

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

*In the matter of an application under and in terms of
Article 17 & 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

1. ***M.M.F Rizna***

2. ***M.N.M Arham (minor)***

*The Petitioners of No. 103/43, Abdul Wahab Mawatha,
Thalapitiya, Galle.*

PETITIONERS

SC (FR): SCFR 147/2018

Vs.

1. ***P.P.W Seneviratne Principal,***
Vidyaloka College, Galle.

2. ***Jayantha Wickramanayake, Director-National
Schools, Ministry of Education***
Isurupaya, Battaramulla.

3. ***Sunil Hettiarachchi, Secretary Ministry of Education,***
Isurupaya, Battaramulla.

4. ***Hon. Attorney General;*** Attorney General's
Department, Hulftsdorf, Colombo 12.

RESPONDENTS

Before: Priyantha Jayawardena PC, J
Vijith K. Malalgoda PC, J
Murdu N. B. Fernando PC, J

Counsel: Pulasthi Hewamanne for the petitioners

Dr. Avanti Perera, SSC for the AG

Argued on: 10th January, 2019

Decided on: 21st February, 2022

Priyantha Jayawardena PC, J

Facts of the Application

The 1st petitioner had filed the instant application on behalf of her youngest son, the 2nd petitioner, who is a minor, stating that her son had been denied admission to Grade-1 of Vidyaloka College, Galle for the year 2018. Therefore, the denial of admission to the 2nd petitioner to Grade-1 of the said school was a violation of the Fundamental Rights of the 2nd petitioner guaranteed by the Constitution.

The petitioners stated that Vidyaloka College is a school that was vested in the government under the Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and the Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961.

The petitioners further stated that admissions to the said schools are governed by circular No. 22/2017 dated 30th of May, 2017 (and the Instructions) issued by the Ministry of Education in respect of admissions to Grade-1 of State Schools for the year 2018.

Accordingly, the petitioners stated that in terms of section 4.1 of the said circular, 33 children should be admitted into each Grade-1 class, with an additional 5 vacancies being reserved for children of members of the Three Armed Forces and the Police.

Furthermore, the petitioners stated that in terms of section 7.1 of the said circular, students should be selected for the existing vacancies to Grade-1 of the said school, according to the categories and percentages indicated below:

Categories	Percentage
Children of residents in close proximity to the school	50%
Children of past pupils of the school	25%
Brothers/sisters of students already studying in the school	15%
Children of staff members of institutions directly involved in school education	05%
Children of officers transferred on the exigency of service	04%
Children of persons arriving after living abroad with the child	01%

It was stated that in terms of section 4.2 of the said circular, in filling vacancies in schools vested in the government, the proportion of children belonging to different religions at the time the school was vested in the government will be taken into consideration. Moreover, the number of vacancies in the said school shall be divided among different religions and other categories.

The petitioners stated that the general practice of Vidyaloka College is to admit a total of three (3) Muslim students to Grade-1 for each academic year.

It was further stated that the 2nd petitioner's eldest brother had gained admission to Grade-1 of the said school in the year 2007, as a Muslim applicant under the "Proximity" category. Moreover, the second brother of the 2nd petitioner had also gained admission to Grade-1 of the said school, in the year 2013, as a Muslim applicant under the "Brothers" category.

Furthermore, the 2nd petitioner had applied to Grade-1 of the said school under both the "Proximity" and "Brothers" categories as a Muslim applicant. It was further stated that the 2nd petitioner had obtained the 7th highest marks under the "Proximity" category and the highest marks under the "Brothers" category.

However, the 2nd petitioner had been denied admission under both of the aforementioned categories.

The petitioners stated that one Muslim applicant under the “Proximity” category had been offered admission to Grade-1 of the said school for the year 2018.

Further, it was stated that another Muslim applicant had been offered admission to Grade-1 of the said school for the year 2018 under the “Past Pupils” category. However, the said applicant had not accepted the offer for admission to Vidyaloka College. Thus, the vacancy under the “Past Pupils” category had not been filled.

Therefore, the petitioners stated that the said vacancy should be allocated to the “Brothers” category and in the circumstances, the 2nd petitioner is entitled to gain admission under the “Brothers” category as he is the Muslim applicant with the highest marks under the said category.

Hence, the petitioners had requested the 2nd respondent to intervene and grant redress to the grievances of the petitioners. Thereafter, the 2nd respondent had requested the 1st respondent to clarify the position concerning the 2nd petitioner’s admission. However, the 1st respondent had failed to respond to the said request.

The petitioners further stated that in response to a complaint lodged by the petitioners at the Human Rights Commission of Sri Lanka, the 1st respondent had sent a letter to the said Commission, setting out the reasons for not admitting the 2nd petitioner to the said school.

The petitioners had also appealed to the 3rd respondent by letters dated 8th and 14th of February, 2018 requesting him to intervene and address the grievances of the petitioners, but the 3rd respondent had not responded to the said letters.

Thus, the petitioners stated that the denial of admission of the 2nd petitioner to Vidyaloka College under the “Brothers” category was illegal, arbitrary, unreasonable and violative of the Fundamental Rights of the 2nd petitioner guaranteed by Article 12 (1) of the Constitution.

Objections of the 1st respondent

The 1st respondent filed objections and stated that in terms of the said circular applicable for the year 2018, thirty three (33) children should be admitted to each Grade-1 class, with an additional five (5) vacancies being reserved for children of members of the Three Armed Forces and the Police.

The 1st respondent further stated that Vidyaloka College has three (3) Grade-1 classes into which ninety-nine (99) students are admitted by interviews and an additional fifteen (15) students are admitted as children of members of the Three Armed Forces and the Police.

Moreover, the 1st respondent denied that Vidyaloka College has a practice of admitting three (3) Muslim applicants to Grade-1 for each academic year.

The 1st respondent stated that the Muslim religious quota for Grade-1 of Vidyaloka College is 2% of the total vacancies for students selected by interviews for a given year. Accordingly, 2% of ninety-nine (99) vacancies equated to two (2) vacancies to Grade-1 for Muslim applicants for the year 2018.

Further, the 1st respondent admitted that the 2nd petitioner had the 7th highest marks under the “Proximity” category and the highest marks under the “Brothers” category.

Moreover, the 1st respondent admitted that since the only Muslim student who had applied under the “Past Pupils” category had not accepted admission to the said school, the vacancy under the “Past Pupils” category remained vacant.

Furthermore, it was submitted that the ninety-nine (99) students to be admitted to Grade-1 by interviews must be selected in accordance with the categories and percentages stipulated in section 7.1 of the said circular.

Accordingly, it was stated that the remaining vacancy under the “Past Pupils” category should be allocated to a Muslim applicant under the “Proximity” category as the highest percentage of vacancies are allocated from the said category.

The 1st respondent stated that in the year under reference, the said school had received thirty four (34) applications from Muslim students under the “Proximity” category for admission to Grade-1. Accordingly, the vacancy which was not filled under the “Brothers” category would be allocated to the “Proximity” category.

In the circumstances, the 1st respondent stated that the respondents had not violated the Fundamental Rights of the 2nd petitioner.

Submissions of the petitioners

The counsel for the petitioners submitted that in terms of section 4.1 of the said circular, thirty three (33) children who are selected by interviews should be admitted to each Grade-1 class.

It was further submitted that prior to the academic year under reference, three (3) Muslim applicants had gained admission to Grade-1 of Vidyaloka College.

Further, it was submitted that the said school has three (3) Grade-1 classes into which ninety nine (99) students are selected by interviews. Thus, the admission of three (3) Muslim students in previous academic years shows that the Muslim quota is 3% of the total vacancies for students selected by interviews in Grade-1 for a given year.

Moreover, when the said 3% religious quota is applied according to the percentages and categories stipulated in section 7.1 of the said circular, the number of vacancies for Muslim applicants are as follows:

- a) 50% of 3 vacancies under the “Proximity” category is one vacancy
- b) 25% of 3 vacancies under the “Past Pupils” category is one vacancy
- c) 15% of 3 vacancies under the “Brothers” category is one vacancy

Hence, the petitioners submitted that the 2nd petitioner is entitled to be admitted to Grade-1 under the “Brothers” category vacancy as he is the Muslim applicant with the highest marks under the said category.

Without prejudice to the above, the petitioners submitted that if the quota for Muslim students is 2% of the total number of vacancies for students selected by interviews to Grade-1 for a given year, the 2nd petitioner is entitled to be admitted to Grade-1 of the said school.

Further, the petitioners submitted that 2% of ninety nine (99) vacancies equates to two (2) vacancies for Muslim students to Grade-1. From the said two (2) vacancies, one (1) had already been filled by a Muslim student under the “Proximity” category.

Moreover, the other vacancy remained available as the Muslim applicant selected under the “Past Pupils” category had not accepted admission to the said school.

It was submitted that section 4.2 of the said circular does not state that any remaining vacancies for Muslim applicants should be proportionately divided in accordance with the percentages stated in section 7.1 of the said circular.

Section 4.2 of the circular states:

“the number of vacancies in the said school shall be accordingly divided among different religions and categories”. [Emphasis added]

Accordingly, the petitioners submitted that since the vacancy under the “Proximity” category had been filled by a Muslim student, the remaining vacancy under the “Past Pupils” category should be allocated to the “Brothers” category.

Moreover, it was submitted on behalf of the petitioners that allocating the remaining vacancy to a category other than “Proximity” would provide equal access to education, which is the objective of any regulation applicable to school admissions.

In support of the above submission, the learned counsel cited *Haputhantirige and Others v Attorney General* [2007] 1 SLR 101 at 119, where it was held:

“Both from the perspective of the application of the equal protection of the law guaranteed by Article 12(1) and from the perspective of national policy, the objective of any binding process of regulation applicable to admission of students to schools should be that it assures to all students equal access to education.”

In the circumstances, the petitioners submitted that the refusal to admit the 2nd petitioner to Vidyalyoka College had violated his rights guaranteed by Article 12 (1) of the Constitution.

Submissions of the respondents

The counsel for the respondents submitted that the petitioners had not produced any material to support their contention that the said school has been having a practice of admitting three (3) Muslim applicants to Grade-1 for each academic year.

Further, the respondents submitted that the religious quota for Muslim students for Grade-1 of Vidyaloka College is 2% of the total vacancies for students selected by interviews to Grade-1 for a given year.

In support of the above submission, the respondents drew the attention of court to the Grade-1 admissions lists for the years 2007, 2012, 2013 and 2014 which were produced marked as “1R2(b)”, “1R2(g)”, “1R2(h)” and “1R2(i)” respectively, where it expressly referred to the quota of Muslim students as 2%.

Further, the respondents relied on the Grade-1 admissions lists for the years 2009 to 2017 marked as “1R2(d)” to “1R2(l)”, which showed that from 2009 to 2017, only two (2) Muslim applicants had been admitted for each academic year, to Grade-1 of the said school.

Moreover, the respondents submitted that the remaining vacancy under the “Past Pupils” category should be allocated in accordance with section 4.2 of the said circular which states:

“When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion”.

Accordingly, it was submitted that the said section 4.2 of the said circular applies to the instant application as the number of applications in the “Past Pupils” category (zero) is less than the number of vacancies set apart for that category (one).

Hence, it was submitted that when the remaining vacancy is proportionately divided amongst the categories stated in section 7.1 of the said circular, it should be allocated to the “Proximity” category.

Further, the respondents submitted that if Vidyaloka College had applied the criteria submitted by the petitioners for filling the remaining vacancy, the said school would be in violation of the said circular.

In support of the above submission, the respondents cited ***Farook v Dharmaratne, Chairman, Provincial Public Service Commission, Uva and Others 2005 (1) SLR 133***, where it was held:

“Article 12 (1) of the Constitution does not provide for any situation where the authorities will have to act illegally”.

In the circumstances, it was submitted that the respondents had not violated the Fundamental Rights of the 2nd petitioner guaranteed by Article 12 (1) of the Constitution.

What is the quota for Muslim students in Vidyaloka College?

The petitioners submitted that three (3) Muslim students are admitted to Grade-1 of Vidyaloka College for each academic year. It was further submitted that the quota for Muslim applicants is 3% of the total vacancies for students selected by interviews to Grade-1 for a given academic year.

However, the 1st respondent submitted that Vidyaloka College has a Muslim quota of 2% of the total vacancies for students selected by interviews to Grade-1 for a given academic year. In support of the said submission, the respondents relied on the admissions lists for Grade-1 for the academic years 2009 to 2017 produced marked as “*IR2(d)*” to “*IR2(1)*”.

A careful examination of the said documents shows that in the years 2009 and 2010, only two (2) Muslim students had been admitted to Grade-1; one applicant from the “Proximity” category and the other from the “Past Pupils” category.

Further, from the years 2011 to 2014, only two (2) Muslim applicants from the “Proximity” category had been admitted to Grade-1 for each academic year.

Moreover, from the years 2015 to 2017, only two (2) Muslim applicants had been admitted per year to Grade-1; one applicant from the “Proximity” category and the other from the “Brothers” category.

Therefore, the said documents depict that in each academic year from the years 2009 to 2010, only two (2) Muslim applicants had been admitted to Grade-1 of the said school. This is contrary to the position of the petitioner that three Muslim applicants had been admitted to Grade-1 in each academic year.

The respondents further relied on the admissions lists for Grade-1 for the years 2007, 2012, 2013 and 2014 marked as “*IR2(b)*”, “*IR2(g)*”, “*IR2(h)*” and “*IR2(i)*” respectively.

A perusal of the above shows that in each of the aforesaid documents, it is stated that the quota allocated for Muslim applicants for Grade-1 is 2%.

The burden of proof in establishing the Muslim quota for Grade-1 lies on the petitioners. However, the petitioners had failed to produce any material to support their contention. On the contrary, the respondents have proved that the quota for Muslim applicants is 2% by producing the aforesaid documents.

In light of the above, I am of the opinion that the Muslim quota for Grade-1 of the said school is 2% of the total vacancies for students selected by interviews to Grade-1 for a given academic year.

Total number of vacancies for Muslim students selected by interviews for Grade-1

Section 4.1 of the said circular applicable for the year 2018 states:

“33 children will be selected for each parallel class in Grade 1. In addition, 05 more children will be selected from among children of those who were in operation areas in the Armed Forces and the Police.”

The ‘children of those who were in operation areas in the Three Armed Forces and the Police’ are not selected by interviews, but in accordance with the procedure stipulated in section 13 of the said circular. Therefore, the vacancies allocated to the said category are excluded from the total number of vacancies for students selected by interviews for Grade-1.

In terms of section 4.1 of the said circular, 33 children are to be selected by interviews for each class in Grade-1.

The 1st respondent submitted that the said school has three (3) Grade-1 classes. Hence, a total of ninety nine (99) vacancies are available for students selected by interviews for Grade-1 in the academic year 2018.

Accordingly, when the 2% Muslim quota is applied to the ninety nine (99) vacancies, two (2) vacancies are available for Muslim applicants to Grade-1 of the said school.

How should the vacancies be allocated?

Section 7.1 of the said circular states;

“(a) Out of the vacancies existing in Grade 1 in a school, the number of children to be selected by the interview will be made from the children belonging to the following categories according to the percentages indicated here:

<i>Children of residents in close proximity to the school</i>	<i>50%</i>
<i>Children of parents who are past pupils of the school</i>	<i>25%</i>
<i>Brothers/sisters of students already studying in the school</i>	<i>15%</i>
<i>Children of persons in the staff members of institutions directly involved in school education</i>	<i>5%</i>
<i>Children of officers in Public Sector/ State Corporations/ State Banks receiving transfers on service exigency</i>	<i>4%</i>
<i>Children of persons arriving after living abroad with the child</i>	<i>1%</i>

(b) Marks will be allocated for selection according to the marking scheme indicated under each category. Maximum number of marks obtainable will be 100.”

[Emphasis added]

Therefore, in terms of the said section, the ninety nine (99) vacancies for students selected by interviews must be allocated as follows:

- (a) Children of residents in close proximity to the school: $99 \times 50\% = 50$ vacancies
- (b) Children of parents who are past pupils of the school: $99 \times 25\% = 25$ vacancies
- (c) Brothers of students already studying in the school: $99 \times 15\% = 15$ vacancies
- (d) Children of persons in the staff members of institutions directly involved in school education: $99 \times 5\% = 5$ vacancies
- (e) Children of officers in Public Sector/State Corporations/State Banks receiving transfers on service exigency: $99 \times 4\% = 4$ vacancies

(f) Children of persons arriving after living abroad with the child: $99 \times 1\% = 1$ vacancy

The document produced marked as “1” by the 1st respondent shows that in the year 2018, ninety nine (99) vacancies were allocated by the said school as follows:

- (a) Children of residents in close proximity to the school: 48 students
- (b) Children of parents who are past pupils of the school: 24 students
- (c) Brothers of students already studying in the school: 15 students
- (d) Children of persons in the staff members of Institutions directly involved in school education: 5 students
- (e) Children of officers in Public Sector/State Corporations/State Banks receiving transfers on service exigency: 4 students
- (f) Children of persons arriving after living abroad with the child: 1 student

As shown above, out of the said ninety nine (99) vacancies, only ninety seven (97) vacancies have been allocated to Grade-1 of the said school to be filled by interviews. Hence, the two remaining vacancies should be allocated to the Muslim applicants under the religious quota allocated to the said school. Thus, it needs to be considered under which categories the two remaining vacancies should be allocated.

In terms of section 7.1 of the said circular, it is evident that twenty five (25) vacancies should be allocated to the “Past Pupils” category. However, only twenty four (24) vacancies under the said category were filled by Vidyaloka College as the Muslim applicant selected and offered admission for the same had not accepted the said admission. Further, there were no other Muslim applicants under the said category.

The petitioners alleged that the said vacancy in the “Past Pupils” category should be allocated to the “Brothers” category. Further, it was submitted that the 2nd petitioner was entitled to fill the said vacancy as he had obtained the highest marks amongst the Muslim applicants in the “Brothers” category.

However, in terms of section 7.1 of the said circular, only fifteen (15) vacancies should be allocated to the “Brothers” category.

It is evident from the document marked as “1” that all fifteen (15) vacancies in the “Brothers” category for the year 2018 had already been filled by Vidyaloka College.

Therefore, the remaining vacancy in the “Past Pupils” category that was not accepted by the said Muslim student cannot be allocated to the “Brothers” category as it would exceed the number of vacancies that are allocated to the “Brothers” category in terms of section 7.1 of the said circular.

Further, in terms of section 7.1 of the said circular, fifty (50) vacancies must be allocated to the “Proximity” category. However, the aforesaid document marked as “1” indicates that only forty eight (48) vacancies in the “Proximity” category were filled by Vidyaloka College.

Accordingly, the remaining vacancy in the “Past Pupils” category could only be allocated to the “Proximity” category without exceeding the number of vacancies in the “Proximity” category as per the criteria stipulated in section 7.1 of the said circular.

Therefore, I am of the view that the remaining vacancy in the “Past Pupils” category must be filled by the Muslim applicant who had obtained the second highest marks from the “Proximity” category.

In the instant application, the petitioners admitted that the 2nd petitioner had only obtained the 7th highest marks under the “Proximity” category. Thus, there are six other Muslim applicants who have scored more than the 2nd petitioner under the said “Proximity” category.

In the circumstances, the 2nd petitioner was not entitled to be admitted to Grade-1 of the said school for the year 2018.

Due to the foregoing reasons, I hold that the 2nd petitioner’s Fundamental Rights had not been violated by the respondents. Accordingly, the application is dismissed.

I order no costs.

Judge of the Supreme Court

Vijith K. Malalgoda PC, J

I agree

Judge of the Supreme Court

Murdu N. B. Fernando PC, J

I agree

Judge of the Supreme Court