

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

D. Pravesha Wickamasuriya,
No. 45, Wikramapura,
Kokwaththa,
Habaraduwa.

On behalf of
Abeyhtunga Kankanam Gamachchige
Sasadara (Minor)

Petitioner

SC /FRA/ 209/2022

Vs,

1. Mr. Sumeda Kariyawasam,
Principle,
Southland College, Galle.
2. President of the Appeal Board,
Southland College, Galle.
3. Mr. Prabath Nalaka,
Directory of National Schools Ministry of
Education,
"Isurupaya" Battaramulla.
4. Secretary to the Ministry of Education,
Ministry of Education,
"Isurupaya" Battaramulla.
5. Minister of Education,
Ministry of Education,
"Isurupaya" Battaramulla.
6. Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda PC,
Justice A.L. Gooneratne,
Justice Janak De. Silva,

Counsel: Lakshan Dias with Ms. Oshani Wijesekara instructed by Mrs. M.D. Dayni
Panditharathne for the Petitioner.
Ms. Yuresha De. Silva, DSG for the Respondents.

Argued on: 16.02.2024

Judgment on: 15.05.2024

Vijith K. Malalgoda PC J

The Petitioner to the instant application D. Pravesha Wickamasuriya had come before this Court alleging the violation of her fundamental rights guaranteed under Article 12(1) of the Constitution by refusing the admission of her daughter Abeythunga Kankanam Gamachcige Sasadara to Grade - 1 of Southland College Galle for the Academic Year 2022.

It is admitted by both parties that the school admission to Grade-1 for the Academic Year 2022 is governed by the Education Ministry Circular No 29/2019 read together with Circulars 16/2020, 13/2021 and the guidelines issued by the Ministry on 31.05.2021.

It is also not in dispute that the Petitioner and her husband who are residents at No.45, Wickremapura, Kokwatta, Habaraduwa had applied admission for her daughter under the category of "Children of residents in close proximity to the school" read with the provisions referred to in Clause 3.2 of the guidelines issued on 31.05.2021.

As revealed before us, the Petitioner could obtain only 34.5 marks at the interview. Since there were several schools with grade one classes between her residence and the school she applied for, she could not obtain any marks under proximity to the school.

However, the petitioner had never challenged the marks allocated by the interview panel to her but her grievance complaint before this Court was mainly based on the failure by the Respondents to follow the provisions identified in Clause 3.2 of the guidelines which reads as follows;

3.2 “In filling vacancies in schools vested to the government under Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961, the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and the number of vacancies in the said school shall be accordingly divided among different religions and categories. When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions.”

With regard to her religious belief, she had submitted in her petition filed before this Court that, “both herself and the minor child are worshippers of non-Roman Catholic Christianity and both of them have dedicated (baptized) to the Church of Heavens’ Gate Church Galle, respectively on 25th January 2015 - 5th June 2016.

Whilst referring to the provisions in Clause 3.2 referred to above the Petitioner has taken up the position that the Southland College which originally belonged to the Methodist Church before it being vested with the Government under the provisions of the Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961, had a non-Catholic, Christian students population of 6.9% of the total students' population, and therefore her daughter is eligible to be admitted to Southland College since she comes well within religious quota for the non-Catholic Christian students identified in the said circular.

In the said circumstances, the Petitioner had taken up the position that the Respondents have failed to admit 6.9% of non-Catholic Christian students from the total intake of students to the Grade 01 of Southland College in violation of her fundamental rights guaranteed under Article 12 (1) of the Constitution. To support her position the Petitioner had heavily relied on the decision in SC FR 613-

616/2024 SC minute dated 15.06.2005 by Shirani Bandaranayake J (as she then was) where her Ladyship had observed that, “A careful examination of paragraph 5 (a) of the circular therefore clearly indicates that it is mandatory that the total number of vacancies should be first allocated as contended by the learned counsel for the Petitioners to the different religions in the proportions that existed at the time of vesting of schools and as specified under different categories in terms of paragraph 5 (b) of the circular.....”

On a careful perusal of the above judgment, it appears that the only selection criteria identified at the time her Ladyship had delivered the said judgment based, on the school admission circular for the year 2004 were paragraph 5 of the Circular which consist of two subparagraphs as 5 (a) and 5 (b) deals with the classification in admissions applicable to the school and admissions for certain groups based on their religious faith taking into consideration the applicable percentage or as commonly identified as religious quota.

However, since then several changes have been introduced to the said circular. In this regard, our attention was drawn to Clause 3.1 of the guidelines, which separately identifies the number of students that should be taken by the school by holding an interview and the allocation granted to armed forces in each class.

Clause 3.1 reads as follows;

- 3.1 **35 children will be selected for each parallel class in grade one by the interview.** In addition, 05 more children will be selected from among the children of those who were in operation areas in armed forces and the police. Accordingly the number of students per class will be 40. (Emphasis added)

The main argument of the Petitioner before this Court was based on the total number of children, admitted to a class and based on the above the learned counsel for the Petitioner argued that the religious quota should not be considered from 35 students but from 40 students since the judgment he relied upon had specifically stated that, “total number of vacancies should be first allocated.....”

However, as observed by this Court the interview process identified in the guidelines is only open to 35 vacancies per class and therefore the religious quota can only apply to the said 35 students.

This position was considered by this Court in the case of *M.U.F. Rizna and Another vs. P. P. W Senevirathne, Principal, Vidyaloka College, Galle and Others SC FR 147/2018* SC minute 21.02.2022 as follows;

“Section 4.1 of the said circular applicable for 2018 states;

“33 children will be selected for each parallel class in Grade- 1. In addition, 05 more children will be selected from among children of those who were in operation areas in the Armed Forces and the Police.

The ‘children of those who were in operation areas in the three Armed Forces and the Police’ are not selected by interviews, but in accordance with the procedure stipulated in Section 13 of the said circular. Therefore, the vacancies allocated to the said category are excluded from the total number of vacancies for students selected by interviews for Grade-1. In terms of Section 4.1 of the said circular, 33 children are to be selected by interviews for each class in Grade-1. The first Respondent submitted that the said school has three (3) Grade -1 classes. Hence a total of ninety nine (99) vacancies are available for students selected by interviews for Grade -1 in the Academic Year 2018.

Accordingly, when the 2% Muslim quota is applied to the ninety nine (99) vacancies two (2) vacancies are available for Muslim applicants to Grade -1 of the said school.”

In the above circumstances, it is clear that the religious quota applicable to the children who were selected from the interview process has to be considered separate from the children who come within the additional number of children admitted to Grade-1 from among children of those who were in operation areas in the Armed Forces and the Police.

Therefore the argument of the Petitioner that the selection of 14 non-Catholic children based on 210 vacancies instead of 16 children based on 240 vacancies exist at Southland College violates the fundamental rights of the Petitioner whose child is in 2nd place on the waiting list for non-Catholic Christian children category does not hold water.

For completeness it is important to consider a letter produced by the 1st Respondent marked 1R2 addressed to the Additional Secretary, Ministry of Defence under the heading “ක්‍රියාත්මක පදනම මත රජයේ පාසැල් වල පළමු ශ්‍රේණියට දැරුවන් ඇතුළත් කිරීම -2022”

Under paragraph 3 of the said letter the attention was drawn to the religious quota when selections are made to Grade -1 in the following terms;

03 කවද 2022 වර්ෂය සඳහා 1 ශ්‍රේණියට බඳවා ගැනීමේ දී ආගමික අනුපාතයන් පාදක වන පාසැල් ඇමුණුම 02 යටතේ යොමු කරන බවද වැඩි දුරටත් දන්වා සිටිමි.

And under Annexure 02 reference is made to Southland College as follows;

06370 SOUTHLAND COLLEGE FORT-GALLE Non-Catholic Cristian 6.90%

When the contents of the above letter are considered, it is clear, that the education authorities are mindful of maintaining the religious quota even concerning the children who are admitted through a different process identified in Clause 07 of the guidelines.

In the circumstances, the child of the Petitioner namely Abeythunga Kankanam Gamachchige Sasalara was not entitled to be admitted to Grade -1 of Southland College Galle under the non-Catholic Cristian category for the year 2022.

For the foregoing reasons, I hold that the Petitioner's fundamental rights had not been violated by the Respondents. The application is dismissed.

I order no costs.

Justice of the Supreme Court

Justice A.L. Shiran Gooneratne,

I agree,

Justice of the Supreme Court

Justice Janak De. Silva,

I agree,

Justice of the Supreme Court

