

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

In the matter of an Application under and in
terms of Articles 17 and 126 of the Constitution
of the Republic

1. Sawunda Marikkala Damith de Silva,
No.1/129, Polwaththta Road,
Kaluwadumulla,
Ambalangoda
2. Sawunda Marikkala Thenuk Sanmitha de
Silva (minor),
No. 1/129, Polwattha Road,
Kaluwadumulla,
Ambalangoda.

SC Application No. SCFR 58/15

Petitioners

Vs.

1. Akila Viraj Kariyawawsam (M.P.)
Hon. Minister of Education,
Ministry of Education,
“Isurupaya”, Battaramulla.
2. Upali Marasinghe,
Secretary – Ministry of Education,
“Isurupaya”, Bataramulla.
3. Sumith Parakramawansha,
Former Principal – Dharmashoka Vidyalaya
Galle Road, Ambalangoda.
- 3A. Ravindra Pushpakumara,
Principal – Dharmashoka Vidyalaye,
Galle Road, Ambalangoda.

4. R. N. mallawarachchi
5. Diyagubaduge Dayarathne
6. Mr. Shirley Chandrasiri
7. NS.T.de Silva

4th to 7th Above All:

**Members of the Interview Board,
(Admissions to Year 1)**

**C/o Dharmashoka /Vidyalaya,
Galle Road, Ambalangoda.**

8. W. T. B. Sarath
9. P. D. Pathirathne
10. K. P. Ranjith
11. Jagath Wellage

4th and 8th to 11th above All:

**Members of the Appeal Board,
(Admission to Year 1)**

**C/o Dharmashoka /Vidyalaya,
Galle Road, Ambalangoda.**

12. 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,
B.P. ALUWIHARE, PC, J &
UPALY ABEYRATHNE, J

COUNSEL: Crishmal Warnasuriya with Udani Galappathi and J.
Wickramasuriya for the Petitioners.
Rajitha Perera, SSC for the 1st , 2nd , 3rd , 8th and 13th
Respondents.

ARGUED ON: 21.01.2016

DECIDED ON: 14.07.2017

B.P.ALUWIHARE, PC, J:

The 1st and the 2nd Petitioners, who are the father and son respectively, have alleged, that by the failure on the part of the Respondents to admit the 2nd Petitioner to Grade 1 of Dharmashoka Vidyalaya, Ambalangoda for the year 2015, the Respondents have violated their fundamental rights guaranteed under Article 12 (1) of the Constitution.

Leave to proceed was granted by this court under the said Article on the 15th of June 2015.

The facts of the case as submitted by the Petitioners are as follows:-

It is common ground that admissions of students to government schools for the year 2015 was governed by a circular issued by the Ministry of Education bearing No. 23/2013 dated 23.05.2013. It was also not in dispute that the cut off mark for the admission of students to grade 1 of the said school for 2015 was 94.25.

The 2nd Petitioner sought admission to the school under the Residency (Proximity/feeder area) category. In terms of the circular P3, the applicant is required to produce proof of residency and marks are allotted for the proximity category based on the criteria laid down in clause 6.1 of the circular P3.

The Petitioners had attended an interview on 20th October, 2014, held to evaluate the eligibility of the 2nd Petitioner to be admitted to the school concerned. The Petitioners state that the Board of Interview comprising of 3rd to 7th Respondents awarded the 2nd Petitioner 90 marks under the category applied for.

The Petitioners state that, when the temporary list containing those who were selected was displayed on the notice board the 2nd Petitioner's name was not among the applicants selected for admission.

Aggrieved by the exclusion of the 2nd Petitioner, an appeal had been lodged with the 3rd Respondent, the Principal of Dharmasoka Vidyalaya as provided for, in clause 9.1 of the circular P3.

The main contention on behalf of the Petitioners was the deduction of 10 marks due to the fact that there are two schools more proximate to the Petitioner's residence. This deduction was made at the initial interview Petitioner faced on 20th October, 2014 and the Appeal Board (which comprised of 4th, 8th and 9th to 11th Respondents) also had been of the view that the deduction of 10 marks referred to above was justified, in view of the fact that the petitioners' residence is more proximate to Kularatne Vidyalaya and Buddhadatta Vidyalaya.

Further, the 2nd Petitioner's name had not appeared on the list, when the final list of the students selected, was released. The Petitioners thereafter had sought administrative relief from various quarters, but those details are of no relevance to decide the issues of this case.

The gravamen of the Petitioners' complaint is that another applicant, namely M.J.V.De Soya who lives further away from Dharmasoka College, than the Petitioners had been selected and this action amounts to discrimination and Petitioners should also be treated equally as the applicant M.J.V.De Zoysa.

The admission to Grade1 of government schools is a competitive process and the cut off mark is set accordingly.

For the admission to Dharmasoka College for the academic year 2015, the cut off mark had been set at 94.25. As such all applicants who secured the cut off mark or marks above that, were required to be taken in.

Hence, what is pivotal to the decision in the instant application is to consider whether the 2nd Petitioner had been deprived of any marks that should have been allotted to him.

As far as allocation of marks is concerned the 2nd Petitioner had obtained 90 marks at the initial interview and that had been confirmed when his case was heard by the Appeal Board, ten marks being deducted for the reason stated above.

The Petitioners do not deny the fact that the said schools are more proximate to their residence, but contends that Buddhadatta Vidyalaya is a primary model school affiliated to two other schools namely Kularatne Vidyalaya, Galle and Prajapathi Gothami Vidyalaya, Galle.

It was contended on behalf of the Respondents that the schools referred to above are not affiliated schools but are two separate schools, and to substantiate that position had placed the document 3AR5 before this court.

3AR5 is a letter addressed to the Provincial Director of Education Southern Province, by the Secretary, Provincial Ministry of Education sent in April, 2012.

The said letter states that Buddhadatta Vidyalaya is to remain as a feeder school and has rescinded part of a letter sent in the year 2003. The requirement initially placed, of admitting students who successfully complete year 5 of the Buddadatta Vidyalaya to Prajapathi Balika Vidyalaya and Kularatne Vidyalaya had been rescinded by the letter 3AR5.

It was contended on behalf of the Respondents, that the position taken up by the Petitioners that Buddadata College is a primary model school affiliated to two other schools is incorrect in view of 3AR5.

It was further argued on behalf of the Respondents that the Petitioners had not challenged the letter 3AR5 and the said document stands uncontradicted.

Having considered the submissions of the parties and the documents filed I am of the view, the deduction of marks in respect of schools closer to the Petitioner's residence than Dharmasoka Vidyalaya thus seem justified.

As far as computation and allocation of marks are concerned, this is the only aspect raised by the Petitioners and I hold that the Respondents had not deprived the Petitioners the marks due.

The Petitioners have also pointed out that the Respondents have acted in contravention of the express guidelines with regard to the admission criteria.

It was contended on behalf of the Petitioners that only four members of the Appeal Board have signed the final list, whereas clause 11.4 (a) of the circular

requires all members of the Appeal Board to sign the list (P13). In addition, it had been alleged that as per clause 11.6 of the circular which requires the applicant to be informed in writing of the specific reason for the rejection of the application, had been violated by not informing the Petitioners the reason for the rejection of their application.

In response to the breaches alleged by the Petitioners, it is the position of the 3A Respondent that the 5th member of the Appeal Board did sign the list subsequently and had produced the copy of the impugned document marked 3AR12. The position of the 3A Respondent is that Clause 11.6 of the circular was complied with by informing the Petitioner with regard to the outcome of the application for admission to the school, which the Petitioners have admitted in their counter affidavits.

I have considered the breaches of the circular alleged by the Petitioners and have not caused any prejudice to the Petitioner and when the responses to the same by the 3A Respondent, at best they are technical in nature, and even if this court is to hold that the alleged breaches have taken place, still it will not have any impact on the marks allotted to the 2nd Petitioner.

In the case of *Rathnayke vs. Attorney General 1997 2 SLR pg. 98* Chief Justice G.P.S De Silva held that every wrongful act is not enough ground to complaint of infringement of fundamental rights. The Petitioner must establish unequal or discriminatory treatment.

The main thrust of the Petitioner's case is unequal treatment of the 2nd Petitioner vis a vis another applicant for the admission to school namely selection of M. J. V. De Soyza for admission, whose residence is further away from that of the Petitioners vis a vis Dharmasoka College, Ambalangoda.

I shall now consider the aspect of discrimination alleged by the Petitioners.

In paragraph 21 of the Petition, it is alleged that the student M.J.V.De Soyza who also received same marks as the 2nd Petitioner (90) at the 1st interview had been wrongfully brought into the final list with 95 marks.

The Petitioners specifically averred that they are not seeking any specific relief against the “wrongfully selected applicant” and had further averred that the Respondents have discriminated against the Petitioners and had arbitrarily selected candidates who are unqualified and/or unsuitable for admission.

Before I consider the alleged discrimination it must be reiterated that what is required for admission to the school applied for, is to gain a minimum of 94.25 marks, by establishing the residency under the “occupancy category”.

As referred to earlier, as far as allocation of marks are concerned, based on the documents and other relevant factors are concerned, there is nothing to indicate that the 2nd Petitioner had been deprived of any marks that he was entitled to.

Thus, what is left with is for this court to consider whether the selection of the applicant M.J.V.De Soyza amounts to discrimination of the 2nd Petitioner and for that reason the said Petitioner’s fundamental right to equal protection of the law had been infringed.

In the case of C.W.Mackie and Company Ltd. Vs. Hugh Molagoda, Commissioner General of Inland Revenue and others (1986) 1 SLR 300, Chief Justice Sharvananda observed that “*the equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act via Article 12, one cannot seek 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, formulated in law in contradistinction to an illegal right which is invalid in law*”.

The decision referred to above had been consistently followed by the Supreme Court and with approval I wish to refer to the statement made by Justice M.D.H.Fernando in the case of Gamaethige Vs. Siriwardane (1988) 1 SLR 384, wherein His Lordship said “*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 commission of a second wrong.*”

Justice Dr. Shirani Bandaranayake following the decision in case C.W.Mackie and Company Ltd, referred to above held in the case of Dissanayake Vs. Piyal de Silva (2007) 2 SLR 134, that Article `12(1) of the Constitution provides only for the equal protection of the law and not for the equal violation of the law.

Considering the above I hold that the Petitioners have failed to establish that the Respondents have violated the fundamental right enshrined in Article 12(1) of the Constitution as far as the 2nd Petitioner is concerned.

Accordingly the application is dismissed, but in all the circumstances, without costs.

JUDGE OF THE SUPREME COURT

Hon. Justice Eva Wanasundera PC

I agree

JUDGE OF THE SUPREME COURT

Hon. Justice Upaly Abeyrathne

I agree

JUDGE OF THE SUPREME COURT

