

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

*In the matter of an application in terms
of Article 126 read with Article 17 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

S C (F R) Application No. 96/ 2012

1. A H Nethum Prabodha Ranawaka,
43/15,
R E De Silva Mawatha,
Heppumulla,
Ambalangoda.

2. A H Nadeeka Malkanthi,
43/15,
R E De Silva Mawatha,
Heppumulla,
Ambalangoda.

PETITIONERS

-Vs-

1. M G O P Panditharathna
Principal,
Drarmashoka Vidyalaya,

Ambalangoda.

2. Director,
National Schools,
Isurupaya,
Battaramulla.

3. Secretary,

Ministry of Education,
Isurupaya,
Battaramulla.

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Buwaneka Aluwihare PC J

L. T. B. Dehideniya J

P. Padman Surasena J

Counsel: Saliya Peiris PC with Varuna de Seram for the Petitioners.

Rajiv Goonetillake SSC for the Attorney General.

Argued on : 2019 - 03 - 21

Decided on: 2019 – 05 - 30

P Padman Surasena J

The 2nd Petitioner is the mother of the 1st Petitioner who is a minor and whose admission to Grade 1 of Dharmashoka College Ambalangoda, was sought by an application made by the 2nd Petitioner to the said school. Upon the 1st Petitioner becoming unsuccessful in getting the admission to the said school, the 2nd Petitioner has appealed to the Appeals Panel appointed by the School authorities. The Petitioners have not been successful at the said appeal too.

The Petitioners had sought eligibility for admission under the category of applicants who reside in close proximity to the school. The Petitioners have scored a total of 86 marks out of 100 marks, which is the maximum amount of marks that any applicant could obtain.

It is in this backdrop that the Petitioners in their petition have prayed inter alia for the following relief.

- I. a declaration that the fundamental rights of the Petitioners guaranteed under Articles 12(1) of the Constitution have been infringed by one or more or all the respondents;
- II. a direction on the Respondents to award the correct marks due for the application of the Petitioners; and
- III. a direction on the Respondents to admit the 1st Petitioner to Grade I class (for the year 2012) of Dharmashoka College Ambalangoda.

This Court on 16-05-2012 having heard the submissions of the learned counsel for the Petitioner and the submissions of the learned Senior State

Counsel who appeared for the Respondents, had decided to grant leave to proceed in respect of the alleged violations of Articles 12(1) of the Constitution.

Since this court at this instance is dealing with an application for an alleged infringement of a fundamental right in terms of Article 127 of the Constitution, the task before this court is to ascertain whether the respondent school authorities have afforded an equal protection of law to the Petitioners.

It is the claim of the Petitioners that the 1st Respondent and the interview board as well as the aforesaid Appeals Panel wrongly deprived the Petitioners, the correct marks he was entitled to receive for his title deed.

In contradistinction to the above position, the 1st Respondent in his affidavit has taken up the following positions.

- i. the Petitioners had submitted only the deed No. 6358 attested by A W Sumanasiri Notary Public on 15-10-1994 [produced marked **R 2(A)**];
- ii. the said deed No. 6358 was in the name of the 2nd Petitioner's father A Gnanasiri;
- iii. there was an endorsement on the said deed No. 6358 stating that the ownership has been transferred by deed bearing No. 66732 on 22-01-1996;
- iv. as the said endorsement gave rise to a suspicion as to the validity of the said deed, the same was verified from the Land Registry of Balapitiya;
- v. upon verification, it was revealed that the property in question had been transferred on 22-01-1996 by the 2nd Petitioner's father A

Gnanasiri and two others to L Jayawathie by deed No. 6732 produced marked **R 4**.

- vi. thereafter, said L Jayawathie had transferred this property to N. S. S. Mendis by deed No. 7584 on 22-03-2002 produced marked **R 5**.
- vii. thereafter, the said N. S. S. Mendis had transferred this property on 26-02-2009 back to the 2nd Petitioner's father A Gnanasiri by deed No. 11818 produced marked **R 6**.

The 1st Respondent has produced the relevant extracts of the Land Registry folio marked **R 7**. Thus, it is the position of the Respondents that the Petitioners were only entitled to marks for the period of their ownership of the said property (i.e. from 26-02-2009 onwards) and that the Petitioners cannot be awarded marks for the previous ownerships held by the other people prior to the execution of the deed No. 11818. Therefore, it is clear that the school authorities could only award three marks for the title deed for the period of ownership held by the father of the 2nd Petitioner, which is less than three years.

As regards the appeal proceedings by the Appeal Panel, the same circular also binds them. Therefore, they too cannot deviate from it. Thus, their action is also within law.

Thus, the Respondent school authorities are entitled to reject the application submitted by the 2nd Petitioner, as she had not obtained sufficient marks to compete with the other applicants who also had applied under the same circular being bound by the same conditions.

Moreover, it is the position of the 1st Respondent that the 2nd Petitioner has attempted to mislead the interview board by producing only the deed

bearing No. 6358 without disclosing the subsequent deeds transferring the relevant property to outsiders.

The 1st Respondent has also brought to the notice of this court that the 1st Petitioner has by this time gained admission to Sri Devananda Vidyalaya which is also a National School and which is in closer proximity to Petitioners' home than Dharmashoka Vidyalaya is.

This Court needs to underscore the fact that the Petitioners at no stage has complained that the respondents had issued the circular produced marked **P 2** unlawfully. The Petitioners' complaint is that the 1st Respondent, the Interview Committee as well as the Appeals Panel erroneously failed to allot full marks they are entitled to as per the said circular.

When adjudicating cases in which the Petitioners have challenged the non-selection of their children to a particular school, the Court needs to always bear in mind that the process of selection of children to a Public school under this circular is always a competitive process. The circular has devised a marking system.¹ It must be borne in mind, as revealed before this Court that it is the same method, the same marking system and the same yardsticks that the respondent school authorities have adopted to evaluate the applications of all applicants for the selection of students to its classes in Grade 1. In the light of this background, this Court cannot see any merit in the argument advanced on behalf of the Petitioners that the respondent school authorities have failed to allot correct marks as per the said marking system affording the equal protection of law to the Petitioners as well.

¹ Clause 6.1 of **P 2**.

Therefore, it is clear that the respondent school authorities have not infringed the fundamental rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

In these circumstances and for the foregoing reasons this Court sees no basis to allow the instant application. Hence, this Court decides to dismiss this application. However, this Court makes no order for costs.

Application is dismissed without costs.

JUDGE OF THE SUPREME COURT

Buwaneka Aluwihare PC J

I agree,

JUDGE OF THE SUPREME COURT

L. T. B. Dehideniya J

I agree,

JUDGE OF THE SUPREME COURT