

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

In the matter of an application under and in terms of Article 17 & 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Sergeant N.W.A. Nihal
2. Bharatha Yomal Nanayakkara (Minor)

**Petitioners**

SC/FR/No. 32/2011

Vs.

1. M.G.O.P. Panditharathne,  
Principal,  
Dharmashoka College,  
Ambalangoda.
2. M.H.T. Wasantha (Secretary)
3. H.D.U. Chandima
4. Tharaka Maduwage
5. W. Ranaweera de Silva  
The 1<sup>st</sup> to the 5<sup>th</sup> Respondents of; Interview Board,  
Dharmashoka College, Ambalangoda
6. R.B. Methananda (President)
7. K.K. Kema Chandani
8. Dharmasiri Ginige
9. K. Indunil de Silva

The 2<sup>nd</sup> and 6<sup>th</sup> to 9<sup>th</sup> Respondents of; Appeals Board,  
Dharmashoka College, Ambalangoda.

10. Director – National Schools,  
Isurupaya, Battaramulla.

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

**Respondents**

BEFORE : HON. AMARATUNGA, J.  
HON. EKANAYAKE, J.  
HON. PRIYASATH DEP PC, J.

COUNSEL : J.C. Weliamuna with Pulasthi Hewamanne  
for the Petitioner.  
M. Gopallawa, Senior State Counsel for the  
Respondents

ARGUED ON : 14.09.2011

DECIDED ON : 28-03-2012

Priyasath Dep PC J

This is fundamental rights application pertaining to an admission of a student to year 1 class of a National School. The 1<sup>ST</sup> Petitioner is the father of the 2<sup>nd</sup> petitioner (minor), on whose behalf submitted an application for admission to the year 1 class of Dharmasoka College,

Ambalangoda. The 1<sup>st</sup> Petitioner after submitting the application for admission to the school took necessary steps to get the 2<sup>nd</sup> Petitioner admitted to the above school.

The first respondent is the Principal of the school and 2<sup>nd</sup> to 5<sup>th</sup> Respondents are the members of the Interview Board. The 6<sup>th</sup> to 9<sup>th</sup> Respondents are the members of the Appeal Board (on admission to Year 1, 2011). The 10<sup>th</sup> Respondent is the Director of National schools and the 11<sup>th</sup> Respondent is the Hon. Attorney General.

The admissions to Government Schools are governed by Circular No. 2010/21 dated 31<sup>st</sup> May 2011 which was annexed to the Petition as marked P2. The Applicants are furnished with another document referred to as "Guidance for admission of students to year 1" referred to as 'Guideline s' which was annexed to the petition marked P3

The percentages of students to be admitted under different categories under the above circular are given below:

Categories

Percentage

Children of Residents living in close proximity to the school	50%
Children of Old boys/girls of the school	25%
Brothers/sisters of students currently studying in the school	15%
Children of Staff members under the Ministry of Education	05%
Children of Transferred public servants	04%
Children of families resident abroad and returning to the country	01%

The 1<sup>st</sup> Petitioner submitted an application on behalf of the 2<sup>nd</sup> Petitioner for admission under "Brothers /sisters of students currently studying in the school category".

The circular and guidelines marked P2 and P3 provides marking schemes under different categories. The marking scheme for "Brothers /sisters of students currently studying in the school category" is given below: (Clause 6.3)

Brothers /sisters of students currently studying in the school category:

1 Three marks for each year the brother /sister has been in the school maximum being 30 marks.

2. Only one brother/Sister is considered

-Total 30 marks

b)Proof of residency established by the production of the extracts of electoral registers including the names of parents for a continuous period of 5 years preceding the year of submission of the application.

- Total 15 marks

c) Proximity to the said school; Hereunder an applicant would be allocated the maximum marks (35) unless there are other schools with Year 1 classes within the feeder area which are in closer proximity to the applicant. 5 marks are deducted for each school

-Total 35 marks

d) Production of title deeds under the name of the applicant or spouse to confirm residency.

- Total 10 marks

e) marks on the achievements of the brothers/sisters and for assistance rendered to the school.

-Total 10 marks

The Petitioner state that they received a letter dated 06-09-.2010 to attend an interview on 29.09.2010. The 1<sup>st</sup> Petitioner and his wife attended the interview and submitted following required documents among other documents:

- (a) A letter issued by the school certifying that the daughter of the 1<sup>st</sup> Petitioner and the sister of the 2<sup>nd</sup> Petitioner, Hansika Sandaruwini Nanayakkara attended school for 11 years
- (b) Extracts of the Electoral Registers
- (c) Certificate of residence issued by Gramaseva Niladhari in proof of residence
- (d) Unregistered Lease Agreement dated 01-08-2009
- (e) Certificates and other documents issued by the school in proof of the achievements and activities of the sister of the 2<sup>nd</sup> Petitioner.

The 1<sup>st</sup> Petitioner states that at the interview the Board examined the documents submitted by him and they were informed that their application received 79.5 marks under “brother/sister of students currently studying in school” category and he was required to sign a document .

The Petitioner states that on or about 05.11.2010 the “temporary list”of the students selected for admission were published on the Notice Board of the school. The Petitioner states that the name of the 2<sup>nd</sup> Petitioner was not in the temporary list.

The 1<sup>st</sup> Petitioner state that on or about 08.11.2008 the 1<sup>st</sup> Petitioner and his wife met the 1<sup>st</sup> Respondent (Principal of school)to discuss the non inclusion of the 2<sup>nd</sup> Petitioner in the Temporary list. The 1<sup>st</sup> Petitioner was informed that an anonymous petition was received against him and therefore his application was not entertained. The petitioners state that the contents of the Petition was not disclosed to them nor they were given reasons or an opportunity to explain. They were requested to submit an appeal.

The Petitioners submitted a formal appeal and also objected to the inclusion of several students in the Temporary List who had received lower marks than the 2<sup>nd</sup> Petitioner.

By a letter dated 7-12 2010 the Petitioners were requested to appear before the Appeal Board on 21-12-2010.The 1<sup>st</sup> Petitioner requested the Appeal Board to allow him to peruse the

relevant file pertaining to admission maintained by the College. On inspection of the file it was revealed that the Petitioner had received 79.5 marks. The Petitioner observed that there was a note in the file drawing the attention to the fact that the 1<sup>st</sup> Petitioner's daughter and the 2<sup>nd</sup> Petitioner's sister Hansika Sadaruwani Nanayakkara had made an application to the College in 2001 giving an address different to the address given in the present application. The 1<sup>st</sup> petitioner informed the Board that it was the previous address and he shifted to the current address in August 2009. The 1<sup>st</sup> Petitioner had stated that previous address also falls within the area demarcated as close proximity to the school. (Feeder area) The Petitioners state that the Appeals Board accepted that the Petitioners were subjected to grave injustice and their appeal will be favorably considered.

The 1<sup>st</sup> Petitioner states that in the final list of admission to year 1, to his utter shock and dismay the 2<sup>nd</sup> Petitioner's name was not on the list. The 1<sup>st</sup> Petitioner states that the 2<sup>nd</sup> Petitioner had secured 79.5 marks and eligible to be admitted to the school. The cut off marks on the final list for "Brothers /sisters of students currently studying in the school category" was 54 marks and the cut off marks for the waiting list was 43.4.

The Petitioners state that two applicants in the waiting list who obtained marks less than the 2<sup>nd</sup> Petitioner were included in the Final list. The Petitioners state that they submitted a complaint to the Human Rights Commission of Sri Lanka and that an investigation is pending.

The Petitioner states that non-selection of the 2<sup>nd</sup> Petitioner for admission to year 1 of the school is discriminatory, arbitrary and in violation of the rights guaranteed to the Petitioner under Article 12 (1) of the Constitution and the circulars and guidelines issued by Ministry of Education. Petitioner also stressed the fact that equal access to education is a basic safeguard recognized by the Constitution in Article 27(2) (h) and the Respondents by their conduct had detracted from the said duty towards the children such as the 2<sup>nd</sup> Respondent.

The 1<sup>st</sup> Respondent, the Principal of Dharmasoka College filed an affidavit denying the allegations made against him and the Interview Board of which he was the Chairman and also against the Appeal Board. He states that in the letters calling for interviews it was specifically mentioned under 'General Instructions' that in the event of information submitted found to

be incorrect or any of the documents submitted are found to be false the application for admission would be rejected and legal proceedings would be instituted against the applicant.

The 1<sup>st</sup> Respondent admits that the 1<sup>st</sup> Petitioner and his wife presented themselves before the Interview Board on 29.09.2010 under the “Brothers /sisters of students currently studying in the school category” and submitted documents referred to under sub paragraphs (a) to (e) of paragraph 11 of the Petition.

The 1<sup>st</sup> Respondent states that based on the documents submitted by the petitioners 79.35 marks were awarded by the Interview Board in respect of the Petitioners application.

The Petitioners had given the address of a residence bearing assessment No 51 /03, Ederamulla, Ambalangoda as their residential address. In proof of residence Petitioners submitted a Lease Agreement dated 01-08 2009 (P6 D) executed between Keraminiyage Mettanada Silva of 51/03, Enderamulla, Ambalangoda as lessor and Gallege Manel Manouri de Silva , wife of the 1<sup>st</sup> Petitioner and mother of the 2<sup>nd</sup> Petitioner as Lessee. The said document is the only document relied upon by the Petitioners to establish that they were residing in the address given in the application

The 1<sup>st</sup> Respondent stated that he received a letter sent by said K. Mettananda de Silva (Lessor) objecting to the selection of the 2<sup>nd</sup> Petitioner on the basis that the Petitioners are not residing in the address given in the application. He stated that the wife of the 1<sup>st</sup> Petitioner who was the Grama Niladarini was maintaining her office in a room in the premises belonging to him and the Petitioner’s family was not permanently residing in his premises. He further stated that during the period in which the interviews were held for school admissions, Petitioner’s family resided in the premises for 2-3 weeks. This letter of objection was marked 1R2 by the 1<sup>st</sup> Respondent. After the filing of this application the said Mettanada deSilva had submitted an affidavit reiterating the matters stated in his letter of objections. (1R3) In his affidavit he further stated that at the time of submitting the affidavit the 1<sup>st</sup> Petitioners wife had removed her office from his premises.

1<sup>st</sup> respondent stated that after the receipt of the objections he examined the extracts of the electoral registers submitted by the 1<sup>st</sup> Petitioner and it was revealed that in the extracts for the years 2005,2006,2007 and 2009 the names of the Petitioner and his wife were registered

under 21 E, Dr Colvin R, de Silva Mawatha, Elathota, Balapitiya. He states that this is the permanent residence of the Petitioner and Dharmasoka College is not the most proximate school to the permanent residence of the Petitioners. He further stated that inquiries revealed that the 1<sup>st</sup> Petitioner's daughter who was a student of Grade 10 had given her present address as 48, Station Road Balapitiya.

The 1<sup>st</sup> Respondent states that the Interview Board considered the objections and they were satisfied that the information given by the Petitioners regarding the place of residence was false and for that reason nullified the marks initially awarded to the 1<sup>st</sup> Petitioner's application. The application of the Petitioner was rejected under section 8-2 (a) and (f) of Circular 2010/21 Issued by the Ministry of Education. (P2). According to the said circular in the event of information or the documents submitted are found to be incorrect or false the interview Board could reject the application. The Appeal Board did not vary the decision of the Interview Board.

I find that the Petitioner had given false information regarding his permanent residence and the Respondents are justified in rejecting the Application submitted by the 1<sup>st</sup> Petitioner. The Respondents had acted in terms of the Circular 2010/21 issued by the Ministry of Education. I hold that there is no violation of the fundamental rights of the Petitioners.

I dismiss the Application. Costs fixed at Rs 10,000 to be paid by the 1<sup>st</sup> Petitioner to the State.

Judge of the Supreme Court

Gamini Amaratunge J

I Agree

Judge of the Supreme Court

Chandra Ekanayake J

I Agree

Judge of the Supreme Court

