

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

Pavithra Tharangi Illeperuma,
No. 312/3/2,
Orchid Apartment,
Havelock Road,
Colombo 05.

On behalf of

Ayurda Lithuli Ganapriyan (Minor)
Plaintiff

SC/FR/204/2022

Vs.

1. Principal,
Visakha Vidyalaya,
Colombo.
2. President of the Appeal Board,
Visakha Vidyalaya,
Colombo.
3. Director of National Schools,
Ministry of Education,
“Isurapaya”,
Battaramulla.
4. Secretary to the Minister of Education,
Ministry of Education,
“Isurupaya”,
Battaramulla.

5. Minister of Education,
Ministry of Education,
“Isurupaya”,
Battaramulla.

6. Hon. Attorney General,
Attorney General’s Department,
Hulftsdorp,
Colombo 12.

Respondents

Before: Priyantha Jayawardena, P.C., J.
P. Padman Surasena, J.
Mahinda Samayawardhena, J.

Counsel: Lakshan Dias with Maneesha Kumarasinghe and Heshan
Bandara for the Petitioner.
Yuresha De Silva, D.S.G., for all the Respondents.

Argued on: 09.03.2023

Written submissions:

by the Petitioner on 08.03.2023 and 06.04.2023.

by the Respondents on 25.01.2023 and 13.03.2023.

Decided on: 19.07.2023

Samayawardhena, J.

Introduction

The Petitioner filed this application on the basis that the refusal to admit her daughter to Visakha Vidyalaya, Colombo, by the 1st Respondent principal and the 2nd Respondent Chairman of the Appeal Board is a

violation of her fundamental right guaranteed by Article 12(1) of the Constitution.

The Petitioner's application pertains to grade 1 admission for the year 2022 under the close proximity category – *vide* R1. There is no dispute about the applicable circulars issued by the Ministry of Education in this regard. They were marked by the Petitioner P4(a)-(f).

The Petitioner's application was summarily rejected even without calling the Petitioner for an interview stating that "the religious quota vacancies had already been filled" – *vide* P8. This is on the erroneous assumption that the child's religion is Hinduism (*vide* P21) despite the Petitioner stating in the application that the child is a Buddhist. The mother of the child is a Buddhist and the father a Hindu. In any event, the admission was sought not under the religious percentage category but under the close proximity category.

Upon the Petitioner taking up this arbitrary decision with the principal, the Human Rights Commission etc., the application was reconsidered by the School Appeal Board. However, the Petitioner says that the Appeal Board did not make an independent decision; instead, it acted in accordance with the directives of the school authorities.

According to the decision of the Appeal Board marked P14, the Petitioner obtained a total of 47 marks:

Main documents in proof of residence	02
Additional documents in proof of residence	00
Electoral registers in proof of residence	25
Proximity to the school	20
Total	47

The Petitioner says she should have been awarded 69 marks instead of 47 marks:

Main documents in proof of residence	10
Additional documents in proof of residence	04
Electoral registers in proof of residence	25
Proximity to the school	30
Total	69

Main documents

At the time of tendering the application, the Petitioner was residing as a lessee at No. 312/3/2, Orchid Apartments, Havelock Road, Colombo 5.

In terms of Clause 6.1.I of the Public Notice issued by the Secretary of the Ministry of Education relating to the admission of children to grade one in government schools for the year 2022 marked P4(f), Lease Agreements fall into the category of main documents to prove residence, and a maximum of 10 marks can be earned based on the length of occupation. To clarify, if the period of occupation exceeds 5 years, the applicant is entitled to the full marks (10 marks).

The first Lease Agreement pertaining to No. 312/3/2, Orchid Apartments, Havelock Road, Colombo 5 marked P7(q) is valid from 11.06.2020 to 10.06.2022. The second Lease Agreement pertaining to No. 312/3/2 marked P7(r) is valid from 11.06.2022 to 10.06.2023. The other Lease Agreements marked P7(m)-(p) covering the period of 10.12.2015 to 10.07.2020 are not relevant to No. 312/3/2, but to No. 312/3/3.

In addition to the aforesaid Lease Agreements, the Petitioner has tendered the following documents as proof of residence at both No. 312/3/2 and No. 312/3/3 for more than 5 years.

1. The Petitioner's National Identity Card
2. The Petitioner's husband's (child's father) National Identity Card
3. Child's birth certificate
4. Grama Niladhari Certificate
5. Petitioner's Bank Account at the Commercial Bank
6. Dialog Bills
7. Child's Father's HSBC Credit Card
8. Child's Father's Bank Account at Commercial Bank
9. Child's Father's Bank Account at BOC
10. Parent's Joint Account at Commercial Bank
11. Life Insurance Policy at SLI
12. Certificate of Registration of a Vehicle
13. Revenue Licences relevant to the Vehicle
14. Vehicle Insurance Certificate
15. SLT telephone bills
16. Electoral Registration Certificates

The Appeal Board has awarded only 2 marks for the main documents (Lease Agreements) because 5 years of residence was established by Lease Agreements relevant to both No. 312/3/2 and No. 312/3/3 (not only to No. 312/3/2).

The Petitioner's submission is that these two units (No. 312/3/2 and No. 312/3/3) are adjoining units separated by a wall and therefore she should have been awarded full marks (10 marks) as she had been living in these adjoining units for over 5 years (from 10.12.2015 to 11.07.2020 at No. 312/3/2 and thereafter at No. 312/3/2 from 10.07.2020) at the time of submitting the application to the school. This position of the Petitioner has been amply supported by the Grama Niladhari in his certificate of residence marked P7(l) and the letter issued by a Licensed Surveyor marked P6.

The Petitioner has applied to several other schools and Sirimavo Bandaranayake Vidyalaya has awarded full marks (10 marks) for the same Lease Agreements – *vide* P15. Both these schools are governed by the same circulars.

The Respondents do not challenge this factual position that No. 312/3/2 and No. 312/3/3 are adjoining units separated by a wall, but their position is that according to clause 6.0(ඊ), the documents tendered as proof of residence should be relevant to the place of residence at the time of submitting the application (i.e. strictly to No. 312/3/2) and therefore documents relevant to No. 312/3/3 cannot be taken into account.

In my view, the Appeal Board has viewed the concept of residence in an abstract sense and has given an overly literal interpretation to that clause. I acknowledge that granting interview panels the authority to interpret clauses of the circulars based on their own discretion or preferences might result in impropriety. However, it does not mean that they are debarred from giving a purposive interpretation to clauses to give effect to the intention of the drafter of the circulars. If I may give an example, circular 13/2021 marked by the Petitioner P4(d) has a clause empowering the interview board to decide on the distance to school depending on the unique facts of the case before the board: “ඉහත මාර්ග දුර ගණනයේදී ප්‍රායෝගිකව ගැටලු සහගත අවස්ථා විසඳාගැනීම සඳහා අවස්ථානුකූලව සාධාරණ හා පොදු තීරණයක් ගැනීමට සම්මුඛ පරීක්ෂණ මණ්ඩලවලට බලතල හිමිවන අතර, එම තීරණ හේතු සහිතව සටහන් තබා ගත යුතු ය.” The petitioner is not challenging the circular; her complaint is that the application of that circular to the facts of this case by the Appeal Board is wrong. There is merit in this complaint.

Based on the documents placed before the Appeal Board, I take the view that the Appeal Board should have awarded the Petitioner 10 marks for those main documents.

Additional documents

No marks were awarded for the additional documents (documents other than Lease Agreements) mentioned above on the basis that “the Petitioner failed to fulfil the requirement of residing at the given address continuously for a period of 6 years”. However, the relevant circulars do not state that marks for additional documents can be given only if 6-year period of residence is established. Applicants who are entitled to marks on main documents can claim marks for additional documents – *vide* last paragraph of 6.1. I (අ) of P4(f).

මෙම ගණය යටතේ ඉහත කරුණුවලට අදාල ව පදිංචිය තහවුරු කිරීම සඳහා හිමිවන ලකුණු උපයා ඇති අයදුම්කරුවන්ට පමණක් මින් ඉදිරියට ඇති කොටස් සඳහා ලකුණු ලබා දිය යුතු ය.

The Appeal Board at least awarded 2 marks for the main documents. Therefore they cannot totally reject additional documents.

In terms of clause 6.1.I (ආ) of P4(f), the Petitioner can receive a maximum of 5 marks for the additional documents.

පදිංචිය තහවුරු කරන අතිරේක ලේඛන

අයදුම්කරු හෝ කලත්‍රයා නමින් ඇති පහත ලේඛන අතරින් ඕනෑම 05ක් සඳහා එක් ලේඛනයකට එක් ලකුණක් බැගින් - ලකුණු 05

ජාතික හැඳුනුම්පත හෝ රියදුරු බලපත්‍රය/ස්ථාවර දුරකථන බිල්පත් (රැහැන් සහිත)/පාසල හැරයාමේ සහතිකය/විවාහ සහතිකය/ජීවිත රක්ෂණ හිමිකම් ඔප්පුව/ලමයාගේ උප්පැන්න සහතිකය/බැංකු පොත/වාහන ලියාපදිංචි සහතිකය හෝ වාහන ආදායම් බලපත්‍රය හෝ වාහන රක්ෂණ සහතිකය.

(තෝවාසික විදුලි බිල්පත්/ජල බිල්පත්/වරිපනම් බදු බිල්පත්/අක්කර බදු බිල්පත්, පදිංචිය තහවුරු කරන ප්‍රධාන ලේඛන යටයතේ වෙනත් පිළිගත හැකි ලේඛනයක් ලෙස ලකුණු උපයා නොමැති නම් පමණක්, පදිංචිය තහවුරු කරන අතිරේක ලේඛනයක් ලෙස යොදාගත හැකිය.)

The Petitioner claims that she is entitled to 4 marks for the additional documents and the Respondents have not disputed this claim except to argue that a 6-year period of residence is required to award marks for additional documents.

The Petitioner is entitled to 4 marks for additional documents.

Proximity to the school

The Petitioner also argues that she is entitled to receive 30 marks for their proximity to the school, rather than the 20 marks that were initially given. The Petitioner claims that out of the 6 schools within the aerial distance, the aerial distance of St. Clare Primary School and Mahamathya Maha Vidyalaya falls over the Kirulapana canal, which should be considered a natural barrier and therefore the actual road distance to those two schools should be considered rather than the aerial distance. Hence the Petitioner says 10 marks should not have been deducted to those two schools.

Circular 13/2021 marked by the Petitioner P4(d) was issued after the Supreme Court judgment in the case of *Lyensa Fernando (Minor) and Another v. S.A.S.U. Dissanayake and Others*, (SC/FRA/17/2019, SC Minutes of 23.03.2021) marked P19. However, circular 13/2021 did not abolish aerial distance method in calculating the distance from the place of residence to schools but stated *inter alia* “යම් පාසලක් ඉහත වෘත්ත සීමාව තුළ පිහිටිය ද ගංගා, කලපු, වගුරුබිම්, රක්ෂිත වනාන්තර ආදී ස්වභාවික බාධාවන් හෝ අධිවේගී මාර්ග පවතින අවස්ථාවලදී පමණක් නිවසේ සිට එම පාසලට ගමන් කල හැකි කෙටිම මාර්ග දුර ඉල්ලුම් කරන පාසලට ඇති කෙටිම මාර්ග දුරට වඩා වැඩි නම් ලකුණු අඩු නොකෙරේ. එහිදී දෙමාපියන් පිළිගත හැකි සාක්ෂි සහිතව මාර්ග සිතියම සම්මුඛ පරීක්ෂණ මණ්ඩලයට ඉදිරිපත් කළ යුතු ය.” This is repeated in clause 6.0 (ඉ) of P4(f).

The Petitioner in her post argument written submissions defining the term “natural barrier” states “a natural object that effectively precludes or deters access.” However, Kirulapana canal does not effectively precludes

or deters access as there is a bridge over the canal facilitating access to the other side. If this is interpreted in the way the Petitioner now suggests, that would in my view be discriminatory against all other similarly circumstanced applicants.

I am not inclined to accept this argument.

Conclusion

On the facts and circumstances of this case, I hold that the decision of the principal to reject the application on a wrong basis at the threshold level and thereafter the refusal by the Appeal Board to award the Petitioner the marks she was entitled to, was arbitrary, irrational and is inconsistent with the fundamental right to equality before the law and the equal protection of the law guaranteed by Article 12(1) of the Constitution.

The principal admits that cut off mark was 53. The Petitioner ought to have received 59 marks.

Main documents in proof of residence	10
Additional documents in proof of residence	04
Electoral registers in proof of residence	25
Proximity to the school	20
Total	59

I direct the 1st Respondent principal to admit the child of the Petitioner to grade 2 or the relevant grade at Vishaka Vidyalaya, Colombo within two weeks from the receipt of the judgment.

The registrar is directed to send a copy of the judgment to the 1st Respondent principal without delay.

Application is allowed. No costs.

Judge of the Supreme Court

Priyantha Jayawardena, P.C., J.

I agree.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court