09.2009

Decided on : 11.09 .2009

**J.A.N. de Silva, C.J.**

Having granted leave to proceed for the alleged infringement of Article 12 (1) of the Constitution, Learned President's Counsel for the Petitioner and the Learned State Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> and 5<sup>th</sup> Respondents invited Court to take up the application for hearing in view of the grave urgency in the matter which relates to an inter-university transfer.

The 1<sup>st</sup> Respondent is the University Grants Commission established by the Universities Act No. 16 of 1978 as amended (hereinafter referred to as the said Act) and has the power to select students for admission to each Higher Educational Institution in terms of Section 15(vii) of the said Act. The Petitioner gained admission to the MBB.S. Degree Programme for the academic year 2008/2009 at the Faculty of Medicine of the 2<sup>nd</sup> Respondent whilst the 4<sup>th</sup> Respondent gained admission to the M.B.B.S. Degree Programme for the same academic year at the Faculty of Medicine of the 3<sup>rd</sup> Respondent.

Learned President's Counsel submitted that on 31<sup>st</sup> July 2009, the date on which the Petitioner registered at the 2<sup>nd</sup> Respondent University, she submitted an appeal to the 1<sup>st</sup> Respondent Commission seeking a transfer to the Medical Faculty of the 3<sup>rd</sup> Respondent University. It is not in dispute that the Petitioner received an

acknowledgement from the 1<sup>st</sup> Respondent Commission dated 8<sup>th</sup> August 2009, marked **P4**, stating that an appeal for an inter-University transfer would depend on the availability of vacancies and the order of the Z score and that the Petitioner should continue her studies at the University which had been already assigned until the formal letter of transfer is sent by the 1<sup>st</sup> Respondent Commission. Learned President's Counsel urged that at the Orientation Programme held on 24<sup>th</sup> August 2009, the Petitioner met another student who informed that her twin sister who got admission to the Faculty of Medicine of the 3<sup>rd</sup> Respondent University had made an application for a transfer to the Faculty of Medicine of the 2<sup>nd</sup> Respondent University. The said twin sister is the 4<sup>th</sup> Respondent in this application.

Learned State Counsel did not contest the reasons contained in the appeal letters of both the Petitioner and the 4<sup>th</sup> Respondent, marked **P3** and **P7** respectively. Thus, the only question to be considered by the Court is whether in the circumstances referred to in the two appeal letters, the inter-University transfers have to be permitted or not.

The admission Handbook of the 1<sup>st</sup> Respondent Commission marked **P2b** spells out the admission procedure. The following Clauses may become relevant for consideration by Court.

**Clause 11.3** - The successful candidates will be informed of their course of study and the University to which they have been selected. If they accept the offer, they should register with the University concerned when called upon to do so within the time period stipulated by the UGC.

**Clause 12a** - Vacancies due to no registration of students selected under the merit quota, will be filled on an all island merit basis.

**Clause 12b** – Vacancies due on no registration of students selected under the District quota, will be filled on a district merit basis. Vacancies in a particular district will be filled with students from the same district.

Thus, it could be seen that once the vacancies are filled in the aforesaid manner, the assignment of students to the Universities comes to an end. However, in terms of Clause 14.1, any student who wishes to get an inter-University transfer may make an appeal to the Appeals Committee appointed by the 1<sup>st</sup> Respondent Commission in terms of Clause 15. Such an appeal may be entertained by the Appeals Committee subject to certain conditions laid down in the said Clause.

The Learned State Counsel was unable to refer to any statutory provision under the said Act which empowers the 1<sup>st</sup> Respondent Commission to appoint an Appeals Committee. Thus, a further issue arises as to whether the creation of an Appeals Committee was *intra vires*, the powers of the 1<sup>st</sup> Respondent as contained in Section 15 of the said Act.

Learned President's Counsel contended that the Petitioner would be at a severe disadvantage by reason of the inordinate delay in effecting her transfer, in as much as, the academic programmes at the Faculty of Medicine of the 3<sup>rd</sup> Respondent University has commenced. The only contention of the learned State Counsel was that if a vacancy occurs in the 3<sup>rd</sup> Respondent University, the said vacancy has to be filled by C. Raguraj (Index No. 9372741) whose Z Score was higher than that of the Petitioner. The Court is at a loss to understand the basis on which C. Raguraj with a Z Score of 2.3311 has been assigned to the University of Peradeniya by the Appeals Committee. The Court is of the view that the requests made by the Petitioner and the 4<sup>th</sup> Respondent by the documents marked **P3** and **P7** respectively, being fair and reasonable, would not cause any hardship or prejudice to the students already selected to follow a course of study in Medicine. The question of "availability of vacancy" to accommodate the Petitioner as alleged in **P4** too does not arise.

In the totality of the foregoing circumstances, the Court declares that the Fundamental Rights guaranteed to the Petitioner by Article 12(1) have been violated by the 1<sup>st</sup> Respondent by its failure to effect the inter-University transfer. Having carefully considered that contents of **P3** and **P7** and the hardships caused to the Petitioner and the 4<sup>th</sup> Respondent, acting in terms of Article 126(4) of the Constitution, this Court makes the following directions :

- a. The 1<sup>st</sup> Respondent is forthwith directed to transfer the 4<sup>th</sup> Respondent to the Faculty of Medicine of the 2<sup>nd</sup> Respondent University for its M.B.B.S. Degree Programme for the academic year 2008/2009; and
- b. The 1<sup>st</sup> Respondent is forthwith directed to transfer the Petitioner to the Faculty of Medicine of the 3<sup>rd</sup> Respondent University for its M.B.B.S. Degree Programme for the academic year 2008/2009.

The aforesaid Orders are personal to the Petitioner and the 4<sup>th</sup> Respondent and would not create a precedent to any inter-University transfers that may be effected by the 1<sup>st</sup> Respondent Commission in the future.

**Chief Justice**

**K. Sripavan, J.,**

I agree.

**Judge of the Supreme Court**

**Chandra Ekanayake, J.,**

I agree.

**Judge of the Supreme Court**