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 of the Republic

1. Seekkuge Rashantha,
No.22, Saman Madura Watta Road,
Heppumulla
Ambalangoda

2. Seekkuge Iduwara Umanjana (minor,
No.22, Saman Madura Watta Road,
Heppumulla
Ambalangoda

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SC FR Application No. 60/15

Petitioners

Vs.

1. Akila Viraj Kariyawawsam (M.P.)
Hon. Minister of Education,
Ministry of Education,
"Isurupaya", Battaramulla.

2. Upali Marasinghe,
Secretary – Ministry of Education,
"Isurupaya", Bataramulla.

2 (A) W. M. Bandusena
Secretary – Ministry of Education,
Isurupaya, Battaramulla.

3. Sumith Parakramawansha,
Former Principal – Dharmashoka Vidyalaya
Galle Road, Ambalangoda.

3A. W. T. Ravindra Pushpakumara,

Principal – Dharmashoka Vidyalaye,
Galle Road, Ambalangoda.

4. R. N. Mallawarachchi
5. Diyagubaduge Dayarathne
6. M. Shirley Chandrasiri
7. N.S.T.de Silva

4th to 7th Above All:
Members of the Interview Board,
(Admissions to Year 1)
C/o Dharmashoka /Vidyalaya,
Galle Road, Ambalangoda.

8. W. T. B. Sarath
9. P. D. Pathirathne
10. K. P. Ranjith
11. Jagath Wellage

4th and 8th to 11th above All:
Members of the Appeal Board,
(Admission to Year 1)
C/o Dharmashoka/Vidyalaya,
Galle Road, Ambalangoda.

12. Ranjith Chandrasekara,
Director-National Schools,
Isurupaya, Battaramulla.

13. Hon. The Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE: EVA WANASUNDERA, PC, J,
B.P. ALUWIHARE, PC, J &
UPALY ABEYRATHNE, J

COUNSEL: Crishmal Warnasuriya with Udani Galappathi and
J. Wickramasuriya for the Petitioners.
Rajitha Perera, SSC for the1st, 2nd, 3rd, 8th and 13th Respondents.

ARGUED ON: 21.01.2016

DECIDED ON: 02.08.2017

ALUWIHARE, PC, J:

The 1st and the 2nd Petitioners, who are the father and son respectively, have alleged, that by their failure to admit the 2nd Petitioner to Grade1 of the Dharmashoka Vidyalaya, Ambalangoda for the year 2015, the Respondents have violated their fundamental rights guaranteed under Article 12 (1) of the Constitution.

Leave to proceed was granted by this court under the said Article on 15th June, 2015.

The facts of the case as submitted by the Petitioners are as follows:-
It is common ground that admissions of students to government schools for the year 2015 was governed by a circular issued by the Ministry of Education bearing No. 23/2013 dated 23.05.2013. It was also not in dispute that the cut off mark for the admission to grade one students for the said school in 2015 was 94.25.

The 2nd Petitioner sought admission to the school under Residency (Proximity/feeder area) category. In terms of the circular P3, the applicant is

required to produce proof of residency and marks are allotted for the proximity category based on the criteria laid down in clause 6.1 of the circular P3.

The Petitioners have averred that under the category 6.1 the Petitioners expected to get 95 marks which is well above the cutoff mark referred to above.

The Petitioners attended an interview held on 17th October, 2014, held to evaluate the eligibility of the 2nd Petitioner to be admitted to the school concerned. The Petitioners state that the Board of Interview comprising of 3rd to 7th Respondents awarded the 2nd Petitioner 95 marks under the category applied for.

The Petitioners state that, on or about 5th January, 2015 the temporary list (P9) containing those who were selected was displayed on the notice board. However, the 2nd Petitioner's name had not been among them.

Aggrieved by the exclusion of the 2nd Petitioner an appeal had been lodged with the 3rd Respondent, the Principal of Dharmasoka Vidyalaya as provided for in clause 9.1 of the circular P3, pointing out that the 2nd Petitioner had obtained marks over and above the cut off mark.

The main complaint of the Petitioners was that the deduction of further 5 marks on the basis that Kandegoda Vidiyalaya is also more proximate to the Petitioner's residence than the school applied for. This deduction had been made after the initial interview Petitioner faced on 17th October, 2014. As a result of this deduction, the marks allotted had been adjusted to 90. The Appeal Board (which comprised of 4th, 8th and 9th to 11th Respondents) also had been of the view that 10 marks have to be deducted, in view of the fact that the petitioners' residence is more proximate to Devananda Vidyalaya as well as Kandegoda Vidyalaya, which the Petitioners had denied.

When the final list of students selected, that was released also did not bear the 2nd Petitioner's name. Petitioners thereafter had sought administrative relief from various quarters, but those details are of not much relevance to decide the issues of this case.

The admission to Grade1 of government schools is a competitive process and the cut off mark is set accordingly.

For the admission to Dharmashoka for the academic year 2015, the cut off mark had been 94.25. As such all applicants who secured the cut off mark or marks above that, were taken in.

Hence, what is pivotal to the decision in the instant application is to consider whether the 2nd Petitioner had been deprived of any marks, preventing him from reaching the cutoff mark.

As far as allocation of marks is concerned, the Petitioners claim that the 2nd Petitioner was awarded 95 marks at the initial interview. It was submitted on behalf of the Respondents that the 2nd Petitioner had been awarded these marks provisionally after the interview. The Petitioners admit that after the interview, on or about the 14.12.2014, the 3rd to the 7th Respondents visited their residence for an inspection. It is the position of the Respondents that after the site inspection the makes awarded to the 2nd Petitioner was revised to 90 as it revealed that Kandegoda vidiyalaya is also more proximate to the petitioner's residence than Dhrmashoka Vidiyalaya.The document 3AR3 is the marking schedule that refers to marks allotted under the scheme.In terms of the marking scheme 5 marks are deducted for each school that is proximate to the Petitioners residence than the school applied for and initially 5 marks had already been

deducted due to the residence of the Petitioners being more proximate to Devananda Vidiyalaya.

As to the allocation of marks, the Petitioners complain that the deduction of further 5 marks on the basis that Kandegoda Vidiyalaya is also more proximate to the residence of the Petitioner than Dharmashoka Vidiyalaya, is erroneous and arbitrary.

The Petitioners also contended that the primary education is of pivotal importance of mind-building and socialisation process of the 2nd Petitioner and due to these reasons he was accommodated at Devananda Vidiyalaya.

The Respondents had filed the document marked 3AR4, an extract from Google Maps, depicting the distances (as a crow flies) to the three schools referred to, from the residence of the Petitioners.

The distances are as follows.

Shri Devananda Vidiyalaya 645 metres

Kandegoda Maha Vidiyalaya 686 meters

Dharmashoka Vidiyalaya 800meters

Having considered the submissions of the parties and the documents filed, I am of the view, that the deduction of marks on the ground that there was another school closer to the Petitioner's residence than Dharmashoka Vidyalaya, thus seem justified.

As far as computation and allocation of marks are concerned, this is the only aspect raised by the Petitioners and I hold that the Respondents had not deprived the 2nd Petitioner any the marks that he was entitled to.

The Petitioners have also pointed out that the Respondents have acted in contravention of the express guidelines with regard to the admission criteria.

It was contended on behalf of the Petitioners that only four members of the Appeal Board have signed the final list, whereas clause 11.4 (a) of the circular

requires all members of the Appeal Board to sign the list. In addition, it had been alleged that clause 11.6 of the circular which requires the applicant to be informed in writing of the specific reason for the rejection of the application, had been violated by not informing the Petitioners the reason for the rejection of their application.

In response to the breaches alleged by the Petitioners, it is the position of the 3A Respondent that the 5th member of the Appeal Board did sign the list subsequently and had produced the copy of the impugned document marked 3AR12. The position of the 3A Respondent is that Clause 11.6 of the circular was complied with by informing the Petitioner with regard to the outcome of the application for admission to the school, which the Petitioners have admitted in their counter affidavits.

I have considered the breaches of the circular alleged by the Petitioners and the responses to the same by the 3A Respondent. At best they are technical in nature, and even if this court is to hold that the alleged breaches have taken place, still it will not have any impact on the marks allotted to the 2nd Petitioner.

In *Rathnayake vs. Attorney General 1997 2 SLR pg.* 98 Chief Justice G.P.S. De Silva held that every wrongful act is not enough ground to complaint of an infringement of fundamental rights. The Petitioner must establish unequal or discriminatory treatment.

I am of the view that the breaches of the circular alleged by the Petitioners are of a technical nature and had caused no substantial prejudice to the Petitioners.

I shall now consider the aspect of discrimination alleged by the Petitioners.

In paragraph 18 of the Petition, it is alleged that the student M.J.V.De Soyza who lives further away than the Petitioners who also received 90 marks at the 1st interview had been wrongfully brought into the final list

with 95 marks and submits this action of the Respondents is violative of the Petitioner's right to equal treatment as provided by the Constitution.

The Petitioners specifically averred that they are not seeking any specific relief against the "wrongfully selected applicant" and had further averred that the Respondents have discriminated against the Petitioners and had arbitrarily selected candidates who are unqualified and/or unsuitable for admission.

Before I consider the alleged discrimination it must be reiterated that what is required for admission to the school applied for, is to gain a minimum of 94.25 marks, by establishing the residency under the "occupancy category".

As referred to earlier, as far as allocation of marks are concerned, based on the documents and other relevant factors are concerned, there is nothing to indicate that the 2nd Petitioner had been deprived of any marks that he was entitled to.

Thus, what is left with is for this court to consider whether the selection of the applicant M.J.V.De Soyza amounts to discrimination of the 2nd Petitioner and for that reason, whether the Petitioner's fundamental right to equal protection of the law had been infringed.

In the case of *C.W.Mackie and Company Ltd. Vs. Hugh Molagoda, Commissioner General of Inland Revenue and others (1986) 1 SLR 300,* Chief Justice Sharvananda observed that the equal treatment guaranteed by Article 12 is equal treatment guaranteed in the performance of a lawful act and via Article 12, one cannot seek execution of any illegal or invalid act……Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, formulated in law in contradiction to an illegal right which is valid in law. The decision referred to above had been consistently followed by the Supreme Court and with approval I wish to refer to the statement made by Justice M.D.H.Fernando in the case of *Gamaethige Vs. Siriwardane (1988) 1 SLR 384,* wherein His Lordship said "Two wrongs do not make a right, and on proof of the

commission of 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.

Justice Dr. Shirani Bandaranayake following the decision in case C.W.Mackie and Company Ltd, referred to above held in the case of *Dissanayake Vs. Piyal de Silva (2007) 2 SLR 134*, that Article 12 (1) of the Constitution provides only for the protection of the law and no for the equal violation of the law.

Considering the above I hold that the Petitioners have failed to establish that the Respondents have violated the fundamental right enshrined in Article 12(1) of the Constitution as far as the 2nd Petitioner is concerned.
Accordingly the application is dismissed, but in all the circumstances, without costs.

JUDGE OF THE SUPREME COURT

S.E.WANASUNDERA, PC, J.

I agree

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree

JUDGE OF THE SUPREME COURT