

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

In the matter of a Fundamental Rights application under and in terms of Article 126 reads with Article 17 of the constitution in respect of the violation of the Fundamental Rights of the Petitioners guaranteed under Article 12 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Kumarapperuma Arachchige Chandana Prasanna,
No. 835/12, Peradeniya Road, Mulgampala,
Kandy

For and on behalf of:

Kumarapperuma Arachchige Thinuga Sethum

Petitioner

SC /FR/ Application No 70/2017

Vs,

1. R.D.M.P. Weerathunga,
Principal,
Kingswood College,
Kandy.
2. Sunil Hettiarachchi,
Secretary,
Ministry of Education,
"Isurupaya",
Pelawatta, Battaramulla.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: K. Sisira J. de. Abrew J

Vijith K. Malalgoda PC J

L.T.B. Dehideniya J

Counsel: Ranga Dayananda with Lilanthi de. Silva and Anuradhi Wickramasinghe for the
Petitioner

Suren Gnanaraj SC for the Attorney General

Argued on: 20.03.2017

Judgment on: 25.05.2018

Vijith K. Malalgoda PC J

The Petitioner to the present application Kumarapperuma Arachchige Chandana Prasanna had filed this application on behalf of his minor son Kumarapperuma Arachchige Thinuga Sethum alleging violation of Article 12 (1) of the Constitution of Democratic Socialist Republic of Sri Lanka by failing to admit the said minor to Grade one of Kingswood College, Kandy.

As revealed before this court, the Petitioner as the father of the minor, applied for admission to Grade one of Kingswood College Kandy, under the category, children of residents in close proximity to the school as laid down in clause 6.1 of the circular No 17/2016 dated 16th May 2016 which governed the school admission to the grade one for the year 2017.

Under clause 6.1 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.

Even though the Petitioner could not furnish a copy of the application he submitted with regard to his son's school admission, it is not disputed that the application submitted to Kingswood College, Kandy by the Petitioner was made under clause 6.1 of the said circular.

However as submitted by the Petitioner, the 1st Respondent by his letter dated 28th July 2016 informed the Petitioner, that his application was rejected on the basis that the title to the Petitioner's residence had not been established.

Being dissatisfied with the said decision of the 1st Respondent, Petitioner had submitted an appeal to the said 1st Respondent under clause 8.1 (e) of the said circular but the said appeal too was rejected by the 1st Respondent by his letter dated 26.08.2016.

Whilst challenging the said decision of the 1st Respondent, the Petitioner had submitted that,

- a) The Petitioner resides at the premises built on a land leased out to his grandmother namely Hewapedige Hinniyhami by the Department of Railways.
- b) The Petitioner being an old boy of Kingswood College, was residing in the same address for a long period of time
- c) The Petitioner had submitted documentary proof as required by the circular 17/2016 including Electricity bills, Water bills, Tax receipts and Electoral Register extracts for the past 5 years in order to establish his residence in the given address
- d) It is contrary to the provisions of the circular 17/2016 to reject an application on the basis that the applicant does not have a title to the premises in which he resides, but the maximum the 1st Respondent could have done was to deduct 10 marks allocated for the title deeds

and argued that failure by the 1st Respondent to call the Petitioner for the interview and the rejection of the appeal by the 1st Respondent was irrational, *mala fide* and illegal.

In this regard the Petitioner heavily relied on the decision by this court in the case of ***Dasanayakage Gayani Geethika and two others Vs. D.M.D. Dissanayake Principal, D.S. Senanayake College, Colombo 07 and five others SC FR 35/2011 SC minute dated 12.07.2011***, where Suresh Chandra J had observed that,

“Residence as envisaged by the said circular would imply a permanent abode which has been used for a continuous period. The manner in which 35 marks have been allocated would

indicate that the continuity in such residence should be at least for a period of 5 years. Such residence does not necessarily connote ownership as the circular speaks of leases whether registered or unregistered being acceptable for the purpose of establishing residence”

During the argument, before us the learned counsel for the Petitioner informed court that he will restrict his argument to the documents contained in pages 42-70 submitted along with the application before this court. As observed by this court the said documents are the documents the Petitioner had relied to establish his residence when he submitted the application to the Kingswood College.

Clause 6 (G) of the circular 17/2016 requires the applicant to submit the documentation with regard to the house he is presently in occupation in order to establish his residence and under clause 10.6 of the said circular no fresh documents are permitted to be submitted during the appeal process.

In the above circumstances, it is further observed by this court that, it is the duty of the Applicant to satisfy the school authorities that all the documents he submitted along with his application refer to his permanent place of residence under which he has submitted the application to gain admission for his child under clause 6.1 of the said circular.

However, as submitted by the learned Senior State Counsel, the documents relied by the Petitioner when he submitted the application to the Kingswood College in order to gain admission for his son, were insufficient to identify the house, the Petitioner said to have residing during the period relevant to this application. In this regard, our attention was drawn to the documents contained in pages 53, 54-58, 61-63, and 64-65.

As observed by this court the Petitioner’s permanent residence, according to the present application and the application he submitted to Kingswood College is No. 835/12 Peradeniya Road, Kandy.

Since the petitioner applied under Clause 6.1, children of residence in close proximity, the Petitioner had to submit a title deed either in his or his spouses name or in the name of his parents. But the title deed he submitted (available at pages 54-58) is a lease in respect of a land bearing No. 835/1 Peradeniya Road in the name of Hewa Pedige Himmihamy. Even though the Petitioner now claims that the said Hinnihamy is his grandmother and therefore he will only lose 10 marks, the position taken up by the learned State Counsel before this court was that the said deed refers to a land bearing No. 835/1 and not 835/12, and the therefore the Petitioner had failed to satisfy the school

authorities that he has permanent residence at No. 835/12 Peradeniya Road when he tendered the application.

In order to satisfy that the Petitioner had paid taxes for his residential premises he has submitted a tax receipt which is at page 53. The said receipt refers the house address as 835/12 but the said receipt is not in the name of the Petitioner but is in name of one of Saimon Appu.

The electricity bills which were in the name of the Petitioner (at pages 61-62) bears the house number as 835/2 Peradeniya Road.

Whilst referring to the discrepancies referred to above, the learned Senior State Counsel submitted before this court that the application submitted by the Petitioner along with the documents, which were produced before this court at pages 42-70 were contradictory to each other and therefore the school authorities could not have entertain the application submitted by the Petitioner as an application which satisfied the residence as required by clause 6.1 of circular 17/2016.

The Petitioner had filed several other documents to establish that the house referred in the deed as 835/1, in the electricity bill as 835/2 and in the tax receipt and other documents including the extracts of the electoral register as 835/12 refers to one and the same house and the said Hewapedige Hinnihamy was his grandmother and Saimon Appu under whose name the tax receipt was issued was his grandfather, but we observe that, none of these material were placed before the school authorities by the Petitioner when he submitted the original application to gain admission for his son to Kingswood College, Kandy.

As referred earlier in this judgment by me, clause 6 (G) requires every applicant to submit documentation with regard to the house, the applicant is presently in occupation and clause 6.1 I (c) specifically stated that the marks can only be allocated to the house the applicant is presently in occupation.

In the said circumstances, it is the duty of the school authorities to identify the permanent residence of any applicant, in order to allocate marks under the provisions of the said circular but, in the absence of any explanation with regard to the contradictory nature of the supporting documents submitted by the Applicant, I am not inclined to conclude that the school authorities have acted in violation of equal protection guaranteed under Article 12 (1) of the Constitution.

It is further observed by me that the decision of the Supreme Court in ***Dasanayakage Gayani Geethika and two others V. D.M.D. Dissanayake Principal, D.S Senanayake College and five others*** and the decision in ***Anjali Thivaak Pushparajah Rohan and another V. Akila Viraj Kariyawasam Hon. Minister of Education and fifteen others SC FR 06/2017*** SC minute dated 27.10.2017 has no applicability to the case in hand since the present case does not refer to the nature of the residence but it refers to the identification of the permanent residence of the applicant at the time he submitted the application under Clause 6.1 of the circular 17/2016.

In the above circumstances, I hold that the Petitioner has failed to establish that his fundamental rights guaranteed under Article 12 (1) of the Constitution had been violated by the 1st to the 3rd Respondents. This application is accordingly dismissed. I make no order with regard to costs.

Judge of the Supreme Court

K. Sisira J. de. Abrew J

I agree,

Judge of the Supreme Court

L.T.B. Dehideniya J

I agree,

Judge of the Supreme Court