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

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

1. Juan Badathuruge Anugi Sageethma,
   No. 78/23D, Samagi Mawatha,
   Bandaranayake Place,
   Galle.

2. Juan Badathuruge Janaka Prasad,
   No. 78/23D, Samagi Mawatha,
   Bandaranayake Place,
   Galle.

SC FR Application No. 214/2017

Petitioners

-Vs-

1. Sandhya Iranie Pathiranawasam,
   The Principal and member of the Interview Board to admit students to Grade 1,
   Southlands College.
   Galle.

2. S.K.S.D. Silva,
   The Vice Principal and member of the Interview Board to admit students to Grade 1,
   Southlands College,
   Galle.

3. Member of the Interview Board to admit students to Grade 1,
   Southlands College,
   Galle.

4. Member of the Interview Board to admit students to Grade 1,
   Southlands College,
   Galle.

5. Member of the Interview Board to admit students to Grade 1,
   Southlands College,
   Galle.

6. Ranjith Thilakasiri,
   Chairman of the Appeals and Objections Board to admit student to Grade 1,
   Southlands College,
   Galle.

7. S.K.S.D. Silva,
   Member of the Appeals and Objections Board to admit student to Grade 1,
   Southlands College,
   Galle.

8. D.L.Chithra,
   Member of the Appeals and Objections Board to admit student to Grade 1,
   Southlands College,
   Galle.

9. Upali Amaratunga,
   Member of the Appeals and Objections Board to admit student to Grade 1,
   Southlands College,
   Galle.

10. Devika Dodampegama,
    Member of the Appeals and Objections Board to admit student to Grade 1,
    Southlands College,
    Galle.

11. Ranga Mohotti,
    Member of the Appeals and Objections
    Board to admit student to Grade 1,
    Southlands College,
    Galle.

12. Director of National Schools,
    Ministry of Education,
    Isurupaya,
    Battaramulla.

13. Secretary,
    Ministry of Education,
    Isurupaya,
    Battaramulla.

14. Padmi Dilrushika,
    317, Udugama Road,
    Galle.

15. Dimantha Kumara,
    Gangarama Cross Street,
    Magalle.

16. M.D.S. Roshan,
    Gangarama Cross Street,
    Magalle.

17. W.G.M. Sharaf,
    Magalle,
    Galle.

18. W.M.S. Senevirathne,
    Gangarama Road,
    Magalle,
    Galle.

19. Rasika Priyadharshana,
    Magalle,
    Galle.

20. Honorable Attorney General,
Department of Attorney General,
Colombo 12.

Respondents

Before: Priyantha Jayawardene, PC, J.
Murdu N.B. Fernando, PC, J. and
S. Thurairaja, PC, J.

Counsel: Saliya Pieris, PC. with Lisitha Sachindra for the Petitioners.
Rajiv Gunathilake SSC for 1st-13th and 20th Respondents.

Argues on: 28.05.2019

Decided on: 17.07.2020

Murdu N.B. Fernando, PC, J.

The 1st and 2nd Petitioners ("The Petitioners") have filed this application seeking a Declaration that the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by one or more or all of the Respondents and/or the State and direct the Respondents to admit the 1st Petitioner to the relevant grade at Southlands College, Galle.

This Court granted Leave to Proceed on 04-08-2017 for the alleged violation of Article 12(1) of the Constitution against all the Respondents.

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

The 2nd Petitioner, the father of the 1st Petitioner submitted an application to Southlands College, Galle for the admission of the 1st Petitioner to Grade One for the year 2017 under the core category 'Children of residents living in close proximity to the school' (proximate category) based upon clause 6:1 of the Admission Circular (P2) dated 16-5-2016.

The Petitioners were called for an interview and at the interview the documents submitted by the Petitioners were examined and marks were given accordingly. The total marks awarded to the Petitioner at the interview was 80, vide mark sheet (P5) and the breakdown of the marks was as follows: -

-	proof of place of residence – electoral registration	-	35 marks
-	proof documents of residence	-	10 marks
-	additional documents to conform place of residence	-	05 marks
-	proximity to the School from the place of residence	-	30 marks
			80 marks

On or about 17-12-2016 'the interim list' of those who were eligible was released and the 1st Petitioners' name appeared as the 68th in a list of 87 names under the 'proximate category'.

Thereafter, by a letter dated 14-12-2016, the 1st Respondent informed the 2nd Petitioner to be present for an inquiry on 28-12-2016 before the Appeals and Objections Board ("Appeals Board") as an objection had been raised in respect of the 1st Petitioners' application for admission to Southlands College, Galle.

The 2nd Petitioner further averred that at the said inquiry the nature and/or the details of the objection pertaining to the 1st Petitioners' admission to Southlands College, Galle was not revealed, and the 2nd Petitioner was only informed that marks awarded to the 1st Petitioner will not be altered or reduced and the mark sheet (P5) was returned to the 2nd Petitioner without any endorsement.

On 14-01-2017 'the final list' was displayed but the name of the 1st Petitioner was not in the list of admissions to Southlands College, Galle. The 1st Petitioner had been moved to the 'waiting list' at the 7th place. Thereafter, the 2nd Petitioner had met the 1st Respondent, the Principal and Chairman of the interview board who informed him that the admission process was not yet complete. On 26-01-2017, the new admissions to Grade One of Southlands College were made. But the 1st Petitioner was not among the selectees.

Thereafter, the 2nd Petitioner went before the Human Rights Commission('HRC'). In March 2017, the 2nd Petitioner was informed that based upon the observations of the 1st Respondent that the Petitioners' rights had not been violated by the Respondents.

The HRC forwarded the 1st Respondents' above said response to the Petitioners which revealed that the Appeals Board had reduced five additional marks from the 1st Petitioner under the sub-category 'proximity to the school from the place of residence'; that initially marks had been reduced under this sub-category only for four schools by the interview board; that the Appeals Board had thereafter reduced marks for five schools upon the premise that there were seven schools between the Southlands College, Galle and the Petitioners' residence; a considered decision was made to reduce marks for five out of the said seven schools; and that this brought down the 1st Petitioners' aggregate to 75, which

was lower than the cut off mark of 76, under the 'proximity category' for admission of students to Southlands College for the year 2017. Being dissatisfied for the said reasons above, the 2nd Petitioner re-agitated the issue before the HRC and the HRC re-iterated its decision.

Thereafter, the Petitioners invoked the jurisdiction of this Court on 22-06-2017 with regard to violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution by non admission of the 1st Petitioner to Southlands College, Galle and specifically with regard to the variation of 1st Petitioners' marks by the Appeals Board after the conclusion of the inquiry.

In the Petition filed before this Court, the Petitioners also averred that the Respondents have violated many provisions of the Admission Circular. Namely, clause 10.9 – the Appeals Board not making an endorsement in the mark sheet; clause 10.7- the Appeals Board considering other documentation not presented at the 1st inquiry; clause 11.4- not displaying the final list for two weeks; clause 11.8 - overriding the decision of the Appeals Board; and clause 11.6- not communicating the final decision to the Petitioners.

The Petitioners also averred that the children of 14th,15th,16th,17th,18th and 19th Respondents have been admitted under 'proximate category' though their residences were further away than the residence of the Petitioners and moved that the 1st Petitioner be admitted to Grade One of Southlands College.

In response to the said Petition, the 1st to 13th Respondents ("Respondents") response was that at the interview, the 2nd Petitioner pointed out the place of residence of the Petitioner in a map of the city of Galle and based upon same, marks were awarded under the sub-category 'proximity to school' from the place of residence after deducting 5 marks each for other eligible schools which the applicant could have applied for admission and in this instance marks were reduced for four schools, under the relevant sub clause of Admission Circular P2.

The Respondents further averred that an objection was raised, with regard to the 1st Petitioner and the Appeals Board been satisfied that there were seven eligible schools between the Petitioners' residence and Southlands College, Galle, reduced marks for an additional school. Thus for 5 schools 5x5=25 marks were reduced which brought down the total marks of the 1st Petitioner to 75 which was below the cut-off mark of 76 for admission under the 'proximity category'. A map of the city of Galle (R2) substantiated the placement of the Petitioners residence viz-a-viz Southlands College.

Whilst categorically denying the Petitioners' allegation of failure to adhere to the provisions stipulated in the Admission Circular P2, the Respondents averred that out of the

14th to 19th Respondents whose childrens' admission was challenged by the Petitioners in this application, that there were no objections raised on behalf of 15th and 16th Respondents, the objection raised pertaing to the 14th, 17th and 19th Respondents were duly considered by the Appeals Board and dismissed; and the 18th Respondent as the name stipulates therein was not an applicant parent. In any event, the Respondents averred that they are not in a position to tender further documentation pertaining to the 1st Petitioner and the children of the said 14th to 19th Respondents, as the relevant files maintained for admissions to Grade One in the year 2017, were taken into custody by the Bribery Commission.

In response to the above, the 2nd Petitioner filed a counter affidavit annexing a map of the Galle city (P12) upon which the Petitioners had marked the residences of the 14th,15th and 17th Respondents and the relevant proximity circles and averred that the Respondents have failed to consider the schools which fell within the proximity circle of the 14th,15th and 17th Respondents when computing the marks for the aforesaid Respondents application for admission to Southlands College and thereby granted the said Respondents and advantage over the Petitioners.

When this application was heard before this Court the Petitioners main submission was that the Petitioners who were similarly circumstanced as the 14th,15th and 17th Respondents, had been treated unequally, arbitrary and discriminatory by the Respondents and thereby the right to equality of the Petitioners had been violated by the Respondents.

The Petitioners also contended that the initial decision of the Appeals Board not to alter the marks awarded to the 1st Petitioner at the appeal inquiry created a legitimate expectation with regard to admission of the 1st Petitioner and therefore the subsequent decision of the Appeals Board to reduce marks without informing the Petitioners was a breach of the legitimate expectation of the Petitioners and thus the said decision is arbitrary, capricious and an infringement of the rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

In response to the said contention of the Petitioners, the Respondents main submission was that Article 12 guarantees equal protection in the performance of a lawful act and that via Article 12 one cannot seek the execution of any illegal or invalid act and further contended that based upon the alleged wrongful admission of 14th,15th and 17th Respondents, a case cannot be made out to admit the 1st Petitioner to Southlands College.

Prior to analyzing the afore mentioned legal arguments presented, I wish to refer to two other matters relevant to this application.

Firstly, the contention of the Petitioners that there is no explanation tendered by the Appeals Board consisting of the 6th to 11th Respondents before this Court in relation to the

reduction of five marks. The record bears out that an affidavit had been filed by the 6th Respondent, the Chairman of the Appeals Board and the said affidavit indicates the decision of the Appeals Board to deduct marks for five schools reducing the 1st Petitioners' aggregate marks to 75 from 80 and informing the said fact to the 2nd Petitioner at the hearing of the Appeal Board. The Petitioners have failed to respond to this affidavit. Thus, in respect of the said material fact the Court will come to a finding based on the preponderance of evidence.

Secondly, the reference and reliance on the judgement of **K.J.A. Chathumi Sehasa and another Vs Pathiranawasam and others SC/FR 201/2017 - S.C. minutes dated 30.05.2018** wherein the admissions to Grade One of Southlands College, Galle in the year 2017 was challenged by way of a fundamental rights application. The said case was based upon the same Admission Circular relied on in this application for admissions in 2017 (P2) and the same core category 'Children of residents living in close proximity to the school' where the Court opined that it cannot compel a Respondent to act illegally and dismissed the application.

In the present application too, this Court is called upon to determine the actions and conduct of the Respondents, similar in nature to the said case and whether such actions and conduct would amount to a violation of fundamental rights of the Petitioners before this Court guaranteed under Article 12(1) of the Constitution.

Upon the aforesaid background, I now wish to examine the instant application in order to determine whether the due process of the law has been followed in the perspective of the merits of this application and the procedure adhered to by the Petitioners and the Respondents in this matter.

The due process of the law for admission of children to Grade One begins from the submission of a duly filled application form. The application should be in accordance with the format at schedule one to the Admission Circular (P2).

Hence, the 1st question to examine is whether the 2nd Petitioner tendered a duly filled application. It's observed by this Court that in the application tendered (P3), to the query 'the total number of schools in closer proximity to the Petitioners' residence viz-a-viz Southlands College [the school applied for] two different responses have been given by the Petitioner. In one instance (at cage 5) it is 'one school' by name Anuladevi Vidyalaya. In another instance (at cage 7.1 d) it is two schools by number. Thus, the Petitioner by stating one and then two schools contradicts its own position in the application. Further, the Petitioner implies that marks should be reduced only for the said one/two schools.

The Survey General's map of the city of Galle (R2) produced before this Court shows the Petitioners' residence marked therein as pinpointed by the 2nd Petitioner at the 1st interview. A visual examination of the said map clearly indicates seven schools located in closer proximity to the Petitioners' residence viz-a-viz Southlands College, Galle. Thus, the information provided by the Petitioners in the application (P3) is inaccurate and false with regard to proximity.

When tendering an application for admission of a child, the applicant parent at cage 8 of the application form declares and acknowledges that submitting false information would render the application to be rejected in limine. Thus, the application of the Petitioners should have been rejected in limine for giving false and inaccurate information as discussed above. This action of the Petitioners' in my view, amounts to a misrepresentation and an intentional violation of the due procedure at the point of submitting an application itself and disqualifies the Petitioners from seeking relief from this Court.

However, it appears that even with the said discrepancy in the application form, the application has been accepted by the Respondents and the Petitioners were called for the 1st interview. At the 1st interview the Petitioners had been given 30 marks under the sub-category 'proximity to the school from the place of residence' considering four schools being in closer proximity and after deducting 5 marks per school for the said four schools. Thus, a total of 20 marks from a possible 50 marks had been deducted and the 1st Petitioner had been granted 30 marks.

The Appeals Board on the other hand had deducted marks for five schools, 5 marks each for the 5 schools which add up to 25 marks under the relevant category (category III in clause 6.1) considering an additional school located in closer proximity to Petitioners' residence. The Appeals Board had not deducted marks for the balance two schools (out of the seven schools) in the vicinity namely, Sacred Heart Convent and Sangamitta Balika Vidyalaya for reasons best known to the Appeals Board. The Respondents in its submissions contended may be one of the said schools is a denominational school and the other lies in equidistance to Southlands College, Galle viz-a-viz Petitioners' residence.

This variation of the five marks for the additional school is the crux of this application. It brought down the aggregate of the 1st Petitioner from 80 to 75, which went below the cut-off mark of 76 and deprived the 1st Petitioner from gaining admission to Southlands College.

Was the decision of the Appeals Board correct when it deducted an additional five marks is the question that this Court has to examine next. The Petitioners have not produced

any evidence to establish that the said five Schools are not situated between Southlands College and the Petitioners' residence. In fact, the Petitioners do not challenge the existence of the said five schools. In the aforesaid circumstances, this Court cannot faulter the Appeals Board for reducing marks for the said five schools under the relevant sub-category as the said five schools lie in closer proximity to the Petitioners' residence when compared with Southlands College. Thus, on the merits of this application the Respondents have acted correctly and legally and in accordance with the relevant regulations and guide lines stipulated in the Admission Circular.

The Petitioners on the contrary contended before this Court, that the aforesaid decision of the Appeals Board was arbitrary, capricious and violated Article 12(1) of the Constitution as the Respondents when awarding marks to the 14th, 15th and 17th Respondents have failed to deduct marks under sub-category 'proximity to the school from the place of residence' for a given number of named schools located in between the residences of the said Respondents and Southlands College though for the Petitioner 25 marks were deducted for five schools as discussed earlier. It appears, the Petitioners have limited their objections to only these three Respondents and had accepted the reasons given by the Respondents in their objections with regard to admission of children of 16th, 18th and 19th Respondents to Southlands College. However, with regard to the veracity of the Petitioners accusation in respect of the 14th,15th and 17th Respondents, the Court will not come to a finding as the applications and admission records of the said Respondents were not produced before this Court for examination due to it being in the custody of the Bribery Commission.

Even if this Court accepts the Petitioners' contention that the 1st to 13th Respondents have wrongfully granted marks to the 14th,15th and 17th Respondents, is that fact alone sufficient for the 1st Petitioner to gain admission to Southlands College is the next question and the most pertinent question that this Court is called upon to answer. In simpler terms, can this Court issue a direction under Article 126(4) to the Respondents to admit the 1st Petitioner to Grade One of Southlands College, Galle, when the 1st Petitioner has obtained less marks than the cut-off marks for the year 2017 or can this Court compel a Respondent to act illegally or contrary to the law and to the due process of the law, merely because the Respondents have acted illegally or contrary to law in a respect of another applicant.

The position in respect of illegal and unlawful orders has been considered by this Court on numerous occasions as reflected in the reported judgements. I wish to refer to the observations of the Lordships of this Court in the following cases referable to the exercise of a valid right founded in law in contradiction to an illegal right which is invalid in law with which I respectfully agree.

Sharvananda, CJ in **CW Mackie and Co.Ltd Vs Hugh Molagoda Commissioner General of Inland Revence and others 1986(1) SLR 300** succinctly held;

> *"The inequality complained by this petitioner in this case is only an inequality in the matter of illegal treatment. The Constitution only guarantees equal protection of the law and not equal violation of the law. One illegality does not justify another illegality.*
>
> *In the exercise of it's power under Article 126(4) of the Constitution this Court can issue a direction to a public authority or official commanding him to do his duty in accordance with the law. It cannot issue a direction to act contrary to the provisions of the law or to do something which in law, would be in excess of this powers"- vide pages 309*
>
> *"[ ] The rule of equality before the law or equal protection of the law under Article 12(1) cannot be invoked under such circumstances. In the exercise of its jurisdiction to grant relief or give such directions as this Court may deem just and equitable this Court cannot lend its sanction or authority to any illegal act. Illegality and equity are not on speaking terms". -vide page 310 and 311*

The aforesaid dicta postulated by Sharvananda, CJ has been quoted, referred and followed in many an instance by this Court.

Mark Fernando, J in **Gamaethige Vs Siriwardena and others [1988]1 SLR 384 at page 404** referring to the above stated legal position went on to hold that,

> *"Two wrongs do not make a right, and on proof of the commissioning 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."*

In **Jayasekera Vs. Wipulasena and others [1988]2 SLR 237** GPS de Silva J (as he then was) and in **Seelawansa Thero and two others Vs Tennakoon Additional Secretary, Public Service Commission [2004]2 SLR 241**, Shirani Bandaranayake J (as she then was) followed the above stated principles and held that Article 12 of the Constitution cannot be understood as requiring the authorities to act illegally in one instance because they acted illegally in another instance.

In **Chathumi Sehasas' case** (the school admission case referred to earlier) Aluwihare, J. respectfully agreeing with the above stated ratio descendi of this Court observed,

"that the conduct of the Respondents in admitting other applicants who have presumably received lower marks than the Petitioner cannot give rise to a 'legitimate expectation'. The Petitioner cannot request this Court to compel the Respondents to act illegally in this case for the mere reason that they have acted illegally in previous cases. The relief which the Petitioner claims is a relief which this Court as a Court of Law and Equity cannot provide since 'Illegality and Equity are not an speaking terms."

Thus, our Courts have consistently held that two wrongs do not make a right and an illegal order cannot be the foundation or the basis for another illegal order.

Hence, it is my considered view that the Petitioners cannot establish its grievance or non-admission of the 1st Petitioner to Southlands College merely because the 14th,15th and 17th Respondents children were admitted on an allegedly a wrong premise. One illegality will not justify another. Thus on such ground too, the Petitioners cannot obtain from this Court a declaration that their rights have been violated by the Respondents.

Independent to the above, the Petitioners should establish their rights and entitlement on an accepted, valid and a legally sound premise which in this application the Petitioners have failed to do. Moreover, the Petitioners have failed to establish that the decision of the Appeals Board in deducting marks for five schools under the relevant sub-category as discussed earlier, is contrary to the law and thus violated the Petitioners fundamental rights.

Therefore, it is re-iterated that this Court will not and cannot make an Order to compel the Respondents to act contrary to the law and admit the 1st Petitioner to Southlands College based only upon the ground that the 14th,15th and 17th Respondents have been admitted to Southlands College. The Constitution guarantees only equal protection of the law and not equal violation of the law. This Court will not issue directions to a Respondent to act illegally merely because in an earlier occasion the Respondents have acted illegally. Thus, I hold that the relief sought by the Petitioners cannot be granted.

In the above referred **Chathumi Sehasas' Case** this Court came to a similar finding in respect of admissions to Southlands College in the year 2017. In the instant case the learned Counsel for the Petitioners appearing before us distinguished the said judgement and strenuously submitted that even if this Court, based on the aforesaid premise were to hold that the acts complained of does not amount to a violation of the Petitioners' fundamental rights, the relief claimed by the Petitioners should be granted on the ground that the Respondents have acted contrary to many provisions of the Admission Circular which according to the Petitioners amounts to an abuse of the procedure and the very abuse

of the said process is equally a violation of Article 12(1) of the Constitution. The said aspect the Petitioners' alleged, had not been considered by when delivering the judgement referred to earlier and thus submitted that the said **Chathumi Sehasas' Case** is not on 'all fours' similar to the instant case.

The learned Presidents' Counsel for the Petitioners, placed his argument on the ground that the Respondents have violated a number of clauses in the Admission Circular and specifically clause 10.9 of the circular and altered the marks not in the manner provided for in the circular i.e not in the presence of the Petitioners (the applicant) and thus the failure to adhere to the specific provision of the circular is an abuse of the due procedure which amounts to a violation of the equal protection clause under Article 12(1) of the Constitution. The Counsel for the Petitioners strenuously argued that when the Appeals Board held out to the Petitioners that no change of the marks would take place, a 'legitimate expectation' was created and relied heavily on the judgement in **Samaraweera Vs People's Bank [2007]2 SLR 362** to substantiate the said contention.

Contrary to the assertion of the Petitioners' with regard clause 10.9, I observe that, in fact in **Chathumi Sehasas' Case,** the Court has considered the said clause of the Admission Circular and stated since there are no markings in the marking sheet 'it lends credence to the position taken by the Petitioners of the said case'. Nevertheless, the Court in the said case observed in terms of clause 10.10 and 8.2 (a) of the circular the Respondents are not precluded from subsequently altering their position and went onto hold 'that while in the ordinary course it is prudent that the amended marks be duly noted and communicated to an applicant at the desired point, one must also be mindful that late discovery that vitiates the eligibility of the applicant, makes an exception to this practice'.

In the said background, I would now examine **Samaraweeras' case** relied upon by the Counsel for the Petitioners to substantiate the above stated contention, with regard to abuse of process, legitimate expectation and violation of a fundamental right.

Samaraweeras' case pertains to a bank employee and extension of his services beyond 55 years. He was initially granted one years' extension of service upon reaching 55 years but was granted only two months extension when requested for a further extension of one year. The Petitioner Samaraweera relied on the relevant circulars to present a case firstly, that he had a legitimate expectation to go on without requesting extensions until 57 years; and secondly, that in any event others who failed to qualify for extensions had been granted extensions and the bank discriminated him as against the other employees.

The court (vide judgement of Raja Fernando, J. at page 365) having observed that the petitioner will have to stand or fall on the record of his own service went on to hold

that the petitioner has failed to establish that he had a legitimate expectation for an extension of service in terms of the circular.

However, with regard to the application of circulars and guidelines, the court held that 'it must be applied fairly and equally to all persons concerned with' and went onto hold that 'the failure to apply the said circular in a uniform manner and in selectively granting treatment to certain employees by misapplying the circular amounted to an infringement of the petitioners' fundamental right. Nevertheless, the court in the said case did not grant the relief prayed for by the petitioner by way of an extension of service, but only granted compensation.

In the said **Samaraweeras' case** Shirani Bandaranayake, J (as she then was) in a separate judgement, while concurring with the judgement of Raja Fernando, J. went onto discuss the circulars pertaining to selection of persons eligible for retirement; principles relating to 'giving of reasons' to court when extension of service of Samaraweera was refused; and 'legitimate expectation' of continuing in service based on a circular and at page 388 stated that legitimate expectation ought to be given a broad interpretation utilizing the concept of procedural fairness, which the Counsel for the Petitioners vigorously propounded before us, strenuously argued and heavily relied upon to substantiate its contention before this Court that the Appeals Board created a legitimate expectation on the Petitioners with regard to admission of 1st Petitioner, the breach of which amounted to a violation of his fundamental right.

While accepting that circulars and guidelines must be applied fairly and equally to all persons and in a uniform manner and not selectively, it is my considered view that in respect of the instant application it is not necessary to go on an academic exercise and analyse 'procedural abuse' in the way the Petitioners term it. It is also not necessary to go on a voyage to define legitimate expectation, procedural fairness and other principles referred to in the afore mentioned case, simply because the Petitioners' case before us stands or falls on the facts and conduct of the Petitioners themselves.

Firstly, in the Application Form the Petitioners tendered to Southlands College it is abundantly clear that the Petitioners have given inaccurate information and has come before Court with soiled fingers and *Secondly,* the Petitioners have failed to establish that the subsequent decision for reduction of marks by the Appeals Board for five schools being more proximate is wrong and inaccurate. Hence, in view of the said facts, in my view the dicta of the Hon. Judges in the **Samaraweeras' case** referred to above have no bearing to the case before us. Thus the said case can be easily differentiated and distinguished. In the said circumstances, I am of the view that the contention of the Petitioners with regard to

procedural fairness and legitimate expectation has no merit and the judgement of **Chathumi Sehasas' case** is on 'all fours' similar to the instant application.

I also wish to comment on certain provisions of the Admission Circular which I consider relevant and important in respect of the appeal procedure and specifically in relation to the Appeals Board hearing. According to clause 9.2 (a) an objection could be tendered even anonymously; clause 10.6 makes provision for holding of an inquiry in order to re-examine the documents already tendered pertaining to an objection; and clause 10.7 speaks of an inquiry pertaining to an appeal. It is observed, that although clause 10.9 makes provision for the Appeals Board to enter marks in the relevant sheets maintained by the school as well as in the summary sheet given to the applicant respectively, it does not indicate that it has to be done in the presence of the parties. Clause 10.10 makes provision for the Appeals Board to verify any fact where necessary by any means (including a site visit) and take relevant follow up action. This Clause is silent as to how and when variation of marks, if any, can be done and the manner of doing same whether it is in the presence of the applicant or not. This Clause gives rise to the proposition that the Respondents could vary or alter the marks even at a subsequent stage, after being satisfied with regard to the matters in dispute, although I am of the view that it would be prudent to do so after informing the parties and necessary amendments made in the presence of an applicant.

I also observe that clause 11.1(a) and (b) provides for an 'Amended interim list' to be prepared and to give a hearing to the parents of the children who will be eliminated from the list, prior to finalizing the 'Final List', which I consider to be a very salutary provision. Thus, this clause once again gives credence to the fact that even at this stage, changes may be made to the marks awarded. Clause 11.8 which refers to the decision of the Appeals Board been final and conclusive is found in the Admission Circular only at this point. i.e. even after a hearing is given to parents consequent to preparation of the 'Amended Interview List'. It is observed in the instance case that an 'Amended interview List' was not prepared and the third and final opportunity given to an unsuccessful parent to be heard was not afforded to the Petitioners selectively but to other unsuccessful parents as well. Hence, even on the said grounds the non-adherence of the procedure in my view cannot be considered an abuse of the process which amounts to a violation of Petitioners fundamental rights.

In summarizing, the alleged violation complained by the Petitioners was in respect of the substantive aspect of the Admission Circular with regard to proximity rule. Nevertheless, greater emphasis was placed by the Petitioners to challenge the procedural aspect of the Circular, reduction of marks by the Appeals Board to establish the violation of its fundamental rights.

For reasons discussed in detail earlier, I am of the view that the proper procedure laid down has been followed and the merits of the Petitioners' application for admission has been properly evaluated and a correct finding has been made. Even with regard to the alternative contention of the Petitioners in respect of procedural impropriety, I see no merit or compelling reason to interfere with the said decision and make order to direct the Respondents to act illegally and in violation of the law and admit the 1st Petitioner to the school applied for.

Hence, I hold that the Petitioners have failed to establish that the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by the Respondents.

For the aforesaid reasons, the application of the 1st and 2nd Petitioners is dismissed. In view of the circumstances of this case, I make no order with regard to costs.

The application is dismissed.

Judge of the Supreme Court

Priyantha Jayawardene, PC, J.

I agree

Judge of the Supreme Court

S. Thurairaja, PC, J.

I agree

Judge of the Supreme Court