

**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 and Article 126 of the Constitution
of Sri Lanka

Mohamed Uzman Nazeem
Appearing by his next friend,
Mohamed Azvin Nazeem,

Both of No. 11/5, Rosmead Place,
Colombo 07.

Petitioner

S.C.F.R.30/2012

Vs.

1. Upali Gunasekera,
Principal,
Royal College,
Colombo 07.
2. H.M.Gunasekara,
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
3. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

Respondents

Before

Shiranee Tilakawardene, J.

K.Sripavan, J.

Chandra Ekanayake, J.

Counsel

: Manohara de Silva, PC with Dharini Daluwatte for
the Petitioner

Viveka Siriwardane De Silva, SSC for the Attorney-General .

Argued on : 09.05.2012

Written Submissions

Filed : By the Petitioner on – 18.06.12
By the Respondent on - 23.07.12

Decided on : 30.8.2012

Sripavan. J.

Pursuant to a Newspaper notice published on 13th May 2011 calling for applications for the admission of students for Grade One for the year 2012, an application was submitted to Royal College, Colombo by the Petitioner, Mohamed Azvin Nazeem seeking admission to his son, Mohamed Uzman Nazeem, to Grade I.

The criteria for selection and the marking scheme in respect of each category are laid down in Circular No. 18/2011 issued by the Ministry of Education. It is not in dispute that the application submitted to Royal College, Colombo by the Petitioner was under the category of “Children of residents in close proximity to the school.”

By letter dated 10th August 2011 marked **D1**, the petitioner was requested to present himself for an interview on 5th September 2011 with certain compulsory documents referred to in the said letter. In addition to the aforesaid documents, residents in close proximity to the school were required to furnish the following documents:-

- “1.1 Documents of proof of residency for the last 5 years (2006-2010) such as Title deeds (Transfer/Gift); Registered/Un

Registered Lease Bonds (with a copy of the original deed of the property for which the lease is written); documents related to Government Official Quarters,

- 1.2 Other documents (Water bills, Tax bills, Electricity Bills, Telephone Bills etc. for the last 5 years – (2006-2010)”

Out of 10 marks, 4 marks had been deducted as the deed of the house was in the name of the petitioner’s mother. The petitioner’s son was awarded 69 marks based on the scheme of marking. When the names of the students who were admitted to Royal College were published in the provisional list, the name of the petitioner’s son did not appear in the said list although he obtained 69 marks. At the hearing before us, Learned Senior State Counsel conceded that cut off marks for admission of students under the petitioner’s category was 52.

The petitioner by letter dated 19th October 2011, marked **G** , appealed to the Principal, Royal College, regarding the non-inclusion of his son’s name in the provisional list and to re-consider his application. The petitioner was required to be present before the Appeals and Protests Board on 2nd November 2011. When the petitioner appeared before the said Board he was informed by the members of the Board that the reason for the non-selection of the petitioner was that the petitioner has failed to establish his residency at the address furnished by him when site inspections were carried out by the relevant authorities. Learned President’s Counsel for the petitioner submitted that the final list of students, selected to Royal College was released on 28th December 2011, but the name of the petitioner’s son had been omitted from the said final list too. Counsel argued that the decision

not to include the name of the petitioner's son amongst the selected students for Royal College was arbitrary, capricious and mala fide and therefore in violation of the petitioner's fundamental rights guaranteed under Article 12(1) of the Constitution.

Leave to proceed was granted on 17-02-2012 for the alleged violation of Article 12(1) of the Constitution.

Learned President's Counsel submitted that the admission or non-admission of a student, who has all the required qualifications and upon obtaining very high marks at the interview to be deprived of a place at a school, on the basis of purported inspection notes kept by school officials who visited his residence, is unreasonable and unfair and such a process places the site inspection officials in a very powerful position, whereby the fate of a child's future lies in the hands of the site inspection officials.

Learned Senior State Counsel relied on Clause 8.3 (c) of Circular No. 18/2011 which reads as follows:

“Before the publication of the interim list and the waiting list, the residence of the children under the category of residents in the close proximity to the school will be confirmed by a spot inspection. If the residence is not confirmed by such spot inspection, the name of the child shall be deleted from the list and called for the Appeal and Objections Investigation. If it is found to be necessary, other categories too may be subjected to a spot inspection....”

Learned Senior State Counsel argued that site inspections have to be carried out prior to the publication of the provisional list and such site inspections were in fact carried out on two occasions prior to the preparation of the provisional list and on both occasions no person had been present at the address furnished by the petitioner. Learned Senior State Counsel drew the attention of Court to the contemporaneous notes that had been made by officers who conducted the said site inspections. It would appear that a further site inspection had been carried out during the time the appeal was pending before the Board. The affidavit of Mr. Wanigasinghe who functioned as the Secretary to the Interview Board as well as the .Secretary to the Appeals Board and who was one of the members of the three site inspection teams, indicates the dates, time and the names of the other members who carried out the site inspection.

It is further noted that the petitioner's application to D.S. Senanayake College for admission to Grade I, had also been rejected on the basis that the petitioner had been unable to prove his residency at the address furnished by him, namely the same address he supplied to Royal College. The affidavit of Mr. Prince Ranjith who was a member of the site inspection team of D.S. Senanayake College and who visited the address given by the petitioner on two different occasions shows clearly that the petitioner has failed to prove his residency at the address given by him. Thus, it could be seen that five site inspections have been carried out by two schools at different dates and found that the petitioner was not living at the given address. I agree with the Learned Senior State Counsel that documentary proof of residency is not enough and the petitioner was required to establish his residency during site

inspections carried out by the school authorities. It is also observed that other than the deed, (which was in the name of the petitioner's mother) no other documents such as Water Bills, Tax Bills, Electricity Bills, Telephone Bills etc. for the years 2006-2010 were furnished by the petitioner at the interview.

It is the duty of the site inspection team to form an unbiased assessment after conducting inspections to ascertain the truthfulness of the claim of the residence at the address furnished by the petitioner. The members of the inspection team are entitled to such flexibility in their precedence as they think the particular case under consideration requires. The Court had the advantage of perusing the contemporaneous notes made by two different teams. There is no necessity for the two different inspection teams to indicate false entries in their spot inspection notes. The Court is undoubtedly bound by those inspection notes and cannot lightly disregard them. Judicial control or intervention may be possible and appropriate where the inspection teams obviously behaved capriciously or arbitrarily. The sole remaining question is whether the two inspection teams acted unfairly or arbitrarily. Nothing of this kind was advanced at the hearing. In fact, in the appeal lodged by the petitioner to the Royal College marked "G" he did not allege any mala fides on the part of the Respondents. The petitioner stated that he believed that the non-inclusion of the name of his child in the Temporary list for Grade I admission as being a selected candidate was a genuine mistake and none others. Hence, I see no reason to think that there was any vestige of unfairness or arbitrariness.

It is not possible for a Court to ignore Clause 8.3(c) because it may lead to what the Learned President's Counsel for the petitioner regards an unjust result. If Clause 8.3(c) needs amendment on the basis that it results in injustice, inconvenience and absurdity, the democratic process must be used by the relevant authorities to bring about the desired change.

Learned Senior State Counsel further contended that after filing the petition, further documents were tendered by the petitioner by motion dated 14.02.12 without permission of Court in order to prove petitioner's residence. Learned Counsel argued that the additional documents filed should not be considered, since the selection of students were made on the basis of documents furnished at the interview, the correctness of which were verified by site inspections. I entirely agree with this submission of the Learned Senior State Counsel.

Article 12(1) of the Constitution deals with the right to equality and equal protection of the law. The guarantee of equality ensures that among equals the law should be equal and should be applied equally.

Considering the totality of the available evidence, I hold that the petitioner's failure to confirm his residency at the address furnished by him, disentitle him to be treated equally with others who were admitted to Royal College under the category of "Children of residents in close proximity to the school". Thus, the petitioner has failed to establish that his fundamental right guaranteed under Article 12(1) of the Constitution has been infringed by the Respondents.

The Application is accordingly dismissed. There will be no costs.

Judge of the Supreme Court

Shirani Tilakawardene, J

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court

