

## 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

1. Hadunnethige Amitha Saman Yuneka
2. Adhikari Dissanayakalage Sumedha Mahesh Jayarathne

**Both of,** No. 57/108, 2<sup>nd</sup> Lane,  
Vidyala Mawatha,  
Avisawella.

**Petitioners**

**SC /FR/ Application No 84/2017**

Vs,

1. B.A. Abeyrathne,  
Principal,  
Royal College,  
Colombo.

2. L.W.K. Silva
3. R.M.I.P. Karunaratne
4. L.K. Jayathilake
5. A.G.P.A. Gunawansa
6. T.Tennakoon

All members of Interview Board for Grade One Admission 2017,  
Royal College,  
Colombo.

7. A.G.N. Jayasekara
8. G.V. Jayasuriya
9. R.M. Ratnayake
10. M.H. Sunny

11. U. Malalasekara
12. Inoka Gunn  
All members of Appeal Board for Grade One Admission 2017,  
Royal College,  
Colombo.
13. P.N. Illapperuma,  
Director, National Schools,  
Department of Education,  
Ministry of Education,  
'Isurupaya' Pelawatte,  
Battaramulla.
14. Sunil Hettiarachchi,  
Secretary,  
Ministry of Education,  
'Isurupaya' Pelawatte,  
Battaramulla.
15. Hon. Akila Viraj Kariyawasam,  
Minister of Education,  
Ministry of Education,  
'Isurupaya' Pelawatte,  
Battaramulla.
16. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:**      **Priyasth Dep PC, CJ**  
  
                  **Sisira J. de. Abrew J**  
  
                  **Vijith K. Malalgoda PC J**

**Counsel:** Harith de. Mel for the Petitioners Instructed by Alanka Dias,  
Suren Gnanaraj SC, for the Attorney General

**Argued on: 21.02.2018, 29.06.2018**

**Judgment on: 06.09.2018**

**Vijith K. Malalgoda PC J**

The two Petitioners namely Hadunnethige Amitha Saman Yuneka and Adhikari Dissanayakalage Sumedha Mahesh Jayarathne made an application in terms of Article 126 of the Constitution for the alleged violation of their fundamental rights guaranteed under Article 12 (1) of Constitution as a consequence of the son of the above Petitioners not being selected for admission to Grade one of Royal College, Colombo 07.

As submitted before this court, the 1<sup>st</sup> Petitioner had started her carrier as a development assistant at Gammedagama Maha Vidyalaya in Deiyandara on 10.10.2005 and was appointed as a Graduate Teacher in class 3-1 at Walasmulla-Handugala Maha Vidyalaya with effect from 01.06.2008.

By letter dated 07.01.2013 she was given a transfer out of her province and was released to the Western Province. With the said transfer the 1<sup>st</sup> Petitioner was appointed to Sedawatta Siddartha Vidyalaya with effect from 11.01.2013.

The 1<sup>st</sup> Petitioner as the mother of minor Sandeep Dissanayake applied for admission to Grade one of Royal College, Colombo 07 under the Education category as laid down in Clause 6.4 of the

circular No 17/2016 dated 16<sup>th</sup> May 2016 which governed the school admission to Grade one for the year 2017.

Clause 6 (a) of the said circular had identified seven categories under which children were admitted to government schools and the criteria for selection and the marking scheme in respect of each category are laid down in the circular issued by the 14<sup>th</sup> Respondent.

Clause 6.4 of the said circular refers to the children of employees who directly involved with the School Education in the Ministry of Education, commonly referred to as Education Category. Under the circular, 05% of the total numbers of vacancies were allocated to the children comes under the said category.

As observed by this court maximum of 20 marks were allocated to the period of service of the parent who is employed under the Ministry of Education (2 marks per year) and maximum of 35 marks were allocated for the distance to the school from the permanent residence of the Applicant. An applicant under the said category is further entitled for a maximum of 25 marks for remote service and 20 marks for unutilized leave for past five years (2 marks for 20 days of unutilized leave). The Applicants are further entitled to obtain 10 more marks if the parent works in the staff of the same school.

The 1<sup>st</sup> Petitioner had applied for the admission of Sandeep Dissanayake to Grade one of Royal College and at the time she submitted the application the 1<sup>st</sup> Petitioner along with her family was permanently resident at No. 57/108, 2<sup>nd</sup> Lane, Vidyala Mawatha, Awissawella.

The Petitioners were called for an interview by the School Authorities on 28<sup>th</sup> August and after considering the documents produced at the interview they were awarded 56 marks by the

Interview Panel. (P-7) Even though cut of marks under the said category was only 48 marks the name of their son was neither included in the Temporary Selection List nor in the waiting list which was published on or about 31<sup>st</sup> October 2016.

Being aggrieved by the said decision, the Petitioners submitted an appeal under Clause 9 of the said circular to the School Authorities but the Petitioners were not successful at the appeal hearing. However the Petitioners learnt at the appeal hearing, that the reason for non-inclusion of the name of the Petitioners' son was due to the 1<sup>st</sup> to the 6<sup>th</sup> Respondents or any one of them not being satisfied as to the residency of the Petitioners' at No.57/108, 2<sup>nd</sup> Lane, Vidyala Mawatha, Avissawella.

Even though the Petitioners have taken up the position that they were neither explained any reason nor they were aware of any reason for such determination, in paragraph 29 of the Petition filed before the Supreme Court the Petitioners have disclose the following;

- 29, a) As far as the Petitioners are aware no persons from Royal College came to the residence of the Petitioners to ascertain residency;
- b) By or about 9<sup>th</sup> October 2016 three persons had arrived at the residence of the Petitioners and inquired about the 1<sup>st</sup> Petitioner and the lessor's daughter B.D. Danushi Samudrika had met such persons and informed that the Petitioners had left to Matara to visit their sick mother.
- c) By or about 16<sup>th</sup> November 2016 some other persons had arrived at the residence of the Petitioners and inquired from the Landlord's wife J.A. Malkanthie as to the Petitioners residence and had been informed that the Petitioners will be back in about an hours time.

d) The Petitioners further state that no person from Royal College had come to their residence as promised at the Appeal Board.

When going through the above averments filed before this court it is clear that the Petitioners were well aware of the fact that they were not at the address they said to have resident, on two occasions when site inspections were carried out, one after the interview and before the Temporary list was published and the other prior to the appeal hearing.

The requirement of ascertaining the correctness of the residence and the allocation of marks for residence under Education category was identified under clause 6.4 (II) as follows;

Distance from the permanent residence to the work place of the applicant is;

Above 100km	- 35 marks
Between 99km to 50km	-25 marks
Between 49km to 25km	-15 marks
Less than 25km	-05 marks

The Applicant is entitled to above marks if he resides only within the feeder area to the school applied. The residence will have to verified under this category.

As revealed during the argument before this court the feeder area of Royal College, Colombo extends up to Avissawella, and the Petitioners who claimed that they reside at No. 15/108, 2<sup>nd</sup> Lane, Vidyala Mawatha, Avissawella are qualified to gain admission for their son to Royal College provided if they fulfill all the other requirements under the above circular.

According to the provisions of clause 6.4 (II), the School Authorities will have to satisfy with regard to the residence of each applicant comes under the said category and under Clause 8.3 (c) of the same circular the mode of verifying the residence under the Close Proximity Category had been identified as site inspection. In the absence of any specific method in order to verify the residence under the Education Category, I see no reason to reject the method followed by the School Authorities to verify the residence of the applicant in the present application. It is also observed under Clause 8.3 (c) that it had provided to carry out site inspections under any other categories as well.

The 1<sup>st</sup> Respondent, Principal Royal College, Colombo 07 who admits the fact that, the Petitioner attended the interview on 28.08.2016 and obtained 56 marks as referred to in P-7, had taken up the position before this court that, a site inspection had been carried out at the Petitioners' residence on 09.10.2016, since it was necessary for the Interview Panel to satisfy with the residence of the applicant under clause 6.4 (II) of the circular 17/2016.

The notes prepared by the inspection team is produced marked R1 to the affidavit of the 1<sup>st</sup> Respondent and the said document confirms the position taken up by the Petitioner in paragraph 29 (b) of the petition that, the inmates have informed that the Petitioner had gone to see their parents.

Since the Petitioner was not found in the address on 9<sup>th</sup>, a second site inspection was carried out to the same address by the same team on 23.10.2016. That too is prior to the release of the temporary list on 31<sup>st</sup> October 2016. Report of the said site inspection is produced marked R-2 and according to R-2, neither the Petitioner nor the owner was available at No. 57/108, 2<sup>nd</sup> Lane, Vidyala Mawatha, on that day.

The Petitioner is silent on this visit in his petition but speaks of a second visit on 16<sup>th</sup> November 2016. However according to the Respondents, no such visit was carried out in the month of November but a third visit was carried out on 30.04.2017 two months after the Fundamental Rights application was filed before the Supreme Court on the instruction of the Attorney General. The report of the said inspection is before this court produced marked R-3.

According to R-3, neither the Petitioner nor the child was present at the above address on that day and one Thenuwara Arachchige Malkanthie was present at the house. The said Malkanthie had given a statement to the officers who carried out the inspection stating that the Petitioner is not at the above address at that time. As further observe by me, the said statement is silent on the fact, whether the Petitioner resides at the above address or not but the officers who carried out the inspection had not observed any evidence of the residence of the Petitioner at the above address.

However the Petitioner whilst challenging the position taken up by the Respondents had filed an affidavit marked P-19 along with her counter objection, from the said Thenuwara Arachchige Malkanthie.

In the said affidavit, she confirms the fact that an inspection team had visited her daughter's house on 30<sup>th</sup> April 2017 around 10.00 p.m and inquired about the Petitioner.

According to the affidavit, she informed them that the Petitioner resides at the house but had gone to a Sinhala New Year dinner and will be returning home late. She further confirms that the members of the said team had taken photographs of the house and got her to sign a document to confirm their visit to the house.

In addition to the said affidavit, another affidavit from Thenuwara Arachchige Malkanthie had been filed along with the petition filed before this court marked P-13 (b).

According to the said affidavit, an inspection team had visited her daughter's house on 20.11.2016 around 8.15 in the morning but the Petitioner was not available in the said address at that time. The said team wanted her to call the Petitioner but according to Malkanthie she could not call the Petitioner in the absence of contact details with her. The team wanted to see the belongings of the Petitioner inside the house but she could not show anything since their belongings were inside their room.

The Respondents have denied this visit in the affidavit filed in the present application. However as the Petitioner admitted in the papers filed before this court, that she made two other applications one to Thurstan College and the other to Mahanama College, there is a possibility that the site inspection referred to in P-13 (b) could be from one of those schools. However, what is important for the consideration of this court is that, even on 20/11 when an inspection team visited the house of the Petitioner around 8.15 a.m. the Petitioner was not present at her house, and the inmates of the house had failed to satisfy the inspection team by showing any belongings of the Petitioner in the house.

When considering the material referred to above it is clear that the Petitioner was not present on 4 occasions, when inspection teams visited the address of the Petitioner between October 2016 to April 2017.

As observed by me earlier, under clause 6.4 (II) of the circular 17/2016 which governed school admissions for the year 2016, the School Authorities have a duty to satisfy with the residence of the applicant even though the applicant had submitted documentary proof of the residence before

the Interview Panel. In this regard, the importance of the site inspection was discussed by Sripawan (J) (as he was then) in the case of ***Mohamad Uzman Nazeem V. Upali Gunasekara Principle, Royal College, Colombo 07 and two others SC/FR/ 30/2012 SC minutes dated 30.08.2012*** as follows;

“I agree with the learned Senior State Counsel that documentary proof of residency is not enough and the Petitioner was required to establish his residency during site inspections carried out by the school authorities.....

It is the duty of the site inspection team to form an unbiased assessment after conducting inspections to ascertain the truthfulness of the claim of the residence at the address furnished by the Petitioners. The members of the inspection team are entitled to such flexibility in their precedence as they think the particular case under consideration requires.”

During the arguments before us the learned counsel for the Petitioner heavily relied on the following observations made in the case of ***Anjali Thivaak Pushparajah Rohan and another V. Akila Viraj Kariyawasam, Hon. Minister of Education and 15 others SC/FR/06/2017*** SC minute dated 27.10.2017;

“As no marks were allocated to the Petitioner’s application, no steps were taken to inspect the Petitioners residence prior to 01.01.2017. However, as revealed before this court, subsequent to the filing of the present application, steps were taken to inspect the premises in question. The said inspection revealed that those who went for inspection could not find a bedroom and/or bed inside the premises but some photographs and house hold utensils were observed inside the said premises.

Even though this court is reluctant to make any remark on the above observation by the team which went for the inspection, I cannot ignore the fact that there are people who live with lots of hardships and therefore one cannot expect everybody in this country to have a bedroom with a bed in their houses.....

.....The Interview Panel has failed to evaluate the document submitted on behalf of the 2<sup>nd</sup> Petitioner and allocate marks to him. The said Panel had acted arbitrarily when they decided not to grant marks. The Panel appears to have considered the concept of residence in a very abstract manner. They failed to consider the documents submitted on behalf of the Petitioners, when the said documents clearly establish the residence of the Petitioners. The Interview Panel should have been mindful of the fact that it is the ambition of every parent to admit their child to a school of their choice and look at the documents not in a stereo typed manner but in a reasonable manner, to grant the entitlement of every child who come before them.”

However as revealed before this court, the facts and circumstances of the present case are quite different to the facts and circumstances under which the above observation was made by this court. The interview Panel who interviewed the Petitioner and her son had given the full marks entitled by them, well above the cut off mark under the Education Category under which the Petitioner submitted her application to gain admission to Royal College.

As required under clause 6.4 (II) a site inspection was carried out by the School Authorities on two occasions prior to the release of the temporary list but neither the Petitioner nor the child or any other member of their family were present at No. 57/108, 2<sup>nd</sup> Lane, Vidyala Mawatha, Avissawella during any of those inspections.

In the said circumstances the School Authorities had decided not to include the Petitioner's son into the temporary list and the appeal too was rejected on the same basis.

When considering all the matters discussed in this judgment, I hold that the Petitioner has failed to establish that her Fundamental Rights guaranteed in terms of Article 12 (1) of the Constitution had been violated by the Respondents.

This application is accordingly dismissed.

I make no order for costs.

**Judge of the Supreme Court**

**Priyasth Dep PC;**

**I agree,**

**Chief Justice**

**Sisira J. de. Abrew**

**I agree,**

**Judge of the Supreme Court**

