

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

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

**S.C. (F/R) Application No. 01/2015**

01. Jahangir Sheriffdeen.

No. 50A, Edward Lane,  
Colombo 03.

02. Harshika Samadhi Ranasinghe  
Sheriffdeen,

No. 50A, Edward Lane,  
Colombo 03.

On behalf of their daughter  
Nauyaa Sheriffdeen (Minor) of

No. 50A, Edward Lane,  
Colombo 03.

**PETITIONERS**

**-Vs**

01. Sandamali Aviruppola,  
Principal,

VisakhaVidyalaya,  
No. 133, Vajira Road,  
Colombo 04.

02. KalaniSuriyapperuma,  
Deputy Principal,  
VisakhaVidyalaya,  
No. 133, Vajira Road,  
Colombo 04.

03. RanjithChandrasekara,  
Director of Education for  
National Schools,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

04. AnuraDissanayake,  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

05. Attorney General,  
Attorney General's  
Department,  
Colombo 12.

**RESPONDENTS**

Before : Sisira J De Abrew J  
Upaly Abeyratne J  
Anil Gooneratne J

Counsel : JC Waliamuna for the Petitioner  
Janak de Silva Senior DSG for the Respondents

Argued on : 1.7.2016, 8.7.2016, 11.7.2016

Written Submission  
tendered : on 25.7.2016 by the Petitioners

Decided on : 3.10.2016

**Sisira J De Abrew J**

The Petitioners have filed this petition seeking a declaration that their fundamental rights guaranteed by Article 12(1) and 12(2) of the Constitution have been violated by the Respondents. They also seek a declaration that their child be admitted to year one for the academic year 2015 at Vishaka Vidyalaya, Colombo.

This court, by its order dated 16.1.2015, granted leave to proceed for alleged violation of Article 12(1) of the Constitution. The Petitioners state that their application to admit the child to Vishaka Vidyalaya, Colombo to year one for the academic year 2015 was rejected by the 1<sup>st</sup> to 4<sup>th</sup> Respondents. They, in their petition, affidavit and counter affidavit, state that they reside at No.50A, Edward Lane, Colombo 3 from 2009. The

Petitioners state that according to the circular issued by the Ministry of Education they are entitled to receive marks as stated below.

- |                                                    |   |          |
|----------------------------------------------------|---|----------|
| 1. Electoral Register                              | : | 28 marks |
| 2. Registered Lease agreement for four years 4x75% | : | 3 marks  |
| 3. National Identity Cards (NIC)                   | : | 1 mark   |
| 4. Marriage Certificate                            | : | 1 mark   |
| 5. Grama Sevaka Certificate                        | : | 1 mark   |
| 6. Distance between the school and residence       | : | 40 marks |

It is common ground that no applicant is entitled to receive marks regarding admission for the year 2015 on the ground that his or her name appears in 2014 electoral register. The Petitioners contend that they reside at No.50A, Edward Lane, Colombo 3 from 2009 and that for the years 2009 to 2013 they are entitled to 28 marks on the basis of electoral register (4 years x 7=28). They further contend that the 1<sup>st</sup> Respondent in paragraph 18 of her affidavit admitted that the Petitioners were entitled to marks according to the following schedule.

- |                                                      |   |    |
|------------------------------------------------------|---|----|
| 1. Voters' List (2011,2012,2013) (3x7)               | : | 21 |
| 2. Documentary proof of residence                    | : | 2  |
| 3. Additional documentation to prove residence (NIC) | : | 1  |
| 4. Distance between the school and residence         | : | 40 |
| Total                                                | : | 64 |

It is common ground that the cut off mark for the admission for the academic year 2015 at Visakha Vidyalaya is 65. Although the Petitioners contend so, it has to be noted that the 1<sup>st</sup> Respondent, in paragraph 18 of her affidavit filed in this court, has stated that the above 64 marks could be granted only if the application of the Petitioners considered to be genuine. When I consider the above matters, it is important to consider whether the application of the Petitioners is a genuine one. In short it is important to consider whether facts contained in the application are genuine. If the application is not a genuine one, the petitioners are not entitled to 64 marks stated in paragraph 18 of the affidavit of the 1<sup>st</sup> Respondent.

Learned Senior Deputy Solicitor General (Senior DSG) relied on the declaration made by the applicant (1<sup>st</sup> or 2<sup>nd</sup> Petitioners) in the application marked P2. The applicant at the end of the application has declared that the all the information supplied is true and if the said information proved to be false or forged, the application would be rejected. Learned Senior DSG contended that the applicant (1<sup>st</sup> or 2<sup>nd</sup> Petitioners) had agreed with the said conditions. He contended that in the application marked P2 the applicant (1<sup>st</sup> or 2<sup>nd</sup> Petitioners) had stated that in 2009 and 2010 the petitioners were residing at No.50A, Edward Lane, Colombo3 and that this information was false. I now advert to this contention. Although the Petitioners state that they, in 2009, were residing at Edward Lane, Colombo 3, birth certificate of the child (P2A) reveals that in July 2009, the father of the child, the 1<sup>st</sup> Petitioner was residing at No 100, Temple Road, Nawala. The Respondents have produced the Electoral Register of the Petitioner pertaining to year 2009 as R11. According to R11, the residence of the 1<sup>st</sup> Petitioner in 2009 was at 100, Temple Road, Nawala. From the above facts it is clear that in

2009, the 1<sup>st</sup> Petitioner was not residing at No.50A, Edward Lane, Colombo3. Thus when the 1<sup>st</sup> Petitioner, in the application marked P2, stated that in 2009 the Petitioners were residing at No.50A, Edward Lane, Colombo3, it appears to be false.

The Petitioners in the application marked P2, claim that, in 2010, they were residing at No.50A, Edward Lane, Colombo. To prove the said fact, they have produced the Electoral Register for 2010 marked P25B wherein it states that they were, in 2010, residing at No.50A, Edward Lane, Colombo3. But the NIC number of the 1<sup>st</sup> Petitioner given in P25B is 751380496X. The 1<sup>st</sup> Petitioner has produced a copy of his NIC marked P2G according to which his NIC number is 751380496V. Thus the NIC number of the 1<sup>st</sup> Petitioner stated in P25B is wrong. This document has been prepared on the information given by the 1<sup>st</sup> Petitioner. It appears from the above mentioned material that the 1<sup>st</sup> Petitioner has submitted a wrong NIC number to the Election Department with the chief occupant list relating to No.50A, Edward Lane, Colombo3. The Respondents have produced marked R1 the Electoral Register for the year 2010 relating to No.100, Temple Road, Nawala wherein it states that the 1<sup>st</sup> Petitioner, in the year 2010 was residing at No.100, Temple Road, Nawala and the NIC number is 751380496V. This NIC number of the 1<sup>st</sup> petitioner is correct according to the copy of his NIC (P2G). From R1 and P25B it appears that the 1<sup>st</sup> Petitioner, in the year 2010, has had two places of residences. According to R1(Electoral Register for the year 2010 produced by the Respondents), in the year 2010, the 1<sup>st</sup> Petitioner was residing at No.100, Temple Road, Nawala. But according to P25B(the Electoral Register for the year 2010 produced by the Petitioners), in the year 2010, he was residing at No.50A,

Edward Lane, Colombo3. At the hearing before us the petitioners submitted that the two other persons mentioned in R1 are the parents of the 1<sup>st</sup> Petitioner. Further I would like to observe that according to R1, the 1<sup>st</sup> Petitioner and his parents were, in the year 2010, were residing at No.100, Temple Road, Nawala. Therefore the above information contained in R1 would have been supplied to the Grama Sevaka by the father of the 1<sup>st</sup> Petitioner. According to the particulars in P25B (the Electoral Register for the year 2010 relating to No.50A, Edward Lane, Colombo3), the 1<sup>st</sup> Petitioner and his wife, the 2<sup>nd</sup> Petitioner, were, in the year 2010, residing at No.50A, Edward Lane, Colombo3. Thus the particulars in P25B would have been supplied to the Grama Sevaka by the 1<sup>st</sup> Petitioner. Can the 1<sup>st</sup> Petitioner contend that the particulars contained in R1 supplied by his father are false? On the other hand can the 1<sup>st</sup> Petitioner contend that the particulars contained in P25B supplied by him are correct in view of his father's declaration? When I consider the above matters it is relevant to consider Section 7 of the Registration of Electors Act No.44 of 1980 which reads as follows:

7(1) *“No person shall be entitled to have his name entered or retained in more than one register, notwithstanding that he may be qualified to have his name entered or retained in two or more registers.”*

7(2) *“No person shall be entitled to have his name entered or retained more than once in the same register, notwithstanding that he may be qualified to have his name so entered or retained.”*

It appears from the above section, that the 1<sup>st</sup> Petitioner is not entitled to maintain that he was residing in more than one place.

In view of the particulars in P25B and R1, the 1<sup>st</sup> Petitioner, by letter marked P24, had written to the Commissioner of Elections clarifying the matters set out in the said documents. The Commissioner of Elections, by letter marked P25, replied the 1<sup>st</sup> Petitioner. According to P25, in the year 2010, the people who were residing at No.100, Temple Road, Nawala would have declared that the 1<sup>st</sup> Petitioner was residing at Nawala and the 1<sup>st</sup> Petitioner would have declared that he was, in the year 2010, residing at No.50A, Edward Lane, Colombo3. According to P24, the 1<sup>st</sup> Petitioner informed the Commissioner of Elections that he, on 1.2.2009, changed his residence from No.100, Temple Road, Nawala to No.50A, Edward Lane, Colombo3. Thus he, by P24 takes up the position that he changed his residence from Nawala to Edward Lane Colombo3 on 1.2.2009. Is this position true? In finding an answer to this question, it is relevant to consider the child's birth certificate marked P2A. According to P2A, the 1<sup>st</sup> Petitioner, in July 2009, had declared that he was residing at No.100, Temple Road, Nawala. Therefore the 1<sup>st</sup> Petitioner's declaration in P24 that he changed his residence on 1.2.2009 from No.100, Temple Road, Nawala to No.50A, Edward Lane, Colombo3 **is proved to be false** by his own declaration. The 1<sup>st</sup> Petitioner in his counter affidavit states that prior to the birth of the child he and his wife were residing at No.50A, Edward Lane, Colombo3 and his wife left for the delivery of child to the hospital on 30.7.2009; that after the child was born he took his wife to his parent's house at No.100, Temple Road, Nawala as his wife required the assistance of his mother immediately after the child's birth; that they temporarily

stayed for few weeks at the parent's home; and that in these circumstances birth certificate of the child carried the address of his parents. If his said story in the counter affidavit is correct, his temporary residence was his parent's residence at Nawala and his residence was at No.50A, Edward Lane, Colombo 3. Then why did he declare his temporary residence as his residence in the child's birth certificate without declaring his residence at Edward Lane? The above facts demonstrate that No.100, Temple Road, Nawala was not his **temporary** residence but his residence at the time of child's birth. The document marked P24 has been produced to this court by the 1<sup>st</sup> Petitioner with his counter affidavit. When I consider the above matters, it appears that the 1<sup>st</sup> Petitioner has submitted a document (P24) which contained falsehood to this court.

The Petitioners, by unregistered lease agreement dated 31.1.2009 marked P2J state that they took premises at No.50A, Edward Lane, Colombo 3 on a lease. Thus they try to prove that they came to reside at No.50A, Edward Lane, Colombo3 on 1.2.2009. The 1<sup>st</sup> Petitioner, by his letter marked P24, too states that he came to reside at the said address on 2.1.2009. This lease agreement was for two years from 31.1.2009 to 31.1.2011. Thus if the Petitioners' contention is true, they had taken residence at No.50A, Edward Lane, Colombo3 from 2.1.2009 and continued till 31.1.2011 as per lease agreement marked P2J. The 2<sup>nd</sup> lease agreement for the period of four years from 31.1.2011 to 31.1.2015 was produced marked P2I. In the said lease agreement the 1<sup>st</sup> Petitioner stated that his address on 31.1.2011 was No.100, Temple Road, Nawala. If the Petitioners on 31.1.2011 were residing at No.50A, Edward Lane, Colombo3 as admitted in previous lease agreement P2J, why did the 1<sup>st</sup> Petitioner state that his address on 31.1.2011

was No.100, Temple Road, Nawala? This cannot be considered as a mistake because the 1<sup>st</sup> Petitioner very strongly takes up the position that he changed his residence from Nawala to No.50A, Edward Lane, Colombo3 1.2.2009. He even wrote a letter to the Commissioner of Elections (P24) informing his change of residence. When I consider all the above matters, I hold that the Petitioners have not proved that in 2009 and 2010 they were residing at No.50A, Edward Lane, Colombo3 and that the Petitioners' claim that they were, in 2009 and 2010, were residing at No.50A, Edward Lane, Colombo3 is false.

According to the Electoral Register of the Petitioners for the year 2010 (P25B), the Petitioners were, in 2010, living at No.50A, Edward Lane, Colombo3. But the Respondents have produced marked X a Electoral Register for the year 2010 which states that the 2<sup>nd</sup> Petitioner with three others namely Ranasinghe Arachchige Nimal, Roshan Lalinda Ranasinghe and Swrana Ranasinghe was living at No.387/E/1 Ratmalana Road, Ratmalana in the year 2010. Therefore the declaration in the application for the admission of the child to Visakha Vidyalaya (P2) that the 2<sup>nd</sup> Petitioner was in 2010 living at No.50A, Edward Lane, Colombo3 appears to be false and cannot be accepted.

According to the birth certificate of the child, the 1<sup>st</sup> Petitioner, in July 2009, was living at No.100, Temple Road, Nawala. But as I pointed out earlier, the 1<sup>st</sup> Petitioner, in P24, states that he on 1.2.2009, changed the his residence from Nawala to at No.50A, Edward Lane, Colombo3 and that from 1.2.2009, he has been living at No.50A, Edward Lane, Colombo3.

The above facts are disproved by his own declaration in the birth certificate of the child.

When I consider the above matters, I hold that the Petitioners, declaration that they, in 2009 and 2010, were living at No.50A, Edward Lane, Colombo3 is false. The 1<sup>st</sup> Petitioner, at the end of the application marked P2, has admitted that if the particulars in the said application (P2) are found to be false, his application would be rejected. On this ground alone, the application of the 1<sup>st</sup> Petitioner for school admission (P2) had to be rejected by the school authorities. If the particulars furnished in the application marked P2 are false, the petitioners are not entitled to the reliefs claimed in their petition filed in this court. For the above reasons, I hold that the application marked P2 is not a genuine one. Therefore the petitioners are not entitled to 64 marks stated in paragraph 18 of the affidavit of the 1<sup>st</sup> Respondent. The petitioners contended that in any event that even without marks for the electoral registers for the years 2009 and 2010 being assigned, they are entitled to 69 marks which should be higher than the cut off mark (65 marks) for the admission to Visakha Vidyalaya. In considering this contention, it is necessary to consider whether the Petitioners have shown *uberima fide* when they filed the present petition in this court. When a person files a fundamental rights application in court, he makes a declaration to court that all what he has submitted to court in his petition and affidavit was true and moves court to act on the said material and further he enters into a contractual obligation with the court to the effect that all what would be submitted by him by way further documents would be true. Subsequently, if the court finds that his declaration to be false and/or he has not fulfilled the said contractual obligation, his

application or the petition should be dismissed in limine. Further when he seeks intervention of court in a case of this nature, he must come to court with frank and full disclosure of facts. If he does not do so or does not disclose true facts, his petition should be rejected on that ground alone. This view is supported by the following judicial decisions. In Jayasinghe Vs The National Institute of Fisheries [2002] 1SLR 277, the petitioner sought a declaration that his fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by some of the respondents. The Supreme Court held thus:

*“The petitioner’s conduct lacked uberima fides. The application has to be rejected in limine on this ground as well. This is a principle which applies to cases coming up before the Court in writ cases as well as in injunction applications and even in admiralty cases. In such cases relief will be refused in limine without hearing the case on the merits even where the decision is alleged to have been made without jurisdiction. The same principle applies to applications under Article 126 (2).”*

Fernando Vs Ranaweera [2002] 1SLR 327. This was a fundamental rights application. This court held as follows:

*“The Petitioner’s conduct in particular, in obtaining interim relief showed lack of oberima fides. This too disentitled him to redress from court.”*

In RPPN Sujeewa Sampath and RPPN Hasali Gayara Vs Sandamali Aviruppola, Principal Visakha Vidyalaya SC FR 31/2014 decided on 26.3.2015 wherein Justice Anil Gooneratne held as follows:

*“Where eligibility for school admission based on prescribed criteria is at issue, the burden is on the applicant to prove residence for the purpose of admission. This burden is to be discharged based on documents presented to the school authorities, which must be validated through a scrutiny and check conducted by the school authorities at the time that the application was presented. If incorrect particulars are provided by an applicant, the school authorities could reject the application.”*

In the case of R Vs Kensington Income tax Commissioner (1917) 1 KB 486 at 495 Viscount Reading CJ observed thus:

*“... if the Court comes to the conclusion that an affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the court as to the true facts, the Court ought, for its own protection and to prevent the abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court, that it has been deceived.”*

His Lordship K Sripavan CJ in SC FR 13/2015 (Fundamental Rights case), (DT Wickramaratne and Others Vs University Grants Commission

and Others- Decided on 20.7.2016) considered the above legal literature and remarked thus:

*“... Failure to attach the schedule in Annexure I to the letters filed by the Petitioners amounts to suppression of a material fact and the application of the Petitioners is liable to be dismissed without proceeding further with the examination on the merits.”*

I have earlier pointed out that the Petitioners have submitted documents which contained false facts. When I consider the above matters, I hold that the petitioners have not disclosed true facts to this court; that they have not come to court with frank and full disclosure of facts; and that their conduct lacked *uberima fides*. I therefore hold that they are not entitled to get relief from this court and that their petition should be dismissed. For the above reasons, I reject the above contention of the Petitioners. The Petitioners tried to contend that at least the 2<sup>nd</sup> Petitioner was living at No.50A, Edward Lane, Colombo 3 from the year 2010 in view of the Electoral Register for the year 2010. But according to the document marked X by the Respondents which is the electoral register for 2010, the 2<sup>nd</sup> Respondent was, in year 2010, residing at Ratmalana. Therefore the above contention of the petitioners cannot be accepted. The petitioners tried to contest that their application was rejected on the ground that they carry a Muslim surname. The petitioners support this position on the basis of submission made by the Respondents at the Human Rights Commission Inquiry marked P9. Page 2 of the above report reveals material relating to the above submission. But can the court basing above material alone, make an order to admit the child to Visakha Vidyalaya in view of the above findings? From the matters that I

have stated in this judgment, it is clear that their application P2 was rejected as they did not obtain sufficient marks. Therefore the above contention cannot be accepted.

For the aforementioned reasons, I hold that the Petitioners are not entitled to the reliefs claimed in their petition. I therefore dismiss the petition of the petitioners. Considering the circumstances of the case I do not order costs.

*Petition dismissed.*

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court

Anil Gooneratne J

I agree.

Judge of the Supreme Court