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

SC(FR) Application No. 31/2014

1. R.P.P.N. Sujeewa Sampath
2. R.P.P.N. Hasali Gayara

Both of 114, Thimbirigasyaya Road,
Colombo 5.

PETITIONERS

Vs.

1. Sandamali Aviruppola
   Principal
   Vishaka Vidyalaya
   133, Vajira Road.
   Colombo 5.
2. Anura Dissanayake
   Secretary, Ministry of Education
   Ministry of Education
   Isurupaya
   Battaramulla.

3. Bandula Gunawardhana
   Minister for Education
   Ministry of Education
   Isurupaya
   Battaramulla.
4. A. S. Rohini
5. K. A. D. M. S. Rathnayake
6. S. Guneratne
7. R. A. I. Randunge

   All Members of the Interview Board
   (on admissions to Grade 1, 2014)
   C/o. Vishaka Vidyalaya
   133, Vajira Road.
   Colombo 5.

8. Members of the Appeal Interview Board
   (on admissions to Grade 1, 2014)
   C/o. Vishaka Vidyalaya
   133, Vajira Road.
   Colombo 5.

8A. Gita Abeygunawardene
   Principal of Holy Family Convent
   Chairman of the Appeal Interview Board

8B. A. S. Rohini
   Secretary of the Appeal Interview Board.

8C. N. R. Jinasena

Member of the Appeal Interview Board.

8D. H. A. M. C. A. Jayasundara

Member of the Appeal Interview Board.

8E. Shrimathi Jayasoorioya

Member of the Appeal Interview Board.

9A. N. N. Kottage (Minor)

9B. R. Kottage

Both of 110/1, Thimbirigasyaya Road,

Colombo 5.

10A. S. I. S. H. Amaratunga (Minor)

10B. N. I. W. A. Karunaratne

Both of 43, Siripa Road

Colombo 5.

11A. D. S. Atapattu (Minor)

11B. K. A. D. K. Samaraweera.

Both of 119, Havelock Road,

Colombo 5.

12A. H. M. T. Wijewardene (Minor)

12B. R. H. K. Erandhika

Both of 76/3, Thimbirigasyaya Road,

Colombo 5.

13A. I. T. Lanka Geeganage (Minor)

13B. A. Udayangani Dahanayake

Both of 57/8, D.S. Fonseka Road,

Colombo 5.

14A. E. Y. M. Leelaratne (Minor)

14B. E. T. D. Leelaratne

Both of 20/2, Fife Road,

Thimbirigasyaya,

Colombo 5.

15. Ranjith Chandrasekera

Director of Education

National Schools

Isurupaya,

Battaramulla.

16. Hon. Attorney General

Attorney General's Department

Hultsdorp

Colombo 12.

RESPONDENTS

BEFORE: Priyasath Dep P.C., J.,

Sarath de Abrew J. &

Anil Gooneratne J.

COUNSEL: Viran Corea with Ermiza Tegal for Petitioners

Asthika Devendra for 9B & 13B Respondents

Rohan Deshapriya with Chanakya Liyanage for 11B Respondent

Nandun Fernando with Dilukshan Fernando for 10B Respondent

Yuresha de Silva S.S.C for Attorney General.

ARGUED ON: 27.02.2015

DECIDED ON: 26.03.2015

GOONERATNE J.

This was a school admission case. The 1st Petitioner is the father of the 2nd Petitioner who filed the present Fundamental Rights Application as the 2nd Petitioner the daughter was denied admission to Grade I of Vishaka Vidyalaya for the year 2014. The 1st Petitioner claims that he has been a resident at the address given in the caption to this application (No. 114, Thimbirigasyaya Road, Colombo 5) for well over 20 years. It is averred in the pleadings of the Petitioners that the

Ministry of Education issued a Circular dated 23.5.2013 regarding admissions of children to Government schools (Grade 1) for the year 2014 and it is marked and produced as P2. On or about 20.6.2013, the Petitioners submitted an application (P3) for admission to Grade 1 in the said school.

This application for admission was under the category of 'proximity' of residence, to the school in question. In this application the Petitioners also challenge as per sub paras (e) and (f) of the prayer to the petition, the decision of the 1st to 3rd and or 15th Respondents to grant admission to Grade 1 of Visaka Vidyalaya, to 9A, 10A, 11A, 12A, 13A & 14A Respondents being the children of 9B, 10B, 11B, 12B, 13B & 14B Respondents.

Petitioners argue that the decision of the official Respondents namely 1st, 2nd and or 3rd Respondents and or 15th Respondent refusing admission to the said school to the 2nd Petitioner and the decision to grant admissions to the said school and relevant Grade to 9A, 10A, 11A, 12A, 13A and 14A Respondents, Constitute a violation/and infringement of Article 12(1) of the Constitution. In fact good part of the submissions of learned counsel for the Petitioner was more or less focused on the irregularities of the decision to admit 9A, 10A, 11A, 12A, 13A and 14A Respondents. The learned counsel for Petitioners drew the attention of

this court to a large number of documents annexed to the Petition to demonstrate that his daughter is more than qualified to be admitted to Visaka Vidyalaya under the 'proximity' of residence category. All those documents are pleaded and annexed to para 10 of the petition. Learned counsel emphasized the fact that the selection procedure was flawed and the children admitted had been irregularly admitted in violation of circular P2.

Learned counsel for the Petitioner argued that at the interview held on 30.8.2013 by the authorities concerned, he had been informed that no marks could be allocated for the title deed relied upon by Petitioner to prove residency as the 1st Petitioner's mother had executed the deed of gift in favour of the 1st Petitioner's brother-in-law. It was the case of the Petitioners that he was totally unaware of such a transaction, although he continued to reside in the given address, for a long period of time. An attempt was made to demonstrate that his mother had done so and gifted the property in question to Petitioner's brother-in-law since his in-laws or sister were in need of money. The deed of gift in favour of Petitioner's brother-in-law bears the No. 511 of 29.11.2007 (P6). Petitioner inter alia pleads that the above deed of gift No. 511 was revoked by Petitioner's mother, by a deed of revocation bearing No. 411 of 23.10.2013 (P7).

On or about 15.10.2013 the school authorities displayed the selection list which gives the cut off marks as 68 but the Petitioner's daughter was not selected and not even included in the waiting list. The waiting list includes applicants who secured marks between 59 and 67. Petitioner claims that his child should be entitled to higher marks than what was allocated by the selection panel. In fact I have perused the written submissions of the Petitioner and the chart at para 21 of same, projects a figure of 96 marks after taking into consideration his explanation. This seems to be the way the Petitioner analyzes his own case, but even in the appeal made by the Petitioner he was not successful as the Appeal's panel had rejected his appeal more particularly as no marks had been allocated to the Petitioner as regards the deed.

On 24.12.2013 the final list was displayed on the notice board. The cut off marks as 67 and Petitioner's child's name was not included nor was she considered to be in the waiting list. In fact another complaint that was suggested by learned counsel for the Petitioner was that either 8 or 6 persons mentioned as Respondents to this application whose children were selected are not residents in the given addresses. However I observe that at the hearing this argument was not fully addressed by learned counsel, for the Petitioner.

Another argument advanced on behalf of the Petitioner was that the selection panel had only allocated 21 marks for electoral list (clause 6:1 of P2) and whereas Petitioner claim he would be entitled to full marks (35). The matter disclosed by the Petitioner indicates that it was due to non inclusion of their names in the electoral list for the years 2008 & 2009, for which an appeal had been made. Petitioner contends that the official Respondents are privy to the records and should ascertain the truth of the statements made by the Petitioner in this regard. Petitioner drew the attention of this court to Clause 8:3 of P2 where the Interview Board could verify above from the Department of Elections. However the 4th to 7th Respondents and 8A & 8E Respondents had not done so. Therefore the 1st Petitioner stresses that his child would be entitled to the full marks of 35 for the electoral list.

The other complaint of the Petitioner was that only 2 marks were allocated in proof of additional documents in proof of residence. Petitioner contends that a variety of documents had been submitted in this regard. However I observe that in view of the several documents submitted, the Petitioners may be entitled to more than 2 marks. Even if the authorities allocate full marks (5) to this category, still the petitioner would be expected to score more marks to prove his entitlement. The question is whether he has been successful on all important

matters in terms of circular P2? Does even the cumulative effect of all documents submitted by the Petitioner bring him at least to a closer point to the cutoff point?

Petitioner in this application itself thought it fit to contest the position of 9B to 13B Respondents who were successful to gain admissions to the school in question. 9B Respondent's case is challenged on the basis that the residence relied upon by 9B Respondent is just bare land. 9B Respondent was permitted to submit new documents. Additional documents had not been annexed to the objection of 9B Respondent. They were registered voters of a different address. Even as regards 10B Respondent the Petitioner states he is not a resident at the given address and it is a bare land. Lease 1R 9D is only for 3 years and full 4 marks cannot be allocated. Lease 1R9B is a purely a business premises. Documents submitted by 10B Respondent is blatantly unclear. Documents considered after closing date. As regards 11B and 12B Respondents the Petitioners challenge their lease agreements. It is suggested that the names are not registered as required by law.

What is significant in the application of the Petitioners is that the material disclosed by the Petitioners in their pleadings itself disclose the inability to gain admission to the school in question. It is evident that the deed relied upon by the Petitioner was not in favour of the Petitioner's mother Leelawathie. At the relevant time and period the deed had been executed in favour of another relative of the Petitioner. The subsequent revocation of same cannot show any good results as the revocation was in the latter part of year 2013, which is outside the scheme contemplated under Circular P2. As such the authorities concerned cannot be unnecessarily blamed on this account, and this court does not wish to interfere with the ruling given by the selection panel and the Appeal's Board. Further the Petitioner's argument does not demonstrate unfairness and arbitrariness. Nor can I conclude that petitioner's attempt to pursue his application under the fundamental rights jurisdiction denies the required equality or discrimination.

The other question is on the electoral list where the Petitioner's claim full marks. Petitioners also state that his name does not appear in the electoral list for the year 2008 and 2009, but an appeal had been made on same and as a result of the appeal his name was relisted in the years 2010, 2011 and 2012. I am not in a position to accept that argument since electoral list are

usually kept intact or updated by entering the relevant forms provided by the Department of Elections. It is an annual process, and the registered voter is expected to give details of residents in a particular household through the chief occupant. One may for various reasons not have the name registered in the electoral list for a particular year but he would not be deprived of registering the residents of the household in the subsequent years if the forms are duly perfected and accepted by the Commissioner of Elections. The authorities concerned have considered and given the marks according to the available data i.e for the years 2010 to 2012. Further where the actual residence of a party is in doubt or where the prescribed criteria is at issue the burden would be on the applicant to prove residence and convince the school authorities.

Where eligibility for school admission based on prescribed criteria is at issue, the burden is on the applicant to prove residence for the purpose of admission. This burden is to be discharged based on documents presented to the school authorities, which must be validated through a scrutiny and check conducted by the school authorities at the time the application was presented. If incorrect particulars are provided by an applicant, the school authorities could reject the application.

The official Respondents produce the Land Registry folios (1R2) to support the position that the premises in question was gifted to another, by the Petitioner's mother. Further the 1st Respondent takes up the position that such a transfer had not been disclosed by the petitioner in his affidavit 1R3, and the petitioner could reasonably expected to be aware of such transaction. Therefore the 1st Respondent state that petitioner has submitted incorrect particulars and it lacks uberrimae fides. The 1st Respondent also very firmly state that no undertaking was given about any site inspection by the authorities concerned, and maintain that by 1R4 marks awarded at the interview are reflected in the 2nd column on the extreme right side. 1st Respondent also state revocation of the alleged gift P7 had been executed on 23.10.2013 and registered on 29.10.2013, and it is clearly after the date (30.8.2013) on which the Petitioners attended the admission interview. By this Respondents urge that if the deed of revocation (P7) was considered by the Appeal's Panel the Petitioner would receive preferential treatment to the detriment of all other applicants.

I wish to observe that the Petitioners have not succeeded in convincing this court with the available material, that they could attract the constitutional remedies relating to fundamental rights. There is enough and more

justification for the school authorities to reject the application of the Petitioners due to their inability to establish 'proximity' of residence. In fact what was pursued turned against the Petitioners, for very good cogent reasons. As such this court need not take the next step to consider the case of the 9B to 13B Respondents, as no kind of hostile discrimination against the Petitioners were proved and established. Notwithstanding above 9B to 13B Respondents, were able to produce lease agreements acceptable as per Circular P2. As such these Respondents were able to fortify their case on site inspections carried out by the authorities concerned. Such a site inspection could not have been extended to the petitioners in the absence of proof of residence required to be established in terms of Circular P2.

Petitioners were not able to establish proximity of residence from the documents relied upon mainly due to the reason that a valid deed during the relevant period had not been produced. Therefore the authorities concerned are not obliged to give any under taking for a site inspection. It is apparent that the school authorities and the admission's panel cannot be faulted in the circumstances and the context of the case presented by the Petitioners. In this state of affairs, I can find no reason to grant relief to the petitioners. The

application of the Petitioners does not seem to fall within the ambit of Article 126 Of the Constitution. Jurisdiction under Article 126 is limited to hearing and determining only questions relating to the infringement of a fundamental right. The grievance projected by the Petitioners cannot be said to be the consequences of the infringement of the fundamental right of equal protection of the laws or of discrimination against the petitioners on any ground set out in Article 12(1) or 12(2) of the Constitution. However before I conclude I refer to the case of Buddhan Choudhury Vs. State of Bihar, 1955 AIR (SC) 191, Das C.J., referring to American decisions said –

> "It is suggested that discrimination may be brought about either by the Legislature or the Executive or even the Judiciary and the inhibition of Article 14 extends to all actions of the State denying equal protection of the laws whether it be the action of any one of the three limbs of the State. It has, however, to be remembered that, in the language of Frankfurter J., in Snowden v. Hughes, (1943) 321 U.S.I, 88 L.e.d. 497, 'the Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State." The judicial decision must of necessity depend on the facts and circumstances of each particular case and what
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> may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.

The application of the Petitioners do not fall within the ambit of Artocle 126 of the Constitution although our jurisdiction in this regard is most extensive. I am unable to grant the petitioners any relief. I would accordingly dismiss this application, but make no order as to costs.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C. J.

I agree.

JUDGE OF THE SUPREME COURT

Sarath de Abrew J.

I agree

JUDGE OF THE SUPREME COURT