

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

In the matter of an application under the Articles 17
and 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

1. Jayasinghe Herath Mudiyansele Kusum
Indika Jayasinghe,
No. 14, 3rd Lane,
Dharmasoka Mawatha, Aruppola, Kandy.
2. Jayasinghe Herath Mudiyansele Swetha
Arundathi Jayasinghe,
No. 14, 3rd Lane,
Dharmasoka Mawatha, Aruppola, Kandy.

Petitioners

SC/FR Application No. 38/17

Vs.

1. Secretary,
Ministry of Education,
'Isurupaya', Battaramulla.
2. I. Withanachchi,
Principal,
Mahamaya Girls College, Kandy.
3. Y.M.T. Kumarihamy,
Principal, Sangamitta Girls School, Matale.

(Chairman, Board of Appeals and Objections)

4. H.M.P.K. Nawaratne,
Vice Principal,
Kingswood College, Kandy.
(Member, Board of Appeals and Objections)
5. K.P.C. Kurukulasuriya,
Secretary,
Mahamaya Girls College, Kandy.
6. S.A.R.A. Senaweera,
Mahamaya Girls College, Kandy.
7. T.S. Kodikara, Agent for School
Development Society, Mahamaya Girls
College, Kandy. (Member, Board of Appeals
and Objections)
8. S.D. Nawaratne, Member of Old Girls Union,
Mahamaya Girls College, Kandy. (Member,
Board of Appeals and Objections)

**3rd to 8th Respondents are members of the
Board of Appeals and Objections**

9. C.L. Mabopitiya (minor)
10. M.S. Jayaratne (Guardian for the 9th
Respondent)

Both of No. 66/32A, Rajapihilla Mawatha,
Kandy.

11. N.D.H. Hettiarachchi (minor)

12. G.C.H. Hettiarachchi (Guardian for the 11th
Respondent)

Both of No. 199 B1/1,
Rajapihilla Mawatha, Kandy.

13. W.S.A.V. Abhimani (minor)

14. W.S.A.D.D. Senarathne (Guardian for the 13th
Respondent)

Both of No. 16/1, Tekkawatta, Tennakumbura,
Kandy.

15. Hon. Attorney General,

Attorney General's Department, Colombo 12.

Respondents

Before : Priyantha Jayawardena PC, J
: A.H.M.D. Nawaz, J
: Achala Wengappuli, J

Counsel : S.N. Vijithsingh for the Petitioners.
: Rajitha Perera, DSG for the Respondents.

Argued on : 15th February, 2024

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

Facts of the case

The instant application was filed challenging the refusal to admit the 2nd petitioner to Grade 1 of Mahamaya Girls College, Kandy, for the Year 2017. The 1st petitioner has made the application to admit the 2nd petitioner to the said school based on the “children of occupants in close proximity to the school” category.

The 1st petitioner stated that the scheme of admission to Grade 1 of National Schools for the Year 2017 was published by the Ministry of Education in Circular No. 17/2016 dated 16th of May, 2016. As per Clause 6.0(a)(i) of the said scheme, 50% of the vacancies in Grade 1 of a school would be filled by “children of occupants in close proximity to the school”.

The 1st petitioner further stated that he, his spouse and his daughter, the 2nd petitioner, reside at No. 14, 3rd Lane, Dharmasoka Mawatha, Aruppola, Kandy. He stated that he has been living in the said premises since his childhood. Further, he purchased the said premises in the year 2001 by Deed of Transfer bearing No. 41054 dated 15th of February, 2001 and the 2nd petitioner was born in the said residence.

Furthermore, the 1st petitioner stated that he submitted an application to admit the 2nd petitioner to Grade 1 of Mahamaya Girls Collage in the Year 2017 under the children of occupants in close proximity category. Further, he is qualified to apply under the occupant’s category as he was residing in the said house for over 21 years. The 1st petitioner stated that the distance from their residence to the nearest boundary of Mahamaya Girls College is 1.2 km.

The 1st petitioner stated that the 2nd respondent requested him to attend an interview on the 22nd of September, 2016, by letter dated 24th of August, 2016. At the interview, the relevant documents were examined and the 2nd petitioner was given only 85 marks out of 100.

Furthermore, under Clause 6.1 (III)(a) of the Circular, out of 50 marks, 5 marks are deducted for each school in closer proximity to the petitioner’s residence than the school under consideration. However, the 1st petitioner stated that instead of deducting only 10 marks from 50 for the schools situated closer to the residence of the 1st petitioner namely, D.S. Senanayake Vidyalaya and

Dharmasoka Vidyalaya, further 5 marks were deducted by including Hemamali Vidyalaya as a school closer to his house than Mahamaya Girls College. Hence, 15 marks were deducted from 50. In total, the 2nd petitioner was given 85 marks out of 100 instead of 90 out of 100.

It was further stated that the said Hemamali School is situated far away from the 1st petitioner's residence, across the Udawatta Kele Sanctuary. Moreover, Clause 6.0(f) of the said Circular states that marks should not be deducted if there are rivers, lagoons, marshy lands, forest etc. that restrict access between a residence and a school in close proximity.

The 1st petitioner stated that on the 7th of October, 2016, the provisional list of selected students and the waiting list were displayed on the notice board of the Mahamaya Girls College and the names of 85 children were displayed as selected students. The 2nd petitioner's name was displayed as No. 5 in the waiting list.

Being aggrieved by the decision not to admit the 2nd petitioner to Mahamaya Girls College, the 1st petitioner forwarded an appeal to the 2nd respondent dated 17th of October, 2016. Further, the 2nd respondent by her letter dated 19th of December, 2016, informed the 1st petitioner that the cut off mark was 85. However, though the 2nd petitioner's mark is same as the cut off mark, her name was displayed on the waiting list.

Thereafter, on the 10th of December, 2016, the final list of selected students and the names of the students in the waiting list were displayed on the notice board of the Mahamaya Girls College. Accordingly, 85 names were displayed as selected students and the 2nd petitioner's name was displayed as No. 3 in the waiting list.

The 1st petitioner stated that he has a legitimate expectation that the 2nd petitioner's name would be included in the final list of selected students as Mahamaya Girls College was close to his residence.

Moreover, as the 2nd petitioner was not admitted to Mahamaya Girls College, he sent a letter to the 2nd respondent requesting necessary action to be taken to admit the 2nd petitioner to Year 1 of the Mahamaya Girls College. However, he did not receive a response to the said letter.

In the circumstances, the petitioners stated that the refusal by the respondents to admit the 2nd petitioner to Mahamaya Girls College is arbitrary, capricious, unreasonable and against the legitimate expectation of the petitioners. Thus, it was stated that the Fundamental Rights guaranteed to the 2nd petitioner under Article 12(1) of the Constitution was violated by the respondents.

After the application was supported by the counsel for the petitioner, this court granted leave to proceed with the said application under Article 12(1) of the Constitution.

Statement of Objections of the 2nd respondent

The Principal of Mahamaya Girls College, Kandy, the 2nd respondent, filed objections and stated that D.S. Senanayke Vidyalaya, Dharmasoka Vidyalaya and Hemamali Vidyalaya are schools closer to the residence of the petitioners than Mahamaya Girls College, Kandy. Therefore, in terms of Clause 6.0(f) read with Clause 6.1(III)(a) of the School Admission Circular No.17/2016, a total of 15 marks was deducted from 50, for schools in closer proximity to the petitioner's residence.

Moreover, Clause 8.3(b) of the School Admission Circular No.17/2016 states that in the event several applicants obtain the same marks, those applicants are required to be ranked in the order of proximity to the school, with those living closest to the school ranking higher than those who live further away from the school. Accordingly, all applicants who obtained 85 marks were ranked according to their proximity to the school and the first five applicants closest to the school were included in the final list, while the remaining applicants were placed in the waiting list. The 2nd petitioner was placed third in the waiting list.

Further, as two applicants selected for admission to Mahamaya Girls College, Kandy declined to attend the said school, the two applicants who were placed first and second in the waiting list were admitted to Grade 1 of Mahamaya Girls College, Kandy. Accordingly, the 2nd petitioner became the first on the waiting list. However, as there were no vacancies left in Grade 1 of Mahamaya Girls College, Kandy, the 2nd petitioner was not admitted to the school.

Hence, the 2nd respondent stated that the respondents acted according to law and have not infringed the Fundamental Rights of the petitioners.

Did the proximity calculation adhere to the Circular?

It is common ground that the 2nd petitioner was allocated 85 marks out of 100 on the basis that there were three schools in closer proximity to her residence.

Clause 6.0 (f) of the Circular No. 17/2016 dated 16th of May, 2016, states that when calculating the distance from one's residence to the school, the aerial distance should be taken. Further, marks should be deducted for each school that falls within the distance stipulated by the said Circular applicable to student admission. The said Circular states that if it is not possible to travel to a school due to a natural cause such as rivers, lagoons, marshes, forests, etc., then the marks should not be deducted.

Clause 6.0 (f) of the Circular states;

“පදිංචි ස්ථානයේ සිට පාසලට ඇති ආසන්නතාවය සලකා බැලීමේ දී පාසලේ සිට පදිංචි නිවස සඳහා වූ අභස් දුර ගණනය කරන අතර රජයේ මිනින්දෝරු දෙපාර්තමේන්තුව මගින් නිකුත් කර ඇති සිතියම භාවිතා කළ යුතු ය. අයදුම්කරුගේ නිවස (ප්‍රධාන දොරටුව) කේන්ද්‍රය කර ගෙන ඉල්ලුම් කරන පාසලේ ප්‍රධාන කාර්යාලයට (ප්‍රාථමික අංශය වෙත ම ස්ථානයක පවතින්නේ නම් එම කාර්යාලයට) ඇති දුර අරය ලෙස ගෙන අදින වෘත්තයක සීමාව තුළට ඇතුළත් පාසල් සඳහා ලකුණු අඩු කරනු ලැබේ. යම් පාසලක් ඉහත වෘත්ත සීමාව තුළ පිහිටිය ද පවතින ස්වාභාවික බාධාවන් නිසා (උදා: ගංගා, කලපු, වගුරු බිම්, රක්ෂිත වනාන්තර ආදිය) එම පාසලට ගමන් කිරීමට නොහැකි නම් අදාළ පාසලට ලකුණු අඩු නොකළ යුතු ය.”

A careful consideration of the map produced marked as ‘2R7’ by the petitioners, shows that Udawatta Kale Sanctuary lay between Hemamali Vidyalaya and the residence of the petitioner. Clause 6.0 (f) of the Circular states that even though the distance is calculated using the aerial distance, if the path to the school is blocked by a natural cause such as a sanctuary (forest), then marks shall not be deducted for that school. Therefore, the respondents cannot deduct 5 marks on the basis that Hemamali Vidyalaya is closer to the residence of the petitioners. Hence, the 2nd petitioner is entitled to 90 marks out of 100.

Conclusion

In the aforementioned circumstance, the 2nd petitioner is entitled to an additional 5 marks as Hemamali Vidyalaya cannot be taken into consideration in deducting marks. Thus, the 2nd petitioner is entitled to 90 marks out of 100 in the children of occupants in close proximity category. However, the 2nd petitioner was not admitted to the school alleging that she did not obtain the required marks to gain admission to Mahamaya Girls College, Kandy.

In view of the above, I am of the opinion that the petitioners have established the violation of their Fundamental Rights guaranteed under Article 12(1) of the Constitution by the respondents. Further, the respondents have violated their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

In the circumstances, I direct the respondents to admit the 2nd petitioner to a suitable grade in Mahamaya Girls College, Kandy within two weeks from the receipt of this judgment, and to pay a sum of Rs. 100,000/- to the petitioners.

I further direct the Registrar of this court to send copies of this judgment to the respondents to act in terms of the law.

Judge of the Supreme Court

A.H.M.D. Nawaz, J

I agree

Judge of the Supreme Court

Achala Wengappuli, J

I agree

Judge of the Supreme Court