

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

In the matter of an application under and in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR. No. 37/2013

1. Galabada Gamage Sunethra
Arambawela.
2. Nihinsa Senuli Arambawela

Both of 109/10, Fife Road,
Colombo 5.

Petitioners

Vs.

1. Mrs. Dhammika C.A. Jayanetti
Principal
Sirimavo Bandaranaike Vidyalaya,
Stanmore Crescent
Colombo 7.
2. Mr. S.M. Gotabaya Jayaratne
Secretary to the Ministry of
Education,
Ministry of Education ,
surupaya,
Battaramulla.
3. Hon. Bandula Gunawardhana (M.P.)
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.
4. The Interview Board (on admissions
to Grade 1, 2013),
C/O, Sirimavo Bandaranaike
Vidyalaya,
Stanmore Crescent
Colombo 7.

SC. FR. No. 37/2013

5. Mr. J.H.M.W. Ranjith
6. Ms. B.G.I. Kalani Hemali
7. Ms. A.D.M.P. Gunasekara
8. Mr. P. Wickremasinghe
9. Ms. Ranjana Perera

All members of the Appeal Interview Board (on admissions to Grade 1, 2013) for Sirimavo Bandaranaike Vidyalaya,
Stanmore Crescent
Colombo 7.

10. Hon. Attorney General
Attorney General's Department,
Hulftscdorp
Colombo 12.

Respondents.

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Before : Marsoof, PC. J.
Hettige, PC. J. &
Wanasundera, PC,J.

Counsel : Viran Corea for the Petitioners.
Dr. Avanti Perera, SC. for the Respondents.

Argued On : 20.12..2013

Decided On : 20.01.2014

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Wanasundera, PC.J.

The Petitioners have come before this Court by way of a petition dated 1st February, 2013, complaining that their fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by one or more of the Respondents by not admitting the 2nd Petitioner to Grade 1 of Sirimavo Bandaranaike Vidyalaya, Colombo. The 1st Petitioner is the mother of the minor girl child, the 2nd Petitioner. Leave to Proceed was granted by this Court on 03.7.2013.

The Petitioners applied to this school under the category of “children of residents in close proximity to the school”. The address of the Petitioners as given is No. 109/10, Fife Road, Colombo 5. They claim that this place was leased by the 2nd Petitioner child's father in 2003 and that they have been living there since then. The child's paternal grand parents reside at No. 10, Andiris Silva Mawtha, Rawatawatta, Moratuwa and the objections filed on behalf of the Respondents seem to suggest that the Petitioners live in Moratuwa and not in Colombo 5.

The facts pertinent to the subject matter are as follows:- The 2nd Petitioner girl child's brother, elder to her is schooling at Isipathana Vidyalaya, Colombo 5. Both these children attend the Dhamma School held on Sundays at the Vajiraramaya Temple, Colombo 4. The 2nd Petitioner and her brother were born in Colombo hospitals in 2007 May and 2003 April. The birth certificates indicate the address of the informant, father, Sundara Chandra Arambewela, as No. 109/10, Fife Road, Colombo 5. This place No. 109/10, is described in the deeds of lease as Lot 1 in Unit 6 of a condominium property depicted in Condominium Plan No. 1675- CH/0/1650/975 dated 08.03.1974. The upper floor of Lot 1 was the leased out premises belonging to one M.H.B. Lalith Herath. The lessee is the father of the 2nd Petitioner child. Initially, the lease period was 5 years from 01.8.2003 to 31.7.2008, and the monthly rental was Rs.8000/- per month for the first two years and Rs.10,000/- per month for the following three years. There was a

refundable deposit of Rs.20,000/- also paid to the lessor. A second lease was executed for another 5 years from 01.8.2008 to 31.7.2013. The rent was increased to Rs. 12000 per month for 2 years and Rs. 14000 per month for the rest 3 years and the deposit was also increased to Rs.40,000/-. Both leases were registered. The National Identity Cards of both parents of the child issued in 2006 and 2008 also bear the address of 109/10, Fife Road, Colombo 5. The Hatton National Bank current accounts from 2007 February of the 1st Petitioner also show the same address. The Dialog telephone bills as well as the Grama Niladari reports confirm that the family is living there. The 2nd Petitioner child's father's business registration in 2006 bears the same address. The older brother's health record card when he was only 3 years give the same address. There are several other affidavits of neighbours of different categories to confirm that the family is living there.

The 1st Respondent has filed an affidavit of objections with two home-visit-reports at different times which contains a record of the presence of the Petitioners at whatever time and day visited at the address, 109/10, Fife Road, Colombo 5. Yet the short comment at the end of the report states "it cannot be said for certain that this is the place of permanent residency". The wording shows that the home-visitors to check the residency mention that they have only a doubt. They fail to say that it is certainly not the permanent residence of the Petitioners. It's only a doubt in their minds, which doubt is not explained at all. They do not give any reasons for the doubt either. There has not been any considered reason to conclude that the Petitioners are not permanently resident there. The Respondents have even gone to the extent of Police inquiries done unofficially in the night, to check whether the Petitioners are in the Moratuwa address, where the minor child's father's old parents live, according to the counter objections affidavit filed by the 1st Petitioner. The Respondents have not given any consideration to evidence on record such as the documents produced at the interview for which good marks to reach the total of 84 out of 100 was granted by the Interview Board. The 1st Respondent has not weighed the evidence on the balance. Moreover, the Respondents

have failed to file and opted not to file the list of others who were admitted to the school, in January, 2013 for this Court to see the clear picture.

In the teeth of the evidence produced before this Court, I observe that the Respondents should not have set aside the 84 marks given at the interview, and having not given any reason for setting aside the said marks, they have acted arbitrarily and in a discriminating manner in not admitting the 2nd Petitioner to Grade 1 of Sirimavo Bandaranaike Vidyalaya. In my opinion, the fundamental rights of the Petitioners guaranteed under Article 12(1) of the Constitution have been infringed by the Respondents. I would therefore make order that the 2nd Petitioner be admitted to Grade 2 of the Sirimavo Bandaranaike Vidyalaya at the very beginning of 2014. I grant the Petitioners costs fixed at Rs. 20,000/- payable by the State to the Petitioners.

Judge of the Supreme Court

Marsoof, PC. J.

I agree.

Judge of the Supreme Court

Hettige, PC. J.

I agree.

Judge of the Supreme Court

