

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 Republic.

SC FR Application 52/2021

1. Welikadage Nadeeka
Priyadarshani Perera
2. Ranmuthu Chamodya Hansani
(Minor)

1st and 2nd Petitioners above, both
of No. 43/6B, R.E. De Silva Road,
Heppumulla, Ambalangoda.

Petitioners

Vs

1. Prof. G. L. Peiris
Hon. Minister of Education

2. Prof. K. Kapila C. K. Perera
Secretary, Ministry of Education

1st and 2nd Respondents above, both
of Isurupaya, Battaramulla.

3. Hasitha Kesara Veththimuni,
Principal,
Dharmashoka Vidyalaya,
Galle Road, Ambalangoda.

4. B. Anthony

5. T. M. Dayarathne

6. L. N. Madhavee Dedunu

7. N. Channa Jayampathy

4th to 7th Respondents above, all of
Members of Interview Board
(Admission to Year 1)
C/O Dharmashoka Vidyalaya, Galle
Road, Ambalangoda.

8. Gamini Jayawardhane

9. Rekha Mallwarachchi

10. J. P. R. Malkanthi

11. S. A. B. L. S. Arachchi

12. Rasika Prabodha Hendaheva

8th to 12th Respondents above, all of
Members of Board of Appeal
(Admission to Year 1)
C/O Dharmashoka Vidyalaya, Galle
Road, Ambalangoda.

13. Kithsiri Liyanagamage
Director- National Schools,
Isurupaya, Battaramulla.

14. J. D. N. Thilakasiri,
Provincial Director of Education
Upper Dickson Road, Galle.

15. Hon. Attorney General
Attorney General's Department,
Hulftsdorp, Colombo 12.

Respondents

Before: Buwaneka Aluwihare, PC. J.
A. H. M. D. Nawaz J.
Kumudini K. Wickramasinghe J.

Counsel: Chrishmal Warnasuryia with Kumudu Hapuarachchi and
Madhuwanthi Konara instructed by Indunil Wijesinghe
for the Petitioners.
Ms. Kanishka de Silva Balapatabendi SSC for the 1st-3rd
and 13th-15th Respondents.

Argued on: 16. 06. 2021

Decided on: 27.10. 2021

Judgement

Aluwihare PC. J.,

The Petitioners in the present application were granted leave to proceed for the alleged infringement, of their fundamental rights guaranteed under Article 12(1) and 12(2) of the Constitution.

The 1st Petitioner is the mother of the 2nd Petitioner who is a minor. The Petitioners allege that the 2nd Petitioner was denied admission to Grade 1 of the Dharmasoka Vidyalaya, Ambalangoda, for the Academic year 2021 citing the failure to meet the requirements under Clause 7.2. ('Children of residents in proximity to school' category) of Circular No. 29/2019 issued by the Ministry of Education ('P3').

The Circular 'P3' sets out the scheme of Grade 1 admissions to Government Schools. Clause 7.0. lists the categories under which applicants may seek admission and the percentages of students to be admitted under the respective categories. The Petitioners had applied under the category of 'Children of residents in proximity to school' referred to in Clause 7.0.

Clause 7.2. Of 'P3' requires that, to be eligible under the said category, mandatorily, applicants should be resident at the address they are applying from and should be able to prove their residency at the said address through documentary evidence.

In order to apply for a particular school, the applicant should be resident within the 'feeder area' of the school. As per Clause 4.7. the 'feeder area' is the administrative district area that the school is situated in. When a school is situated on the border of an administrative district area, the nearest divisional secretariat division of the other administrative district near the border should be considered as the feeder area.

Clause 7.1.5. sets out the procedure in which the proximity of the place of residence to the school is to be determined. It requires that a *circle* be drawn taking the distance from the main door of the applicant's residence to the front door of the Main office of the school of which admission is sought (where the Primary Section is situated in a

different premises, the distance to that Office), as the radius. (“ඉල්ලුම් කරන පාසලේ ප්‍රධාන කාර්යාලයට (ප්‍රාථමික අංශය ප්‍රධාන පාසලින් බැහැර වෙනත් පරිශ්‍රයක පවතින්නේ නම් එම කාර්යාලයට) ඇති දුර”).

Marks are to be deducted for each other Government School with a Primary Section to which the applicant can be admitted, situate within the *circle*. The marks to be deducted per each such school is 5, as per Clause 7.4.5. of ‘P3’. According to the Circular, the allocation of marks for the ‘Children of residents in proximity to school’ category are as follows;

Place of residence	20 marks
Other documents	05 marks
Electoral records	25 marks
Proximity to School	50 marks
Total	100 marks

The Petitioners had been called for an interview on 8th September 2020. At the interview, the 1st Petitioner had submitted a true copy of the property deed of the residence of the 1st Petitioner, Certificate of Character and Residence issued by the Grama Niladhari, electricity bills, water bills, documents relating to assessment rates, the Pregnancy record book of the 1st Petitioner and electoral records along with the school admission application form and the birth certificate of the 2nd Petitioner, as documentary proof of residence. The 2nd Petitioner had been allocated 92.4% marks which were over and above the cutoff mark, which was 90%. 5 Marks had been deducted, as per clause 7.4.5. for Devananda Vidyalaya situated within the circle, and the 1st Petitioner states that she did not oppose it as they had obtained marks above the cutoff mark. In confirmation of the acceptance of the marks, the Petitioner had signed at the foot of the mark sheet (‘P10’). The Petitioners state that at the conclusion of the interview, the 2nd Petitioner was declared eligible for admission.

The Petitioners assert that they fulfilled the admission criteria in the manner referred to above and the awarding of sufficient marks [92.4%], afforded them a legitimate expectation of gaining admission to the school.

On 15th November 2020, the 3rd to 7th Respondents as members of the Board of Interview had visited the residence of the Petitioners for a site inspection, while the Petitioners were not at home. They had inspected and photographed the premises. The Principal had informed the Petitioners via a phone call that the representatives were at their house for the site inspection. The Petitioners state that they were not at home at that time, and were on their way home.

On 3rd December 2020, a staff officer of the school had informed the 1st Petitioner, via telephone, to be present on 4th December 2020 for a discussion regarding the admission of the 2nd Petitioner to the school. At the discussion on that day, the 1st Petitioner alleges that she was asked to place her signature on the cover of a file without explaining the content, that was in English. The Respondents, however, deny this allegation and state that the notes explaining the unsatisfactory proof regarding residence at the given address were made in Sinhala and not in English, as evinced by 'R8'.

On a subsequent occasion, the 1st Petitioner along with the Chief Incumbent priest of the Shri Niketharamaya temple, had gone to meet the Principal to inquire whether the 2nd Petitioner could secure admission to the school. However, the 1st Petitioner had been informed that the 2nd Petitioner could not be admitted to the school as there was another school (in addition to Devananda Maha Vidyalaya) situated within the *circle*, namely Kandegoda Maha Vidyalaya. The Petitioner had been informed that as required by Clause 4.7. of 'P3' a further 5 marks had to be deducted from the marks originally awarded, in addition to the earlier deduction of marks for Devananda Maha Vidyalaya.

The Petitioners contend that, whereas both Dharmasoka Vidyalaya and Devananda Vidyalaya are situated within the Ambalangoda educational division, the said Kandegoda Maha Vidyalaya is situated within the educational division of Balapitiya,

although all three schools are situated within the same administrative district. The crux of their argument is that, Kandegoda Maha Vidyalaya therefore should not be considered as a school that fall within the *circle* and that marks should not be deducted due to the location of the said Kandegoda Maha Vidyalaya as that is not the objective of Clause 4.7. of 'P3'. The Respondents, however, contend that, as the Balapitiya Divisional Secretariat is situated within the Galle District, as is Dharmasoka Vidyalaya, marks must be deducted for the said school as well.

The 'temporary list' ('P11') displayed in or around 23rd December 2020 announcing the names of the candidates who were provisionally selected, had not contained the name of the 2nd Petitioner, although the names of at least 2 candidates with marks lower than that of the Petitioner were included (No. 89 and 90).

The Petitioners state that after the lapse of about a week since the release of the temporary list, the 3rd Respondent and a few others had visited the residence of the Petitioners, at which time the father, sister's son and brother-in-law of the 1st Petitioner were present in the premises.

On 31st December 2020, the 1st Petitioner had preferred an appeal to the Board of Appeal ('P12') in terms of Clause 11 of 'P3' impugning the exclusion of the 2nd Petitioner from the temporary list.

The hearing of the appeal had been held on 17th January 2021, with the participation of the 1st Petitioner and the 8th to 12th Respondents. According to the 1st Petitioner, she had been informed that the 2nd Petitioner cannot be admitted to the school as it was difficult to accept the proof of residence due to the unkempt condition the premises were in at the time of the inspection, indicating that the house was, in fact, not occupied. The 1st Petitioner alleges that she was informed of this decision without a re-examination of the requisite documents or conducting a proper hearing according to the procedure specified in 'P3'. The 2nd Petitioner was awarded 77.4% marks by the Appeal Board, and the Petitioner alleged that no justifiable reasons were given for the reduction of marks from the original 92.4% marks awarded by the Interview Board.

The Petitioners contend that this is non-compliant with Clause 11 and 18 of 'P3' which pertain to ensuring a just and fair process of appeal.

The Respondents maintain that no marks were deducted on the basis of the state of the residence of the Petitioners. The 1st Petitioner had refused to sign the document ('R9') on which the Respondents had reduced the marks previously awarded. The notation the 1st Petitioner had made on 'R9' stating that she is unwilling to sign the document was not denied at the hearing, by the Petitioner.

The final list of students selected for Dharmasoka Vidyalaya was displayed on 3rd February 2021 and the 2nd Petitioner's name was not included in the list, nor in the waiting list displayed on the website of the school. The 3rd Respondent, by his communication on 5th February 2021, had informed that the 2nd Petitioner cannot be admitted to the school as she has not secured the required 90% marks under the 'proximity' category.

Consequently, in or around 31st December 2020, the 1st Petitioner tendered appeals to the President of the Republic, the Secretary of Education (Southern Province) and the Director of Divisional Education Office, Ambalangoda, and were called to the Divisional Education Office on 18th January 2021 for the appeal to be considered. The 1st Petitioner states that Ms. D. P. Damayanthi, the Director of Divisional Education had stated that the 2nd Petitioner had been treated unfairly and that although she had repeatedly tried to contact the 3rd Respondent she had failed to do so. The Petitioners state that they have tendered an appeal to the 2nd Respondent, Secretary, Ministry of Education but that they do not foresee a satisfactory administrative resolution of the matter.

The Petitioners have filed a complaint to the Human Rights Commission [HRC] dated 5th January 2021 ('P9') as well but have subsequently withdrawn it citing personal difficulties. The 3rd Respondent in his affidavit has taken up the position that the complaint [to the HRC] has been withdrawn after he submitted his observations to the Commission.

Awarding of provisional marks based on proximity

It appears that the provisional marks were awarded taking into consideration, *inter alia*, the map marked 'R4'. The Respondents state that it is the usual practice to have the applicants point out their residence on a Google map that is made available to them, at the interview. Taking the location of the residence as one point and the location of the school office as the other, a circle is drawn using the distance between the said two points as the radius. The map 'R4' has been marked in the above manner, and in that map, other than Dharmasoka Vidyalaya, only Devananda College had fallen within the radius of the *circle*. The map 'R6' on the other hand, had been drawn by an official of the Surveyor General's Department who made the necessary measurements during the site inspection. 'R6' which depicts the applicable circle, indicates that Devananda Vidyalaya is completely within the circle while a small part of the Kandegoda Maha Vidyalaya also falls within the circle. In the case of the Dharmasoka Vidyalaya, more than 50 per cent of the school buildings fall within the circle. For the purposes of this case, reliance can be placed on the map ['R6'], the same being drawn by an official of the Survey General's Department using GPS measurements.

The initial grounds for reduction of marks as stated in 'R8' are that; the Petitioners were resident in 3 locations during the material time period; that from the site inspection, it was clear that the house in question was an unoccupied partially built structure [Photographs 'R5' & 'R5a'] and there was not even a door fixed to the lavatory; that upon calculation of the distance by the surveyor it was evident that marks should be deducted for Kandegoda Maha Vidyalaya as well.

The Petitioners in their written submissions had contended that the requirements of Clause 9 regarding site visits have not been followed by the Respondents. Per Clause 9.3.3. records of the site visit should be maintained with the date, time, and the names and signatures of the persons who conducted the site inspection. The Respondents have submitted records of the first site inspection signed by the persons who carried out the inspection marked 'R7'. In the said records, a second site visit has been

suggested in order to ascertain whether the Petitioners were in fact resident there, as the structure in question has been found to be a house that was being built anew and yet to be fully completed.

The Petitioners state that the names of the persons who accompanied the 3rd Respondents on the second site visit are not recorded. Furthermore, if deductions are made from the awarded marks, the reason for such changes must be disclosed to the applicant, according to Clause 9.3.3. of 'P3'. The Respondents, however, had considered the Petitioners' application for the admission to the school concerned on the premise that the Petitioners were residing at the house in question. Thus, even if it is assumed that the Respondents had not been in total compliance with Clause 9.3.3. of 'P3' in its application, no prejudice has been caused to the Petitioners.

There, however, is another factor that needs consideration as far as allocation of marks is concerned. As confirmed by the 'Certificate of residence and character' issued by the Grama Niladhari ('P7') the 1st Petitioner has resided at 453/3A, Beach Road, Heppumulla, Ambalangoda from her date of birth to 22nd May 2016; at 63/4, R. E. De Silva Mawatha, Heppumulla, Ambalangoda from 23rd May 2016 to 31st December 2016; and at 43/6B, R. E. De Silva Mawatha, Heppumulla, Ambalangoda (the address from which the application has been made). It is evident that the Petitioners had resided at three different locations within the time period material to the application i.e. the 5-year period immediately before the year, the application for admission was submitted.

Clause 7.2.2.3. states that when the applicant has been resident in another address within the feeder area and is submitting electoral records from both addresses in order to confirm their residence of at least 5 years within the feeder area, both electoral records can be considered as electoral registers of the present place of residence. Such consideration, however, can be given only if the schools which are more proximate than the school to which the child is applying to are the same for both places of residence. It can be seen that the 1st Petitioner has been a resident within the same area of Heppumulla for the period from 2015-2019 that was material for the

admission process. However, the Petitioners have not submitted material to show that the 'schools' for both addresses are the same thereby starving the court of material to ascertain whether the benefit of Clause 7.2.2.3. should be given to the Petitioners.

In the written submissions tendered on behalf of the Respondents, the deduction of marks of the 2nd Petitioner is explained. As the 1st Petitioner has resided at the current address only for 3 years, marks have been awarded only for those 3 years for both parents of the applicant, amounting to 15 marks (2.5 x 3 x 2). It should also be noted that although marks were awarded for the 1st Petitioner's husband as well, the electoral records 'P9' only pertain to the 1st Petitioner. No evidence of the husband's residence in the 5 years material to the application has been submitted. 5 marks were deducted from the 45 marks that had been originally awarded under the proximity criteria, for the Kandegoda Maha Vidyalaya as well.

Originally, as indicated by 'R8', based on the site visit the Respondents had concluded that the Petitioners were not resident at the given address. They had, however, awarded full marks for the documentary evidence submitted without making any deductions in spite of the fact that the Respondents entertained doubts as to the Petitioner's residency at the given address. For the purposes of awarding marks for residence as confirmed by the electoral records the Respondents have awarded marks for the 3 years in which the Petitioners have stated that they have been resident at the given address.

The Respondents further submit that as indicated on the mark sheet 'R9' the marks awarded at the first interview are subject to change if the information provided by the applicant is revealed to be inaccurate/false, or if it is found by the site inspection that the applicant is not residing at the given address. The Respondents therefore argue that no legitimate expectations can be founded on the marks awarded therein.

In addition, the Respondents further state that the Petitioners themselves, in Item No. 5 of their application, have accepted that Devananda Vidyalaya is closer in proximity than Dharmasoka Vidyalaya. The Respondents further dispute the 1st Petitioner's submission that she was residing at the given address with her husband and daughter

since 2015 as in the notice of assessment 'P8c' submitted by her the property is described as a 'land'. The water and electricity bills adduced as additional documents to establish as proof of residence 'P8a' and 'P8b' bear dates after the 30th of June 2020, the closing date for applications.

The Respondents further state that the 2nd Petitioner has been admitted to Devananda Vidyalaya which was not disclosed to court by the Petitioners.

Upon a perusal of the additional documents submitted as proof of residence by the Petitioners, it is clear that they do not meet the requirements of the Circular. The water and electricity bills submitted ('P8a' and 'P8b') are only of the year 2020 and that too are not bills dated prior to the application deadline as required. Neither do the bills indicate at least 5 years of ownership. The single assessment sheet submitted 'P8c' is only regarding the year 2016. The pregnancy record book of the 1st Petitioner ('P8d') indicates the address 'No. 453/3A, Patabendimulla, Ambalangoda' an address other than that of the current residence, which therefore, cannot qualify as proof of residence at the current address. The electoral records from 2015-2019 ('P9') indicate that the 1st Petitioner was registered in the same electoral district. No electoral records of the father of the 2nd Petitioner were submitted

The certificate of the Grama Niladari ('P7') indicates that the 1st Petitioner was resident within the same area, though at 3 different addresses during the minimum 5 years material to the application. It should be noted that the Circular does not recognize the certificate of the Grama Niladari as additional documentary proof of residence.

Although the Petitioners contend that they are eligible for 100% marks in the category of proximate residence, it is not so. The documents mentioned above do not satisfy the requirements of the Circular 'P3' to the extent required to gain admission to Dharmasoka Vidyalaya, despite the fact that the 2nd Petitioner has been a resident within the Heppumulla, Ambalangoda area for the entirety of her life (*vide* addresses in the documents submitted by the 1st Petitioner).

The Petitioners have failed to submit documentary proof to sufficiently establish their residence at the address material to gaining admission to Dharmasoka Vidyalaya. The Respondent Interview Board and the Board of Appeal have in fact awarded the applicant the maximum marks that she was entitled to. It is imperative that the Petitioners fulfil the eligibility criteria before they hasten to impugn the decision of the Interview Board and the Appeals Board.

It is common knowledge that each year, a considerable number of school admission applications are submitted for consideration by school authorities and the school staff is required to go through the tedious process of evaluating such applications. In the said context, it would be impractical to hold to account each and every minor oversight or administrative lapse, on the part of the Interview Board, which is not of any gravity as to cause prejudice and thereby discriminate the applicant. As is clear from the analysis of the evidence, the maximum marks possible had been awarded to the Petitioners. Wanasundera J. in **Wijesinghe v. Attorney-General** [1978-79-80] 1 SLR 102 held “*Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights.*” Under Article 126, the Supreme Court would intervene in instances where a fundamental right was breached. In the present case, no such intervention is called for.

When the number of applicants seeking admission to a school exceeds the capacity of the intake, some criteria has to be adopted to select the number of applicants that the school can accommodate. The State cannot be held at fault for adopting such a process. Although the Petitioners’ choice of school may have been Dharmasoka Vidyalaya, it has been shown that they do not possess the requirements to make it through the vetting process successfully. In the circumstances the State has provided the 2nd Petitioner with a school, by admitting her to Devananda Vidyalaya, a school which is in the vicinity of Dharmasoka Vidyalaya. In this context, it cannot be concluded that any prejudice or an injustice has been caused to the Petitioners, much less a breach of the Directive Principles of State policy, the duty to assure “*to all persons of the right to universal and equal access to education at all levels.*”

There is no evidence to conclude that the Petitioners have been denied equality before the law or the equal protection of the law. Nor is there any occasion to accept that the Petitioners were subjected to discrimination on any ground.

Therefore, we do not deem it fit to hold that the Petitioners' rights under Article 12(1) and 12(2) have been infringed.

I make no order as to costs.

Application dismissed.

Judge of the Supreme Court

A. H. M. D. Nawaz J.

I agree.

Judge of the Supreme Court

Kumudini. K. Wickramasinghe J.

I agree.

Judge of the Supreme Court