

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

In the matter of an application under Article 126(2) of the Constitution in respect of the violation of the Fundamental Rights to equality before the law and to the equal protection of the law guaranteed to the Petitioners under Article 12(1) of the Constitution.

1. B.M.N. Banneheka and

(minor)

1a. Master B.M.I.A. Banneheka,
Both of “Somi Kelum”
Ihala Malkaduwawa Road,
Kurunegala.

Application No. SC/FR/46B/2014

Petitioners

Vs.

1. Y.G. Thillakaratne, Principal (Chairman of the Interview Board)
Maliyadeva Boys College,
Negombo Road, Kurunegala.
2. L.U.W. Jayalath (Secretary of the Interview Board), Vice Principal,
Maliyadeva Boys College,
Negombo Road, Kurunegala.
3. J.M. Jayarathne, Principal of the Primary School, Maliyadeva Boys College,
Negombo Road, Kurunegala.
4. M.P. Liyanage (Representative of the Old Boys Association) Maliyadeva Boys College, Negombo Road, Kurunegala.
5. Rajapaksha (Representative of the School Development Society),
Maliyadeva Boys College, Negombo Road, Kurunegala.

(1st to 5th Respondents were members of the Interview Board).

6. D.M.N.W.B. Dissanayake (Chairman, Appeals and Objections Board), Principal, Sri Saranankara Central College, Bingiriya.
7. L.U.W.Jayalath (Secretary of the Interview Board and Secretary of the Appeals and Objections Board), Vice Principal, Maliyadeva Boys College, Negombo Road, Kurunegala.
8. Ms. Sunethra (Teacher of Maliyadeva Boys College) Maliyadeva Boys College, Negombo Road, Kurunegala.
9. R. Dharmasekera, (Representative of the Old Boys Association), Maliyadeva Boys College, Negombo Road, Kurunegala.
10. Ms. Samantha (Representative of the School Development Society), Maliyadeva Boys College, Negombo Road, Kurunegala.

(6th to 10th Respondents were members of the Appeals and Objections Board)
11. Secretary, Ministry of Education, Isurupaya, Battaramulla.
12. S.M.S.B. Samarakone, and

(minor) 12a. Master S.M.S.I. Samarakone, both of No. 90, Baudhaloka Mawatha, Kurunegala.
13. H.M.U.B. Herath, and

(minor) 13a. Master H.M.A.S.B. Herath, both of No. 28/2, Galwala Road, Negombo Road, Kurunegala.
14. T.K.N.L. Ariyasena, and

- (minor) 14a. Master S.D. Senasinghe, both of
No. 9/7, Welagedera Mawatha, Uthuru
Wewa Rauma Road, Kurunegala.
15. R.D.B. Bandula, and
- (minor) 15a. Master R.D.E. Pahan, both of
No. 133, Welangolla Road,
Yanthampalawa, Kurunegala.
16. S.M.R.N.K. Semasinghe, and
- 16a. Master S.M.S.P. Semasinghe, both of
No. 17/47, Iluppagedera Road,
Kurunegala.
17. Zonel Director of Education,
Education office, Kandy Road,
Kurunegala.
18. Director of National Schools,
Ministry of Education, Isurupaya
Battaramulla.
19. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : Dep, PC. J
Marasinghe, J &
Aluwihare, PC. J

Counsel : T.M.A. Muthalif for the Petitioners
Suren Gnanaraj, SC for the Respondents

Argued on : 17.09.2014

Decided on : 25-03-2015

Priyasath Dep, PC. J

The Petitioners filed this Fundamental Rights application alleging that 1A Petitioner who was eligible to be admitted to Maliyadeva College was wrongfully not admitted to the College and thereby his fundamental rights were violated by the school authorities.

The 1st Petitioner submitted an application on behalf of his son (1A Petitioner) to be admitted to Grade 1 of Maliyadeva College. The application was submitted under the category of children of persons residing in close proximity to school referred to in Circular No.23/2013 issued by the Ministry of Education. Under that circular 50% of students are admitted to school from this category and a maximum of 50 marks are given based on residence. However if there are schools with primary sections located closer than to the school applied for, 5 marks are deducted for each school.

The Petitioners state that they were summoned for an interview before the Interview Board and they attended the interview and the Board having examined the documents gave 85 marks. The 1A Petitioner's name was included in the Temporary Waiting List at the 90th place.

The 1st Petitioner was informed that objections had been filed against his application and he was asked to present before the Appeal and Objection Board. He appeared before the Board and the Board reduced five marks from the allotted 85 marks and gave 80 marks as there is a school which is in close proximity to his residence.

The Petitioners state that when the final list was displayed 1A Petitioner's name was not included in the amended waiting list which included the names of 11 other applicants who had obtained 80 marks.

The Petitioners state that 12A-16A Respondents were wrongfully admitted to school. The 1st Petitioner submitted an appeal to the Secretary to the Ministry of Education. He complained to the Human Rights Commission and the Commission after inquiring into his complaint held that there is no violation of human rights. Thereafter the Petitioners filed this application in this Court.

The 1st Respondent Y. G.Tilakarathne, Principal, Maliyadeva College, Kurunegala filed a statement of objections and refuted the allegations made against the Interview Board and the Appeal and Objection Board. The 1st Respondent raised the following objections:

- (a) the Petitioners are guilty of suppression and misrepresentation of facts
- (b) the Petitioners' application is time barred.

In his statement of objections 1st Respondent stated that the Petitioners attended the interview held for the selection of students for admission to Grade 1. The 1st Petitioner was invited to identify the location of his residence on the area map. It was found that though not disclosed by the Petitioner, the Wehera Kanistha Vidyalaya is situated in close proximity to his residence and for that reason 5 marks were deducted and was allocated 85 marks.

The 1st Respondent stated that by letter dated 12-10-2013 he received an objection in relation to the marks allotted to the 1A Petitioner on the basis that there are other schools in close proximity to the Petitioners residence for which marks had not been deducted. Thereafter a field inspection was carried out by the Appeal Board. The 1st Petitioner was summoned before the Appeal Board and it was revealed that the 1st Petitioner had misled the Board in relation to the exact location of his residence. As a result the interview board was misled in relation to exact distance from Petitioners' residence to Maliyadeva College and the exact number of schools which are in close proximity to the Petitioners' residence. It was established that Nissanka Vidyalaya which had not been disclosed by the 1st Petitioner is in close proximity to the Petitioners' residence. The Board deducted five marks and revised the marks allotted to the 1A Petitioner to 80. The 1st Petitioner having accepted the decision placed his signature in the reverse of the document marked R1 in the presence of the members of the Appeal Board.

The 1st Respondent stated that the cut off mark for admission under the distance category was 83.5 and the 1A Petitioner having secured only 80 marks was not eligible to get admitted to the school.

The 1st Respondent denies that 12A- 16A Respondents were wrongly admitted. He states that they were admitted in terms of the Circular No 23/2013 which was marked P1. All of them had secured marks above the cut off marks. In his statement of objections he had explained as to how marks were allotted to 12A-16A Respondents. I am satisfied that they were lawfully admitted to the school.

Having considered the pleadings and documents in this application, I am of the view that the 1st Petitioner's son (1A Petitioner) was not admitted to the school as he failed to secure sufficient marks required for admission. I hold that there is no infringement of the fundamental rights of the Petitioner. The Human Rights Commission also had come to the same conclusion.

The application is dismissed .No Costs.

Judge of the Supreme Court

Rohini Marasinghe J.
I agree.

Judge of the Supreme Court

Buwanaka Aluwihare P.C., J.
I agree

Judge of the Supreme Court

