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 Democratic Socialist Republic of Sri Lanka.

1. Warushamannadi Saman de Silva

2. Yamuna Subhashini Dissanayake

   Both of : No. 188/7/2, 6th Avenue Apartment, Havelock Road, Thimbirigasyaya, Colombo 05.

   For and on behalf of :
   Chathuni Malintha de Silva

PETITIONERS

SC FR. 19 / 2015 Vs

1. S.S.K. Aviruppola,
   Principal, Visakha Vidyalaya,
   Colombo 05.

2. Upali Marasinghe, Secretary,
   Ministry of Education, Isurupaya,
   Battaramulla.

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

3. Ranjith Chandrasekera, Director –
   National Schools, Ministry of Education,
   Isurupaya, Battaramulla.

3(a)I.A.P.N. Illeperuma, Director –
   National Schools, Ministry of Education,
   Isurupaya, Battaramulla.

4.U.M. Prasanna Upasantha, Principal,
   Mahanama College, Colombo 03.

5.Hon. Attorney General,
   Attorney General's Department,
   Colombo 12

RESPONDENTS

BEFORE : S. E. Wanasundera PC. J.
B.P. Aluvihare PC. J. &
Upaly Abeyrathne J.

COUNSEL : Uditha Egalahewa PC with Ranga Dayananda for the Petitioners
Sanjay Rajaratnam PC , ASG for the Respondents

ARGUED ON : 21. 01. 2016.

WRITTEN SUBMISSIONS
BY THE PETITIONERS : 16. 02. 2016.
BY THE RESPONDENTS : 09. 02. 2016.

DECIDED ON : 11 .07.2016.

S. Eva Wanasundera PC. J

This Application was filed by the Petitioners as parents on behalf of their daughter namely Chathuni Malintha de Silva on the 5th of February, 2015. It is with regard

to the denial of admission of the said child to Grade 1 of Visakha Vidyalaya in the year 2015, by the 1st Respondent.

The Petitioners alleged that their fundamental rights guaranteed by Article 12(1) of the Constitution are violated by the 1st to 4th Respondents or any one or more of them by such denial.

The 1st Respondent is the Principal of Visakha Vidyalaya and at the time of filing this case the 4th Respondent was the head of the Appeals Board. The 2nd and the 3rd Respondents were the other members of the Appeals Board who sat with the 4th Respondent to decide the Appeal filed by the Petitioners.

Leave to proceed was granted on the 11th March, 2015 by this Court under Article 12(1) of the Constitution after hearing the Counsel for the Petitioners and the Additional Solicitor General who defended the 1st to the 4th Respondents and appeared for the 5th Respondent, the Hon. Attorney General as well.

The admitted facts are:-

1. That the Petitioners sought admission of their daughter to Grade 1 of Visakha Vidyalaya for the year 2015, under the category of Chief Occupant in terms of the Circular No. 23/2013.
2. At the first interview held by the school, the Petitioners' daughter was awarded 54 marks.
3. The Board of Appeal increased the marks to 62.
4. The cut off mark under the Chief Occupant category for admission for Grade 1 was 65.

I observe that the Petitioners had been residing at No. 556/1/c, Galle Road, Colombo 3 from June 2007 to September 2010 .The said premises were acquired by the State for the Marine Drive in 2010 and then the Petitioners had moved to No. 176/22, Thimbirigasyaya Road, Colombo 5, in the month of October, 2010. They lived there until August, 2012. Then they moved to No. 188/7/2, 6th Avenue Apartments, Havelock Road, Colombo 5 in August, 2012 having obtained the said place on a lease. They are living in this apartment up to date.

All these premises come under the Grama Niladari area of Thimbirigasyaya.

The Petitioners submitted an application for admission of their daughter to Visakha Vidyalaya. They were not called for any interview even though others had been called. When inquired from the school, the security personnel had advised them to make an entry in the log book maintained at the school. So they did and consequent upon that log entry, they were asked to come for an interview at 1.30 p.m. on the 8th September, 2014 by way of a telephone call which they received on the same day. It was a Poya day, a holiday.They were interviewed along with the daughter under Ref. No. CO/142.

I find no explanation given by the school authorities for not having called the Petitioners in the normal course of granting an interview , in any affidavit filed by any of the Respondents in this case. If the Petitioners had not been alert, perhaps they would never have got a chance to face an interview, which is an entitlement of an applicant living in the feeder area of this school for admission.

The Circular No.23/2013 is the most important document since it is according to the provisions therein that the selection criteria is decided by the School. It is marked and produced as P2. Clause 6.1 deals with the applications of children living in close proximity to the school. The Petitioners are qualified to apply to Visakha Vidyalaya under Clause 3.5 of the aforementioned circular as they are within the feeder area of that school.

The 1st Respondent's affidavit dated 8th May, 2015 discloses in paragraph 10(d) that the Petitioners were granted marks under ' Close proximity to school from the Residence'. Para 10(d) of the said Affidavit reads: " A total of 45 were allotted to the Petitioner from 50 marks to be given on the proximity to school. Five marks were deducted from the aforesaid 50 marks for the proximity of the Petitioners to Visakha Vidyalaya. " This sentence sounds wrong in its context.

Anyway it was submitted by the Additional Solicitor General in his submissions that there is another school between the Residence and the Visakha Vidyalaya by the name Vidyathilaka Vidyalaya and it is due to that reason that the 5 marks were deducted from 50 marks. Yet there is no evidence before this Court that such a school exists. The Petitioners have submitted that such a school is not shown in the maps prepared by the Surveyor General's Department. The fact that it is not mentioned in the 1st Respondent's affidavit

before this court and the fact that such evidence is not produced by any Respondent before this Court by any other means under oath or affirmation, this Court cannot see and recognize the existence of such a school. There should be evidence before Court with regard to any fact submitted by any party, for this Court to act on the same when considering a Fundamental Rights Application. I conclude that in the circumstances the Petitioners marks were reduced. It has been done in an arbitrary manner by the 1st Respondent and the Appeals Board has failed to recognize the same and not given due consideration thereto.

The marks given by the school on the electoral registers being only 7, it was argued by the Petitioner that it should be 14. I am of the opinion that the enhanced mark granted by the Appeals Board includes more than 7 marks as contested and therefore the Petitioners can be satisfied taking that mark to include the 7 more marks they claim to be entitled to under 'electoral register' mentioned in Clause 6.1.I.

Under Clause 6.1.II. , registered deeds of lease and unregistered deeds of lease are recognized to prove the residence. As agreed and confirmed by the affidavit of the 1st Respondent, in paragraph 10(b) , the registered lease has been given 2 marks. The unregistered lease covering the period from 1.09.2012 to 31.08.2013 was not given any marks even though the 1st Respondent has admitted that the Petitioners had moved to the present address in August, 2012. I observe that the Petitioners are entitled to 50% of the maximum marks of 2 according to Clause 6.1.II., i.e. one mark. I hold that the Petitioners are legally entitled to that one mark. The learned Additional Solicitor General argued that if marks are given , literally according to Clause 6.1.II , it would lead to absurdity which, when analysed. I fail to agree with him.

I feel that the interpretation of Clause 6.1 which includes items I,II, and III should be considered very carefully, because the decision to be made at the end of the granting of marks is crucial to the Petitioners who come for the interview under the category of " Residents in close proximity to the school ".

This Clause uses the phrase, " the year of application ". The calculation of the period of lease, the year of getting title by way of deeds, the electoral lists and other documents in proof of residence have to be calculated from the year of

application backwards. What is the " year of application "? When a child has to start schooling in the year 2016, to determine ' the year of application for the purpose of admission ' should be reckoned in a meaningful way. Does the school want to know where the child is living in January, 2016 or where the child was living in January, 2015? If discovering evidence of residence 5 years before 2015 is done, then the full year of 2015 residence will be a void which is not considered. The year of application therefore should mean the year of proposed admission. The documents should prove a continuation of residence upto the date of admission. Otherwise, the documents could prove only 5 years before the application was written down. The writing of the application to get admission would be the previous year. That date is not important. The year of "application for admission" is the year which is important. It is meaningful when documents of the previous year could be shown that the child has been there upto the date of the writing of the application and at the time the interview is held.

In the case of Dasanayakage Gayani Geethika and Two Others Vs DMD Dissanayake and Four Others (SCFR 35/2011 – SC Minutes dated 12th July, 2011) it was held by the Supreme Court that " It is clear that the interview panel should always have to look at the establishment of evidence to prove residence and consider the totality of what has been put forward as evidence by a parent to establish evidence rather than only carrying out an exercise of ticking the relevant box in relation to the specified documents mentioned in the circular alone ".

The Petitioners were not given any marks for documents produced under item III of Clause 6.1. Considering the number of documents produced and their nature to show that the Petitioners are residing at the Apartment they came into occupation in August, 2012, I am of the opinion that, if not the maximum marks, some marks could have been granted since those documents prove that the Petitioners are at present residing at the given address in the application for admission to the school. The maximum number of marks which can be given is five. I am of the opinion that the reasons for not giving the due marks are not explained in evidence before court and reasons given for the same, in the oral submissions made before court are frivolous. Therefore I hold that the Petitioners are entitled to get full marks.

The 1st Respondent has in her affidavit complained that the Appeal Board had incorrectly given one mark in the Appeal. I am of the opinion that she has no right to criticize the decision of the Appeal Board since the said Board has the legal right to scrutinize her decisions and grant relief to the Appellants who come before the Board at its discretion.

In addition to the number of marks that the Appeal Board has granted to the Petitioners, I am of the opinion that the Petitioners are entitled to 5 more marks on the proximity rule under Clause 6.1. IV. and another 5 marks under 'other documents relating to residence'. I believe another 3 marks for the registered and unregistered deeds of lease must have got included when the Appeals Board increased the marks to 62. Then the total number of enhanced marks by this Court are ten more, which brings the total number of marks to 72.

I hold that the Petitioners daughter is entitled to be admitted to Visakha Vidyalaya under the Chief Occupant Category. The denial of the same by the 1st Respondent was arbitrary, capricious, illegal and unlawful and thus was in violation of their fundamental rights guaranteed under Article 12(1) of the Constitution. This Court further grants the relief as prayed for in the prayer (c) to the Petition.

This Court directs the 1st, 2(a) , and 3(a) Respondents to admit the daughter of the Petitioners, namely Chathuni Malintha de Silva to Grade 2 of Visakha Vidyalaya for the year 2016 forthwith since she has already missed one year in school in Grade 1 in the year 2015.

Judge of the Supreme Court