

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

S.C (FR) Application No. 57/2012

In the matter of an Application under  
and in terms of Article 126 of the  
Constitution.

1. Dewndara Wedasinghage Manusha  
Madhurangana  
20/A, Pansalhena Road,  
Wellampitiya.

**And 87 others**

**PETITIONERS**

Vs.

24. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**And 23 others**

**RESPONDENTS**

**BEFORE:** Priyasath Dep P.C., C.J.,  
Sisira J. de Abrew J. &  
Anil Gooneratne J.

**COUNSEL:** Asthika Devendra with Jagath Wickramasuriya for Petitioners  
  
Saliya Peiris P.C. with Thanuka Nandasiri for 1B, 2A - 5A, 6B, 7A,  
17B, 21B, 22C & 23A Respondents  
  
Sanjay Rajaratnam P.C., A.S.G. for 8<sup>th</sup>, to 16<sup>th</sup> & 24<sup>th</sup> Respondents

**ARGUED ON:** 22.03.2017

**DECIDED ON:** 05.07.2017

**GOONERATNE J.**

This Fundamental Rights Application has been filed by about 88 Petitioners to obtain National or Provincial Schools for children who have completed their primary education at the Maligakanda Mahinda Vidyalaya. Petitioners describe Maligakanda Mahinda Vidyalaya as a school developed under a project called "Model Primary School Project" in the year 2006. It is a project conducted to resolve problems of the high competitive nature for school children, for school admissions to Grade 6 of the popular and National Schools. Petitioners rely on document P3 to fortify their case to admit children to popular and or National Schools after completing primary education as stated in P3.

P3 is a letter issued by the Provincial Education Director, Western Province to Zonal Director of Education, Colombo. This letter is copied to Secretary, Education and Secretary Chief Minister and some others for their information. Paragraph 2 of P3 states that Vidyawardana Vidyalaya and Maligakanda Vidyalaya would be developed as a model Primary School from the

year 2007. It is stated as regards Vidyawardena Vidyalaya from 2007 for Grade 1 parallel classes to be conducted and those students who pass the Grade 5 examination and the marks obtained at the Grade 5 Scholarship/Competitive Examination would be the criteria to select students to D.S. Senanayake College (10% males) and Devi Balika Vidyalaya (10% females) and the rest to Parakrama Bahu Vidyalaya. It emphasis that these students should be admitted. යන පාසල් වලට ඇතුළත් කල යුතුය. As regards Maligakanda Vidyalaya P3 reads as follows:

බප/කො/මලිගාකන්ද විද්‍යාලය

2007 වර්ෂයේ සිට 1 ශ්‍රේණියේ සමාන්තර පන්ති 04 ක් ආරම්භකළ යුතු අතර 5 ශ්‍රේණිය සමත් වන සිසුන් 5 ශ්‍රේණියේ ශිෂ්‍යව විභාගයේ ලකුණු/තරග විභාගයක ලකුණු පදනම් කරගෙන කොළඹ ආනන්ද විද්‍යාලය, කොළඹ නාලන්ද විද්‍යාලය සහ ශාන්ත ජෝන් විද්‍යාලය යන පාසල්වලට පිරිමි ළමයින්ගෙන් 20% බැගින්ද කොළඹ අශෝක විද්‍යාලයට පිරිමි ළමයින්ගෙන් 30% ද සි.ඩබ්.ඩබ්. කන්තන්තර විද්‍යාලයට පිරිමි ළමයින්ගෙන් 10% ද ඇතුළත් කල යුතුය. 5 ශ්‍රේණිය සමත්වන ගැහැණු ළමයින්ගෙන් 20% බැගින් ගෝනම් බාලිකා විද්‍යාලය, ආනන්ද බාලිකා විද්‍යාලය, රත්නාවලි බාලිකා විද්‍යාලය, සි.ඩබ්.ඩබ්. කන්තන්තර විද්‍යාලය සහ සියථ ශාන්තුවරයන්ගේ බාලිකා විද්‍යාලය යන පාසල්වලට ඇතුළත් කල යුතුය. 5 ශ්‍රේණිය සමත්වන සිසුන්ගෙන් කොළඹ ආනන්ද, නාලන්ද සහ ගෝනම් බාලිකා යන පාසල්වලට ඇතුළත් කරනු ලබන්නේ බෙ ද්ධ සිසුන් පමණකි.

The question is whether the above P3 letter stipulates a binding agreement to compel the authorities concerned to admit children to Provincial and National Schools in the manner referred to in P3. Can the Petitioners argue that there is a 'legitimate expectation' for the Petitioners and require the authorities concerned to admit their children in the manner stipulated in P3? There is an expectation to comply with P3 but whether it could be termed a 'legitimate expectation' is another question to be considered very carefully. Especially an admission of students to Grade 1 and the competitive nature of the Grade 5 Scholarship Examination, is being controlled and adopted by circulars of the Education Department and the Ministry of Education. This is so due to the competitive nature of school admissions and to observe transparency in the process of selection, of students to National and Provincial Schools. It should not be done according to the whims and fancies of persons in some authority. A consultative procedure may not be available in cases where high competitive aspects of admissions of students to Grade 1 and Grade VI Scholarship Examination is concerned. It may be unfair and unreasonable to adopt different procedures of admissions of students.

The Education Department or the Ministry of Education of the Central Government lays down the criteria for Grade 5 Scholarship Examination. There is a cut-off point of marks and students who score marks above the cut-

off point would be eligible to be selected to popular schools or may be entitled to scholarships. On the other hand students from model primary schools are also considered in terms of letter P3 (provided the required marks are obtained) to be admitted to schools like Ananda, Nalanda, Devi Balika etc. The two procedure available for students may clash in certain respects. P3 contemplates of a certain percentage e.g 30% for male students and 20% for girls in the selection process. Due to difficulties encountered by the authorities P10, MOU had to be issued. It clearly states in its opening paragraph that it has become essential to issue such MOU due to hardships/difficulties faced in admitting children to popular schools, in the Colombo District. A practical approach is being introduced in P10, MOU although certain problems could be envisaged. It is correct that the Petitioners were not privy to P10. Nor was any consultative procedure adopted, prior to issuance of P10. Nevertheless it is a matter for the Education Department and the Ministry of the Central Government to take steps in the best interest of Education and all those involved in the subject. As such a consultative process cannot be made available as it would be impracticable.

P10 MOU was issued in the greater interest of the public and education and Justice to all. Those students who could not obtain the required marks in the scholarship examination cannot have a legitimate expectation of being selected to popular schools in the Colombo District notwithstanding the

material in P3. To describe and explain further the marks list in P11 is thus incorporated as follows:

### **Petitioners performance at the Grade 5 Scholarship Examination**

The results of the Petitioners at the Grade 5 Scholarship Examination has been depicted in the Mark List (P11), which is as follows:

- 1<sup>st</sup> Petitioner – 75 marks – not qualified
- 3<sup>rd</sup> Petitioner – 96 marks – not qualified
- 5<sup>th</sup> Petitioner – 92 marks – not qualified
- 7<sup>th</sup> Petitioner – 146 marks – not qualified
- 9<sup>th</sup> Petitioner – 110 marks – not qualified
- 11<sup>th</sup> Petitioner – 101 marks – not qualified
- 13<sup>th</sup> Petitioner – 122 marks – not qualified
- 15<sup>th</sup> Petitioner – 127 marks – not qualified
- 17<sup>th</sup> Petitioner – 94 marks – not qualified
- 19<sup>th</sup> Petitioner – 128 marks – not qualified
- 21<sup>st</sup> Petitioner – 117 marks – not qualified
- 23<sup>rd</sup> Petitioner – 69 marks – not qualified
- 25<sup>th</sup> Petitioner – 87 marks – not qualified
- 27<sup>th</sup> Petitioner – 152 marks – not qualified
- 29<sup>th</sup> Petitioner – 117 marks – not qualified
- 31<sup>st</sup> Petitioner – 123 marks – not qualified
- 33<sup>rd</sup> Petitioner – 153 marks – not qualified
- 35<sup>th</sup> Petitioner – 130 marks – not qualified
- 37<sup>th</sup> Petitioner – 90 marks – not qualified
- 39<sup>th</sup> Petitioner – 141 marks – not qualified
- 41<sup>st</sup> Petitioner – 115 marks – not qualified

43<sup>rd</sup> Petitioner – 142 marks – not qualified

45<sup>th</sup> Petitioner – 118 marks – not qualified

47<sup>th</sup> Petitioner – 119 marks – not qualified

49<sup>th</sup> Petitioner – not qualified

51<sup>st</sup> Petitioner – 120 marks – not qualified

53<sup>rd</sup> Petitioner – 154 marks – not qualified

55<sup>th</sup> Petitioner – 145 marks – not qualified

In comparison of marks in P11 with those who scored above the cut-off point of marks, it would be unreasonable and unfair to deprive a National school to other students who faired well in the Scholarship Examination.

In order to clarify the matter in detail, I would refer to that part of the written submissions of 8A, 9D, 10, 11A, 12, 13, 14A, 15A, 16A and 24 Respondents and the MOU (P10) as follows:

- (b) the MOU dated 03.11.2009, marks P10 entered into between the Ministry of Education and the Western Province Provincial Ministry of Education specifies the manner in which students from Maligakanda Mahinda New Model Primary School should be admitted to Grade 6 of National and Provincial Schools commencing from 2012.
- (c) Clause 5 of the said MOU provides that students who obtain marks above the District cut off marks at the Grade 5 Scholarship Examination would be admitted to Grade 6 of National and Provincial Schools in the Colombo Education Zone. Priority in respect of admission to National Schools in the Colombo Education Zone would be based on the order of merit among such students.

(d) In the year 2012, 7 students were admitted to National Schools based on the marks obtained at the Grade 5 Scholarship Examination pursuant to clause 5 of the MOU, in the following manner.

Ananda College	-	01 student (178 marks)
D.S. Senanayake College	-	01 Student (174 marks)
Mahanama College	-	01 student (168 marks)
Asoka Vidyalaya	-	01 students (167 marks)
Lumbini Vidyalaya	-	03 students (159 marks)

(e) Clause 5.1 of the MOU provides that students who obtain marks below the District cut off marks at the Grade 5 Scholarship Examination would be admitted to Grade 6 of Provincial Schools in the Colombo Education Zone, based on residencies and preferences.

(f) Steps were taken to admit the unsuccessful students of the Maligakanda Mahinda New Model Primary School to Susamyawardana Vidyalaya, Colombo 8 and C.W.W. Kannangara Maha Vidyalaya, Colombo 8, which are Provincial Schools in accordance with Clause 5:1 of the MOU based on preferences indicated by the parents, (vide – 9R3A and 9R3B)

The above Respondents have not violated the fundamental rights of the Petitioners. Equal protection of the law cannot be extended to a case of this nature where selection procedure is geared to recognise the cut-off point of marks obtained in an examination, which is competitive. P10 – MOU recognise this fact. P11 indicates the marks obtained by the Petitioners. It is clear that the Petitioners' marks are below the cut-off point. In my view if the



Petitioners are admitted to the schools mentioned above such an act can amount to violation of the fundamental rights of the others who have obtained more marks than the Petitioners. When I consider all the above matters, I feel that the Petitioners are not entitled to claim that their fundamental rights have been violated as they were not admitted to the schools mentioned above.

In the circumstances of the case in hand, I proceed to dismiss this application without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C. C.J.

I agree

CHIEF JUSTICE

Sisira J. de. Abrew J.

I agree

JUDGE OF THE SUPREME COURT

