

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

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

- 1. R.M. Premil Priyalath de. Silva,**
- 2. P.W.Reka Samanthi,**
- 3. R.M.D.S.R.de. Silva (Minor)**  
All at 20/1,  
R.E. de. Silva Mawatha,  
Ambalangoda.

**Petitioners**

**SC /FR/ Application No 97/2015**

Vs,

- 1. Akila Viraj Kariyawasam (M.P)**  
Hon. Minister of Education,  
Ministry of Education,  
“Isurupaya” Battaramulla.
- 2. Upali Marasinghe,**  
Secretary- Ministry of Education,  
“Isurupaya” Battaramulla.
- 3. Sumith Parakramawansa,**  
Principal- Dharmashoka Vidyalaya,  
Galle Road, Ambalangoda.
- 4. R.N. Mallawarachchi**
- 5. Diyagubaduge Dayarathne**
- 6. M. Shirley Chandrasiri**
- 7. N.S.T. de, Silva**  
3<sup>rd</sup> to 07<sup>th</sup> above all  
Members of the Interview Board  
(Admissions to Year 01)  
C/o: Dharmashoka Vidyalaya,  
Galle Road, Ambalangoda

**8. W.T.B. Sarath**

**9. P.D.Pathirathne**

**10. K.P.Ranjith**

**11. Jagath Wellage**

04<sup>th</sup> and 08<sup>th</sup> to 11<sup>th</sup> above all

Members of the Appeal Board

(Admissions to Year 01)

C/o: Dharmashoka Vidyalaya,

Galle Road, Ambalangoda

**12. Mr. Ranjith Chandrasekara**

Director- National Schools,

“Isurupaya” Battaramulla.

**13. Hon. the Attorney General,**

Attorney General’s Department,

Colombo 12.

**Respondents**

**Before:** S.E Wanasundera PC J  
Nalin Perera J  
Vijith K. Malalgoda PC J

**Counsel:** Chrishmal Warnasuriya for the Petitioners  
Rajitha Perera, SSC for the Hon. Attorney General

Argued on: 09.01.2018

**Judgment on: 20.02.2018**

**Vijith K. Malalgoda PC J**

The 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners are the parents of the 3<sup>rd</sup> Petitioner minor who sought admission to Grade 1 at Dhamashoka Vidyalaya, Ambalangoda.

The 1<sup>st</sup> Petitioner as the father applied through his wife, for admission of the 3<sup>rd</sup> Petitioner to grade one of Dharmashoka Vidyalaya, Ambalangoda for the academic year 2015 under the category “Old Boys”, to schools as laid down in clause 6.0 (a) (II) of the circular No 23/2013 dated 23.05.2013 which governed the school admission to the grade one for the year 2015, since the 1<sup>st</sup> Petitioner is a past student of the said school.

The 2<sup>nd</sup> Petitioner who is the wife of the 1<sup>st</sup> Petitioner and the mother of the 3<sup>rd</sup> Petitioner had submitted the said application to Dharmashoka Vidyalaya on behalf of her husband who was employed in the United Arab Emirates, as a Licensed Security Officer.

Clause 6 (a) of the said circular issued by the 2<sup>nd</sup> Respondent had identified six 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 said circular. It is not disputed that the application submitted to Dharmashoka Vidyalaya by the 2<sup>nd</sup> Petitioner on behalf of the 1<sup>st</sup> Petitioner was under the category of “Old Boys”.

Under clause 6.2, 25% of the total number of vacancies were allocated to the children come under the said category and how such parents should establish the requirements and how the marks should be allocated based on the documents produced by the old boy is identified under the said clause.

As observed by this court, maximum of 26 marks were allocated to the period the old boy had studied at the school and another 25 marks were allocated for the educational achievements

during the said period. Another 25 marks were allocated to extracurricular activities during this period and the balance 24 marks had been allocated for the membership of the Old Boys Association, achievements after leaving the school and contribution for the school development.

Even though the learned counsel for the Petitioner made some remarks with regard to some of the documents produced under P-14, to the effect that the said circular had made provisions to allocate marks to financial contributions, the learned counsel did not challenge the marks allocated to the Petitioners under the said heading. It is observed by me that, by the said circular the maximum marks that could be awarded to an applicant was restricted to six marks and the Petitioner too had scored the maximum marks under the said heading and therefore see no merit in the Petitioners argument. As further observed by me, neither the circular nor the marking scheme adopted by Dharmashoka Vidyalaya had made provisions to give marks for financial contributions but made provision to allocate marks to the contributions made for the betterment of the school, and as evident from the documents submitted by the Petitioners, the contributions were not limited to financial contributions.

The fact that the Petitioners faced the interview, under the said category was not in dispute but, what was disputed before this court was the marks allocated to the Petitioners, by both the Interview Panel and the Appeal Board. With regard to the allocation of marks with regard to the II, III and IV categories identified under clause 6.2 of the circular, the Interview Panel was given discretion for the distribution of marks under each heading within the limits of the circular.

It is further observed that the Petitioner did not challenge the marking scheme adopted by the Interview Panel, but what was in dispute was the allocation of marks under the said scheme adopted by the Interview Panel.

The Petitioners alleged that the allocation of marks by the Interview Panel to some of the old boys were discriminatory and unfair and named 07 such old boys under paragraph 26 as follows;

“The following are such applicants who the Petitioners reliably aware had benefited from such favoritism;

OB- 57	R.M.K.Daminda
OB-82	A.I.C. Anurapala
OB-87	D.J.I. Assalarachchi
OB-152	I. Upendra
OB-160	M.G.I. Niranjala
OB- 104	G.P.M. Mendis
OB- 125	I.P. Apsara”

However the Petitioners have failed to submit any material before court to establish the allegation of favoritism against neither the Interview Panel nor the Appeal Board. In the said circumstances I have no doubt that the marking scheme adopted by the Interview Board was applied equally to all the applicants who faced the interview under the said category.

In this regard I am further mindful of clause 9.1 of the circular 23/2013 which provides for challenging any selection on the temporary list. The Petitioners have failed to make use of the said provisions in order to challenge any of the above selections.

Based on the marking scheme adopted by the Interview Board, the Petitioners have calculated their entitlement for marks under paragraph 15 of their petition as follows;

i.	For the classes the applicant had studied in the school up to “year 13”	26.0
ii.	For the academic achievements	7.5
iii.	Cadet provincial competition medals	6.0
iv.	Membership of the cadetting unit	1.5
v.	Scout membership	1.0
vi.	Swimming certificates	1.0
vii.	School house meet competition	2.0
viii.	Member of the Art Society	1.0
ix.	Life member Old Boys Association	2.00
x.	Member ship Old Boys Association [1 mark per year]	2.56
xi.	Academic achievements after leaving school	2.0
xii.	Assistance given to school development	<u>6.00</u>
		58.56

When considering the above entitlement identified by the Petitioners, I observed that the 3<sup>rd</sup> Respondent, Principal, Darmashoka Vidyalaya had admitted the entitlement of the above marks identified by the Petitioners except under (ii) Academic achievements, (vii) School House meet competition (viii) member of the Art Society and (xi) Academic achievement after leaving the school.

As further submitted by the 3<sup>rd</sup> Respondent the Petitioners entitlement for academic achievement is only 5.4 marks, since his G.C.E. O/L Examination results in his 1<sup>st</sup> attempt was only 1-S and 4-C. He was given additional 0.5 marks for the simple pass he obtained for maths on his second sitting but was not entitled to get more marks for the other subjects he got through on the 2<sup>nd</sup> sitting (3R6). Since there was an alteration visible in the certificate referred to under (vii) Petitioner was not given any marks under the said category and there is no entitlement of marks

for becoming a member of a society when the Petitioner was at school and therefore there is no entitlement for another one mark under category (viii).

The Petitioner claimed 2 marks for a Diploma Certificate he obtained after leaving the school but, his entitlement for a Diploma was only 1.5 marks.

According to the 3<sup>rd</sup> Respondent, at the interview the Petitioners were only allocated 49.07 marks and therefore not selected for the temporary list, since the cut off marks under the said category was 57.12. However at the appeal the marks given to the Petitioners were adjusted as admitted by the 3<sup>rd</sup> Respondent referred to by me above and the Petitioners were awarded 54.07 marks but the said mark was still below the cut off mark for the selection.

As observed by me, the Petitioners were struggling to obtain few marks to get through the cut off mark but as referred above, the marks allocated to the Petitioners were based on the marking scheme which was not challenged before this court. Even though the Petitioners could not challenge the reductions of marks under categories (ii), (viii) and (xi), Petitioners have produced marked P-15 an affidavit from one Aruna Prasad Weerasuriya challenging the decision to reject a certificate produced marked P-11 which was issued in the year 1983, when the 1<sup>st</sup> Petitioner said to have participated in an inter house meet for High Jump event under 12 category.

In the absence of any official document to establish that the said person namely Aruna Prasad Weerasuriya had become 2<sup>nd</sup> in the said event as claimed by him, I am not inclined to consider the said affidavit in favour of the Petitioners.

When considering the material already discussed, it appears that the 3<sup>rd</sup> Respondent as well as the other Respondents (Specially the 4<sup>th</sup> and 8<sup>th</sup> to the 11<sup>th</sup> Respondents, who are members of the Appeal Board) had strictly adhered to the provisions laid down in the circular pertaining to the admission of children to grade one for the year 2015 and the marking scheme adopted by the Interview Panel for giving marks under clause 6.2 of the said circular. The Petitioners never

challenged the said marking scheme. As further observed by me the Petitioners and the 3<sup>rd</sup> Respondent are in agreement of granting marks to the Petitioners under most of the headings as referred to above, but was in dispute under few areas. However the Petitioners were not successful in establishing, that the said discrepancies were due to the conduct of the said Respondents in violation of the said circular and/or the marking scheme adopted under clause 6.2 of the said circular.

In the said circumstances there is no doubt that the Respondents referred to above have allocated the marks in terms of the provisions laid down under the circular issued by the 2<sup>nd</sup> Respondent.

The Petitioners have alleged violation under Article 12 (1) of the Constitution by the above Respondents when the 3<sup>rd</sup> Petitioner was not admitted to Dharmashoka Vidyalaya, Ambalangoda.

In the case of ***Samadi Suharshana Ferdinandis and another Vs, S.S.K. Aviruppola, Principal, Visakha Vidyalaya and others SC/FR Application 117/2011*** SC minute dated 25.06.2012 Dr. Shirani Bandaranayake CJ discussed the concept of equality under Article 12 of our Constitution as follows;

“Our Constitution has clearly spelt out the concept of equality before the law and there are numerous instances where that right had been accepted and upheld. In the process this court has also noted that if a person complains of unequal treatment the burden is on that person to place before this court material that is sufficient to infer that unequal treatment had been meted out to him. Accordingly, it is necessary for the Petitioners not only to establish that they had been treated differently from others, but also that such treatment was so different as the others were similarly circumstanced and there were no grounds to differentiate them from him.”

As referred to above in this judgment, the Petitioners have failed to place before this court any material to establish that they were treated differently by any of the above Respondents when they decide not to admit the 3<sup>rd</sup> Petitioner to Dharmashoka Vidyalaya, Ambalangoda. In the said circumstances I hold that Petitioners have not been successful in establishing that their fundamental rights guaranteed in terms of Article 12 (1) of the Constitution had been violated by the Respondents.

The Application is accordingly dismissed. I make no order for costs.

JUDGE OF THE SUPREME COURT

S.E Wanasundera PC J

I agree,

JUDGE OF THE SUPREME COURT

Nalin Perera J

I agree,

JUDGE OF THE SUPREME COURT