

**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

**SC /FR/ Application No 28/2018**

1. Deva Wisaru Damdhara Wijesiri  
No. 59/10, Mahayaya,  
Bogahawatte,  
Ambalangoda.
2. Dewarahandi Sabeetha De. Silva  
No. 59/10, Mahayaya,  
Bogahawatte,  
Ambalangoda.

**Petitioners**

**Vs,**

1. Hasitha Kesara Wettamuni,  
Principal,  
Dharmashoka College,  
Ambalangoda.  
Chairman,  
Interview and Administrations Board
2. Dhammika Kodikara,  
Secretary,  
Interview and Administrations Board
3. K. Janika Jayamali de. Silva,  
Head of Primary  
Member  
Interview and Administrations Board
4. Sarath Somathilake,  
School Development Society  
Representative  
Member  
Interview and Administrations Board

5. Ashoka Kumara  
Representative Past Pupils Associates  
Member  
Interview and Administrations Board

Member of the Interview Board in relation to admission of students to Grade 1 of the Dharmashoka College, Ambalangoda for year 2018

6. K. K. K. Kodithuwakku,  
Chairman,  
Appeals and Objections Board

7. R. N. Mallawarachchi  
Secretary  
Appeals and Objections Board

8. S. K. S. D.de. Silva  
Member  
Appeals and Objections Board

9. Monaka Niranjana  
School Development Society  
Representative  
Member  
Appeals and Objections Board

10. Ravindra Assalaarachchi  
Representative Past Pupils Associates  
Member  
Appeals and Objections Board

Members of the Appeals and Objections Board in relation to admission of students to Grade 01 of Dharmashoka College, Ambalangoda for years 2018

11. Secretary,  
Unit to admit students to Grade 1,  
Ministry of Education,  
"Isurupaya" Pelawatta,  
Battaramulla.
12. Secretary,  
Ministry of Education,  
"Isurupaya" Pelawatta,  
Battaramulla.
13. Director of National Schools,  
Ministry of Education,  
"Isurupaya" Pelawatta,  
Battaramulla.
14. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

### **Respondents**

**Before:** Justice Vijith K. Malalgoda PC  
Justice S. Thurairaja PC  
Justice E.A.G.R. Amarasekera

**Counsel:** Vishwa De. Livera Tennekoon for the Petitioners Instructed by Ms. Lilani  
Ganegama  
Suren Gnanaraj, SSC for Attorney General

Argued on: 25.07.2019

**Judgment on: 07.11.2019**

**Vijith K. Malalgoda PC J**

The two Petitioners before this court, the five years old son and his mother, have alleged violation of their fundamental rights guaranteed under Article 12 (1) of the Constitution by denying the admission of the 1<sup>st</sup> Petitioner to grade one of Dharmashoka College Ambalangoda.

As revealed before us the 2<sup>nd</sup> Petitioner being the mother of the 1<sup>st</sup> Petitioner minor, submitted an application for admission of her son to grade one of Dharmashoka College Ambalangoda under the category, Children of Officers employed with the State, Corporations, Statutory Boards or State Banks, who have been transferred on exigency of service, commonly known as transfer category as laid down in Clause 7.6 of Circular number 22/2017 which governed the school admission to grade one for the year 2018.

Under clause 7.6 of the said circular 4% of the total number of vacancies were allocated to the children come under the said category and how such parents should establish their eligibility to come within the said clause and the allocation of marks to them is explained under the said clause.

The 2<sup>nd</sup> Petitioner who is a Grama Niladhari by profession was working at 88A Kandegoda Grama Niladhari Division at the time she submitted the application on behalf of her son the 1<sup>st</sup> Petitioner to gain admission to Dharmashoka College under the said category. Appointed as a Grama Niladhari in the year 2009, (P-2) 2<sup>nd</sup> Petitioner was attached to Balapitiya AGA's Division of the Galle District and was working as Grama Niladhari at 19B Makumbura Ahungalla until she received a transfer to 88A Kandegoda Grama Niladhari Division with effect from 09.03.2016 by letter dated 08.03.2016 (P-4) on exigency of service. She reported to work on 15.03.2016 to 88A

Kandegoda Grama Niladhari Division and changed her residence to a place closer to the new division with effect from 16.03.2016 (P-7)

Duly filled application along with supporting documents required under Clause 7.6 was submitted to Dharmashoka College by the 2<sup>nd</sup> Petitioner and the Petitioners were called to attend an interview on 30<sup>th</sup> August 2017. When the Petitioners attended the said interview on 30<sup>th</sup>, the Interview Board consist of 1<sup>st</sup> to the 5<sup>th</sup> Respondents after going through the documents submitted by the 2<sup>nd</sup> Petitioner before them, had rejected their application without giving any marks. When rejecting their application the 1<sup>st</sup> Respondent informed the reason for rejection as “former residence, current residence, former place of work and the present place of work are within the radius of 10 km, and as such the Petitioners cannot be considered under the transfer category.”

The above position was written on her mark sheet by the 1<sup>st</sup> Respondent in Sinhalese language as follows (P-14) “පෙර පදිංචිය, පසු පදිංචිය පෙර සේවා ස්ථානය පසු සේවා ස්ථානය යන ස්ථාන හතරම 10 km ඈත ගෙන ආදින වෘත්ත සීමාව තුළ පිහිටා ඇත. පදිංචියේ වෙනසක් ගණයට අදාළව නැත.”

The Petitioners have appealed against the said decision of the Interview Board under the provisions of the said circular but the Objections and Appeal Board informed the Petitioners that the application submitted by the 2<sup>nd</sup> Petitioner cannot be considered under the said category.

The main requirements that should be fulfilled under Clause 7.6 is explained under the said clause as follows;

“Under this category applicants who are permanently residing with the child in the feeder area of school, after being transferred to a Government, Corporation, State Bank or statutory institution situated within the area of the school on exigency of service (not at

the request of the employee) during a period of 5 years prior to the date of calling for applications are entitled to come under the said clause of the circular.”

It is further required that the applicant should come to the new place of residence with the child from the previous place.

The following explanation too had been given to the term “area of the school” under the said clause in the following manner;

“The area of school means the relevant institute should be located within a circle drawn with a radius of ten kilometers having taken the school as the center”

When it comes to the allocation of marks under this category, the distance between the previous work place to the present work place, plays a significant importance and the applicant is entitled to a maximum of 40 marks under the following guide lines;

More than 150 km	40 marks
From 149 km to 100 km	32 marks
From 99 km to 50 km	24 marks
From 49 km to 25 km	16 marks
Less than 25 km	8 marks

When going through the requirements and the marking guide lines referred to above it appears that the applicant should fulfill the following requirements to comes within Clause 7.6 of the circular,

1. Permanently reside with the child in the feeder area of the school after the transfer

2. The institution to which the applicant is transferred should be located within the area of the school
3. The transfer should be on exigency of service
4. The transfer should be within 05 years prior to the date of calling for application
5. The applicant should come to the new place of residence with the child from the previous place

Whilst referring to the above, the Petitioners submitted that Clause 7.6 of the circular does not refer to the “previous place of residence” and/ or the previous place of work but the requirements under the circular are,

- a) Transfer must be to an institution located within the area of school
- b) The applicant should permanently reside in the feeder area of the school after being transferred
- c) Applicant should come to the new place of residence with the child from the previous place

and since the distance between the previous work place to the present work place is less than 25 km, the applicant is entitled to obtain 8 marks under the transfer category.

However whilst challenging the above position, the 1<sup>st</sup> Respondent had explained the requirement under Clause 7.6 in paragraph 21 of his affidavit as follows;

- 21 (1) for an applicant to be eligible to apply for school admission under the category for “Children of Officers in Government/Corporation/Statutory Boards/State Banks receiving transfers on exigencies of service” as set out

in Clause 7.6 of the School Admission Circular marked P-9 to the petition, as applicant must satisfy the following requirements namely;

- a) The transfer must be on exigencies of service and not made on the personal request of the applicant
- b) The transfer should have been effected 5 years prior to the closing date for application
- c) The transfer must be to an institution located within the “area of the school”. The area of the school is defined as an area having a 10 kilometers radius from the school
- d) The applicant must have commenced his/her residence within the feeder area of the school only after having assumed duties in the institution to which he/she was transferred. The term “feeder area of the school” is defined in Clause 4.7 of the School Admission Circular to mean the Administrative District in which the school is located.
- e) The applicant and the child should have relocated from the place of previous employment to the new place of employment
- f) Only the final destination of transfer will be considered for the purpose of this category
- g) Change in residence for the purpose of being attached to a particular institution or for the purpose of training and education will not qualify under this category.



Submitting the above requirements as the eligibility criteria for an applicant to succeed under the said category, the 1<sup>st</sup> Respondent had analyzed the application submitted by the 2<sup>nd</sup> Petitioner and submitted under sub-paragraphs 2 and 3 as follows;

2. According to the Petitioner's application, the 2<sup>nd</sup> Petitioner's transfer as Grama Niladhari was from 19B Makumbura situated in the Ahungalla Grama Niladhari Division of the Balapitiya Divisional Secretariat to the 88A Kandegoda Grama Niladhari Division of the Balapitiya Divisional Secretariat. Therefore the 2<sup>nd</sup> Petitioner's transfer was not a transfer from an institution outside the "area of the school" to an institution within the 'area of the school as contemplated under Clause 7.6 of the School Admission Circular, but was a transfer between two institutions which were within the same' area of the school"
3. Furthermore, according to the Petitioner's application the 2<sup>nd</sup> Petitioner was previously resident at No 708/A/9 Makumbura, Ahungalla and pursuant to her transfer had relocated her residence to No 59/10 Mahayaya Bogahawatte, Ambalangoda. Therefore the 2<sup>nd</sup> Petitioner had always been resident in the Galle district within the " feeder are of the school" and had not commenced residing in the "feeder area" pursuant to the transfer as required under Clause 7.6 of the School Admission Circular."

As observed by this court the interpretation given to term "area of the school" was amended in the year 2016 (School Admission for year 2017) to extend the area from 2 km to 10 km and the identical provisions were included in the year 2017 when the new circular was issued with regard to the School Admission for the year 2018.

When extending the area from 2 km radius to 10 km radius, the Education Ministry had explained its decision in Circular 17/2016 (ii) dated 26.09.2016 as follows;

“ස්ථාන මාරු ගණය යටතේ පාසැල්වල පළමු ශ්‍රේණියට ළමුන් ඇතුළත් කිරීමේදී, පෙර වර්ෂ වල දුර සීමාව සලකා නොබැලීම නිසා, පාසලට ආසන්න සේවා ස්ථානවලට ස්ථාන මාරු ලබා පැමිණ, ඒ අවට පදිංචිවූ අයදුම්කරුවන්ට පාසලට ඇතුළත්වීමට තිබූ අවස්ථාව අහිමිවී ඇති බව නිරීක්ෂණය විය. එම තත්වය අවම කිරීම අරමුණු කර ගෙන 2016.05.16 දිනැති 17/2016 චක්‍රලේඛයේ අංක 6.5 වගන්තිය යටතේ ස්ථාන මාරුවීම් ලැබූ නිලධාරීන්ගේ දුරුවන් තෝරා ගැනීමේදී පාසල පිහිටි ප්‍රදේශය ලෙස, පාසල කේන්ද්‍රය කර කිලෝමීටර් 2ක් අරය ලෙස අදින වෘත්තයක සීමාව තුළ අදාළ ආයතනය පිහිටා තිබිය යුතු බව දක්වා ඇත. එනමුත්, ස්ථාන මාරුවීම් ලබා පැමිණි බොහෝ නිලධාරීන්ගේ වර්තමාන සේවා ස්ථානය හා පාසල අතර දුර, කිලෝ මීටර් 2 සීමාව ඉක්මවා යන නිසා වැඩි පිරිසකට පාසැල් නොලැබියාම සම්බන්ධයෙන් ලැබී ඇති ඉල්ලීම් සැලකිල්ලට ගන්නා ලදී.

සේවා ස්ථාන භාගරික ප්‍රදේශයෙන් බැහැරට ගෙනයෑමේ රජයේ ප්‍රතිපත්තිය මත කිලෝ මීටර් 2 සීමාව තුළ පාසල් නොමැතිවීම නිසා ස්ථාන මාරුවීම් ලබා පැමිණෙන නිලධාරීන්ට මුහුණ දීමට සිදුවන දුෂ්කරතා හා අපහසුතා සැලකිල්ලට ගෙන 17/2016 චක්‍රලේඛයේ අංක 6.5 වගන්තියෙහි ස්ථාන මාරුවීම් ගණය යටතේ, සලකා බලන දුර ප්‍රමාණය කිලෝ මීටර් 2 වෙනුවට කිලෝමීටර් 10ක් ලෙස අදාළ වගන්තිය සංශෝධනය කරනු ලැබේ. ”

When going through the reasoning given in the above Circular, it is clear that the reason for extending the radius from 2 km to 10 km was to accommodate more children to apply under the said category and not to restrict children applying under the said category.

However, as observed by this court, when rejecting the application submitted by the Petitioner to admit her child the second Petitioner into Dharmashoka College Ambalangoda, the only reason given by the Interview Board was that, “former residence, current residence former place of work

and the current place of work are within the radius of 10 km” which was introduced to the above circular for the 1<sup>st</sup> time in the year 2016 in order to accommodate more children, as explained in the Circular 17/2016 (II).

It is further observed that, Clause 7.6 which refers to the Children of Officers employed with the State Corporations, Statutory Board, State Banks, who have been transferred on exigency of service had only required such employees to come and live with the child in the area where the school is located, from the previous place, if he or she fulfills the other requirements under the said Circular, but is silent whether the previous place comes within or outside the area where the school is located.

In this regard I have further observed that the Respondent in paragraph 21 (1) (d) of his objections had averred that;

“The applicant must have commenced his/her residence within the feeder area of the school **only** after having assumed duties....” (Emphasis added)

but, Clause 7.6 of the Circular, does not contain the term “only” when referred to the residence after assuming duties.

When going through the provisions of Clause 7.6 it appears to me that the 1<sup>st</sup> Respondent had introduced the term “only” to impress the position he has taken in paragraph 21 (3) of his objections.

When considering the material already discussed, it is clear that the 2<sup>nd</sup> Petitioner who has received a transfer order on exigency of service, had reported to work in the New Grama

Niladhari Division on 15.03.2016 which is within the area of Dharmashoka College Ambalangoda and moved to a new residence within the feeder area of the school with effect from 16.03.2016.

The said transfer was effected within the 5 years period stipulated in Clause 7.6 of the School Admission Circular. As observed above, the Circular is silent on the place of previous stay and the previous work place and in the said circumstances we observe that Petitioners were eligible to come under Clause 7.6 of the said Circular.

In the case of ***Mallika Jothirathna and Another Vs. Principle Dharmashoka Vidyalaya and Other*** ***SC FR 412/2016*** SC minute dated 31. 10. 2018 this court had observed the instances where this court would interfere in cases of School Admissions as follows;

“..... Nevertheless, these Circulars aim at achieving the best possible frame work for admission of students to Grade one of all Government Schools each year and, are from time to time, refined and revised by the lessons learnt from the experience of each year. In these circumstances this court would be reluctant to question the provisions as, of such circular unless they are manifestly inadequate, unreasonable, arbitrary or unfair.

At the same time, this court is aware of the onerous nature of the task faced by officers who implement the provisions of such Circulars and handle and decide on admissions to grade one, especially in National Schools which receive a very large number of applications.

Therefore, this court has intervened in the decision making process of applications for admission of Grade one only where it has been established that the provisions of the applicable Circular have been ignored, violated, misapplied or misinterpreted or there has been an abuse of process or a mistake which prejudices a child or other similar grounds”

In the case of ***Laksith and Another Vs, Chairman, School Committee Dharmashoka Vidyalaya Ambalangoda and other 2009 (2) Sri LR 267***, court observed, “Education is one of the most important aspects in any civilized society as such authorities concerned are under a public duty to ensure and grant the right to admit a child to a school (if possible of his choice) if the admission requirements are fulfilled.

During the argument before this court it was further revealed that the full quota under Clause 7.6, i.e. 4% of total number of vacancies was not admitted for the year 2018. The Interview Panel had refused to assess the Application submitted by the Petitioner to gain admission to Dharmashoka College Ambalangoda and the said decision was arbitrary and not supported by any provision of the School Admission Circular 22/17.

Referring to arbitrariness in ***E.P. Royappa Vs. State of Tamil Nadu and another (AIR 1974 SC 555)*** Justice Bhagawati (as he was then) observed,

“In fact equality and arbitrariness one sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14...”

For the aforementioned reasons I hold that the fundamental right of the Petitioners guaranteed under Article 12 (1) of the Constitution has been infringed by refusing the admission of the 2<sup>nd</sup> Petitioner to grade one of Dharmashoka College Ambalangoda by the Respondents. Even though the application submitted under Clause 7.6 of the Circular 22/17 was not assessed by the 1<sup>st</sup> to 5<sup>th</sup> Respondents, for the reasons given in this judgment, I am satisfied that the Petitioners have had the necessary requirement to gain admission under Clause 7.6 of the said Circular. In the said

Circumstances I direct the 1<sup>st</sup> Respondent to make necessary arrangement for the 1<sup>st</sup> Petitioner to be admitted to appropriate grade forthwith.

Application allowed. No costs.

**Judge of the Supreme Court**

**Justice S. Thuraija PC**

**I agree,**

**Judge of the Supreme Court**

**Justice E. A. G. R. Amarasekara**

**I agree,**

**Judge of the Supreme Court**

