

**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 126 of the Constitution.

SC.FR.NO.414/2017

Binudi Yehansa Manage
No.141/3B, Vajira Road,
Colombo 05.

Appearing by,
Kumarasiri Manage
No.141/3B, Vajira Road,
Colombo 05.

Petitioner

Vs.

1. S.S.K. Awiruppola
The Principal,
Vishaka Vidyalaya,
Vajira Road,
Colombo 05.
2. Sunil Hettiarachchi
Secretary to the Ministry of Education,
Isurupaya, Pelawatte,
Battaramulla.

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

Respondents

BEFORE : **SISIRA J. DE ABREW, ACTING CJ.**

L.T.B. DEHIDENIYA, J. &

P. PADMAN SURASENA, J.

COUNSEL : Manohara de Silva PC for the Petitioner.

Yuresha de Silva SSC for the Attorney-General.

ARGUED &

DECIDED ON : 24.01.2019.

SISIRA J. DE ABREW, ACTING CJ.

The Petitioner by his petition dated 15.11.2017 has complained to this Court that his fundamental rights guaranteed by Article 12(1) have been infringed by the 1st Respondent when she (the 1st Respondent) refused to admit the Petitioner's child to Vishaka Vidyalaya, Colombo. This Court by its order dated 28.03.2018 granted Leave to Proceed for the alleged violation of Article 12(1) of the Constitution.

Petitioner made an application to Vishaka Vidyalaya, Colombo to admit his child to Grade I. However, the Principal of Vishaka Vidyalaya (the 1st Respondent) refused the admission of the said child to the Vishaka Vidyalaya. Thereafter, on an appeal made by the Petitioner to the Secretary to the Ministry of Education (the 2nd Respondent) in terms of circular marked P1, the said Secretary made an order that the petitioner's child should be admitted to Grade I in Vishaka Vidyalaya in the year 2014. This document has been marked as P7 by the Petitioner. However, the 1st Respondent made an endorsement on the said letter marked P7 as a suggestion to the 2nd

Respondent that she would admit the Petitioner's child to Grade II in Vishaka Vidyalaya in the year 2015 as the petitioner's child has, at that time, been admitted to Musaeus College.

Surprisingly even in the year of 2015, the Petitioner's child was not admitted to Vishaka Vidyalaya by the Principal of Vishaka Vidyalaya. Although, the 1st Respondent did not admit the Petitioner's child to Grade I in Vishaka Vidyalaya in the year 2014, the 1st Respondent on the direction given by the Secretary to the Ministry of Education on the same letter marked P7, has admitted a child of one Kasturiarachchi to Grade I in Vishaka Vidyalaya in the year 2014. This is reflected in the document marked P15a. The admission of Kasturiarachchi's child to Grade I in Vishaka Vidyalaya in the year 2014 on the direction made by the Secretary to the Ministry of Education (the 2nd Respondent) was not denied by the 1st Respondent in his affidavit filed in this Court. We note that P7 and P15a which are the same documents had been signed by the 2nd Respondent. Thus it appears that on the same direction given by the 2nd Respondent the 1st Respondent decided to admit Kasturiarachchi's child to Grade I in Vishaka Vidyalaya in the year 2014, but she (the 1st Respondent) did not admit the child of the Petitioner to Grade I in Vishaka Vidyalaya in the year 2014. Thus it appears that the document marked P7 was applicable to the child of Kasturiarachchi but not to the child of the Petitioner. On this point itself we hold that the Petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the 1st Respondent. Further, we note that although the 1st Respondent refused to admit the Petitioner's child on the direction given by the 2nd Respondent to Grade I in Vishaka Vidyalaya in the year 2014, the same 1st Respondent has, on directions given by the 2nd Respondent, admitted seven children to Grade I in Vishaka Vidyalaya in the year 2014 on 29.05.2014 and 02.06.2014. The above mentioned admissions are proved by documents marked P15c and P15d. P15c and P15d have been signed by the 2nd Respondent respectively on 02.06.2014 and 29.05.2014. P7 was signed by the 2nd Respondent on 26.05.2014. We note that even the

admission numbers are found on the said documents marked P15c and P15d. Therefore, we note that although the 1st Respondent refused to admit the Petitioner's child on a direction given by the 2nd Respondent (P7), the 1st Respondent has, on subsequent directions given by the 2nd Respondent admitted children to Grade I in Vishaka Vidyalaya in the year 2014. This is evident by document marked P15d and P15c. We therefore hold that the 1st Respondent has violated the fundamental rights of the petitioner guaranteed by Article 12(1) of the Constitution.

For the above reasons, we hold that the 1st Respondent has violated the fundamental rights of the petitioner guaranteed by Article 12(1) of the Constitution. We therefore direct the 1st Respondent to admit the Petitioner's child to Grade VI in Vishaka Vidyalaya, Colombo in the year 2019. The 1st Respondent is directed to comply with this direction within one month from the date of this judgment.

Learned Senior State Counsel who appears for the 1st Respondent undertakes to inform the judgment of this Court to the 1st Respondent.

ACTING CHIEF JUSTICE

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT

P.PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT

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