

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

**S.C. FR Application No. 35/ 2011**

1. Dasanayakage Gayani Geethika
  2. Samarasinghe Mudalige Nandana Sugathsiri
  3. Samarasinghe Mudalige Mithila Themiya Adithya Samarasinghe
- All of No. 21R 26, E.D. Dabare  
Mawatha, Narahenpita, Colombo 05

**Petitioners**

**Vs.**

1. D.M.D. Dissanayake  
Principal,  
D.S. Senanayake College,  
Colombo 07
2. W.H. Premalal Kumarasiri,  
Principal, Mahanama College  
Colombo 03
3. P.S. Nonis,  
Director of Education,  
National Schools Branch  
Ministry of Education,  
"Isurupaya" Baththaramulla
4. H.M. Gunasekera  
Secretary,

Ministry of Education,  
"Isurupaya" Baththaramulla

5. Asoka Senani Hewage

Director General,

Library Documentation Services  
Board, Independence Avenue,  
Colombo 7

6. Honorable Attorney General,

Attorney General's | Department  
Colombo 12

**Respondents**

**Before :** Marsoof J

Ekanayake J

Suresh Chandra J

**Counsel :** Kanishka Witharana for Petitioners

Ms. S. Barrie State Counsel for the Attorney General

**Argued on :** 31/05/2011

**Decided on :** 12<sup>th</sup> July 2011

**Suresh Chandra J,**

The Petitioners made an application in terms of Article 126 of the Constitution for the alleged violation of their fundamental rights guaranteed under Article 12(1) of the Constitution as a consequence of the 3<sup>rd</sup> Petitioner not being selected for admission to Grade 1 of D.S.Senanayake College.

The Petitioners in their application have stated that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are the parents of the 3<sup>rd</sup> Petitioner for whose admission to D.S.Senanayake College they made an application for the year 2011. The application had been submitted under the category of "Children of the residents at close proximity to the School" which category is dealt with under Clauses 6.1(I-IV) of the circular No.2010/21 dated 31.5.2010 issued by the Ministry of Education regarding admission of children to Grade 1 of Government Schools marked P5. The Petitioners stated that they submitted documents P8 to P17 along with their application and tendered

documents marked P19A to P19T at the interview held on 7<sup>th</sup> September 2010 and that they were informed by the Panel who held the interview that they had received 57 marks. They were surprised to see that the name of the 3<sup>rd</sup> Petitioner was not in the list of children selected for admission which was displayed by the school. The 1<sup>st</sup> Petitioner had submitted an appeal in terms of the said circular and had given further grounds to substantiate her entitlement to have her child selected to the said School. Thereafter the 1<sup>st</sup> Petitioner had been required to attend an inquiry before the Appeals Board and she had submitted a further document (P22) from the National Housing Development Authority regarding the house that they were residing. According to the matters indicated by the 2<sup>nd</sup> Respondent at the appeal inquiry, the 1<sup>st</sup> Petitioner had been given the impression that she would be given a further 25 marks on distance and 4 marks for title documents by treating same as a lease, entitling them to earn 86 marks. However, when the final list was displayed in the School the name of the 3<sup>rd</sup> Petitioner was not included in the list either among those who were selected or those who were on the waiting list. The waiting list consisted of those who had received between 55 and 60 marks. The Petitioners had thereafter made the present application to this Court.

The Respondents filed objections by filing an affidavit from the 1<sup>st</sup> Respondent, who stated that the petitioner's assertion that they had earned 57 marks at the interview was false and that they had been awarded only 37 marks as per document marked R2, and that there was no alteration of the said marks at the Appeals Board, and that the 3<sup>rd</sup> Petitioner did not qualify for selection on the marks obtained by the Petitioners. The 1<sup>st</sup> Respondent has further stated that the Petitioners could not be awarded any marks under Clause 6.1(II) as they had not produced any of the documents set out in the circular, and that no marks could be allocated under Clause 6.1(IV) as the Petitioners could not be considered to have established the requirement of residence. The 1<sup>st</sup> Respondent further stated that the cut off mark for selection was 61 marks and that those who had obtained over 55 marks had been placed in the waiting list. The 1<sup>st</sup> Respondent in the said circumstances denied violating the fundamental rights of the Petitioners as alleged.

The application requires a consideration of the provisions of the circular P5(R1) which lays down the criteria for admission to Grade 1 of Government Schools specially regarding the matters pertaining to **residence**. The main thrust of the Petitioners application is that on the basis of residence they are entitled to have the 3<sup>rd</sup> Petitioner admitted to the school.

Clause 6.1 sets out that 50% would be admitted on the basis of "Children of residents in Close Proximity to the School". The said Clause 6.1 comprises four sub-clauses I, II, III and IV. Under I – "Titled residence", the electoral lists are taken into account and a maximum of 35 marks is allocated on the basis of 7 marks per year from the year prior to admission and the previous continuous five years.

Under Sub-Clause II, "Documents establishing residence" a maximum of 10 marks is given if the Ownership Deed is in the name of the Applicant or the spouse and within brackets it is stated as Transfer/Gift. If the Deed (Transfer/Gift) is in the name of the Applicant's or spouses father or mother, 6 marks are allotted.

It also states that documents under the Buddhist Temporalities Ordinance can be accepted according to the area, and further that Folios and Duplicates can also be considered.

Registered lease deeds and Government Official Quarters Documents would be allotted 4 marks and unregistered lease deeds would be allotted 2 marks.

Under Sub-Clause III – “Other Documents establishing residence” – A maximum of 5 marks is allotted on the basis of 1 mark for each document for documents such as National Identity card, Electricity bills, Water bills, Telephone bills, Marriage certificates, etc.

Under Sub-Clause IV – “Proximity to School from Residence” – Under this a maximum of 50 marks is allotted on the basis that if there are no other government schools having primary sections between the residence and the school that the child is sought to be admitted. If there are other schools in between where the child could be admitted, 5 marks to be deducted for each school.

The Respondents have produced document R2 along with their objections, which is a copy of the document which had been used by the School at the Interview which sets out the manner in which marks have been allotted. The said document is divided into four cages according to Clause 6.1 I to IV of the aforesaid Circular.

According to the said document R2, 35 marks have been allocated under Clause 6.1- I for the electoral Lists that had been produced as the names of the Petitioners have been registered at the address given by them as their residence for the years 2005 to 2009 continuously. It is also significant to note that the names of the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners as well as the name of “Kariyawasam Uluwita Gamage Kusumalatha” the mother of the 1<sup>st</sup> Respondent is also included as being at the same address.

No marks have been allocated under 6.1 –II regarding documents relating to the residence. In this cage, the necessary documents are listed as 1,2,3, and 4. In the category 2, which is “In the name of the Applicant’s mother or father” for which 6 marks can be given, in the column set apart for “maximum marks” a “?” mark has been put, and the word “mother” has been underlined.

Under Sub-Clause 6.1–III, 02 marks have been given on the basis of other documents establishing the residence. It is not quite clear as to the documents for which the 02 marks have been allocated, and it appears that out of the five documents stated in R2 , namely, National Identity card, Telephone bills, Water bills, Marriage certificate, driving license or other, only water bills have been ticked off.

Under Sub-Clause 6.1 – IV, regarding proximity to school from the residence, the figures “06” have been put within the cage stating this category and under the marks allotted column the figures “20” within brackets have been written and struck off with an oblique stroke of a pen and on the side it is written in Sinhala as follows:” Since there is no deed no marks can be given regarding schools”.

An examination of the said document shows that below the cage setting out the above mentioned particulars regarding the residence and marks, there is a legend "Full marks obtained: "and alongside that the following ".....(in words). There is no entry alongside "Full marks Obtained" nor is there anything written in words. However, at the right edge of the document which is below the cage set out for marks the figures "37" is written.

A further observation regarding Document R2 is that on the left had margin of the document the word "Kusumalatha" is written in Sinhala in ink, which is the name of the Applicant's mother as has been revealed in the petition and the documents produced. Further it is also stated in Sinhala in that margin in Sinhala that "there is no deed" and also the words "National" and "Documents" in Sinhala.

A consideration of Clause 6.1 of the Circular (R1) shows that the main consideration for selection of children under the category of "Children of those who are residing close to the School", would be the Applicant's place of residence. The relevant indices or criteria that are to be taken into account regarding the establishing of same are set out in 6.1 – I – IV referred to above.

The main thread which runs through all four categories is the concept of "residence".

The ordinary meaning that is given to "residence" is "the place where an individual eats, drinks, and sleeps or where his family or his servants eat, drink and sleep. (Wharton's Law Lexicon).

Residence as envisaged by the said Circular would imply a permanent abode which has been used for a continuous period. The manner in which 35 marks have been allotted would indicate that the continuity in such residence should be at least for a period of 5 years. Such residence does not necessarily connote ownership as the circular speaks of leases whether registered or unregistered being acceptable for the purpose of establishing residence. Credence is also given to the acceptability of other documents such as utility bills, employment letters, bank documents, letters received etc which would all serve as items establishing the genuineness of the residence. Such documents if available for a long period of time would indicate that they have been obtained for the purpose of getting a residential qualification. Procurement of such documents is sometimes referred to as "manufacturing" of documents. Care has to be taken in identifying such "manufactured" documents from genuine documents. Therefore interview panels should consider all the documents that are submitted by a prospective applicant and assess them carefully and see whether the cumulative effect of such documents would establish the genuine residence of such applicant.

According to Clause 6.1, 35 marks are given for the electoral register Extracts which would seem to be the basic and most important criterion and that the other documents referred to in Sub-Clause 6.1 – II and III substantiate or confirm the residence given in the electoral register extract. Therefore, if the electoral register extracts have been accepted and the entitlement of full marks (35) have been given, there is no reason as to why such an applicant cannot get marks under Sub-

Clause 6.1-IV which is 50 marks less 5 marks for each school from the residence to the school applied.

In R2 the interview sheet, under the category for other schools, the figure "6" being entered is significant, which would mean that there are six other schools between the residence and the relevant school for which 30 marks would be deducted and the applicant would be entitled to 20 marks. This is apparently the reason why the figures "20" have been entered in R2 within brackets and for some reason best known to the Interview Panel has been struck off with an oblique stroke and with the note "not entitled to marks as there is no valid deed".

It is my view that, once marks are given under Clause 6.1 for the Electoral Register Extracts which satisfies the criterion of "residence", then such an applicant is entitled to marks under Clause 6.1 – IV. Therefore accepting the fact that 20 marks could have been given as is seen in R2, to deprive the petitioners of such marks is incorrect and they are entitled to 20 marks on that score.

The Petitioners had also submitted several other documents, among which the relevant documents were the National Identity Cards and Telephone Bills which were in the name of the 2<sup>nd</sup> Petitioner, Child Health Development Record, Bank statements, documents regarding employment which refer to the residence of the petitioners etc. The other utility bills such as electricity and water were in the name of the mother of the 1<sup>st</sup> Petitioner, Kusumalatha. The documents that can be considered under Clause 6.1-III are not confined to the five documents listed therein, it refers to other documents without mentioning the type of documents. It is left to the interview Panel to consider other relevant documents. They cannot rule out those documents just because they are not listed in the relevant Clause. What is necessary to be seen is as to whether such documents can be considered to confirm the residence of the Applicants. In such circumstances important documents such as the child's health development record, and the letters regarding their employment should have been considered. Only 2 marks had been given under this category whereas according to the documents produced, even if the other documents are disregarded, for the two national identity cards, the telephone bill and the health record marks should have been given. I am of the view that at least 4 marks should have been given under this category.

The other matter that requires consideration is the document produced as P17 which is a document issued by the National Housing Development Authority on 1<sup>st</sup> June 2004 in favour of "K.U.P.Kusumalatha", which states that the said premises has been conveyed to her. According to the Affidavit tendered as P16 she is the mother of the 1<sup>st</sup> Petitioner. According to Clause 6.1, the documents listed are Transfer deeds, Gift deeds, Leases both registered and unregistered and government quarters documents. Would it mean that the document P17 cannot be considered to satisfy the criterion of residence, just because it is a letter and not a deed? From the documents that are to be considered in the circular, what is important is the establishing of the "residence" and not ownership. In effect the writing of the name "Kusumalatha" in R2 is indicative of the fact that the Interview Panel's attention had been drawn to P17.

On the face of it, P17 is not a deed which confers ownership of a premises. However, it is a document issued by the National Housing Development Authority relating to the particular residence wherein the petitioner's mother Kusumalatha is residing. If the deed of a parent of an applicant, and if a registered or unregistered lease document can be considered in favour of an applicant to establish residence, I see no reason as to why P17 cannot be considered, a reading of which clearly indicates that Kusumalatha would be given the said premises, which certainly goes to establish her residence at the said address, as well as its legitimacy. When the appeal was considered, the Petitioners had submitted P22 which was a confirmation of P17 issued by the National Housing Development Authority. In the said circumstances the Petitioners are entitled to get marks for P17 and since it is in the name of the mother of the Petitioner it should entitle the petitioner to get 6 marks.

In Haputhantirige and others v Attorney General (2007) 1 SLR 101, the question of residence and ownership was looked into by this Court in relation to a previous circular by the Ministry of Education and it went on to note certain instances where there have been large amounts of "manufactured deeds" shown as evidence of ownership when entering children into government schools. It was further noted that in circumstances such as where a property was inherited from a parent who had died and testamentary proceedings were not concluded or where instances of co-ownership or prescriptive possession could not be proven by title deeds people in such circumstances who would be considered owners of the property would not be allocated marks according to the marking scheme. It is clear that the interview panel should always have to look at the establishment of evidence to prove residence and consider the totality of what has been put forward as evidence by a parent to establish evidence rather than only carrying out an exercise of ticking the relevant box in relation to the specified documents mentioned in the circular alone. It has to be noted that such arbitrary views by interview panels would encourage parents of prospective students to government schools to obtain title deeds by any method and would undermine the whole purpose of the enforcement of the present circular.

On a consideration of the above matters, I am of the opinion that the Petitioners are entitled to 35 marks for the electoral register extracts, 6 marks for the residence document P17, 4 marks for the category of documents which confirm residence and 20 marks in relation to other schools, making up a total of 65 marks which is above the cut off mark for this school. This would entitle the 3<sup>rd</sup> Petitioner to obtain admission to the School.

The interview panel has failed to evaluate the documents that were submitted by the petitioners in support of their application to admit the child to the School and appear to have acted arbitrarily. The Panel appears to have considered the concept of residence in a very abstract manner and has failed to consider the totality of the documents that were submitted which clearly establish the residence of the Petitioners. The Panel seems to have acted under a fixed notion of considering residence only if the stereotyped documents relating to title, such as transfers, gifts, leases etc are produced without considering the cumulative effect of the totality of the documents submitted. Although such panels do have to interview large numbers, they have to be mindful of the fact that it is the ambition of every parent to admit their child to a

school of their choice when a child has reached the school going age and that they should consider such applications in a reasonable manner specially when such applicants have satisfied the basic criteria regarding residence.

In the above circumstances I hold that the Petitioners have established the fact of violation of their fundamental rights in terms of Article 12(1) of the Constitution. The decision of the Respondents that the 3<sup>rd</sup> Petitioner is not entitled to be admitted to D.S.Senanayake College is set aside. The Respondents are directed to take steps to admit the 3<sup>rd</sup> Petitioner to Grade I of D.S.Senanayake College forthwith.

**JUDGE OF THE SUPREME COURT**

**SALEEM MARSOOF J,**

**I agree.**

**JUDGE OF THE SUPREME COURT**

**CHANDRA EKANAYAKE J,**

**I agree.**

**JUDGE OF THE SUPREME COURT**