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.

1. **HIMANSHU SUNETH NANAYAKKARA**
2. **KALAVANA VIDANALAYA KANTHILATHA LAKMINI KUMARI NANAYAKKARA**
3. **THISULI SENETHMA NANAYAKKARA [MINOR]**
   Appearing through her Next Friend
   HIMANSHU SUNETH NANAYAKKARA
   All three of No. 26B, Fife Road, Colombo 05.

PETITIONERS

SC (FR) Application 24/2018

VS.

1. **S.S.K. AVIRUPPOLA**
   Principal, Visakha Vidyalaya, Vajira Road, Colombo 05.

2. **VICE PRINCIPAL [HEAD OF PRIMARY SECTION]**
   Visakha Vidyalaya, Vajira Road, Colombo 05.

3. **CHAIRPERSON OF SCHOOL DEVELOPMENT SOCIETY**
   Visakha Vidyalaya, Vajira Road, Colombo 05.

4. **SUNIL HETTIARACHCHI**
   Secretary, Ministry of Education, Isurupaya, Battaramulla.

5. **DR. JAYANTHA WICKRAMANAYAKA**
   Director of Education, National Schools Branch,
   Ministry of Education, Isurupaya,
   Battaramulla.

6. **L.M.D. DHARMASENA**
   Principal, Mahanama College,
   Colombo 03.

7. **HON. ATTORNEY GENERAL**
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

BEFORE:	Buwaneka Aluwihare, PC, J. Prasanna Jayawardena, PC, J. L.T.B. Dehideniya, J.
COUNSEL:	Dr. Sunil Cooray with Ms. Sithara Jayasundera for the Petitioners. Dr. Avanti Perera, SSC for the Respondents.
ARGUED ON:	28th August 2018.
WRITTEN SUBMISSIONS FILED:	By the Respondents, on 18th September 2018. By the Petitioners, on 05th October 2018.
DECIDED ON:	29th November 2018.

Prasanna Jayawardena, PC, J

The petitioners complain that the respondents' refusal to admit the 3rd petitioner child to Visakha Vidyalaya at the beginning of this year [2018] violated their fundamental rights which are guaranteed by Article 12 (1) of the Constitution. Thus, the question to be decided is whether the 3rd petitioner child - who is a five year old girl - was entitled to be

admitted to the school in terms of the published criteria governing admission to Grade 1 of Government Schools.

The 1st and 2nd petitioners are the parents of the 3rd petitioner child.

The 1st respondent is the Principal of Visakha Vidyalaya. The 2nd and 3rd respondents are the Vice-Principal and Chairperson of the School Development Society of the school. The 4th respondent is the Secretary to the Ministry of Education. The 5th respondent is the Director of Education of National Schools. The 6th respondent is the Head of the Appeals Board constituted to hear appeals and objections arising from applications to admit children to Grade 1 of Visakha Vidyalaya in the year 2018. The 7th respondent is the Hon. Attorney General.

The petitioners filed this application by their petition dated 17th January 2018. The documents marked “P1” to “P19” were annexed to the petition. On 12th March 2018, the petitioners were granted leave to proceed under Article 12 (1) of the Constitution. The 1st respondent - the Principal of Visakha Vidyalaya - has filed her affidavit dated 28th May 2018 and produced the documents marked “1R1” to “1R5”. The 1st and 2nd petitioners filed their counter affidavit dated 05th July 2018 and produced further documents marked “P20” to “P24”.

In their petition, the petitioners state that they submitted the application dated 17th June 2017 marked “P4” to the 1st respondent for admission of the 3rd petitioner child to Visakha Vidyalaya in 2018. “P4” was despatched to the 1st respondent by registered post on 20th June 2017 as shown by the registered postal article receipt marked “P20”.

The scheme of admission of children to Grade 1 of government schools in 2018 is set out in Circular No. 22/2017 dated 30th May 2017 issued by the Secretary to the Ministry of Education and filed with the petition marked “P5”. This circular sets out the procedure to be followed when submitting, receiving, processing and deciding on applications for admission to Grade 1, and the marking schemes, criteria and standards to be applied when doing so.

The petitioners state that they applied to the school under the category of “Children of residents in close proximity to the school” since they reside in an apartment on the second floor of the multi-storied building bearing Assessment No. 26B, Fife Road, Colombo 05.

They state they had resided at these premises continuously from 01st June 2012 onwards and were residing there at the time they submitted the application marked

"P4". The 1st petitioner had leased this residence for a two year period from 01st June 2012 to 31st May 2014, by deed of lease no. 1956, marked "P1". Thereafter, the lease was renewed for a further three year period from 01st June 2014 to 31st May 2017, by deed of lease no. 2273, is marked "P2". Finally, the lease was renewed for two more years from 01st June 2017 to 31st May 2019, by the *registered* deed of lease no. 2912 dated 06th May 2017, a copy of which is marked "P3a". As shown by the stamp placed by the Land Registry of Colombo on the deed of lease marked P3a", this deed of lease was duly registered on 16th June 2017.

When they submitted the application marked "P4", the petitioners annexed copies of the *registered* deeds of lease marked "P1" and "P2" which established that they had leased the premises continuously from 01st June 2012 up to 31st May 2017. It should be mentioned that, in accordance with the standard procedure set out in the circular marked "P5", original deeds which establish residence are not submitted along with the application. Instead, applicants are required to submit copies and then produce original deeds at the interview.

The petitioners state that, at the time they submitted their application to the 1st respondent, the original deed of lease no. 2912 [for the then current period] had been sent to the Land Registry for registration. Therefore, the petitioners had no alternative but to submit with their application a copy of this deed of lease, which had been certified by the Notary Public who attested the instrument. A copy of the deed of lease no. 2912 which was submitted along with "P4" is filed with the petition marked "P3b".

However, since the original deed of lease no. 2912 was at the Land Registry, the copy marked "P3b" submitted with application did not evidence that the deed of lease no. 2912 had been registered at the Land Registry However, here too, the petitioners expected that they will produce the original of the *registered* deed of lease no. 2912 at the interview since by the time the interviews are held in August or September that year, the original deed would have been returned to them by the Land Registry after it was registered.

The petitioners also submitted with their application marked "P4" several other documents marked "P6a" to "P6j".

The petitioners state that although their application was submitted within the specified time limit, they were not called for an interview. However, they were aware that other applicants residing in the neighbourhood of the petitioners' residence had been called. Further, the petitioners had also submitted applications for admission to Sirimavo Bandaranaike Vidyalaya and St. Paul's Girls' School at the same time they submitted

the application marked “P4” to the 1st respondent and had been called for interviews by these schools. It should be mentioned here that both these institutions are reputed National Schools located close to Visakha Vidyalaya.

In these circumstances the petitioners wrote the letter dated 09th July 2017 marked “P7a” to the 1st respondent [Principal, Visakha Vidyalaya] inquiring whether their application had not been received despite it being sent by registered post on 20th June 2017. Sometime later, the petitioners received a notice dated 14th August 2017 marked “P8” from the 1st respondent stating that their application for admission was rejected in terms of the circular marked “P5” due to the inadequacy of the documents submitted by the petitioners to establish residence [“*පදිංචිය සනාථ කිරීමට අදාලව එවා ඇති ලේඛන අඩුපාඩු සහිත වීම/ ප්‍රමාණවත් නොවීම*”].

When the 2nd petitioner sought to enter the school to ascertain why the documents submitted by them were inadequate, she was not permitted to enter. The security officers who were at the gate told her that she could make a written complaint in a log book which would be available at the gate within a few days. The 2nd petitioner later made an entry in the log book stating that the petitioners had submitted copies of the deeds of lease and expected to produce the original deeds at the interview. She stated that the current deed of lease no. 2912 had been sent for registration at the time the application marked “P4” was submitted and, therefore, a certified copy of this deed of lease had been annexed to the application. She stated that the current deed of lease no. 2912 had been registered at the Land Registry on 16th June 2017. She went on to state that she now had the original *registered* deed of lease no. 2912 [*“මේ අනුව මා සතුව අඛණ්ඩව ලියාපදිංචි කරන ලද බදු ඔප්පු සහ අනෙකුත් ලියවිලි මා සතුව ඇත”*]. She requested that the petitioners be called for an interview. A photograph of this log entry is marked “P9b”.

However, when the 2nd petitioner inspected the log book a few days later, she found that that an entry had been made in it by the school stating that, in terms of the circular marked “P5”, only applicants who had submitted copies of a *registered* deed of lease to establish residence were eligible to be called for an interview [“*වක්‍රලේඛයට අනුව ලියාපදිංචි බදු ඔප්පුවලට පමණක් සම්මුඛ පරීක්ෂණයට කැඳවීමට අවස්ථාව ඇති බව කරුණාවෙන් දන්වමි*”]. A photograph of this log entry is marked “P9a”.

The 1st petitioner then wrote the letter dated 11th September 2017 marked “P10” to the 1st respondent stating that the original *registered* deed of lease no. 2912 had been registered at the Land Registry on 16th June 2017 - *ie:* prior to the submission of the application marked “P4” by registered post. He stated that he had despatched the application by registered post on 20th June 2017 without waiting to receive the

registered deed of lease from the Land Registry because there was a postal strike in force and he was apprehensive of postal delays resulting in the application failing to reach the 1st respondent by the deadline [30th June 2015 in terms of clause 17 of "P5']. He stated that, at the time the application marked "P4" was submitted, the deed of lease no. 2912 had been registered and was at the Land Registry.

The petitioners state that, on 15th September 2017, they received a telephone call from the school requesting them to attend an interview on 17th September 2017. On that day, only the 1st petitioner was permitted to enter an interview room. The 1st and 2nd respondent and a few other ladies were in that room. The 1st respondent informed him that the petitioners' application had been rejected because the criteria set out in circular marked "P5" did not permit the application to be considered. When the 1st petitioner tried to produce the original deeds of lease including the original *registered* deed of lease no. 2912, he was not permitted to do so and the 1st petitioner told him that *"there is no need to produce any documents"*. The petitioners aver that the 1st respondent *"did not clearly explain the "exact reason for the denial of their application"*.

Thereafter, the Temporary List and Provisional List of children selected for admission to Grade 1 of Visakha Vidyalaya in 2018 was published in terms of clause 9.3 of the circular marked "P5". The 3rd petitioner child was not named in the list. Therefore, the petitioners submitted the appeal dated 20th November 2017 marked "P15" to the 1st respondent, in terms of clauses 10 and 11 of the circular marked "P5". The petitioners then received a notice dated 01st December 2017 marked "P19" summoning the petitioners for an inquiry into their appeal, to be held on 18th December 2017. It is seen that this notice stipulates that documents which were not produced at the interview cannot be produced at the inquiry into the appeal. [*"ඔබ විසින් මුල් සම්මුඛ පරීක්ෂණ මණ්ඩලය වෙත ලබා දී ඇති ලේඛන ඇතුළත් ගොනුවේ අමුණා නොමැති කිසිදු ආකාරයේ ලේඛනයක් මේ අවස්ථාවේ දී සලකා නොබලන බව ද දන්වා සිටිමී"*]. The petitioners attended the inquiry which was presided over by the 6th respondent. The petitioners were informed that the Appeals Board cannot recommend that the petitioners' appeal be allowed.

Thereafter, the Final List of children selected for admission was published on 04th January 2018. The 3rd petitioner child was not named in the list. The petitioners state that the 'cut-off' mark for admission under the "Children of residents in close proximity to the school" category was 60 marks. The petitioners plead that they were entitled to receive 68.5 marks upon the documents they had submitted with the application [including the current deed of lease no. 2912] and that, therefore, the 3rd petitioner child was entitled to be admitted to Grade 1 of Visakha Vidyalaya in 2018 under the "Children of residents in close proximity to the school" category.

They plead that the 1st respondent has acted arbitrarily, capriciously, and unreasonably and in a discriminating manner when she refused to admit the 3rd petitioner child to the school *and* refused to grant the petitioners an opportunity for a *"proper"* interview. They plead that, thereby, their fundamental rights under Article 12 (1) of the Constitution have been violated.

The 1st respondent [Principal of Visakha Vidyalaya] filed an affidavit along with the documents marked "1R1" to "1R5". She admitted receiving the petitioners' application marked "P4" on 21st June 2017 and admitted that the *registered* deeds of lease marked "P1" and "P2" and the *unregistered* deed of lease no. 2912 marked "P3b" were submitted with the application. The 1st respondent stated that, in terms of clause 7.2.2.1 (iii) of the Circular marked "P5", *"….. only registered lease agreements are admissible as documents in proof of residence under the Proximity Category. Such requirement was strictly and uniformly applied in respect of all applications received by the School.".*

She also stated that the deed of lease no. 2912 marked "P3a" has been registered on 16th June 2017 as shown by the stamp placed by the Land Registry and went on to say that she *"believes"* the *registered* deed had been available with the petitioners at the time they submitted their application dated 17th June 2017 marked "P4" and, therefore, the *registered* deed of lease no. 2912 *"could have been attached"* to the application. She averred that *"However, the petitioners failed to submit such lease agreement with their application and such failure to do so is entirely due to their own fault."*.

The 1st respondent pleaded that 710 applications were received to fill 83 positions under the "Children of residents in close proximity to the school" category. She stated that the school was *"compelled"* not to call the petitioners for an interview because *"the Petitioners did not submit a registered lease agreement to establish residence at the address from which the school admission application was made."*.

The 1st respondent pleaded that, in any event, the Companies Form 40 marked "P6i" submitted with the petitioners' application states that 1st petitioner's residential address was No. 10, Vijithapura, Thalangama South, Battaramulla while the letter dated 30th June 2016 marked "1R3" written to the 1st petitioner by the Ministry of Education is addressed to the 1st petitioner at No. 444, D3, 1/1, Lake Road, Akuregoda, Battaramulla. She averred that these two documents give rise to a *"serious doubt"* as to whether petitioners reside at the address stated in the school application - *ie:* in an apartment on the second floor of the multi-storied building bearing Assessment No. 26B, Fife Road, Colombo 05.

The 1st respondent also pleaded that the fact of rejection of the petitioners' application and the reasons for the rejection were communicated to the petitioners by the notice dated 14th August 2017 letter marked "P8" and that, therefore, the present application to this Court is time barred.

The 1st respondent averred that, at the interview held on 17th September 2017, the 1st petitioner submitted the *registered* deed of lease no. 2912 marked "P3a" which had not been submitted along with the petitioners' application marked "P4". She said the interview panel was chaired by her. She said the interview panel had examined "P3a" and noticed that the deed had been registered on 16th June 2017 and informed the 1st petitioner that, *"as such"*, the *registered* deed of lease no. 2912 should have been annexed to the application marked "P4".

The 1st respondent stated that the 1st petitioner was informed that the *registered* deed of lease no. 2912 marked "P3a" submitted at the interview held on 17th September 2017 could not be considered because only documents which had been submitted along with "P4" could be considered. She pleaded that the interview panel had acted in strict accordance with clause 9.1.5 of the circular marked "P5" which *"specifically provides that the re-evaluation should be done on the documents submitted with the original school admission application."*.

The 1st respondent averred that the 'cut off' marks for the "Children of residents in close proximity to the school" category was 61 marks. She stated that, as set out in the re-evaluation form marked "1R4", the petitioner were entitled to only 57.1 marks. Therefore, the petitioners' application had to be rejected. The Appeals Board had confirmed this position when it considered the petitioners' appeal.

The 1st respondent pleaded that she and the school had acted in strict accordance with the circular marked "P5" and the law and denied any violation of the petitioners' rights guaranteed under Article 12(1) of the Constitution.

In their counter affidavit, the 1st and 2nd petitioners stated that the current deed of lease no. 2912 marked "P3a" had been registered at the Land Registry on 16th June 2017 and, thereafter, the related entry had been made in the folios of the Land Registry on 17th June 2017, as shown in the Extract from the folios of the Land Registry marked "P21". They said that the *registered* deed of lease was not in their possession when they posted their application dated 17th June 2017 marked "P4". The 1st and 2nd petitioners also stated that the address mentioned stated in the Companies Form 40 marked "P6i" is the address of the 1st petitioner's Company which is named in that document, at the time the company was first registered. He went on to state that the

address stated in the letter marked “1R3” is the new address of the same Company. In this connection, the 1st petitioner also produced, marked “P22”, copies of telephone bills sent to the Company at that address.

Having set out the positions taken by the parties, I will now examine whether the refusal of the petitioners’ application constituted a violation of their fundamental rights guaranteed by Article 12 (1) of the Constitution.

In this regard, as I observed recently [in SC FR 412/2016 decided on 31st October 2018 with His Lordship, the Chief Justice and Justice Priyantha Jayawardena, PC agreeing], the complexity of the task which the circular marked “P5” seeks to accomplish must be recognized and this Court, in the exercise of our fundamental rights jurisdiction, would be inclined to question the provisions of such a circular only where the provisions are manifestly inadequate, unreasonable, arbitrary or unfair and, I would add, provided there has been no delay. Further, being well aware of the onerous nature of the task faced by officers who implement the provisions of such circulars and are called upon to balance the rights of a large number of applicants while applying the provisions of the circulars, this Court would be inclined to intervene and exercise of our fundamental rights jurisdiction only where the provisions of the circular have been ignored, violated, misapplied or misinterpreted or where there has been an abuse of process or a mistake which prejudices a child, or other similar grounds. In my view, the present application should be considered from that perspective.

When doing so, it is first necessary to examine clause 7.2.2.1 (iii) of “P5” since the 1st respondent’s position is that the petitioners’ application had to be refused when the provisions of that clause were applied. Thus, the 1st respondent has stated that the *unregistered* deed of lease no. 2912 marked “P3b” was not considered by the school because clause 7.2.2.1 (iii) stipulates that, where an application is made under the “Children of residents in close proximity to the school” category by an applicant who resides in leased premises, a *registered* deed of lease must be submitted with the application.

Clause 7.2.2.1 [including clause 7.2.2.1 (iii)] states, *inter alia*:

“පදිංචියට අදාළ නිමිකම තහවුරු කරන ලේඛන ලෙස පහත ලේඛන පිළිගැනේ :-

- ✓ සින්නක්කර ඔප්පු
- ✓ තෑගි ඔප්පු
- ✓ ……..

(i)……

(ii)……...

(iii) **ලියාපදිංචි බදු ඔප්පු** (අවශ්‍ය වන්නේ නම් බදු දීමනාකරුගේ අයිතිය සම්බන්ධව පත් ඉරු මඟින් සනාථ කළ යුතුය.) ……”.

It is evident that the specification in clause 7.2.2.1 (iii) that a *registered* deed of lease must be submitted to establish residence in a leased premise is an attempt to introduce a safeguard which deters the execution of bogus leases to found applications for admission to Grade 1 of schools under the “Children of residents in close proximity to the school” category. That is because the requirement of registration of a deed of lease makes it possible to subsequently ascertain, where considered necessary, whether there are concurrent leases of the very same premises - *ie:* an examination of the folios at the Land Registry will reveal whether there is another registered deed of lease which is concurrent with the deed of lease which founds the application. While the requirement of registration of a deed of lease may not be a foolproof method of eliminating bogus deeds of lease, it serves a useful purpose at the preliminary stage of determining the applications which are eligible for consideration when preparing the list of applicants to be interviewed. Thus, the requirement of a registered deed of lease in clause 7.2.2.1 (iii) is *ex facie* reasonable.

Next, it is necessary to examine whether the 1st to 3rd and 6th respondents have ignored, violated, misapplied or misinterpreted the provisions of “P5” or whether there has been an abuse of process or mistake which prejudiced the 3rd petitioner child when these respondents refused the petitioners’ application and appeal.

When doing so, it is necessary to keep in mind that clause 7.2.2 read with clause 7.2.2.1(iii) states that, in such cases, the submission of acceptable *registered* deeds of lease with the application will entitle the petitioners to six marks if these instruments establish that the petitioners have resided at the premises bearing Assessment No. 26B, Fife Road, Colombo 05 for a continuous period of five years or more prior to 30th June 2017.

The 1st respondent has made it clear that there was no difficulty in *prima facie* accepting the validity of the deeds of lease marked “P1” and “P2” which established residence at the leased premises from 01st June 2012 to 31st May 2017 - *ie:* a period of five years. However, the petitioners were denied any marks on account of the submission of lease agreements marked “P1” and “P2” because the deed of lease no. 2912 dated 06th May 2017 marked “P3b” - which is the copy of the current deed of lease covering the period when the application was submitted - *was unregistered*.

Thus, it is clear that, if the current deed of lease no. 2912 was taken into account, the petitioners would have received a further six marks if the petitioners had been called for

an interview and produced the registered deeds of lease marked “P1” and “P2” *and* the *registered* deed of lease no. 2912 marked “P3a” at the interview.

The 1st respondent has stated that the petitioners were entitled to receive only 57.1 marks on the basis of the documents they submitted without taking *any* of the deeds of lease into account. Thus, if the three deeds of lease were taken into account, the petitioners would have received a further six marks and ended up with 63.1 marks.

The 1st respondent has stated that the ‘cut off’ mark was 61. Therefore, the conclusion has to be that if these three deeds of lease marked “P1”, “P2” and “P3a” were considered, the 3rd petitioner child would have been entitled to be admitted to Grade 1 of Visakha Vidyalaya in 2018.

There is no dispute that the 1st to 3rd respondents initially rejected the petitioners’ application and did not call them for an interview solely because the current deed of lease no. 2912 marked “P3b” submitted with the application marked “P4” did not establish that the deed of lease had been registered *at the time of* the submission of the application.

It seems to me that the 1st to 3rd respondents acted correctly when they did so because there is nothing on the face of the *unregistered* deed of lease no. 2912 marked “P3b” submitted with the application which established that the said current deed of lease was pending registration at the time the application was submitted. In these circumstances, the 1st to 3rd respondents cannot be faulted for acting in terms of clause 7.2.1.1 (iii) and sending the notice marked “P8” informing the petitioners that their application had been rejected due to the inadequacy of the documents submitted to establish residence.

However, when the petitioners received the notice marked “P8”, they made the entry marked “P9b” in the log book and wrote the letter dated 11th September 2017 marked “P10” informing the 1st to 3rd respondents that the current deed of lease no. 2912 had been sent for registration at the time of the application was submitted and that the petitioners now have the original *registered* deed of lease no. 2912 and are able to produce it at the interview. The petitioners also explained that they had despatched the application by registered post on 20th June 2017 without waiting to receive the *registered* deed of lease from the Land Registry because they were apprehensive of delays in the post resulting in the application failing to reach the 1st respondent within the time limit. Upon receipt of “P10”, the 1st to 3rd respondents have summoned the petitioners to attend an interview which was held on 17th September 2017.

It is plain to see that the petitioners were summoned for an re-evaluation interview to be held on 17th September 2017 in terms of clauses 9.1.5 and 9.1.6 of the circular marked "P5" which provide applicants whose applications are rejected with an opportunity to obtain a re-evaluation interview to demonstrate the basis on which they have made their application and establish their claims to an interview.

Thus, clauses 9.1.5 and 9.1.6 state:

"9.1.5 සුදුසුකම් නිබියදීත් තම දරුවාගේ ඉල්ලුම්පත්‍රය සිව් ගුණයට නොගෙන ප්‍රතික්ෂේප වී ඇත්නම් පමණක් අදාල ලිපි ලේඛන (පෙර අයදුම්පත්‍රය සමග ඉදිරිපත් කරන ලද ලේඛන පමණක්) සහිත ව නැවත ඉල්ලුම්පත්‍රයක් හා ලකුණු සනාථ කිරීම සඳහා තර්කානුකූල ව ඉදිරිපත් කරන තොරතුරු ඇතුළත් ඉල්ලීමක් ප්‍රතික්ෂේපිත ලිපියේ පිටපතක් සමග එම පාසලේ විදුහල්පති වෙත ඉදිරිපත් කළ හැකි ය...

9.1.6 සම්මුඛ පරීක්ෂණ මණ්ඩලය විසින් සම්මුඛ පරීක්ෂණය පවත්වන අතරතුර එසේ ඉදිරිපත් කරන ලද පැමිණිලි සම්මුඛ පරීක්ෂණය අවසන් වීමට සතියකට පෙර හෝ සලකා බලා සුදුසුකම් ලබන අයදුම්කරුවන් සම්මුඛ පරීක්ෂණයට කැඳවිය යුතු අතර, නැවතත් ප්‍රතික්ෂේප වන පැමිණිලිකරුවන් වෙත ඒ බව ලිපියකින් දැනුම් දිය යුතුය. මේ සම්බන්ධ අදාළ ලේඛන ද තබා ගත යුතුය."

However, when the petitioners sought to produce the original *registered* deed of lease marked "P3a" at the re-evaluation interview held on 17th September 2017, the 1st to 3rd respondents refused to consider the original *registered* deed of lease no. 2912 marked "P3a". The 1st respondent has stated in her affidavit that the 1st to 3rd respondents refused to consider the original *registered* deed of lease no. 2912 marked "P3a" because they were of the view that the words *"(පෙර අයදුම්පත්‍රය සමග ඉදිරිපත් කරන ලද ලේඛන පමණක්)"* in clause 9.1.5 of the circular marked "P5" prohibits them from considering the original *registered* deed of lease marked "P3a". This leads to the conclusion that the 1st to 3rd respondents regarded the original *registered* deed of lease no. 2912 marked "P3a" as amounting to a "*new*" document which was not submitted along with the petitioners' application and is, therefore, prohibited by clause 9.1.5.

However, the 1st to 3rd respondents have failed to realise that the original *registered* deed of lease no. 2912 marked "P3a" which the petitioners sought to produce at the interview held on 17th September 2017 was *not* a new document. Instead, it is the very same document as the *unregistered* copy marked "P3b" submitted along with the application other than for the fact that "P3a" bears a stamp establishing that the deed of lease has been registered at the Land Registry on 16th June 2017. The 1st to 3rd respondents failed to realise that a mere glance at the original *registered* deed of lease

no. 2912 marked “P3a” would have shown that it was identical to the *unregistered* copy marked “P3b” submitted with the application other than for the presence of this stamp. The 1st to 3rd respondents have failed to realise that the placing of this stamp does not make “P3a” a *“new”* document but only shows that the deed of lease which [as clearly stated in “P9a” and “P10”] was registered on 16th June 2017 and was at the Land Registry at the time the application was submitted.

Thus, the 1st to 3rd respondents erred gravely and acted arbitrarily and unreasonably when they took the view that they were prohibited from considering the *registered* deed of lease no. 2912 marked “P3a” at the re-evaluation interview held on 17th September 2017.

Further, the 1st to 3rd respondents have failed to comprehend that the particular circumstances in which the petitioners stated they were placed - *ie:* the availability of only an *unregistered* deed of lease no. 2912 at the time of submission of the application because the deed of lease was at the Land Registry - made it impossible for the petitioners to annex a copy of the *registered* deed of lease at the time they submitted their application marked “P4”. Thus, the 1st to 3rd respondents have failed to apply the common sense and equity reflected in the maxim *nemo tenetur ad impossibile* - *ie:* no one is bound to perform an impossibility. That omission on the part of the 1st to 3rd respondents was arbitrary and unreasonable and caused grave prejudice to the petitioners.

The 1st to 3rd respondents have also overlooked the fact that the previous *registered* deeds of lease marked “P1” and “P2” together with the several other documents submitted along with the application marked “P4” constituted clear evidence that the petitioners resided at the premises from 01st June 2012 onwards and that, in this background, the high probability was that deed of lease no. 2912 had, in fact, been sent for registration at the time the petitioners submitted their application. The 1st to 3rd respondents failed to realise that, in the particular circumstances of this case, the petitioners should be given an opportunity at the re-evaluation interview held on 17th September 2017 in terms of clauses 9.1.5 and 9.1.6 of the circular marked “P5”, to produce all the originals of the documents submitted with their application including the original *registered* deed of lease no. 2912 marked “P3a”.

It also has to be noted that clause 6.2.6. of the circular marked “P5” placed a duty upon the 1st to 3rd respondents to analyse and correctly understand the provisions of “P5” and reach an appropriate and correct decision after considering all the factors relevant the petitioners’ application. In this regard, clause 6.2.6. stipulates *“පළමුවන ශ්‍රේණියට ළමයින් ඇතුළත් කිරීම සඳහා පත් කරන සම්මුඛ පරීක්ෂණ මණ්ඩලයට ළමයින් තෝරා ගැනීමට අදාල ව*

සියලුම සාධක සලකා බලා සුදුසු පරිදි තීරණ ගෙන ක්‍රියාත්මක කිරීමේ බලතල හිමි වේ. එහි දී ලබා දී ඇති වක්‍රලේඛ විධිවිධානවලට අනුකූල වන පරිදි තෝරා ගැනීමේ කටයුතු කර ගෙන යා යුතු අතර, වක්‍රලේඛයේ සඳහන් කරුණු පිලිබඳ විග්‍රහ කර ගැනීමද, තෝරා ගැනීමේ ගැටලු පිලිබඳ තීරණ ගැනීමද සම්මුඛ පරීක්ෂණ මණ්ඩලයේ වගකීම වේ. මෙසේ ගනු ලබන තීරණ හා විග්‍රහ කිරීම පිළිබඳ ව සම්මුඛ පරීක්ෂණ මණ්ඩලයේ සභාපති විසින් කෙටියෙන් ලොග් සටහන් තැබිය යුතු අතර, වෙන ම පොතක වාර්තා කර අවශ්‍ය අවස්ථාවල දී ඉදිරිපත් කිරීම පිණිස සුරක්ෂිත ව තබා ගත යුතු ය.”.

Thus, clause 6.2.6 vested the 1st to 3rd respondents with ample authority and, in fact, a duty to adopt a common sense approach when they were faced with the unusual and, perhaps, unique problem presented by petitioners' application. However, instead of exercising that authority and duly performing that duty, the 1st to 3rd respondents appear to have acted mechanically when they refused to even consider the *registered* deed of lease no. 2912 marked "P3a" when the petitioners sought to produce it at the re-evaluation interview held on 17th September 2017. Thereby, the 1st to 3rd respondents failed to understand the purpose and effect of the provisions of clause 7.2.2.1 (iii) read with clauses 9.1.5 and 6.2.6 of the circular marked "P5". The 1st to 3rd respondents failed to correctly apply these provisions at the re-evaluation interview held on 17th September 2017and, thereby, failed to achieve the purpose of these provisions

Thus, the 1st to 3rd respondents erred gravely when they failed to realise that, in the unusual and, perhaps, unique circumstances of this particular case, the petitioner should have been given the opportunity to demonstrate, at the re-evaluation interview held on 17th September 2017 - that the deed of lease no. 2912 had been registered prior to the expiry of the time limit for submission of applications - *ie*: before 30th June 2017. The 1st to 3rd respondents have erred in failing to give the petitioners that opportunity. This failure on the part of the 1st to 3rd respondents resulted in them acting arbitrarily and unreasonably when they rejected the petitioners' application marked "P4".

The 1st respondent has also acted unreasonably and arbitrarily when she speculated that the original deed of lease no. 2912 would have been returned to the petitioners immediately after it was registered on 16th June 2017 and was, therefore, available with the petitioners when they despatched their application marked "P4" on 20th June 2017. By indulging in that speculation the 1st respondent has displayed a seeming lack of awareness of the reality of procedure that a deed which is registered at the Land Registry on 16th June 2017 is unlikely to reach the hands of the person who submitted the deed for registration within three or four days. Further, by seeking to use this speculation to justify the refusal to grant the petitioners an opportunity to produce the original *registered* deed of lease no. 2912 at the re-evaluation interview, the 1st respondent has unfairly and unreasonably caused grave prejudice to the petitioners.

The 6th respondent who chaired the Appeal Board which considered the petitioners' appeal has failed to correct the errors identified earlier. He seems to have simply gone along with the 1st respondent's erroneous decisions without duly performing the duty vested in the Appeals Board of correcting the errors and injustice visited on the petitioners by the 1st to 3rd respondents.

Next, the 1st respondent's contention that the documents marked "P6i" and "1R3" give rise to a *"serious doubt"* as to whether the petitioners reside at the address stated in the school application - *ie:* in the second floor of the multi-storied building bearing Assessment No. 26B, Fife Road, Colombo 05 - is without merit. It is clear that these documents relate to the address of the 1st petitioner's company named Pinnacle Technologies (Pvt) Ltd and not to the petitioners' residence. In any event, if the 1st respondent had a doubt regarding the *bona fides* of the petitioners' position that they resided at the premises bearing Assessment No. 26B, Fife Road, Colombo 05, the correct stage for her to investigate the truth of the petitioners' position was at a full and proper re-evaluation interview at which she asked the petitioners to clarify any doubts she may have had. Further, if the 3rd petitioner child was selected and named in the Temporary List and Provisional List, the inspection which is done to verify residence in terms of clause 9.3.3 of the circular marked "P5" would have ascertained whether or not the petitioners resided at the stated address. The 1st respondent was not entitled to use her alleged *"doubt"* to deny the petitioners the opportunity of a full and proper re-evaluation interview on 17th September 2017 at which all documents submitted by the petitioners, including the *registered* deed of lease no. 2912, were examined.

The claim made in the 1st respondent's affidavit that the present application is time barred is also without merit since the petition has been filed within one month of the inquiry into the petitioners' appeal and, further, within two weeks of the publication of the Final List. Learned Senior State Counsel, correctly, did not seek to press time bar before us.

For the aforesaid reasons, I hold that the 1st to 3rd and 6th respondents violated the petitioners' fundamental rights under Article 12 (1) of the Constitution when they refused the petitioners' application to admit the 3rd petitioner child to Grade 1 of Visakha Vidyalaya in 2018. The 1st and 2nd respondents are directed to admit the 3rd petitioner child to the appropriate Grade at Visakha Vidyalaya subject only to the 1st and 2nd respondents being entitled to first examine the original documents submitted with the petitioners' application marked "P4" and verify the authenticity of these documents. The 1st and 2nd respondents are directed to complete that process without delay upon submission of the original documents by the petitioners. In the event the 1st and 2nd

respondents are of the view that any one or more of these documents are not genuine, they are directed to bring such matter to the attention of this Court and seek an appropriate order from this Court. In the circumstances of this case, the parties will bear their own costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J.
I agree.

Judge of the Supreme Court

L.T.B. Dehideniya, J.
I agree.

Judge of the Supreme Court