

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME - LEVEL 5
FINAL EXAMINATION 2006
ADMINISTRATIVE LAW – LWU 3311/4331
DURATION : THREE (03) HOURS



DATE : 27th April 2006

TIME : 1.30 p.m. – 4.30 p.m.

ANSWER FIVE QUESTIONS ONLY.

Illegible handwriting will be penalized.

1. “The existence of a legitimate expectation may have a number of different consequences; it may give *locus standi* to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that if the authority proposes to defeat a person’s legitimate expectation, it must afford him an opportunity to make representations in the matter.”

Halsbury, Halsbury’s Law of England, 4th Edition, Vol 1(1), p.151.

Critically analyze the above statement.

2. The University Grants Commission (UGC) published the criteria for University entrance two months ago. Nalini applied for the Faculty of Science in the University of Colombo. She satisfied all the required qualifications set out in the entrance regulations. Two weeks after the deadline she received a reply rejecting her application. The letter did not state any ground for rejection. Nalini believes that she has a strong case against the decision of the authorities on the ground of failure to give reason.

She submitted an appeal to reconsider her application. The Appeal Board requested her to defend her case the following week. Although she made a request to retain a lawyer on her behalf the Appeal Board refused it. When her case was being heard the principal officer who rejected her application was sitting next to the president of the Appeal Board.

At the end of the hearing, the Appeal Board affirmed the earlier decision. The decision of the Appeal Board sets out a list of reasons for not permitting her application.

Nalini wishes to challenge the decision of the UGC on the ground of denial of principles of Natural Justice.

Advise her, referring to the current developments in the area of Principles of Natural Justice.

3. The Minister of Environment has the authority to publish the list of prescribed projects to obtain an Environmental Protection License (EPL). The Minister has appointed a committee to consider the factors affecting this decision. Based on the committee's recommendations, she published the list of prescribed projects in the government gazette. One provision in the regulations empowering the Minister states, that **"the Minister's decision is final and conclusive and it can not be challenged in any court."**

Arjuna owns a small-scale industry to produce carbon ink. The gazette includes this industry as a prescribed project for which an EPL is required. In the previous gazette his industry had not been included in the list of prescribed projects.

Arjuna challenged the Minister's decision on the ground that the Minister has no authority to delegate her powers to a committee. He argued that the Minister has gone against the substantive rules which govern her. He further states that one member of the committee is not on good terms with him as he is a political opponent.

Can the Minister's decision be challenged on the basis that it is *ultra vires*? Considering the U K and Sri Lankan jurisdictions, do you think Arjuna has a valid argument?

Discuss

4. **Either,**

In the light of the Supreme Court decision in *Silva vs. Iddamal goda (SC 471/2000 SCM 8.8.2003)*, explain the judicial approach of Sri Lanka towards *locus standi*.

Discuss the developments in this area comparing two other jurisdictions in the world.

Or

Section 1 of the School (Admission) Act 2005 empowers the Secretary of the Ministry of Education to determine the criteria for any school admission which, in his opinion, ensures **'equal access to public educational facilities'**. The Act does not provide any mechanisms for any person to appeal against the criteria; nor does it require giving reasons for his decision. The Secretary is required to consult principals, teachers and parents before making this decision.

In May 2005, the Secretary decided to reject 50 applications received by a popular school in Colombo. The Secretary claims the applicants have not satisfied the admission requirements stated by him. He further states that the particular school has no vacancy for the respective applicants because the school has already exceeded the required number of students. No clear reasons are given for the decision to reject each application. A recent research study by the Sri Lankan University Education Research Association suggests, in contrast, that the particular school is behind the required student intake and is in excess of resources. The Secretary has not consulted the principal, teachers and parents before making his decision.

You are approached by the following clients and all of them wish to know whether they have *locus standi* to challenge the Secretary's decision.

- a. Mahajana Vimukti Party, which has been campaigning for several years to save free education;
- b. Piyadasa Mohotti, who has just bought a very expensive house in the area so that his twin daughters could attend the school.

Advise your clients if they would be granted *locus standi* in these circumstances.

5. The Red Light Approach advocates a strong role for the courts to review administrative decisions. It considers that the function of law is to control the excesses of the State. The Green Light Approach considers that the function of administrative law is to facilitate the operations of the State.

Discuss.

6. The judicial review of administrative actions has its basic foundation on constitutional principles such as the rule of law and the separation of powers.

How would you justify the above statement? Discuss.

7. Critically assess how the public approach to administrative remedies either judicial or non-judicial has changed in the Sri Lankan context in the past few decades?

8. Under Article 126 of the 1978 Constitution of Sri Lanka, Executive and Administrative actions can be questioned on the basis of violation of fundamental rights. How do you distinguish between the role of public officers under administrative law and their role in the area of fundamental rights?

Discuss.

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