

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

1. Naragal Nilantha de Silva,
No.48, Kanda Road,
Ambalangoda
2. Naragal Rasindu Harshana de Silva
(minor)
No.48,Kanda Road,
Ambalangoda.

SC FR Appln No. SCFR 59/15

Petitioners

Vs.

1. Akila Viraj Kariyawawsam (M.P.)
Hon. Minister of Education,
Ministry of Education,
“Isurupaya”, Battaramulla.
2. Upali Marasinghe,
Secretary – Ministry of Education,
“Isurupaya”, Bataramulla.
- 2(A) W.M.Bandusena
Secretary – Ministry of Education,
Isurupaya, Battaramulla.
3. Sumith Parakramawansa,
Former Principal – Dharmashoka
Vidyalaya
Galle Road, Ambalangoda.

- 3A. W.T.Ravindra Pushpakumara,
Principal – Dharmashoka Vidyalaye,
Galle Road, Ambalangoda.
4. R.N.mallawarachchi
5. Diyagubaduge Dayarathne
6. M.Shirley Chandrasiri
7. N.S.T.de Silva

4th to 7th Above All:
Members of the Interview
Board,
(Admissions to Year 1)
C/o Dharmashoka /Vidyalaya,
Galle Road, Ambalangoda.

8. W.T.B.Sarath
9. P.D.Pathirathne
10. K.P.Ranjith
11. Jagath Wellage

4th and 8th to 11th above All:
Members of the Appeal Board,
(Admission to Year 1)
C/o Dharmashoka/Vidyalaya,
Galle Road, Ambalangoda.

12. Ranjith Chandrasekara,
Director-National Schools,
Isurupaya, Battaramulla.
13. Hon. The Attorney General,
Attorney General's Department,
Colomb o 12.

Respondents

BEFORE: S.E.WANASUNDERA, PC, J,
B.P. ALUWIHARE, PC, J &
UPALY ABEYRATHNE, J

COUNSEL: Crishmal Warnasuriya with Udani Galappathi and J. Wickramasuriya for the Petitioners.
Rajitha Perera, SSC for the 1st, 2nd, 3rd, 8th and 13th Respondents.

ARGUED ON: 21.01.2016

DECIDED ON: 28.07.2017

ALUWIHARE, PC, J:

The 1st and the 2nd Petitioners, who are the father and son respectively have alleged, that by the failure on the part of the Respondents to admit the 2nd Petitioner to Grade 1 of the Dharmashoka ViDdyalaya, Ambalangoda for the year 2015, the Respondents have violated their fundamental rights guaranteed under Article 12(1) of the Constitution.

Leave to proceed was granted by this court under the said Article on 15th June, 2015.

The facts of the case as submitted by the Petitioners are as follows:-

It is common ground that admissions of students to government schools for the year 2015 was governed by circular issued by the Ministry of Education bearing No. 23/2013 dated 23.05.2013. It was also not in dispute that the cut off mark for the admission to grade one students for the said school for 2015 was 94.25.

The 2nd Petitioner sought admission to the school under Residency (Proximity/feeder area) category. In terms of the circular P3, the applicant is required to produce proof of residency and marks are allotted for the proximity category based on the criteria laid down in clause 6.1 of the circular P3.

The Petitioners have averred that under the category 6.1 the Petitioners expected to get 96 marks which is well above the cutoff mark referred to above.

The Petitioners have attended an interview on 6th October,2014, held to evaluate the eligibility of the 2nd Petitioner to be admitted to the school concerned. The Petitioners state that the Board of Interview comprising of 3rd to 7th Respondents awarded the 2nd Petitioner 91 marks under the category applied for.

The Petitioners state that, on or about 5th January, 2015 the temporary list containing those who were selected was displayed on the notice board. However, the 2nd Petitioner's name had not been among the applicants selected for admission.

Aggrieved by the exclusion of the 2nd Petitioner an appeal had been lodged with the 3rd Respondent, the Principal of Dharmasoka Vidyalaya as provided for in clause 9.1 of the circular P3.

The main contention on behalf of the Petitioners was the deduction of 5 marks due to the fact that Devananda Vidyalaya is more proximate to the Petitioners' residence. This deduction was made at the initial interview Petitioner faced on the 6th October,2014 and the Appeal Board (which comprised of 4th, 8th and 9th to 11th Respondents) also had been of the view that the deduction of 5 marks referred to above was justified, in view of the fact that the petitioners' residence is more proximate to Devananda Vidyalaya.

When the final list of students selected was released, the 2nd Petitioner's name had not been there. Petitioners thereafter had sought administrative relief from various quarters but those details are of not much relevancy to decide the issue in this case.

The admission to Grade1 of government schools is a competitive process and the cut off mark is set accordingly.

For the admission to Dharmashoka for the academic year 2015, the cut off mark had been 94.25. As such all applicants who secured the cut off mark or marks above that were taken in.

Hence what is pivotal to the decision in the instant application is to consider whether the 2nd Petitioner had been deprived of any marks that should have been allotted to him.

As far as allocation of marks are concerned the 2nd Petitioner had obtained 91 marks at the initial interview and that had been confirmed when his case was heard by the Appeal Board.

As to the allocation of marks the Petitioner complains that 5 marks were deducted on the basis that there was another school proximate to the residence of the Petitioner than Dharmashoka College, Ambalangoda, namely Devananda Vidyalaya.

The Petitioners have ie not denied the fact that the said school is more proximate to their residence, and had contended further that they had received a letter from Devananda Vidyalaya with regard to the enrolment of the 2nd Petitioner to that school, but had not done so due to the distance and the medical condition of the 2nd Petitioner.

In the objections of the 3A Respondent, Principal Dharmashoka Vidyalaya, he had admitted the fact that 5 marks were deducted due to the proximity of Devananda College and in support of that had annexed an extract from “Google map”(3AR4) which shows the location of the residence of the Petitioners and the two schools. According to the same, the distance from the residence of the Petitioners to Devananda College is 397 meters whereas the distance to Dharmashoka Vidyalaya is 470 meters.

Having considered the submissions of the parties and the documents filed I am of the view, the deduction of marks in respect of the school closer to the Petitioners’ residence than Dharmashoka Vidyalaya thus seem justified.

As far as computation and allocation of marks are concerned this is the only aspect raised by the Petitioners and I hold that the Respondents had not deprived the Petitioners the marks due.

The Petitioners have also pointed out that the Respondents have acted in contravention of the express guidelines with regard to the admission criteria.

It was contended on behalf of the Petitioners that only four members of the Appeal Board have signed the final list whereas clause 11.4(a) of the circular requires all members of the Appeal Board to sign the list. In addition, it had ben alleged that as per clause 11.6 of the circular which requires the applicant to be

informed in writing of the specific reason for the rejection of the application, had been violated by not informing the Petitioners the reason for the rejection of their application.

In response to the breaches alleged by the Petitioners, it is the position of the 3A Respondent that the 5th member of the Appeal Board did sign the list subsequently and had produced the copy of the impugned document marked 3AR12. The position of the 3A Respondent is that Clause 11.6 of the circular was complied with by informing the Petitioner with regard to the outcome of the application for admission to the school, which the Petitioners have admitted in their counter affidavits.

I have considered the breaches of the circular alleged by the Petitioners and the responses to the same by the 3A Respondent. At best they are technical in nature, and even if this court is to hold that the alleged breaches have taken place, still it will not have any impact on the marks allotted to the 2nd Petitioner.

It was held in the case of *Rathnayake vs. Attorney General 1997 2 SLR pg. 98* Chief Justice G.P.S. De Silva held that every wrongful act is not enough ground to complaint of infringement of fundamental rights. The Petitioner must establish unequal or discriminatory treatment.

I am of the view that the breaches of the circular alleged by the Petitioners are of technical nature and had caused no substantial prejudice to the Petitioners.

In the case of *C.W.Mackie and Company Ltd. Vs. Hugh Molagoda, Commissioner General of Inland Revenue and others (1986) 1 SLR 300*, Chief Justice Sharvananda observed that the equal treatment guaranteed by Article 12 is equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act via Article 12, one cannot seek execution of any illegal or invalid act.....Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, formulated in law in contradiction to an illegal right which is valid in law.

The decision referred to above had been consistently followed by the Supreme Court and with approval I wish to refer to the statement made by Justice M.D.H.Fernando in the case of *Gamaethige Vs. Siriwardane (1988) 1 SLR 384*, wherein His Lordship said “Two wrongs do not make a right, and on proof of the

commission of wrong the equal protection of the law cannot be invoked to obtain relief in the form of an order compelling commission of a second wrong.

Justice Dr. Shirani Bandaranayake following the decision in case C.W.Mackie and Company Ltd, referred to above held in the case of Dissanayake Vs. Piyal de Silva (2007) 2 SLR 134, that Article 12 (1) of the Constitution provides only for the protection of the law and no for the equal violation of the law.

Considering the above I hold that the Petitioners have failed to establish that the Respondents have violated the fundamental right enshrined in Article 12(1) of the Constitution as far as the 2nd Petitioner is concerned.

Accordingly the application is dismissed, but in all the circumstances, without costs.

JUDGE OF THE SUPREME COURT

S.E.WANASUNDERA, PC, J.

I agree

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree

JUDGE OF THE SUPREME COURT

