

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

In the matter of an Application under and in terms of Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Kirahandi Yeshin Nanduja De Silva
No. 142, Main Street,
Ambalangoda.
2. Tikiriyadura Indu Amalka De Zoysa
No. 142, Main Street,
Ambalangoda.

SC FR Application No. 50/2015

Petitioners

Vs.

1. Sumith Parakramawansa
Principal & Chairman - Interview
Board
Dharmashoka Vidyalaya
Ambalangoda.
2. Rekha Nayani Mallawarachchi
Secretary – Interview Board
3. Mr. Diyagubaduge Dayaratne
Member – Interview Board
4. Malliyawadu Sheryl Chandrasiri
Member – Interview Board
5. Nilenthi Santhaka Thaksala De Silva
Member – Interview Board
6. W.T.B. Sarath
Chairman – Appeals and Objections
Board
7. Rekha Nayani Mallawarachchi

Secretary – Appeals and Objections
Board

8. P.D. Pathirana
Member – Appeals and Objections
Board

9. K.P. Ranjith
Member – Appeals and Objections
Board

10. Jagath Wellage
Member – Appeals and Objections
Board

All c/o Dharmashoka Vidyalaya,
Ambalangoda

11. Director National Schools,
Isurupaya, Battaramulla.

12. Secretary,
Ministry of Education,
Isurupaya, Battaramulla.

13. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : Eva Wanasundera PC, J
Priyantha Jayawardena PC, J
Upaly Abeyrathne, J

Counsel : Saliya Pieris with Varuna de Saram for the Petitioners.
Dr. Avanti Perera, SSC for all the Respondents.

Argued on : 15th March, 2017

Decided on : 2nd August, 2017

Priyantha Jayawardena PC, J

The Petitioners stated that the 1st Petitioner is a minor, aged five years, and the 2nd Petitioner is his mother. The 1st Respondent is the former Principal of Dharmashoka Vidyalaya located in Ambalangoda (hereinafter ‘Dharmashoka Vidyalaya’) and the Chairman of the Interview Board. The 2nd Respondent is the Vice Principal of the said school and the Secretary of the Interview Board. The 3rd to 5th Respondents are the members of the Interview Board. The 6th to 10th Respondents are the members of the Appeals Board (hereinafter the ‘Appeals Board’). The 11th Respondent is the Director of National Schools while the 12th Respondent is the Secretary of the Ministry of Education.

It was further averred that applications were called for the admission of students to Grade One of National Schools for the year 2015 under the “Guidelines/Instructions and Regulations regarding admission of Children to Grade I” (hereinafter referred to as ‘Guidelines and Instructions’) issued by the Secretary of the Ministry of Education. The Guidelines and Instructions marked as ‘P2’ stipulate the basic qualifications and procedure to be followed with regard to the admission of students to Grade One.

The 2nd Petitioner had submitted an application to Dharmashoka Vidyalaya under the Chief Occupant (Distance) Category to admit the 1st Petitioner to the school. At the time of application, the Petitioners resided at No. 142, Main Street, Ambalangoda which was owned by the 2nd Petitioner.

The Petitioners stated that the 2nd Petitioner is the sole proprietor of the land and two storied building thereon, situated at No. 142, Main Street, Ambalangoda by virtue of the Deed of Transfer No. 3014 dated 23rd June, 2011. The ground floor of the said premises had been leased by 2nd Petitioner to her brother, Tikiadura Neil de Zoysa (hereinafter called ‘Neil de Zoysa’) by Deed of Lease No. 3193 dated 29th June, 2012 for a period of one year commencing on 29th June, 2012 and ending on 28th June, 2013. However, after the expiry of the Deed of Lease, Neil de Zoysa failed to hand over vacant possession of the property.

Sometime after the application for admission was submitted, conflicts arose between Neil de Zoysa and the 2nd Petitioner and her husband as the 2nd Petitioner’s brother refused to leave the premises after the lease had expired. Consequently, on or about 29th August 2014, the 2nd Petitioner’s entire family temporarily shifted from the said premises to Ahungalla in order to avoid any conflict with Neil de Zoysa.

As a result of the conflict, the 2nd Petitioner had filed an action in the District Court of Balapitiya bearing No. 3572/L dated 14th October, 2014 seeking a declaration of title to the aforementioned property and an order to eject Neil de Zoysa from the ground floor of the said premises.

In the Complaint filed in the said District Court action, it was averred by the 2nd Petitioner that the aforementioned property was transferred to Newile Susantha De Zoysa by Deed bearing No.

1128. Thereafter, Newile Susantha De Zoysa transferred the same to the 2nd Petitioner by Deed bearing No. 3014 dated 23rd June, 2011. The 2nd Petitioner by the Lease Agreement bearing No. 3193 dated 29th June, 2012 leased out the ground floor of the aforementioned property to Neil de Zoysa for a period of 1 year from 29th June, 2012 to 28th June, 2012.

The Petitioners stated that on or around 28th August, 2014, the 2nd Petitioner's elder brother, Newile Susantha De Zoysa, decided to vacate the premises at No. 142, Main Street, Ambalangoda and hand over vacant and peaceful possession to the 2nd Petitioner.

By letter dated 26th September 2014, the Petitioners were called for an interview held on 21st October, 2014 at Dharmashoka Vidyalaya and were requested to bring the required documents to prove residence as mentioned in the application for admission and the Petitioners produced the said documents to prove their residence was No. 142, Main Street, Ambalangoda. The Petitioners also informed the Interview Board that since submission of the application, they had temporarily changed their residence.

The Petitioners stated that at the interview the 1st Petitioner was awarded 96.5 marks out of a total of 100 marks on the following basis:

- (a) 35 out of 35 marks for being registered on the electoral list;
- (b) 7.5 out of 10 marks for the documents proving residency;
- (c) 04 out of 05 marks for additional documents to prove residency; and
- (d) 50 out of 50 marks for distance between residence of the applicant and the school.

The Petitioners further stated that the initial cut off mark for admission to Dharmashoka Vidyalaya for the year commencing 2015 was 95 marks; nevertheless, the first list put up at Dharmashoka Vidyalaya on 20th December, 2014 did not include the name of the 1st Petitioner. Therefore, the Petitioners lodged an appeal accompanied by all the originals of the documents with the Appeals Board to reconsider their application.

The Petitioners stated that they were subsequently called by the Secretary of the Appeals and Objections Board for an interview on 15th January, 2015. They further contended that the Appeals Board awarded 96.5 marks to the 1st Petitioner which were the same as the original Interview Board decision. Moreover, the Petitioner stated that the 6th, 8th, 9th and 10th Respondents informed the Petitioners that based on the marks awarded and in consideration of the residence issue, the 1st Petitioner should be legally enrolled in school and the 7th Respondent indicated the 1st Petitioner should be admitted on a sympathetic basis.

The Petitioners were informed that the 1st Petitioner was not included on the list posted on 20th December, 2014 because of a petition sent by Neil de Zoysa, alleging that the Petitioners did not reside at the declared residence. Despite requests, the Petitioners were not provided with a copy of the objection and were informed that the matter should be resolved through the

Courts for the 1st Petitioner to be enrolled at Dharmashoka Vidyalaya. The Respondents contested the Petitioners' claim that they were awarded the same marks by the Appeals Board as being highly implausible because the Board would not have then asked the Petitioners to resort to litigation to resolve the issue.

On 11th February 2015, the Appeals Board put up a second list for Dharmashoka Vidyalaya with a cut off mark of 94.25. Despite the lower cut off, the list did not include the 1st Petitioner's name. Due to this denial of admission, the Petitioners have filed the instant Application praying, *inter alia*, for a declaration that the Petitioners' Fundamental Rights guaranteed under Article 12(1) of the Constitution have been infringed and to direct the Respondents to admit the 1st Petitioner to Grade One of the Dharmashoka Vidyalaya for the year 2015. The Supreme Court has granted leave to proceed in terms of Article 12 (1) of the Constitution.

Thereafter, the 1st and 12th Respondents filed their respective affidavits. The 1st Respondent, the former Principal, in his affidavit stated, *inter alia*, that the cut off mark for Grade 1 admission was 95 marks and the 1st Petitioner was initially awarded 96.5 marks. Moreover, Section 9.2 of 'P2' stipulated that prior to publication of provisional and waiting lists, site inspections must be carried out to verify residence and if they are not occupants, the child's name must be removed. Neil De Zoysa made a formal objection to the 1st Petitioner's admission application on the basis that the Petitioners were not resident at the No. 142, Main Street Ambalangoda and a subsequent site inspection by the Board on 3rd December, 2014 revealed that the Petitioners were not residing at the said address.

Moreover, the Petitioners admitted that they were no longer residents by the date of the site inspection and had moved to a residence in Ahungalla. The 1st Respondent further stated that the Petitioners had not satisfied the relevant criteria for admission under the Chief Occupants (Distance) Category. Thus, the 1st Petitioner's name was not included on the admission lists published on 20th December, 2014 and 11th February, 2015.

The 12th Respondent filed an affidavit and confirmed the said position of the 1st Respondent. Both the 1st and 12th Respondents stated that the requirement under Section 6.0(e) of residence verifying documents is to ensure that information is up to date. Moreover, Section 6.0(e) must be construed in a such way that if there is any change to the said information between submission of the application and a decision being made, such as change will have an effect on the outcome of the application. They stated that such an interpretation is logical considering the context of Section 9.2 of the Guidelines and Instructions marked as 'P2' and if Section 6.0(e) was read in isolation, Section 9.2 would be rendered redundant.

Furthermore, admission of students whose residences have changed during the period between application submission and the final decision on admission would defeat the purpose of having the Chief Occupants (Distance) Category for admissions. They further contended that admission of the 1st Petitioner on this basis would amount to a violation of Article 12(1)

as the Guidelines and Instructions marked as ‘P2’ are applied by all State schools and the Petitioners are seeking a deviation from the applicable rules.

In their written submissions, the Respondents also contended that granting relief to the Petitioners has the potential to open the floodgates of litigation and cited *R.P.P.N Sujeewa Sampath and Another v Principal Visakha Vidyalaya and Others* SC (FR) Application No.31/2014; wherein the Court did not grant relief in a FR application filed regarding a denial to admit a student who only provided a valid deed to prove residency after the selection process was concluded. The Court observed that the grievances of the Petitioners were not the outcome of the infringement of the fundamental right of equal protection of the laws or the fundamental right against discrimination.

Thereafter, the 2nd Petitioner filed a Counter Affidavit and stated, *inter alia*, that the application should be considered in light of all the circumstances of the case and that the 1st to 10th Respondents and the Appeals Board had been duly informed about the change in residence. Moreover, the Deed of Lease No. 3193 dated 29th June, 2012 marked as ‘P8’ ended on 28th June, 2013 and the District Court Case No. 3572/L is pending to eject the Defendant in that case.

Does the Change of Residence after the Submission of an Application for Admission to a School Deprive a Student from Gaining Admission?

The matter to be addressed in this Application is whether the change of residence after the submission of an application for admission to a school and before the selection is finalised under the ‘Chief Occupants’ (Distance) Category would deprive a student of admission to a school.

The Respondents contended that for an applicant to be eligible to be admitted under the ‘Chief Occupants’ (Distance) category, the applicant must remain at the same address as disclosed in the application until the selection process is concluded.

Guidelines/Instructions and Regulations regarding Admission of Children to Grade 1

Section 6.0 titled ‘Method of Selection’ provides as follows:

“(e) The forwarded documents to prove the residency should be relevant to the place of living at the time of submitting the application.” [Emphasis added]

Section 9.0 bearing the title ‘Interim List’ states:

“9.1 Selections will be made separately for each category according to the marks Priority and thereafter the interim list and waiting list will be prepared.

9.2 Before the publication of the interim list and the waiting list the residence of the children under the category of residents in the close proximity to the school will be confirmed by a spot inspection. If the residence is not confirmed by such spot inspection the name of the child will be deleted from the list. If it is found to be necessary other categories too may be subjected to a spot inspection.” [Emphasis added]

I am of the opinion that the instant Application requires consideration of the applicability of Sections 6.0(e) and 9.2 of the said Guidelines/Instructions and Regulations regarding Admission of Children to Grade 1. Thus, it is paramount to consider the relevant Articles of the Constitution and history of Sri Lanka’s education system in order to arrive at a fair reasoning of the application of the rules and guidelines governing school admissions.

The Right to Free Education

Education has long been acknowledged as an essential building block for the development of countries. In ancient Sri Lankan society, education was initially associated with Buddhist temples. Buddhist Monastic Colleges, also known as Pirivenas, were primarily intended to teach clergy but also gave the opportunity for male lay students to be educated. With the invasion of the Portuguese, missionary schools were established in the island. During the Dutch period, steps were taken to expand education opportunities by increasing the number of schools.

In the early 19th Century, the British introduced mass education with a dual system of schools split into English and Sinhala and the Pirivena system existed alongside these. Following the implementation of Donoughmore Commission’s recommendations, Executive Committees were created for various subjects of the government.

The Executive Committee on Education was placed under the chairmanship of Dr. C.W.W. Kannangara, who became the first minister of education in Sri Lanka. During his tenure as the Minister of Education, he laid the foundation for a national system of education which opened the doors for the free education. The draft bill took a long period to be finalized and the Education Ordinance No. 31 of 1939, which was enacted after a long deliberation, remains the basic law of Education in Sri Lanka. The purpose of the law was to ensure that children of school going age attended school as a preliminary step to address the disparity between the haves and the have-nots.

Since then all successive governments have facilitated school education by providing various facilities to students; such as free meals, uniforms and books. Moreover, it is important to note that the emphasis on education is such that even university education is free and scholarships are awarded to needy students to complete their graduate studies. Further, free education has given the underprivileged access to opportunities that had previously been

reserved for the privileged. Hence, I am of the opinion that any matter relating to education shall be considered in light of the aforementioned government policy, constitutional provisions and socio-economic background.

The Right to Education under the Constitution

Though the right to education has not been recognized as a fundamental right in the Sri Lankan Constitution, the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels have been recognized as a directive principle in the Constitution. Thus, the Government is obliged take into consideration the Directive Principles of State Policy when enacting laws and taking action regarding governance. In this context, I am of the view that it is paramount to give equal access to education in order to establish a free and just society.

The Effect of the Directive Principles of State Policy Enshrined in the Constitution

Article 27(2) (h) of the Constitution states:

“The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include –

...the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.”

Article 27(1) states that the Directive Principles of State Policy (hereinafter referred to as the ‘Directive Principles’) serve to guide the Government when enacting laws and indicate the level of governance required to establish a free and just society. The effect of Article 27(1) is constrained by Article 29 of the Constitution, which explicitly states that Article 27 does not impose legal rights or obligations and they are not enforceable.

The effect and the applicability of Directive Principles have been considered by Justice S. Sharvananda in his book titled *Fundamental Rights in Sri Lanka (A Commentary)* at page 55 where it states;

“Although [Directive] principles are expressly made unenforceable, that does not affect their importance and relevance. They are as important as the fundamental rights of an individual. They are relevant considerations in the enactment of laws. They represent the aspirations of the people in Sri Lanka. There is no disharmony between directive principles and the fundamental rights as they complement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare state. These principles are constitutionally binding on the State,

even though they are not enforceable but are only to be taken into account in determining the validity of a law. Hence, to determine the ambit and dimension of fundamental rights and what kind of restrictions that can be legitimately imposed on them by law, the directive principles set out in Article 27 are relevant.”

In the case of *Seneviratne v. U.G.C.* (1978-79-80) 1 SLR 182, the court held;

“It is a settled principle of construction that when construing a legal document the whole of the document must be considered. Accordingly, all relevant provisions of the Constitution must be given effect to when a constitutional provision is under consideration and, when relevant; this must necessarily include the Directive Principles... [T]hese provisions are part and parcel of the Constitution and that the courts must take due recognition of them and make proper allowance for their operation and function.”

Further, in *Watte Gedera Wijebanda vs. Conservator General of Forests and Other* (2009) 1 SLR 337, it was held that although Directive Principles are not specifically enforceable against the state, they provide important guidance and direction to the various organs of state in the enactment of laws and in carrying out the functions of good governance.

Hence, it is apparent that although the Constitution states that Directive Principles do not impose legal rights or obligations and they are not justiciable, our courts have given effect to Directive Principles as long as they do not conflict with other Articles of the Constitution. Therefore, as this Application relates to education, Article 27(2)(h) is applicable to the instant Application.

Article 12 (1) of the Constitution

Article 12(1) of Sri Lanka’s Constitution states “All persons are equal before the law and are entitled to the equal protection of the law”. Matters relating to education have been the commonly used as grounds for invoking Article 12(1) of the Constitution.

The right to equality which is recognized in our Constitution is inherent to human dignity. The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America bears resemblance to the aforementioned Article 12. This Clause has been interpreted by the American Supreme Court to include equal opportunity without racial discrimination regarding education. In *Brown v Board of Education Topeka* 347 US 483 (1954), Chief Justice Warren stated at 493:

“Today, education is perhaps the most important function of State and to provide it, is a right which must be made available to all on equal terms.”

Applicability of the Guidelines and Instructions regarding Admission of Children to Grade I

Section 6.0(e) clearly states that the documents must prove the residence at the time of submitting the application and makes no reference to the impact of a change of residence. Section 9.2 states that a child's name will be deleted if a spot inspection of the residence does not confirm residency. Therefore, it is necessary to consider whether Section 9.2 requires applicants to remain at the same premises until the site inspection is completed or carried out to ascertain residency.

I am of the opinion that Section 6.0(e) and Section 9.2 should be interpreted in such a way that the two sections do not conflict with each other. They need to be considered in a reasonable manner with particular emphasis on the Directive Principles and the safeguards enshrined in the Constitution regarding the right to education. In order to ascertain if a decision is reasonable, a court has to find out if the administrator had left out relevant factors or taken irrelevant factors into account. In *Dissanayake v Kaleel* [1993] 2 SLR 135 at 184, Mark Fernando J stated that "fairness lies at the root of equality and equal protection".

Discretionary powers shall never be treated as absolute and unfettered. Article 12 provides safeguards based on the rule of law against the arbitrary and unreasonable exercise of discretionary powers. It is important to keep in mind that children are the future of a country and educating children not only secures the country's future but that of the whole world. Moreover, persons who are in authority have a duty to protect the rights of the children to have access to education by giving effect to Directive Principles. In such a scenario, I am of the opinion that no rules or regulations shall hamper the right of a child to have access to education.

I am also of the view that the criteria for school admission should be construed in light of government policy and the Directive Principles enshrined in the Constitution. Thus, Section 6.0(e) and Section 9.2 of 'P2' should not be given a narrow interpretation to compel applicants to remain at the same residence after submission of the application. If such an interpretation is given, what will be the predicament of persons who may have to vacate their dwellings due to natural disasters? The aforementioned Guidelines and Instructions serve to regulate equal access to education for all school going children and should not be used to deprive them of an education due to a mere technicality.

The purpose of the Section 9.2 site inspection is to prevent applicants from moving into the catchment area of more desirable schools for the sole purpose of gaining admission to a school or forging documentation in order to enable admission to such schools. I am of the view that a reasonable interpretation of Section 9.2 does not include a *bona fide* applicant who was ousted from his residency due to reasons beyond their control. In light of this

interpretation, Section 9.2 would not be rendered redundant as it still serves to prevent fraudulent applications.

Therefore, if a change of residence occurs after application submission and before admission, the change shall not have an impact on the outcome of the application if the applicants are displaced due to reasons beyond their control. In the case at hand, the 2nd Petitioner holds title to the property and there is an ongoing dispute. Further, there is no dispute with regard to the residence of the Petitioners at the time they submitted their application for admission to Dharmashoka Vidyalaya. Thus, *R.P.P.N Sujeewa Sampath and Another v Principal Visakha Vidyalaya and Others* cited by the Respondents has no applicability to the instant Application.

I hold that in terms of Articles 27(2)(h) and 12(1) of the Constitution, every child has a right to have equal access to education at all levels and thus, a child cannot be deprived of the said right because he or she was displaced from his residence due to unforeseen circumstances.

I further hold that Section 6.0 and Section 9.2 should be considered together and not in isolation. Therefore, I am of the view that if an applicant is displaced due to unforeseen circumstances, it is not a ground to deprive a child from gaining admission to the school where he or she had applied to.

In the instant Application, the applicant had been displaced due to reasons beyond his control. In such a scenario, Section 9.2 shall not stand as an obstacle to admission to the school. Thus, denying the 1st Petitioner admission to school on the basis that the applicant was not residing at the address declared on the application at the time of the site inspection is a violation of his fundamental right to equal protection guaranteed by Article 12(1) of the Constitution.

Hence, I direct the Principal of Dharmashoka Vidyalaya and the 2nd to 12th Respondents to take immediate steps to admit the 1st Petitioner to Dharmashoka Vidyalaya and place him in an appropriate grade.

I order no costs.

Judge of the Supreme Court

Eva Wanasundera PC, J
I agree

Judge of the Supreme Court

Upaly Abeyrathne, J
I agree

Judge of the Supreme Court