

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

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

SC FR Application No. 41/2016

1. J.R. Hettiarachci, 2/91A (584)
Thanne Kumbura, Kandy.
2. K.H.M.A. Kehelella,
10/8, Hewahata Road,
Thenne Kumbura, Kandy.
3. I.B.S.R. Chandrarathne, 55 (46),
Pahala Thenne Kumbura, Kandy.
4. N.G. Thillakarathne, 4/35A,
Thenne Kumbura, Kandy.
5. D.N.S. Hettiarachchi, 2/91A (584),
Thenne Kumbura, Kandy.
6. K.H.M.M.S.I. Kehelella, 10/8,
Hewahata Road, Thenne Kumbura,
Kandy.
7. I.B.S.S. Chandrarathne, 55 (46), Pahala
Thenne Kumbura, Kandy.
8. N.G.L.D. Thillakarathne, 4/36A, Thenne
Kumbura, Kandy.

PETITIONERS

Vs

1. I. Vithanachchi
Principal,
K/Mahamaya Balika
Vidyalaya,
Kandy.
2. Hon. Akila Viraj Kariyawasam,
Hon. Minister of Education,
Ministry of Education, “Isurupaya”
Baththramulla.
3. P.N. Ailapperuma,
Director (National Schools),
National Schools Branch
Ministry of Education,
“Isurupaya” Baththaramulla.
4. W.M. Bandusena
Secretary,
Ministry of Education,
“Isurupaya” Baththaramulla.
5. Hon. Attorney General
Attorney General's Department,
Colombo 12.
6. H.S.P. Weerasekera
Assistant Principal,
K/Mahamaya Balika Vidyalaya,
Kandy.
7. R.A.T. Chandrakanthi,
Board Secretary-Assistant Teacher,
K/Mahamaya Balika Vidyalaya,
Kandy.
8. N.A.K. Wijekon, Member, Old
Girls'
Association,
K/Mahamaya Balika Vidyalaya,
Kandy.
9. D.M.M.K. Abesinghe, Member,
School Development

- Society, K/Mahamaya Balika
Vidyalaya,
Kandy.
10. P.P.S. Bandrara,
(Chairman of the Appeal Board)
Principal,
Kingswood College, Kandy.
 11. R.A.T. Chandrakanthi (Secretary of
the Board) Assistant Teacher,
Mahamaya Balika Vidyalaya,
Kandy.
 12. P.K. Senevirathne, Assistant
Teacher, Mahamaya Balika
Vidyalaya,
Kandy.
 13. N.M. Padmadevi
Member, Old Girls' Association,
K/ Mahamaya Balika Vidyalaya,
Kandy.
 14. P. Basnayake
Member, School Development
Society, K/Mahamaya Balika
Vidyalaya,
Kandy.

RESPONDENTS

Before : Sisira J. De Abrew J.
Priyantha Jayawardena PCJ. &
Prasanna. S. Jayawardena PC J.

Counsel : Canishka G. Witharana with H.M. Thillakarathna for
the Petitioners.
Suren Gnanaraj SC for the Respondents.

Argued on : 04.08.2016

Decided on : 2.11.2016

Sisira J De Abrew J.

The Petitioners in this petition seek a declaration that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the 1st to 4th and 6th to 14th Respondents. They also seek a direction on the 1st to 4th and /or 6th to 14th respondents to admit their children to Grade 1 of K/Mahamaya Balika Vidyalaya, Kandy for the year 2016.

The Petitioners submitted their applications to K/Mahamaya Balika Vidyalaya, Kandy to admit their children to Grade 1 of the said school. The children of the Petitioners obtained 81 marks. The cutoff point was also 81 marks. The names of the Petitioners' children were also published in the waiting list. But they were not admitted to the school. The Petitioners state that seven children who also obtained 81 marks were admitted to the said school. Thus the Petitioners state that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the Respondents.

The 1st Respondent, in her affidavit filed in this court, states that there were seventeen applicants who had received 81 marks under the residence category; that there were only seven vacancies remaining under the residence category; that she proceeded to rank the said applicants in the order of proximity to the school; that of the seventeen applicants seven applicants whose houses were, on the basis of distance, closer to the school than the others were admitted to the school. It appears from the affidavit of the 1st Respondent that the residences of the said seven applicants were closer to the school than the residences of the Petitioners. This was the basis of the selection. The 1st Respondent has based her decision on the basis of instructions given by the Secretary to the Ministry of Education (4th Respondent) at a meeting held on 10.8.2015. The report of the said meeting is marked as R1. It

appears that R1 contains some general instructions given to all the Principals of schools. According to R1, when applicants have obtained equal marks under the category of residence, they would be listed in accordance with the distance from the school to the residence. Thus according to R1, when there are several applicants who have obtained equal marks under the category of residence, the applicant whose house comes first on the basis of distance would be listed first in the residence category list and the applicant whose house comes last on the basis of distance would be listed last in the residence category list although both had obtained equal marks under the residence category. This procedure was adopted in respect of the applicants who had obtained equal marks on the basis of residence category. Further according to R1, if the above procedure is adopted, the distance between the school and the applicant's residence should be clearly displayed in the waiting list and the final list of admission. The 1st Respondent, in her affidavit filed in this court, states that seven applicants [students who were selected] referred to in paragraph 16 of the petition were the closest to the school as far as the distance is concerned; that therefore they were ranked higher than the petitioners' children; and that as a result of the said procedure being adopted, the said seven applicants were admitted to the school and the balance ten (including the petitioners' children) were not admitted to the school.

I have to note here that P3, the circular issued by the 4th Respondent, governs admission of children to Grade 1 of Government schools. This is the circular that has to be followed by the Principals when admitting children to Grade 1 of Government schools. The 1st Respondent takes up the position that she followed R1 when she refused to admit the Petitioners' children. Therefore the most important question that must be decided is whether the document marked R1 is a part of the circular marked P3. I now advert to this question. Learned SSC relying

on clause 11:10 and 18 of the circular P3 which was later amended on 18.6.2014 by P4A submitted that the Secretary to the Ministry of Education (4th Respondent) has the power to resolve any question that may arise in connection with admission to Grade 1 of Government Schools; that his decision should be final; and that the 1st Respondent has acted on the instructions of the 4th Respondent.

The complaint of the Petitioner in this case is that when they got equal marks with the other seven applicants referred to in paragraph 16 of the petition, the said seven children were selected but their children were not selected; that they have not got equal protection of the law; and that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated. I now advert to this contention. This can't be the first occasion that a problem of this nature arose. The fact that this type of problem had arisen in the past is evident by the issuance of R1. Therefore it is clear that this type of problem had arisen earlier. Then why didn't the 4th Respondent take steps to include the said instructions contained in R1 by amending the circular P3. It appears from P4A that the 4th Respondent on 18.6.2014 had taken steps to amend clause 18 of circular marked P3. But he had failed to take steps to amend the circular P3 to include instructions contained in R1. The problem that has arisen in this case appears to be a serious problem that the Principals of schools and officers of the Ministry of Education are facing when they take decisions with regard to admission to Grade 1 of Government schools on the basis of residence category. In these circumstances, if the procedure set out in R1 which had been followed by the 1st Respondent is a decision of the Secretary to the Ministry of Education who is the 4th Respondent, why didn't he take steps to include the instructions contained in R1 by amending the circular P3 which governs admission to Grade 1 of Government schools? The respondents cannot provide an answer to this question. The Document marked R1 is not a circular. It is

only a report of a meeting of all Principals. When R1 is examined, it appears that officers of the Ministry of Education including the Secretary to the Ministry had attended the said meeting. This meeting had been held on 10.8.2015. The above observation demonstrates that said procedure set out in R1 which had been followed by the 1st Respondent is not a part of the circular P3. If the 1st Respondent followed the circular P3, there were compellable reasons for her to admit children of the Petitioners to the school. For the above reasons, I hold that the 1st Respondent has failed to follow the circular P3 when she refused to admit the children of the Petitioners to Grade 1 of Mahamaya Vidyalaya. Further the Petitioners were having legitimate expectations that their children would be admitted to the school as they have complied with the circular P3 which governs admission to Grade 1 of Government schools.

Learned SSC tried to contend that on the basis of P4B, the maximum number of students of a class cannot exceed 40 and that therefore the children of the Petitioners could not be admitted to the school. In this connection, I would like to consider a hypothetical situation. If two twin sisters have applied for admission of a school and one twin sister becomes the 40th applicant and the other twin sister becomes the 41st applicant, is it fair to reject the admission of the other twin sister on the basis of P4B? Further if two applicants who live in a twin house have applied for admission to a school and their distances from the twin house to the school are equal and they become 40th and 41st applicants on the residence category, can the 41st applicant be refused admission to the school on the basis of P4B? It can be contended that on one hand the 1st Respondent cannot violate the instructions in P4B and on the other hand the Petitioners cannot be penalized because of P4B when they have got equal marks with the students referred to in paragraph 16 of the Petition (students who obtained the same marks were admitted

to the school). In a situation of this nature, the officers of the Ministry of Education must take a decision in favour of the Petitioners as they are not guilty of violating any regulation or circular P3.

The 1st Respondent has interpreted the circular P3 based on R1 which is not a part of the circular P3 and the decision of the 1st Respondent is not in favour of the Petitioners. In fact the decision of the 1st Respondent is against the Petitioners. It has to be noted here that the Petitioners have not violated the circular and they have fulfilled the requirements of the Circular P3. If not for the restrictions contained in P4B and if the 1st Respondent did not follow the document marked R1 which is not a part of the circular P3, the children of the Petitioners would have been admitted to the school (Mahamaya Vidyalaya). The Petitioners and their children are facing this predicament not due to their fault but due to the decision of 1st Respondent who followed the instructions in documents R1 and P4B. In a situation of this nature, the interpretation of the circular P3 should be in favour of the children and such an interpretation should not be tainted with other documents such as R1. In my view, if the children of the Petitioners who have, on the basis of distance, obtained equal marks with the other seven students are refused admission to the school acting in terms P4B, they would not get equal protection of law and their fundamental rights guaranteed by Article 12(1) of the Constitution would be violated. For the above reasons, I am unable to agree with the contention of learned SSC.

Article 12(1) of the constitution is as follows: “All persons are equal before the law and are entitled to the equal protection.”

For the aforementioned reasons, I hold that the Petitioners have not got equal protection of the law and that the 1st Respondent has violated the fundamental

rights of the Petitioners guaranteed by Article 12(1) of the Constitution. I therefore direct the 1st Respondent, the Principal of K/Mahamaya Balika Vidyalaya, Kandy to admit the children of the Petitioners namely

1. Dinuri Nimthara Sithmi Hettiarachchi
2. Kehelelle Herath Mudiyansele Minuli Suraktha Limali Kehelella
3. Imiya Bandarage Sayuri Sathsarani Chandrarathna
4. Mahapeligedera Lochana Dewmini Thillakarathne

to Grade 1 of K/Mahamaya Balika Vidyalaya, Kandy for the year 2016. The present holder of the Principal, K/Mahamaya Balika Vidyalaya, Kandy should implement this direction within three weeks from the date of this judgment. The Registrar of this court is directed to send a certified copy of this judgment to the 1st Respondent within three days of the date of this judgment.

Judge of the Supreme Court.

Priyantha Jayawardena PC J

I agree.

Judge of the Supreme Court.

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court.

