

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/ Application No 58/2018

1. J.M.H. Chandani Jayasundara,
No. 19/8, Guilford Crescent,
Colombo 07.
2. B.P. Niyadandupola,
No. 19/8, Guilford Crescent,
Colombo 07.
3. Nulara Piyaji Niyadandupola,
No. 19/8, Guilford Crescent,
Colombo 07.

Petitioners

Vs,

1. Ms. S.S.K Aviruppola,
Principal,
Vishaka Vidyalaya,
Colombo 05.
2. Ms. Kalani Sooriyapperuma,
Deputy Principal (Administration)
Vishaka Vidyalaya,
Colombo 05.
3. Ms. Sumudu Weerasinghe,
Deputy Principal (Education & Development)
Vishaka Vidyalaya,
Colombo 05.
4. Ms. Jeevana Ariyaratne,
Deputy Principal (Co-Curricular & Extra- Curricular)
Vishaka Vidyalaya,
Colombo 05.

5. Ms. Pushparani Samarasinghe,
Sectional Head (Primary),
Vishaka Vidyalaya,
Colombo 05.
6. L.M.D. Dharmasena,
Chairman,
Admissions Appeal Board,
Vishaka Vidyalaya,
Colombo 05.
7. Ms. Rukmali Kariyawasam,
Member,
Admissions Appeal Board,
Vishaka Vidyalaya,
Colombo 05.
8. Sunil Hettiarachchi,
Secretary,
Ministry of Education,
"Isurupaya", Battaramulla.
9. G.N. Silva,
Zonal Director of Education,
Colombo District,
Zonal Education Office,
Vidatha Mawatha,
Colombo 02.
10. P. Sirilal Nonis,
Provincial Director of Education,
Western Province Provincial Ministry of Education,
Provincial Department of Education,
No.76, Ananda Kumaraswamy Mawatha,
Colombo 07.
11. Hon. the Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda PC
Justice P. Padman Surasena
Justice E.A.G.R. Amarasekera

Counsel: Sanjeewa Jayawardena PC with Nilshantha Sirimanne, Rukshan Senadeera and
Uween Jayasinhe for the Petitioners
Dr. Awanthi Perera SSC for Attorney General

Argued on: 13.02.2019

Judgment on: 25.03.2019

Vijith K. Malalgoda PC J

The three Petitioners before this Court, a father, mother and their young daughter who appeared through her parents have alleged violation of the Fundamental Rights of them guaranteed under Article 12 (1) of the Constitution by denying the admission of the 3rd Petitioner to Grade one of Vishaka Vidyalaya Colombo 05.

As revealed before this court the 1st and the 2nd Petitioners being the parents of the 3rd Petitioner minor, applied for admission to grade one of Vishaka Vidyalaya, under the category, children of Residents in close proximity to the school as laid down in clause 7.1 (i) of circular No.22 of 2017 which governed the school admission to the grade one for the year 2018.

Under clauses 7.1 (i) and 7.2 of the said circular, 50% of the total number of vacancies were allocated to the children comes under the said category and how such parents should establish their residence and how the marks should be allocated based on the documents produced by the applicant is identified under the said clause.

As observed by this court, maximum of 30 marks are allocated for establishing the Residence by the Electoral Register during the past five years and a maximum of 15 marks are allocated for the documents in proof of residency of the parents. Another five marks are allocated for additional documents to confirm the place of residence making a total of 50 marks for establishing the residence of the Applicant.

The balance 50 marks are given for proximity to school from the place of the Residence of the Applicant and under the said circular, 5 marks are deducted to each school comes within the distance between the Residence of the Applicant and the school applied for, which has a primary section where the child can gain admission.

As revealed before us the Petitioners attended the formal interview for the selection of students for grade one at Vishaka Vidyalaya on 16.09.2017 and secured 58.3 marks at the said interview. The Petitioners were issued with a document indicating the marks allocated to the 3rd Petitioner under four headings and a copy of the said document is produced before this court mark P-7. According to P-7, the Petitioners were allocated full marks for establishing the residence by Electoral Register. For establishing the ownership, the Petitioners were allocated only 4.5 marks out of 15 marks and additional documents 3.8 out of 5 marks.

For proximity to the school, the Petitioners were allocated only 20 marks after reducing marks for six schools making the total marks 58.3.

When the Temporary selection list was published on 06. 11. 2017, the name of the 3rd Petitioner was not found on the selected students list, but was appeared in the 7th position on the 'waiting list'. Being aggrieved by the said selection, specially with regard to the reduction of marks under

the heading proximity to school, the Petitioners preferred an appeal under clause 10 of the said circular.

Even at the appeal, marks allocated to 3rd Petitioner were not revised by the appeal board, and in protest the Petitioners refused to sign the mark sheet during the appeal hearing.

As revealed before this court the cut off mark under, children of Residents in close proximity category for the year 2018 was 61.5 and the Petitioners main contention was to challenged the reduction of 10 marks for two schools under proximity to school, comes within the said category.

Both, the Petitioners and the Respondents agree, that 30 marks under close proximity to school was deducted for the following schools,

1. Yasodhara Vidyalaya, Colombo 07
2. Presbyterian Girls School, E.W. Perera Mawatha, Colombo 07
3. Sirimavo Bandaranayake Vidyalaya, Stanmore Crescent , Colombo 07
4. St. Anthony's Balika Vidyalaya, St. Anthony's Road, Colombo 03
5. St. Mary's Balika Maha Vidyalaya, Alwis Place, Colombo 03
6. Vidyathilaka Vidyalaya, Thimbirigasayaya, Colombo 05

However, the Petitioners challenged the reduction of 10 marks for two schools namely, St. Anthony's Balika Vidyalaya and St. Mary's Balika Maha Vidyalaya based on the provisions of the same circular. In this regard the Petitioners relied on a document they obtained from the Zonal Director of Education on 6th December 2017. According to the Petitioners the said letter which is produced marked P-11 before this court, refers to the Buddhist students percentage as 9% and 4% with regard to St. Anthony's Balika Maha Vidyalaya and St. Mary's Balika Maha Vidyalaya, Respectively.

However the Appeal Board of Vishaka Vidyalaya had very correctly refused to entertain the said document since clause 11.6 of the circular 22 of 2017 prohibits the Appeal Board to consider fresh documents in appeal.

However the issuance of P-11 is an eye opener to consider another aspect of the said circular, which was overlooked by the authorities when admitting children under the said category.

In this regard, our attention was drawn to the following clauses of the Guidelines/ Instructions and Regulation regarding admission of children to Grade 1 issued with the circular 22 of 2017 which governed the school admission for the years 2018.

Clause 3.2 In filling vacancies in schools vested to the government under Assisted Schools and Training Schools (Special Provisions) Act No 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961, the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and the number of vacancies in the said school be accordingly divided among different religions and categories. When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions.

Clause 6 (III) Proximity to school from the place of residence

Maximum marks will be given only if the applicant's place of residency is proved and if there are no other Government Schools with Primary sections located closer to the place of residence than the school applied for. In the event of having other Government schools with Primary sections for the admission of the child which are closer to the place of residence than the school applied for marks will be deducted at the rate of 05 marks from the maximum marks for each such closer school.

(Other government primary schools that the child could be admitted means, if the government school concerned has the learning medium the child has applied for / if a girls or boys school or a mixed school appropriate for the child and **If a government school which can admit 10% or more children of the religion to which the child belongs.** (emphasis added)

Since the Petitioners relied heavily on P-11, the Respondent made an attempt to counter the same by submitting an affidavit from the author of P-11, the Zonal Director of Education, the 9th Respondent to the present application.

The 9th Respondent whilst admitting the issuance of P-11 made an attempt to clarify P-11 by submitting that;

5. d) Since the 1st and/or 2nd Petitioners required the information urgently to pursue an appeal regarding the school admission application of the 3rd Petitioner, I immediately issued letter dated 06.12.2017 addressed to the 1st Respondent (P11) setting out the information received from the Principles of St. Anthony's Balika Maha Vidyalaya, Colombo 03 and St. Mary's Balika Maha Vidyalaya, Colombo 03;

- e) However, upon further clarifications being sought, it has now transpired that the said information received from the Principals of St. Anthony's Balika Maha Vidyalaya, Colombo 03 and St. Mary's Balika Maha Vidyalaya, Colombo 03 and the letter issued thereupon by me (P11) do not accurately capture the number of Buddhist students admitted to the two schools, for the reasons more fully described below;
- f) The Principals of St. Anthony's Balika Maha Vidyalaya, Colombo 03 and St. Mary's Balika Maha Vidyalaya have clarified the basis upon which the percentages of 9% and 4% referred to in subparagraph (c) were initially informed to me on an approximate basis and provided the actual numbers of students of different religions admitted to the two schools during the past 10 years;

A copy of letter the dated 03.04.2018 issued by the Principal of St. Anthony's Balika Maha Vidyalaya, Colombo 03 and copy of letter dated 06.04.2018 issued by the Principal of St. Mary's Balika Maha Vidyalaya, Colombo 03 are annexed hereto marked 9R1 and 9R2 respectively and pleaded as part and parcel hereof.

Explaining circumstances under P-11 was issued, the 9th Respondent proceeded to submit some statistics obtained from the two schools referred to above along with two letters from the principals of those schools.

The 9th Respondent had further submitted that both St. Anthony's Balika Maha Vidyalaya and St. Mary's Balika Maha Vidyalaya are Roman Catholic Private Schools which were vested in the state in terms of Assisted Schools and Training Colleges (Supplementary Provisions) Act No 8 of 1961 read with Assisted Schools and Training Colleges (Special Provisions) Act No 5 of 1960 but there appears

to be no documentary proof of quota reserved at either of the schools for students of religions other than Roman Catholics, at the time of vesting in the Government.

However when considering the specific written guidelines given by the circular, this court cannot simply ignore the said requirement, when the authorities submit that they don't have the required information with them. Out of the two letters submitted by the two Principals, the principal St. Anthony's Balika Maha Vidyalaya had stated that according to the information she could collected, 7%, 10% and 10% of Buddhist students were admitted to the said school during the three years immediately after the said school was vested with the government.

Even though the principal St. Anthony's Balika Maha Vidyalaya had failed to give the required information as at the time, the vesting took place, in the following year, there was only 7% of Buddhist students admitted to the school and it is well below the 10% required under clause 3.2 of the circular 22 of 2017.

In the said circumstances a question will arise as to the eligibility of St. Anthony's Balika Maha Vidyalaya to admit Buddhist students to its grade one, above the 10% requirement under Assisted Schools and Training Colleges (Special Provisions) Act No 5 of 1960 and Assisted Schools and Training Colleges (Supplementary Provisions) Act No 8 of 1961 and in the said circumstances clause 3.2 read with Clause 6 (III) of the guidelines will become a barrie to consider St. Anthony's Balika Maha Vidyalaya as a "other Government primary school that the child could be admitted" to Vishaka Vidyalaya, Colombo 05.

In the absence of similar information with regard to the other school referred to above; i.e. St. Mary's Balika Maha Vidyalaya, this court will refrain from making any observation, but we emphasize the requirement of the authorities to abide by the rules laid down in the circular, since it

is the paramount duty of the relevant authorities to fulfill the desire of any applicant, if they are eligible to come within the provisions of the circular.

As observed by this court the 3rd Petitioner was allocated 58.3 marks at the interview as well as at the appeal hearing. Cut off mark under the category the application was considered was 61.5 marks and obtaining additional 3.2 will make the 3rd Respondent eligible to gain admission to Vishaka Vidyalaya, Colombo 05.

When considering the conclusion this court had already reached with regard to St. Anthony's Balika Maha Vidyalaya that the said school cannot be considered as a "other government primary school that the child could be admitted," the 3rd Petitioner is entitled to receive 5 marks reduced by the authorities for the said school, increasing the total marks obtained at the interview to 63.3 marks, making the 3rd Petitioner eligible to gain admission to grade one Vishaka Vidyalaya, Colombo 5.

The Petitioners have alleged the violation of their fundamental rights guaranteed under Article 12 (1) of the Constitution which deals with the right to equality and equal protection of law. The guarantee of equality ensures that among equals the law should be equal and should be applied equally.

When considering the totality of the evidence placed before this court I hold that the 3rd Petitioner is entitled to obtain 63.3 marks making her eligible to gain admission to grade one of Vishaka Vidyalaya, Colombo 05 under the category of "Children of Residents in close proximity to the school," thus the Petitioners have established that their fundamental rights guaranteed under Article 12 (1) of the Constitution had been infringed by the Respondents.

Whilst confirming that the Petitioners Fundamental Rights guaranteed under Article 12 (1) of the Constitution had been infringed by the above conduct of the Respondents, I direct the 1st Respondent to take steps to admit the 3rd Petitioner to grade one or to the appropriate grade of Vishaka Vidyalaya, Colombo 05.

Justice P. Padman Surasena

I agree,

Judge of the Supreme Court

Justice E.A.G.R. Amarasekera

I agree,

Judge of the Supreme Court

Judge of the Supreme Court