

**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 read with Article 17 of the
Constitution.*

1. **HIKKADUWA LIYANAGE
VINUSH LAKNIDU,**
No 5/2, Heegalduwa Road,
Wilegoda,
Ambalangoda.
2. **LAKSHIKA SAMIDDHI
GODELLAGE,**
No 5/2, Heegalduwa Road,
Wilegoda,
Ambalangoda.

PETITIONERS

S.C. F.R. Application No: 136/2015

VS.

1. **SUMITH
PARAKRAMAWANSA,**
The Principal and a
Member of the Interview
Board to admit students
to Grade -1, GA/Am/
Dharmashoka College,
Ambalangoda.
- 1A. **W.D. RAVINDRA
PUSHPAKUMARA,**
The Principal,
Dharmashoka College,
Ambalangoda.
2. **DIYAGUBANDUGE
DAYARATHNE,**
Member of the Interview
Board to admit students
to Grade -1, GA/Am/
Dharmashoka College,
Ambalangoda.

- 3. NILENTHI SANTHAKA THAKSALA DE SILVA,**
(Representative of the School Development Board)
Member of the Interview Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.
- 4. MALLIYAWADU SHIRLY CHANDRASIRI,**
(Representative of the Past Pupils' Association)
Member of the Interview Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.
- 5. REKA NAYANI MALLAWARACHCHI,**
Secretary of the Interview and the Appeal and Objections Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.
- 6. W.T.B. SARATH,**
Chairman of the Appeal and Objections Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.
- 7. K.P. RANJITH,**
Member of the Appeal and Objections Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.

8. **JAGATH WELLAGE,**
(Representative of the Past Pupils' Association), Member of the Appeal and Objections Board to admit students to Grade -1, GA/Am/ Dharmashoka College, Ambalangoda.
9. **P.D. PATHIRATHNE,**
(Representative of the School Development Board), Member of the Appeal and Objections Board to admit students to Grade 1, GA/Am/ Dharmashoka College, Ambalangoda.
10. **DIRECTOR OF NATIONAL SCHOOLS,**
Ministry of Education, Isurupaya, Battaramulla.
11. **SECRETARY MINISTRY OF EDUCATION,**
Isurupaya, Battaramulla.
12. **R.M.K. DAMINDA,**
No:34/18, Manimulla, Ambalangoda.
13. **R.M.T. NIMSARA,**
No:34/18, Manimulla, Ambalangoda.
14. **M.G.I. NIRANJALA,**
No.132, D.Santin de Soyza Mawatha, Kuleegoda.

15. **K.A.M. PEIRIES**,
No.132, D.Santin de
Soyza Mawatha,
Kuleegoda.
 16. **R.M. MANORI**,
No. 15/3,
Paluwatte Road,
Poramba,
Ambalangoda.
 17. **T.S. MIHISARA**,
No. 15/3,
Paluwatte Road,
Poramba,
Ambalangoda.
 18. **N.H.T. YASANTHI**,
No: 43,
Pieris Weda Mawatha,
Kaluwadumulla,
Ambalangoda.
 19. **W.A.M.D.**
WEERAKOON,
No: 43,
Pieris Weda Mawatha,
Kaluwadumulla,
Ambalangoda.
 20. **HONOURABLE**
ATTORNEY-
GENERAL,
Department of Attorney-
General,
Colombo 12.
- RESPONDENTS**

BEFORE:

K. Sripavan C.J.
Upaly Abeyrathne J.
Prasanna Jayawardena, PC. J

COUNSEL:

Saliya Pieris with Thanuka Nandasiri for the Petitioners.
Rajitha Perera, Senior State Counsel for the Hon.
Attorney General.

ARGUED ON: 08th September 2016
WRITTEN SUBMISSIONS FILED: By the Petitioners on 27th September 2016
By the Respondents on 26th September 2016
DECIDED ON: 10th November 2016

Prasanna Jayawardena, PC, J.

The 1st Petitioner is a five-year-old boy. The 2nd Petitioner is his mother. In this application, the Petitioners allege that, the failure of the Respondents to admit the 1st Petitioner child to Grade 1 of Dharmashoka College, Ambalangoda in the year 2015, violated the Petitioners' fundamental rights guaranteed by Article 12 (1) of the Constitution. The Petitioners have made this application by way of their Petition dated 06th April 2015 which was later amended, with the permission of this Court, by the Amended Petition dated 30th August 2015.

The 1st Petitioner child lived with his parents in Wilegoda, Ambalangoda. The 1st Petitioner child became entitled to be admitted to a government school in 2015 when he had reached five years of age. His parents were anxious to admit their son to Dharmashoka College which is a leading school in Ambalangoda with a history of over a century and a good record in both the academic arena and the sports field.

The admission of children to Grade 1 of Government schools causes much anxiety and heartburn to parents throughout the island. Naturally, parents want their child to be admitted to the best possible school which is accessible to them. This results in what Siva Selliah J described, in 1986, as a "*scramble for admission*" – *vide*: HULANGUMUWA vs. SIRIWARDENA, PRINCIPAL VISAKHA VIDYALAYA [1986 1 SLR 275 at p.281]. Three decades later, there continues to be much competition and scrabbling for the limited number of places available each year in government schools, particularly in the case of schools which are perceived as 'leading' or 'good' schools.

So as to bring about order, fairness and transparency in the process of selecting and admitting children to Grade 1 of government schools, the Ministry of Education has, for several years, formulated and laid down, *inter alia*: (a) the procedure to be followed when parents submit applications for the admission of their children to Grade 1 of government schools; (b) the procedure to be followed when evaluating and ranking these applications; (c) the selection criteria to be applied; (d) the marks which are to be awarded in respect of such selection criteria when evaluating and ranking the applications; (e) the procedure for notifying the selected applicants; (f) the procedure whereby applicants who have not been selected may appeal seeking a re-evaluation of their application and/or object to the selection of an applicant who they submit has been wrongly selected; (g) the consideration of such appeals and objections; and, finally, (h) after the appeals and objections have been considered, the determination of the Final List of applicants who have been selected for admission to Grade 1 and the publication of this Final List.

This is done by way of a Circular issued by the Ministry of Education which sets out, comprehensively and in considerable detail, the procedure, selection criteria and marking schemes to be followed and applied when admitting children to Grade 1 of government schools. This process often throws up unforeseen difficulties and new challenges. Therefore, the Ministry of Education has, from time to time, effected revisions in the contents of these Circulars and issued new Circulars which seek to rectify the shortcomings of the previous Circular.

At the time relevant to this application, Circular No. 23/2013 dated 23rd May 2013 issued by the Secretary, Ministry of Education was in force. The Circular is captioned, “ආසැල් වල පළමු වන ශ්‍රේණියට ළමයින් ඇතුළත් කිරීම.” [“Admission of children to Grade 1 of schools”]. It is filed with the Amended Petition marked “**P-2**”.

It is common ground in this application that, the entire process of admission of children to Grade 1 of Dharmashoka College in the year 2015, was governed by the provisions of this Circular marked “**P-2**”.

Thus, the fate of this application will largely depend on whether or not the rejection of the Petitioners’ application to admit the 1st Petitioner child to Dharmashoka College in 2015, was in compliance with the provisions of “**P-2**” and satisfies the tests of reasonableness, equality and other criteria required under the Law.

It is now necessary to set out the relevant facts relating to the Petitioners’ application.

In the latter half of 2014, the Ministry of Education published notices calling for applications from parents for the admission of their children to government schools in 2015. Section 4.2 of “**P-2**” states that, all such applications must be in the specified format. Further, Section 4.3 of “**P-2**” makes it clear that, copies of the documents which an applicant relies upon to establish eligibility for admission to the school, should be annexed to the application.

The 2nd Petitioner submitted an application, together with supporting documents, for the admission of her son (the 1st Petitioner child) to Dharmashoka College. This application form, which has been produced by the Respondents marked “**1R3**”, states below its caption that, that the applicant must annex copies of the documents which he/she relies upon.

Section 3.1 of “**P-2**” states that, a total of 40 children are to be admitted to each Class in Grade 1 of a government school. The wording of Section 3.1 suggests that this is the maximum number. Section 3.1 goes on to state that, 30 of the children to be admitted to each Class, are to be selected through the ‘interview process’ set out in “**P-2**”. 03 more children are to be selected as a result of the ‘appeals and objections process’ set out in “**P-2**”. Thus, a total number of 33 children are to be selected for each Class through the ‘interview process’ and ‘appeals and objections process’ set out in “**P-2**”. In addition, 07 children of parents who are tri forces or police personnel who are in or have been in active service, are to be admitted upon the recommendations of Ministry of Defence. It is in this manner that, the final number of 40 children per Class in Grade 1 is to be reached.

Since there is a fixed number of Classes in Grade 1 in a school in a year, the result is that, there is a maximum number of children who can be admitted to Grade 1 of a particular school in that year. The Petitioners have stated that, the maximum number of children who were to be admitted to Grade 1 in Dharmashoka College in 2015, had

been fixed at 198. Although the Amended Petition does not state so, it is evident that, the Petitioners are referring to the total number of children to be selected through the 'interview process' and 'appeals and objections process'. The total number of 198 is not disputed by the Respondents. This establishes that, Dharmashoka College had six Classes in Grade 1 in 2015 [*ie*: $33 \times 6 = 198$]

Section 6 of “**P-2**” sets out the six different ‘Categories’ under which children can admitted to Grade 1 together with the percentages out of the total number of admissions for the year,

which are accorded to each such Category. These six Categories and the percentages accorded to each Category are:

- | | | |
|------|---|-------|
| I. | Children of parents who reside close to the school. | - 50% |
| II. | Children of past pupils of the school. | - 25% |
| III. | Children with siblings who are students of the school at the time of the application. | - 15% |
| IV | Children of employees of institutions under the Ministry of Education which directly deal with education by State Schools. | - 05% |
| V | Children of parents who are public servants or employees of State Corporations, Statutory Boards State Banks and who have been transferred. | - 04% |
| VI | Children who have returned from abroad with their parents. | - 01% |

The 2nd Petitioner is a past pupil of Dharmashoka College and the Petitioners’ Application was submitted under Category II above – *ie*: children of past pupils of the school.

As set out above, “**P-2**” required that, 25% of the children admitted to Grade 1 of Dharmashoka College in 2015 through the ‘interview process’ and ‘appeals and objections process’, should be children whose admission had been sought under Category II stated above.

Since the maximum number of children who were to be admitted in 2015 through the ‘interview process’ and ‘appeals and objections process’ was 198, simple arithmetic shows that, 49 of them should be children whose admission had been sought under Category II stated above. [$198 \times 25\% = 49$]

By similar calculations, the number of children who were to be admitted for all the Categories stated above, according to the aforesaid percentages of the total number of 198, will be:

- | | | |
|------|---|-------------------------|
| I. | Children of parents who reside close to the school. | - 99 (<i>ie</i> : 50%) |
| II. | Children of past pupils of the school. | - 49 (<i>ie</i> : 25%) |
| III. | Children with siblings who are students of the school at the time of the application. | - 30 (<i>ie</i> : 15%) |

- | | | |
|-----|--|------------------------|
| IV. | Children of employees of institutions under the Ministry of Education which directly deal with education by State Schools. | - 10 (<i>ie:</i> 05%) |
| V. | Children of parents who are public servants or employees of State Corporations, Statutory Boards, State Banks and who have been transferred. | - 08 (<i>ie:</i> 04%) |
| VI. | Children who have returned from abroad with their parents. | - 02 (<i>ie:</i> 01%) |

The Petitioners and the Respondents are in agreement with regard to the aforesaid numbers and percentages.

The Interview Board which had been appointed to select the applicants who were to be admitted to Grade 1 of Dharmashoka College in 2015, had selected the Petitioners' application as one of the initial number which required to be further considered at an interview. Accordingly, the Petitioners were called for an interview to be held on 27th October 2014. These steps were taken in terms of the provisions of Section 5 and Section 8 of "**P-2**".

The letter dated 26th September 2014 calling the Petitioners for this interview has been filed with the Amended Petition marked "**P-3B**". This letter advised the Petitioners that the interview would be held in accordance with the provisions of "**P-2**". "**P-3B**" also specifically instructed the Petitioners that, they were required to bring to the interview, originals of *all* the documents they relied on. Further, "**P-3B**" specifically advised the Petitioners that, documents submitted after the interview would *not* be accepted. [සම්මුඛ පරීක්ෂණය පැවැත්වෙන අවස්ථාවේදී සියලුම ලිපි ලේඛන (මුල් පිටපත් සමඟ) ඉදිරිපත් කළ යුතු අතර පසුව ඉදිරිපත් කරන ලේඛන භාරගනු නොලැබේ.]

The documents submitted by the Petitioners along with the application and at the interview, included some photographs. The Petitioners state that, these photographs establish that the 2nd Petitioner was a member of the Basketball Team of Dharmashoka College. Copies of these photographs have been filed with the Amended Petition marked "**P-5A**" and "**P-5B**".

The Petitioners were interviewed by the Interview Board on 27th October 2014. The Interview Board accepted all the documents submitted by the Petitioners as being eligible for consideration when awarding marks other than the photographs marked "**P-5A**" and "**P-5B**". The Interview Board declined to award any marks based on the photographs. The Petitioners have not disputed this decision of the Interview Board.

When the Provisional List of children to be admitted under the Category II – *ie:* children of past pupils of the school - was published on the school notice board, the 1st Petitioner's name was not on it. The 1st Petitioner's name was not on the Waiting List for that Category either. The Provisional List and Waiting List are prepared and published in terms of Section 8 of "**P-2**".

The Petitioners then submitted an *appeal* to the Board of Appeals and Objections which was constituted under and in terms of Section 9 of "**P-2**". The 2nd Petitioner was advised by the Letter filed with the Amended Petition marked "**P8-C**" that, the appeal would be taken up for consideration by the Board on 15th January 2015.

It is to be noted that, this letter marked “**P8-C**” expressly stated that, no marks will be awarded during the appeal process on the basis of documents which had not been submitted at the interview. [සම්මුඛ පරීක්ෂණයේදී ඉදිරිපත් කරන ලද ලිපි හැර වෙනත් ලිපි සඳහා මෙහිදී ලකුණු ලබා දීමක් සිදු නොකෙරේ] It is also to be noted that, Section 10.7 of “**P-2**” states that, when hearing an appeal, the Board may only consider the documents submitted at the interview. [අභියාචනා විභාග කිරීමේ දී අභියාචනා ඉදිරිපත් කළ සියලු ම දෙනා කැඳවා සම්මුඛ පරීක්ෂණයට ඉදිරිපත් කළ ලිපි ලේඛන පමණක් නැවත වරක් විමර්ශනය කළ යුතුය.]

When the Board of Appeals and Objections took up the 2nd Petitioner’s *appeal* for consideration on 15th January 2015, the 2nd Petitioner’s husband (the 1st Petitioner child’s father) appeared before the Board. He had sought to tender the Documents filed with the Amended Petition marked “**P-6A**” and “**P-6B**”. The Petitioners state that, “**P-6A**” is an affidavit by a sports teacher who served at Dharmashoka College from 1991 to 1996 and that, “**P-6B**” is a letter issued by the basketball coach of Dharmashoka College during the period 1991 to 1996.

However, the Board of Appeals and Objections declined to consider these two documents.

The Petitioners state that, although the Board of Appeals and Objections declined to consider the documents marked “**P-6A**” and “**P-6B**” tendered by the Petitioners at the hearing of the appeal, the Board had considered and awarded marks upon documents tendered by the 12th and 14th Respondents (parents of the 13th and 15th Respondent children) *during or after the appeal process* and upon documents tendered by the 16th and 18th Respondents (parents of the 17th and 19th Respondent children) *after they had been interviewed by the Interview Board*.

The Final List of students selected for admission to Grade 1 of Dharmashoka College in 2015 was published on the notice board on 27th February 2015 in terms of Section 11 of “**P-2**”. This Final List has been filed with the Amended Petition marked “**P-11**”. The 1st Petitioner’s name was not on the Final List.

The last student named on the Final List of 49 students admitted under Category II - “Children of past pupils of the school” – had obtained 57.12 marks. Thus, the “cut off” for this Category of admission in 2015 was 57.12 marks.

The 1st Petitioner child had been awarded 53.71 marks. His name was the eighth on the Waiting List of 12 students which was published along with the Final List.

A few days after the Final List was published, the Petitioners had lodged a complaint with the Human Rights Commission challenging the marks awarded to them. The Petitioners state that this complaint was pending at the time they made the present application to this Court on 06th April 2015.

The Petitioners had also made written appeals to the Director of National Schools and to the Secretary, Ministry of Education complaining that they were not awarded the marks they were entitled to. These letters of appeal have been filed with the Amended Petition marked “**P-13A**”, “**P-13B**”, “**P-14**”. On 19th March 2015, the Petitioners’ appeals were considered at an interview held at the Ministry of Education, which the 2nd Petitioner’s husband attended. These appeals did not yield a result favourable to the Petitioners.

The Petitioners state that, *after* the aforesaid Final List and Waiting List were published and after the Petitioners made the aforesaid appeals to the Director of National Schools and to the Secretary, Ministry of Education, the Petitioners have become aware that, 15 more children have been admitted to Grade 1 of Dharmashoka College under Category IV above – *ie*: children of employees of institutions under the Ministry of Education which directly deal with education by State Schools. The Petitioners state that, in addition, a further 07 children have been admitted under Category I above – *ie*: children of parents who reside close to the school.

The Petitioners state that, these later admissions resulted in the total number of children admitted to Grade 1 of Dharmashoka College in 2015 increasing to 220. [*ie*: 198 + 15 + 07 = 220].

The Petitioners state that, as a result of the aforesaid later admissions, the actual number of children who have been admitted under all the aforesaid Categories and the percentages of admission *per* Category (based on the number of 220 children said to have been eventually admitted to Grade 1) now are (approximately):

1. Children of parents who reside close to the school. - 106 (48.18%)
2. Children of past pupils of the school. - 49 (22.27%)
3. Children with siblings who are students of the school at the time of the application. - 30 (13.63%)
4. Children of employees of institutions under the Ministry of Education which directly deal with the education by State Schools. - 25 (11.36%)
5. Children of parents who are public servants or employees of State Corporations, Statutory Boards and State Banks and who have been transferred. - 08 (3.63%)
6. Children who have returned from abroad with their parents. - 02 (0.9%)

The Petitioners state that, as set out above, the number of children eventually admitted under Category IV above – *ie*: children of employees of institutions under the Ministry of Education which directly deal with education by State Schools – has increased from the 5% of the total admitted number permitted by the Circular marked “**P-2**”, to 11.36% of the total admitted number.

The Petitioners state that, if a similar increase had been made in the number of children eventually admitted under Category II above – *ie*: children of past pupils of the school – the 1st Petitioner child (whose name was on the Waiting List) would have been admitted to Grade 1 of Dharmashoka College in 2015.

In this regard, the Petitioners also state that, in the period of more than four months that had passed between the date they filed the original Petition and the date they filed the Amended Petition, the 1st Petitioner child’s name had moved from eighth position to third position on the Waiting List since five children whose names were above his on the Waiting List, had been admitted to other schools.

The Petitioners claim that, on the following three grounds, the Respondents' failure to admit the 1st Petitioner child to Grade 1 of Dharmashoka College in 2015 was arbitrary, discriminatory and a violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution:

- (i) Firstly, they claim that, 04 marks (02 marks per year) should have been awarded on the account of the 2nd Petitioner having represented the school basketball team in 1992 and 1993.

In this connection, they claim that the documents marked "**P-6A**" and "**P-6B**" establish that, the 2nd Petitioner represented the school basketball team in 1992 and 1993. The Petitioners state that, the Board of Appeals and Objections *should not have* declined to consider these two documents. The Petitioners' position is that, "**P-6A**" and "**P-6B**" *should have been* accepted by the Board.

The Petitioners state that, if "**P-6A**" and "**P-6B**" had been accepted by the Board, the Petitioners would have been awarded 04 more marks.

The Petitioners also claim that, since the 1st Petitioner child's father (the 2nd Petitioner's husband) was a Committee Member of the Past Pupils' Association, a further 01 mark should have been awarded

The Petitioners state that, these 05 additional marks, (which they claim they were entitled to, but were not awarded) would have placed the Petitioners well over the "cut off" point of 57.12 marks (*ie*: 53.71 + 05 = 58.71), thereby, entitling the 1st Petitioner child to be admitted to Grade 1 of Dharmashoka College in 2015.

The Petitioners contend that, the failure to award them these additional 05 marks was in violation of the provisions of the Circular marked "**P-2**" and was arbitrary and a violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution;

- (ii) Secondly, the Petitioners complain that, although the Board of Appeals and Objections declined to consider the documents marked "**P-6A**" and "**P-6B**" submitted by the Petitioners at the hearing of their appeal, the Board had considered and awarded marks upon documents tendered by the 12th and 14th Respondents during or after the appeal process and upon documents tendered by the 16th and 18th Respondents after they had been interviewed by the Interview Board.

The Petitioners allege that, in these circumstances, they have been subject to discriminatory treatment which was a violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution;

- (iii) Thirdly, the Petitioners allege that, the failure to admit the 1st Petitioner child to Grade 1 of Dharmashoka College in 2015 despite the admission of 15 more children under Category IV and the admission of 07 more children under Category I *after* the aforesaid Final List and Waiting List was published, was in contravention of the Circular marked "**P-2**", arbitrary and a violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution;

On 19th November 2015, this Court granted the Petitioners leave to proceed under Article 12 of the Constitution.

The Principal of Dharmashoka College, who is the 1st Respondent, has submitted an Affidavit by way of his Objections to the Petitioners' Application.

The 1st Respondent states that, the Circular marked "**P-2**" prohibits the consideration of new documents at the stage of appeal. He states that, the 1st Petitioner child now stands seventh in the Waiting List. He also states that, any marks to which the 1st Petitioner child's father (the 2nd Petitioner's husband) may have been entitled to, cannot be taken into account when considering the application submitted by the 2nd Petitioner for the admission of the 1st Petitioner child to Dharmashoka College. In this connection, it should be mentioned that, the 1st Petitioner child's father (the 2nd Petitioner's husband) had submitted a separate application under Category I – *ie*: children of parents who reside close to the school - which had also been unsuccessful.

The 1st Respondent has denied the Petitioners' claims that, after the aforesaid Final List and Waiting List were published, 15 more children were admitted to Grade 1 of Dharmashoka College under Category IV and a further 07 children were admitted under Category I. He denies that the total number of children admitted to Grade 1 of Dharmashoka College in 2015 increased to 220. The 1st Respondent has also denied the resulting changes in the percentages in the Categories of admission, which were alleged by the Petitioners.

However, the 1st Respondent has stated that, the Secretary, Ministry of Education, who is the 11th Respondent, sent six letters dated 21st April 2015, a letter dated 30th April 2015 and a letter dated 18th June 2015 to the 1st Respondent, directing that, a total number of 08 children named in these letters, be admitted to Grade 1 of Dharmashoka College. These letters have been filed with the 1st Respondent's affidavit marked "**1R5a**" to "**1R5f**", "**1R6**" and "**1R7**". The 1st Respondent states that he acted on the directions of the 11th Respondent and admitted the 08 children named in these letters to Grade 1 – *ie*: after the aforesaid Final List and Waiting List were published.

The 1st Respondent has also stated that, the Secretary, Ministry of Education sent another letter dated 29th May 2015 to the 1st Respondent directing that, the 11 children named in this letter be admitted to "*different grades of Dharmashoka Vidyalaya*" in 2015. This letter has been filed with the 1st Respondent's affidavit marked "**1R8**".

Although the 1st Respondent has not set out the contents of this letter marked "**1R8**" in his affidavit, a perusal of this letter reveals that it, *inter alia*, directs the 1st Respondent to admit, to Grade 1 of Dharmashoka College in 2015, 07 children of teachers and non-academic staff who were then attached to that school.

I have set out the facts relating to the application before us and the respective positions taken by the Petitioners and the Respondents. I will now consider whether the Petitioners are entitled to succeed in their application to this Court.

As set out above, the Petitioners' *first* contention is that, they were entitled to have been awarded a further 04 marks upon the documents marked "**P-6A**" and "**P-6B**" and that a further 01 mark should have been awarded on the ground that, the 1st Petitioner child's father (the 2nd Petitioner's husband) was a Committee Member of the Past Pupils' Association.

With regard to the 04 marks claimed upon the documents marked **“P-6A”** and **“P-6B”**, it is an undisputed fact that, the Petitioners *first* tendered the documents marked **“P-6A”** and **“P-6B”** to the Board of Appeals and Objections at the stage of the hearing of the appeal. These documents were *not* tendered to the Interview Board during the interview stage. Therefore, as evident from the facts narrated earlier, these documents were tendered by the Petitioners *outside* the procedure set out in **“P-2”**.

As set out above, the Board of Appeal and Objections had declined to consider the documents marked **“P-6A”** and **“P-6B”**.

Consequently, the question that needs to be considered by this Court is whether the decision of the Board of Appeals and Objections declining to consider the documents marked **“P-6A”** and **“P-6B”** was in contravention of the provisions of the Circular marked **“P-2”** or arbitrary or unreasonable for some other reason.

In this regard, as set out above, the Petitioners had been specifically advised and should have been aware that, they were required to submit to the Interview Board, at the interview stage, all the documents they wished to rely on. Further, in terms of the Circular marked **“P-2”**, the Board of Appeals and Objections was precluded from considering documents tendered, for the first time, at the appeal stage - *vide*: Section 4.3, Section 8.2 and Section 10.7 of **“P-2”**, the Application Form marked **“1R3”** and the letters marked **“P3-B”** and **“P8-C”**.

Thus, it is evident that, the Board of Appeals and Objections acted in terms of and in pursuance of the provisions of the Circular marked **“P-2”** when the Board declined to consider the documents marked **“P-6A”** and **“P-6B”** and award marks upon these documents.

Further, it is equally evident that, in the background of the very large number applications received for admission to a limited number of places in Grade 1; and the imperative need to put in place an established, known and transparent procedure whereby *all* such applications can be evaluated and processed in a manner that is fair to *all* the applicants; there was very good reason for the aforesaid rules that, all documents must be tendered at the interview stage and that, the Board of Appeals and Objections was precluded from considering documents tendered, for the first time, at the appeal stage. Needless to say, if applicants are permitted to tender new documents at the appeal stage, the interview stage which had been laboriously completed prior to that, will be rendered inconclusive and substantial prejudice will be done to applicants who have complied with the rules and submitted all their documents at the interview stage. It is for these reasons that, in terms of **“P-2”**, the Board of Appeals and Objections has the limited function and scope of examining the marks awarded by the Interview Board upon the documents and material which was considered at the interview stage, and correcting any errors committed by the Interview Board.

Therefore, it is evident to me that, the decision of the Board of Appeals and Objections declining to consider the documents marked **“P-6A”** and **“P-6B”**, was not only in accordance with the provisions of the Circular marked **“P-2”**, but, was also eminently reasonable.

Next, with regard to the 01 mark claimed on the ground that, the 1st Petitioner child's father (the 2nd Petitioners' husband) was a Committee Member of the Past Pupils'

Association, the application which is relevant to this case was submitted by the 2nd Petitioner and not by her husband.

A perusal of the Circular marked “**P-2**”, the application form marked “**1R3**” and the Marking Scheme marked “**1R4**” makes it clear that, there was no provision for the 2nd Petitioner’s application to be awarded marks on account of her husband being a Committee Member.

For the aforesaid reasons, I hold that, the Petitioners’ first contention must fail.

The Petitioners’ *second* contention is that, although the Board of Appeals and Objections declined to consider the documents marked “**P-6A**” and “**P-6B**” submitted by the Petitioners at the hearing of their appeal, the Board had considered and awarded marks upon documents tendered by the 12th and 14th Respondents during or after the appeal process and upon documents tendered by the 16th and 18th Respondents after they had been interviewed by the Interview Board.

The Petitioners have not adduced any material to support the aforesaid allegation with regard to the 12th, 14th and 16th Respondents. These allegations have not been admitted by the 1st Respondent. The Petitioners have not sought an Order from this Court directing the 1st Respondent to submit the documents and mark sheets relating to these Respondents even though the Petitioners stated, in their Petition, that they would seek such an Order from this Court.

In these circumstances, there is no material before this Court which substantiates the Petitioners’ aforesaid allegation that, documents submitted by the 12th, 14th and 16th Respondents *after* the interview stage, had been considered.

With regard to documents said to have been submitted by the 18th Respondent, the Petitioners have annexed to their Amended Petition, the affidavits marked “**P-10A**” and “**P-16A**” by the 18th Respondent together with a certificate marked “**P-16B**”.

A perusal of the affidavits marked “**P-10A**” and “**P-16A**” makes it clear that, the documents referred to by the 18th Respondent in those two affidavits, including the certificate marked “**P-16B**”, were submitted during the interview stage. The two affidavits make it clear that, the Board of Appeals and Objections had only revised the marks awarded by the Interview Board in respect of these documents which had been placed before the Interview Board. Thus, it is evident that, the submission of documents by the 18th Respondent was *within* the ambit of the provisions of the Circular marked “**P-2**”.

Thus, the facts relating to the submission of documents by the 18th Respondent, particularly with regard to the time at which the 18th Respondent submitted the documents and the fact that she submitted the documents within the ambit of the provisions of “**P-2**”, are essentially *different* from the facts relating to the submission of “**P-6A**” and “**P-6B**” by the Petitioners. The two situations cannot be reasonably or properly classified together. The 18th Respondent and the Petitioners were *not* equally circumstanced.

In MACKIE & CO. LTD vs. MOLAGODA [1986 1 SLR 300 at p.308], Sharvananda CJ explained that, “*In order to sustain the plea of discrimination based on Article 12 (1), a party will have to satisfy the court about two things, namely (1) that he has been*

treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis”.

As set out above, the Petitioners have failed to meet these criteria.

There is also no material before this Court to suggest that, the Respondents had acted arbitrarily or unreasonably when evaluating and selecting applicants during the interview process or appeal process.

Accordingly, I hold that, the Petitioners’ second contention must also fail.

It remains for me to consider the Petitioners’ third and *final* contention that, the admission of 15 more children under Category IV and the admission of 07 more children under Category I *after* the aforesaid Final List and Waiting List was published, was in contravention of the Circular marked “**P-2**”. The Petitioners’ argument is that, the failure to admit the 1st Petitioner child when these later admissions increased the total number admitted to 220, was in contravention of the Circular marked “**P-2**”, arbitrary, discriminatory and a violation of the Petitioners’ fundamental rights guaranteed under Article 12(1) of the Constitution.

As set out above, the 1st Respondent denies the Petitioners’ claim that, 15 children were admitted under Category IV and a further 07 children were admitted under Category I *after* the Final List and Waiting List was published.

But, the 1st Respondent has acknowledged that, *after* the Final List and Waiting List was published, he did admit a total of 08 children to Grade 1 of Dharmashoka College in 2015 upon the instructions set out in the letters marked “**1R5a**” to “**1R5f**”, “**1R6**” and “**1R7**” issued by the Secretary, Ministry of Education.

The letter marked “**1R7**” states that, the child named therein was to be admitted in pursuance of an Order made by this Court in S.C. F.R. Application No. 57/2015. Therefore, I do not need to further consider that particular admission.

However, a perusal of the other letters marked “**1R5a**” to “**1R5f**” and “**1R6**” establishes that, on 21st April 2015 and 30th April 2015, the Secretary, Ministry of Education has ordered that, the 07 children named in these letters be admitted to Grade 1 of Dharmashoka College without citing any provision of the Circular marked “**P-2**” in terms of which he makes his orders. The 07 children that, the Secretary has ordered be admitted, are not named on the Waiting List.

Thus, on the face of it, the 07 children named in these letters marked “**1R5a**” to “**1R5f**” and “**1R6**”, have been admitted to Grade 1 of Dharmashoka College *outside* the provisions of the Circular marked “**P-2**”.

Next, a perusal of the letter marked “**1R8**” makes it clear that, on 29th May 2015, the Secretary, Ministry of Education has ordered that, another 07 children named in this letter, who are children of teachers and non-academic staff attached to Dharmashoka College, be admitted to Grade 1.

This also has been done *outside* the terms of the Circular marked “**P-2**” which makes no separate provision whatsoever for the admission of children of staff attached to a school.

Thus it is clear that the aggregate number of 14 children named in the letters marked “1R5a” to “1R5f”, “1R6”, “1R8” have been admitted *outside* the process set up and implemented under and in terms of the Circular marked “P-2”.

Learned Senior State Counsel submitted that, the letters marked “1R5a” to “1R5f”, and “1R6” by which the Secretary, Ministry of Education ordered that 07 children be admitted to Grade 1 of Dharmashoka College were issued after the Secretary considered appeals made to him by applicants who had been unsuccessful with their applications submitted under and in terms of the process set out in “P-2”. Learned Senior State Counsel submitted that, Section 11.10 and Section 18 of “P-2” which state “පළමු වන ශ්‍රේණියට ලමයින් ඇතුළත් කිරීම සම්බන්ධ ව අධීක්ෂණය කිරීමටත් යම් ගැටළුවක් ඇති වුවහොත් එය නිරාකරණය කිරීමට අදාළ තීරණ ගැනීමටත් අධ්‍යාපන අමාත්‍යාංශයේ ලේකම්ට අනුලංගනීය බලය පැවරේ.” and “මෙම වක්‍රලේඛයේ පැන නගින ඕනෑම ගැටළුවක් සම්බන්ධයෙන් අධ්‍යාපන අමාත්‍යාංශ ලේකම්ගේ තීරණය අවසාන තීරණය වනු ඇත.” vest the Secretary with the power to entertain such appeals and to order that children be admitted to Grade 1. Learned Senior State Counsel submitted that, the Petitioners themselves have recognized this power vested in the Secretary by addressing the appeals marked “P-13A”, “P-13B” and “P-14” to him. On this basis, learned Senior State Counsel submitted that, these 07 children had been duly admitted *within* the scope and ambit of “P-2”.

I cannot agree with this contention. The Circular marked “P-2” makes no provisions for any form of appeals other than appeals made to the Board of Appeals and Objections constituted under and in terms of Section 9 of “P-2”. There is certainly no provision in “P-2” for an appeal to be submitted to the Secretary, Ministry of Education. Further, it is clear that, Section 11.10 and Section 18 of “P-2” only state that, where a problem arises in the implementation of the provisions of “P-2”, the Secretary, Ministry of Education is empowered to resolve such problems. By no stretch of imagination can these two provisions be taken to create a separate ‘appellate jurisdiction’ vested in the Secretary, Ministry of Education to decree that children should be admitted to Grade 1 outside the process set out in “P-2”. The mere fact that, the 2nd Petitioner addressed appeals to the Secretary in her last-ditch efforts to get her son into Dharmashoka College, cannot confer a non-existent authority on the Secretary.

Learned Senior State Counsel also submitted that, the letter marked “1R8” by which the Secretary, Ministry of Education ordered that 07 children of teachers and other staff serving at Dharmashoka College be admitted to Grade 1, is a ‘*separate scheme*’ with no connection to the process set out in “P-2”. On this basis, learned Senior State Counsel submitted that, the admission of these 07 children by the letter marked “1R8”, did not contravene the provisions of “P-2” and was, therefore, not irregular.

I cannot agree with this contention either. As stated earlier, the Circular marked “P-2” is a comprehensive scheme which deals with all aspects of the admission of children to Grade 1 of government schools. It has been held out as such by the Ministry of Education.

In this regard, it is relevant to reiterate here that, the process set up by the Circular marked “P-2” was drawn up, published and implemented by the Ministry of Education so as to bring about order, fairness and transparency in the process of selecting and admitting children to Grade 1 of government schools.

The contents of the Circular are made known to the public. Parents who seek admission of their children to Grade 1 of government schools are required to submit their applications in terms of “P-2”. They are bound by decisions taken by the Interview Board, the Board of Appeals and Objections, the Principal of the school and the Secretary, Ministry of Education, under and in terms of the provisions of the Circular.

By the same token, parents who seek admission of their children to Grade 1 of government schools have a legitimate expectation that, the same authorities and the Secretary, Ministry of Education will act only under and in terms of and within the scope and ambit of the provisions of the Circular when admitting children to Grade 1 of government schools.

In these circumstances, the Secretary, Ministry of Education is bound and required to strictly adhere to the provisions of the Circular marked “P-2” in all matters relating to the admission of children to Grade 1 of government schools. He is not entitled to disregard the provisions of the Circular marked “P-2”. He is prohibited from acting outside them.

I would also add that, if the Secretary, Ministry of Education is of the view that, he must have the discretion to order that, specific children be admitted to Grade 1 of government schools or for him to have the discretion to order that, children of teachers and non-academic staff attached to a school be admitted to that school, the Circular marked “P-2” has to be amended first to provide for such admissions and such amendments must be made known to the public.

It is only after that is done, that, the Secretary can properly exercise such a discretion and order that children be admitted to Grade 1 of government schools within the scope of the provisions of an Amended Circular which may replace “P-2”.

Thus, in *JAYAWICKREMA vs. PROF.W.D. LAKSHMAN, VICE CHANCELLOR, UNIVERSITY OF COLOMBO* [1998 2 SLR 235] Mark Fernando J held that, where the Post Graduate Institute of Medicine had a set of published regulations relating to training programmes in Anaesthesia which led to Board certification as a Consultant Anaesthetist, the regulations must be followed by the Post Graduate Institute of Medicine. His Lordship stated [at p.250-251] *“It is true that regulations can be amended. But even the authority which made the regulations is bound by them, unless and until they are duly amended; and disregarding its own regulations is not a method by which that authority can amend them”* and *“On a matter of such importance – to patients, the profession and the nation – nothing short of an express amendment made after due consideration will suffice”*.

In this background, this Court has to now consider whether the admission of the 14 children named in letters marked “1R5a” to “1R5f”, “1R6” “1R8” and the resulting increase in the total number of children admitted to Grade 1 to 220, *outside* the provisions of the Circular marked “P-2”, will entitle the 1st Petitioner child to an Order from this Court directing that he too be admitted to Dharmashoka College.

When considering this issue, it is necessary to keep in mind that, the Petitioners’ application had been correctly dealt with in terms of the Circular marked “P-2”. Thus, under and terms of “P-2, the 1st Petitioner child is *not* entitled to be admitted to Grade 1 of Dharmashoka College.

Next, this Court has to keep in mind the fact that, only a total number of 198 children could be properly admitted to Grade 1 of Dharmashoka College in 2015 under and in terms of and in compliance with the Circular marked “P-2”. This entire number of 198 have been admitted in 2015. Thus, the full number of children who may, lawfully and properly, be admitted under and in terms of “P-2”, have been admitted in 2015.

The Petitioners have not prayed for the setting aside of the admission of any of these children, which if ordered by this Court will create a ‘vacancy’ in this permitted number of 198.

Therefore, if this Court now orders that, the 1st Petitioner child be admitted to Dharmashoka College, such an Order will result in the breach of the rule dictated in the Circular marked “P-2” that only a maximum number of 198 children should be admitted and that, thereby, each Class should not have more than 40 children. Further, such an Order would be in contravention of the provisions of “P-2” since the 1st Petitioner child is not entitled to be admitted under and in terms of “P-2”.

In this regard, the established principle is: the fact there had been a previous executive or administrative act which contravened a law or regulation to the benefit of a respondent or a third party, will not induce or justify a Court granting a petitioner Reliefs which themselves result in the contravention of that law or regulation. In other words, a Court will not order the commission of a wrongful or irregular act on the basis that a wrongful or irregular act has been previously committed. A Court will not compel equality by ordering illegality.

This principle was explained by Sharvananda CJ in MACKIE & CO. LTD vs. MOLAGODA [at p. 309], where His Lordship stated, *“But the equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act. Via Article 12, one cannot seek the execution of any illegal or invalid act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is invalid in law.”* and *“The inequality complained of by this petitioner in this case is only an inequality in the matter of illegal treatment. The Constitution only guarantees equal protection of the law and not equal violation of law. One illegality does not justify another illegality. In the exercise of its powers under Article 126(4) of the Constitution this court can issue a direction to a public authority or official commanding him to do his duty in accordance with the law. It cannot issue a direction to act contrary to the provisions of the law or to do something which in law, would be in excess of his powers.”*

In the same vein, Mark Fernando J stated in GAMAETHIGE vs. SIRIWARDENA [1988 4 SLR 384 at p.404], *“Here the petitioner’s allegation that these persons were not on the waiting list and/or were not eligible for General Service Quarters amounts to an allegation that quarters were allocated in breach of the relevant rules. Two wrongs do not make a right, and on proof of the commission of one wrong, the equal protection of the law cannot be invoked to obtain relief in the form of an order compelling the commission of a second wrong”*.

Similarly, in AMUNUPURA SEELAWANSA THERO vs. ADDITIONAL SECRETARY, PUBLIC SERVICE COMMISSION [2004 3 SLR 365 at p.373], Bandaranayake J, as Her Ladyship then was, stated, *“ an authority cannot be compelled to act illegally in a case for the mere reason that it has acted illegally in previous cases.”*

Upon an application of this principle to the present Case, I am compelled to conclude that, this Court cannot make an Order that, the 1st Petitioner child be admitted to Dharmashoka College in contravention of the provisions of the Circular marked “P-2” by using the admission of the 14 children *outside* the provisions of “P-2”, as a ‘justification’ for such an Order.

Therefore, the Petitioners cannot get any Relief upon their third contention.

Before concluding, it should be mentioned that, the Petitioners have not sought any Orders from this Court setting aside the admission to Dharmashoka College of the 14 children named in letters marked “1R5a” to “1R5f”, “1R6” “1R8”. Further, these children are not parties to this application. In these circumstances, this Court is not called upon to make any Orders with regard to the admission of these children to Dharmashoka College.

For the aforesaid reasons, the Petitioners’ application is dismissed. In the circumstances, of the Case, I make no Order with regard to costs.

Judge of the Supreme Court

K. Sripavan CJ.
I agree

Chief Justice

Upaly Abeyrathne J.
I agree

Judge of the Supreme Court