

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

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

SC.FR.No.40/2019

1. Iresha

Dulashini Dangolla,
Mo.10A, Meegahawatta Road, Gangodawila,
Nugegoda.

2. Kandabadage Don Nadeera Wijenayaka,

Mo.10A, Meegahawatta Road, Gangodawila,
Nugegoda.

For an on behalf of

Kandabadage Dona Nelisa Manuldi
Wijenayaka.

PETITIONER

Vs.

1. Sandamali Aviruppola,
Principal,
Visaka Vidyalaya,
Colombo-05

2. N.H.M.Chithrananda,
Secretary,
Ministry of Education,
'Isurupaya',
Battaramulla

3. S.M. Keerthirathna,
Ananda College,
Colombo- 10

4. Hon. Attorney General,
Attorney General's Department,
Colombo-12.

RESPONDENTS

Before: Jayantha Jayasuriya, PC, CJ.

L.T.B.Dehiddeniya, J.

P. Padman Surasena, J.

Counsels: Uditha Egalahewa PC with Ranga Dayananda, Ms. Anuradhi Wickremasinghe & Minoli Rathnayake for the Petitioners.

Rajiv Goonetillake, SSC, for the AG.

Argued on: 24.01.2020

Decided on: 04.08.2020

L.T.B Dehiddeniya J.

The 1st and 2nd Petitioners being the parents of the minor child Kandabadage Dona Nelisa Manuldi Wijenayaka made an application to admit the child to Visaka Vidyalaya, Colombo. The application was based on the category of ‘children of persons belonging to the staff in an institution directly involved in school education’. Under the circular 24/ 2018 (1R1), paragraph 7.5.2.2, if a parent has worked in a difficult school, that parent is entitled to obtain 03 marks for a full year, up to the maximum of 15 marks. The Petitioners’ contention is that, the 1st Petitioner has worked as a teacher in the school, A/ Habarana Vidyalaya during the period from 10th June 2003 – 24th September 2007. The Petitioners claim that, this school is categorized as a difficult school. To establish that, the Petitioners have tendered the document marked P2 (XXIX) issued by the Zonal Director of Education, Kekirawa dated 06-06-2018. In the said letter, the director certified that, the 1st Petitioner served as an English teacher from 10-06-2003 to 24-09-2007 in A/ Habarana Maha Vidyalaya. He further certified that; the said school comes within Palugaswewa division which is a difficult division. The interview board headed by the 1st Respondent has not accepted this document as proof of the fact that, A/ Habarana Maha Vidyalaya is a difficult school.

Being dissatisfied with this decision, Petitioners have tendered an appeal. The Petitioners have obtained another letter from the same Zonal Director of Education dated 03-09-2018 marked as P4 where he certified that, A/ Habarana Maha Vidyalaya was categorized as a difficult school during the said period. The Petitioners, on the basis of this document argue that, they are entitled for additional 12 marks. If the said 12 marks were given to the Petitioners, they go above the cut-off mark and their minor child would have been admitted to Visaka Vidyalaya. The appeal board has not considered the document because under the

circular, the appeal board is not authorised to consider any document which was not tendered to the original interview board. Further, the 1st and 2nd Respondents submit certain documents in proof of the fact that, A/ Habarana Maha Vidyalaya is not a difficult school. (This argument will be considered at a later stage of this judgement).

The Petitioners submit that, the denial of admission to the school is an infringement of their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

In this application, parties do not contest the marks given to the Petitioners on their other qualifications. The only contest is with regard to the marks that, the Petitioners claim for serving in a difficult school.

There is no contest that, the 1st Petitioner has served as a teacher in A/ Habarana Vidyalaya during the said period. The issue is whether the said school was categorised as a difficult school and the proof of it. Under Article 7.5.2 of the circular, the Zonal Director of Education has to certify that, it is categorised as a difficult school. The document tendered by the Petitioner with the application (P2, XXIX) does not certify that it is a difficult school. The document says, the school is geographically situated in a difficult educational division. The circular expects a certificate whether school is categorised as a difficult school. Its geographical situation is not considered for this matter.

The Petitioner has obtained another document from the same author to the effect that, the school is a difficult school. The Petitioners admit that, this document was obtained after the 1st interview. The appeal board has not considered this document because they were not permitted to consider any document other than the documents that were tendered at the 1st interview.

The 1st Petitioner is a school teacher and their application is to admit the child to Visaka Vidyalaya, Colombo. It is a known fact that, Visaka Vidyalaya is getting more applications than the available vacancies. Therefore, if the Petitioners wanted to admit their child to the said school, they should have tendered all the relevant documents strictly according to the school admission circular. The 1st Petitioner should have known that the document marked P2- XXIX is not in conformity with the circular for two reasons i.e. firstly the document is in simple language and secondly the 1st Petitioner being a school teacher is expected to be more familiar with the documents of the Education Department. Further she was able to obtain the document marked P4, which is in strict compliance with the school admission circular after the 1st interview. I do not see any reason why she could not have obtained it prior to the 1st

interview, if this document (P4) reflects the accurate position and had been issued in compliance with the accepted practice and procedure.

It is pertinent to note that the, contents in document P4 is also in issue. The 1st Respondent submitted the list of difficult schools marked 1R3 which was made available to the interview board by the Ministry of Education, where A/ Habarana Vidyalaya is not included.

The 2nd Respondent being the Secretary to the Ministry of Education explained further in his objection that the said school was not categorized as a difficult school.

On questioning the Zonal Director of Education Kekirawa, it has been revealed that, A/ Habarana Vidyalaya was categorised as a more convenient school. R3A, a list relation to the said school from year 2003 - 2007 shows that, it has been categorised as a more convenient school. Further in document R3, the Zonal Director of Education certifies that, the said school is categorised as a more convenient school. The document marked P2-XXIX gives a reference number and the Zonal Director of Education was able to trace the record. He confirms that, the said document was issued by the said office. (R 2 A) To the contrary, there is no reference number given in the document P4 and the zonal director has failed to trace the copy of the said letter.

The Zonal Director of Education, Kekirawa by the certification marked R3, has further confirmed the fact that, the Palugaswewa education zone is considered a difficult educational zone for the purposes of appointments within the North Central province and the transfers take place within and outside the provinces including the transfers within the Kekirawa educational zone. The contention of the Zonal Director of Education is that, A/ Habarana Maha Vidyalaya is not fallen into the category of difficult schools and the particulars mentioned in the letter dated 03.09.2018 are inaccurate.

The 1st Respondent being the Principal of Visaka Vidyalaya cannot be held liable for her conduct as the Petitioners were unable to produce a document certifying A/ Habarana Maha Vidyalaya is a difficult school at the interview. The contention of the 1st Respondent is that no document tendered at the interview in proof of the fact that, A/ Habarana Vidyalaya is a difficult school. Thus, this court sees no reason to hold the 1st Respondent liable on the breach of fundamental rights on her side as the Principal of the school. In addition to these circumstances, the 1st Respondent has produced the list of difficult schools marked 1R3 issued by the Ministry of Education where A/ Habarana Vidyalaya is not included.

Further, the Petitioners rely on the document marked P4 which in its content's states that, A/ Habarana Vidyalaya is a difficult school. But there is a clear lapse on the side of the petitioners where they have not produced the specific document at the interview. Thus, a document which has not produced at the interview is precluded from the consideration by the Appeals Board.

There is prima facie evidence against the fact that, A/ Habarana Vidyalaya is a difficult school. The certification issued by the Zonal Director of Education, Kekirawa marked R3, itself is of proof that A/ Kekirawa Vidyalaya is a more convenient school. In addition to these circumstances, the document marked P4 has irregularities on the face of it where it lacks the evidentiary value. There is no reference number given in this document and the Zonal Director of Education was unable to trace the related file where this letter was issued.

There is a clear negligence on the part of the Petitioners in not producing the correct documents at the time of the interview and also the document that they relied on does not provide any basis for a relief provided by law.

Considering these circumstances, I see that, there is no violation of fundamental rights guaranteed to the Petitioners by the Article 12 (1) of the Constitution.

Application dismissed.

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ

I agree

Chief Justice

P. Padman Surasena, J

I agree

Judge of the Supreme Court