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 reads with Article 17 of the Constitution against an impugned violation of fundamental rights under Article 12(1) of the Constitution of Democratic Socialist Republic of Sri Lanka.

SCFR 21/2019

1. Jayasekera Arachchige Senudhi Methanga,
   M23/3, Dabare Mawath,
   Narahenpita
   Colombo 05.
   (Minor)

2. Jayasekera Arachchige Chamila Prabath,
   M23/3, Dabare Mawath,
   Narahenpita,
   Colombo 05.

Petitioners

VS.

1. A.R.M.R. Herath,
   Principal and the chairperson
   of the Interview Board to
   admit students to Grade 1,
   Sirimavo Bandaranayake
   Vidyalaya,
   Stanmore Crescent,
   Colombo 07.

2. Rukmali Kariyawasam,
   Primary Principal and member
   of the Interview Board to
   admit students to Grade 1,
   Sirimavo Bandaranayake
   Vidyalaya,
   Stanmore Crescent,
   Colombo 07.

3. Jayantha Seneviratne
   Member of the Interview
   Board to admit students to
   Grade 1,
   Sirimavo Bandaranayake
   Vidyalaya,

Stanmore Crescent,

Colombo 07.

4. Oshara Panditharathna,

Principal,

Dharmapala Vidyalaya,

Pannipitiya.

5. Padmasiri Jayamanne,

Secretary,

Ministry of Education

Isurupaya, Pelawatta,

Battaramulla.

6. Ranjith Chandrasekera,

Director of National Schools ,

Isurupaya, Pelawatta,

Battaramulla.

7. Honourable Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

Before : Jayantha Jayasuriya PC, CJ

L.T.B. Dehideniya, J

E.A.G.R. Amarasekera, J

Counsel : Upul Kumarapperuma with Ms. Sharleen Fernando for Petitioners.

Rajive Goonethilleke , SSC for 1st, 5th, 6th, and 7th Respondents

Argued on : 14.11.2019

Decided on : 13.02.2020

Jayantha Jayasuriya PC, CJ

The first petitioner is a five-year old child whose father is the second petitioner. This court by its order dated 21 May 2019, granted leave to proceed in this application on the alleged infringement of Article 12(1) of the Constitution.

The second petitioner submitted the application dated 16 June 2018, to admit the first petitioner to grade one at Sirimavo Bandaranayake College for the year

2019. The application was submitted under the category - children of residents living in close proximity to the school (proximity category).

It is the contention of the second petitioner that he had been residing at the address given in the application since his childhood and the first petitioner at the same address, since birth. It is his contention that his mother became the legal owner of the said premises in the year 2004. She has gifted the same premises to the second petitioner by the deed of gift attested on 18 October 2017.

The second petitioner had submitted all necessary documentation including the two deeds, an affidavit from the mother, birth certificates of the applicant and the child, marriage certificate of the applicant, certificate of residence and the extracts of the electoral register issued by the Grama Niladari. Copies of these documents are produced before this court marked P4(a) – P4(y).

He was called for an interview before a panel comprising of the first, second and third respondents where the first respondent was the chairperson. The board of interview had awarded a total of 47 marks of which 03 marks were assigned under the heading documents in proof of residency. Petitioners dispute the marks assigned under this heading and claim that they have been denied 18.4 marks that should have been assigned under the said heading in addition to the 3 marks already assigned. They claim that the 3 marks awarded represent the period of residence from the date on which the second petitioner became the legal owner of the premises namely the day on which the mother of the second petitioner gifted the premises to him. It is their contention that additional 18.4

marks should have been awarded taking in to account the 13 year time period in which the mother of the second petitioner remained the legal owner of the premises in which the second petitioner resided.

It is their contention that the circular relating to school admissions for the year 2019 makes provision for the same. They further contend that if those 18.4 marks were awarded the total marks awarded to the petitioners would be 65.4 and thereby would have qualified to be admitted. The cutoff marks for the school they applied was 60.2.

Being aggrieved with the decision of the board of interview, the petitioners presented an appeal on 21 November 2018. The second petitioner presented himself before the Appeal and Objection Investigation Board comprising of the 4th Respondent and another member whose identity is unknown to him. However, the second petitioner claims that he was not informed of the decision of the said appeal board.

Petitioners submit that the refusal to admit the 1st petitioner to Sirimavo Bandaranayake Vidyalaya is illegal, unreasonable, unlawful, arbitrary, discriminatory and contrary to the relevant circular.

The first respondent who is the principal of the school and the chairperson of the interview board contends that the petitioners were correctly awarded 3 marks for the Deed of the property which the second petitioner had been the owner of, for a period between six months to one year. It is her further contention that

there is no provision in the relevant circular to add marks for the previous ownership of the property.

The fifth respondent who was the Secretary to the Ministry of Education contended that the school authorities have correctly awarded 3 marks for the deed of the property of which the second petitioner had been the owner of, for a period more than six months and less than one year. Further he contends that there is no provision in the relevant circular to add marks taking into account the previous ownership of the property. He further contended that the Admission circular issued in the year 2013 permitted the aggregation of the period of previous ownership of the property by the grandparent of the child in situations where the parent of the child had owned the property for less than three years. Further he contends that the notice issued by the Ministry of Education relating to school admissions in the year 2020 had re-introduced the aggregation of the period of previous ownership by the grandparent of the child.

The mark sheet in respect of the school admission application of the petitioners is marked P6 and R3. They are in two different formats. However, both these documents confirm that the petitioners were awarded 3 marks under the heading "documents confirming residency".

The relevant circular relating to school admissions for the year, namely Circular 24/2018 of the Ministry of Education (hereinafter referred to as the Circular) is produced marked P2 and R1.

Clauses 7.2, 7.2.1 and the relevant part of clause 7.2.1.1 of the said circular are reproduced herein below:

7.2 පාසලට ආසන්න පදිංචිකරුවන්ගේ ළමයින් - 50%

මෙම ගණය යටතේ පෝෂිත ප්‍රදේශය තුළ (4.7 උපවගන්තියට අනුව) පදිංචි වී සිටින සියළු දෙනාටම අයදුම් කළ හැකිය. මෙහි දී අයදුම්කරුවන් අයදුම් කරන ස්ථානයේ පදිංචි වී සිටීම සහ ඒ බව සනාථ කිරීම අනිවාර්ය වේ. අයදුම්කරුගේ සැබෑ පදිංචිය භෞතික ව සනාථ කර ගැනීම මෙම චක්‍රලේඛයේ 9.3.3. හි සඳහන් ස්ථානීය පරීක්ෂාව මගින් ද, ලිඛිත ව සනාථ කර ගැනීම පදිංචියට අදාළ ප්‍රධාන ලේඛන පරීක්ෂාව මගින් ද, සිදු කළ යුතුය.

මෙහි දී පදිංචිය සනාථ කිරීමට අදාළ ව ඉදිරිපත් කළයුතු ලේඛන පහත දැක්වේ.

7.2.1 පදිංචිය තහවුරු කරන ප්‍රධාන හා අතිරේක ලේඛන
පදිංචිය තහවුරු කරන ප්‍රධාන හා අතිරේක ලේඛන අදාළ පුද්ගලයාගේ නමට පැවරී, ඉල්ලුම්පත් භාර ගන්නා අවසන් දින සිට ආසන්න පුර්ව වර්ෂ 5 ක කාලය සැළකිල්ලට ගෙන පහත ප්‍රතිශත අනුව ඊට හිමි ලකුණු ලබා දිය යුතුය.

වර්ෂ 05 ක් හෝ ඊට වැඩි	**100%**
වර්ෂ 05 ට අඩු වර්ෂ 04 දක්වා	**80%**
වර්ෂ 04 ට අඩු වර්ෂ 03 දක්වා	**60%**
වර්ෂ 03 ට අඩු වර්ෂ 02 දක්වා	**40%**
වර්ෂ 02 ට අඩු වර්ෂ 01 දක්වා	**20%**
වර්ෂ 01 ට අඩු මාස 06 දක්වා	**10%**
මාස 06 ට අඩු	**05%**

7.2.1.1. පදිංචිය තහවුරු කරන ප්‍රධාන ලේඛන
පදිංචිය තහවුරු කරන ප්‍රධාන ලේඛන ලෙස පහත ලේඛන පිළිගැනේ.

- ✓ **සින්නකර ඔප්පු**
- ✓ **තෑගි ඔප්පු**
- ✓ **දීමනා පත්‍ර**
- ✓ **රජයේ ප්‍රධාන (හිමිකරු මිය ගොස් ඇත්නම් අයදුම්කරු / කලත්‍රයා අනුප්‍රාප්තිකයෙකු ලෙස නම්කර තිබිය යුතු අතර, අදාළ බලධාරියා විසින් ඒ බව සනාථ කළ යුතුය.)**

- ✓ විහාර හා දේවාල ගම් පනත යටතේ බෞද්ධ කටයුතු කොමසාරිස් ජනරාල් විසින් නිකුත් කරන ලද බදු ඔප්පු හෝ බෞද්ධ කටයුතු කොමසාරිස් ජනරාල් විසින් සහතික කරන ලද අදාළ විහාරාධිපති විසින් නිකුත් කරන සහතික.
- ✓ පත් ඉරු මගින් සනාථ කර ඇති වසර 10කට වැඩි කාලයක් සහිත ප්‍රකාශන ඔප්පු
- ✓ ගෙවිමේ පදනම මත මිල දි ගෙන ඇති නිවාස ලේඛන (අයිතිකරු සමග ඇති කරගත් ගිවසුම් හා ගෙවීම් කරන ලද ලදුපත්)

(සින්නක්කර ඔප්පු හා තෑගි ඔප්පු ප්‍රකාශන ඔප්පුවකින් ලියා ඇත්නම් එම ප්‍රකාශන ඔප්පුව වසර 10ක් හෝ ඊට වැඩි කාලයක් ලියාපදිංචි වී තිබිය යුතුය.)

(i) පදිංචි ස්ථානයේ හිමිකම ඔප්පු කිරීමට ඉදිරිපත් කරනු ලබන ඉහත ලේඛන ඉල්ලුම්කරුගේ / කලත්‍රයාගේ නමට ඇත්නම් - ලකුණු 30

(ii) ඉල්ලුම්කරුගේ / කලත්‍රයාගේ මවගේ හෝ පියාගේ නමට හිමිකම ඇත්නම් - ලකුණු 23

(හිමිකම අනෙකුත් අයගේ නමට ඇත්නම් මෙම ලකුණු ලබා නොදිය යුතුය.)

අවශ්‍ය වන්නේ නම් පත් ඉරු හා දෙවන පිටපත් පරීක්ෂා කර හිමිකම තහවුරු කරගත යුතුය.

Petitioners in this application claim that additional 18.4 marks under sub clause (ii) of clause 7.2.1.1 should have been awarded to their application. It is their contention that these marks should have been awarded for the transfer deed no. 1232 attested on 24 November 2004. This deed had been made by the National Housing Development Authority in favour of the mother of the second petitioner conveying the ownership of the premises to the latter. Thirteen years thereafter the ownership was transferred to the second petitioner through a deed of gift that was attested on 18 October 2017. Three marks were awarded to the

petitioners under sub clause (i) of clause 7.2.1.1 in relation to the said deed of gift.

The respondents contend that they awarded 3 marks to the Deed of Gift under which the second petitioner acquired lawful ownership. They further submit that no marks were awarded to the aforesaid Deed of Transfer through which the mother of the second petitioner gained lawful ownership. It is their contention, that no such aggregation of marks is permitted under the Circular. They contend that marks can be awarded to deeds falling under one of the two sub categories only.

The core issue that has to be considered in this application is whether the failure to award marks for the deed of transfer which confirmed the lawful ownership of the mother of the second petitioner from 2004 to 2017 is contrary to the circular and therefore is arbitrary and / unreasonable and / irrational.

In deciding this issue, it is important to examine the whole circular with a view to comprehend the rationale and the object and the purpose of the whole scheme provided thereunder. An interpretation of any specific individual Rule or Rules needs to be guided by the findings of such an examination.

According to the Circular, six different categories have been recognised under which the applications could be submitted. A common factor applicable to all six categories is that the parents or the legal guardian should reside in the “feeder

area" of the relevant school. Therefore "Residency" of the applicants has an important bearing in the ultimate decision to admit a child under the Circular.

Clause 3.1 of the Circular recognises "Children of the residents living in close proximity to school" as one of such categories relating to school admissions (proximity category). Clause 7.1 (i) of the circular provides that, fifty percent of the vacancies should be filled by the applicants who come under proximity category. Clause 7.2 set out the different criteria under which marks should be awarded when applications under proximity category is considered. Clause 7.2.1 recognises two categories of documents that can be considered in proof of residency. The two categories recognised therein are "the main documents" and "additional documents". Further, the circular sets out the maximum marks that can be assigned to the acceptable documents under each category. Actual marks that can be awarded in a given situation is determined in accordance with the percentage of marks that can be assigned out of the maximum marks based on the 'age' of the document. One hundred percent is assigned for documents which are five years or older from the closing date of the applications. The lowest percentage namely, five percent is assigned to the documents less than 6 months old. Documents between 6 moths to one year old attract ten percent of the assigned maximum marks. The above scheme as recognised by the Circular therefore mainly focuses on the duration of residency in deciding the actual marks that will be awarded to an applicant. The focus is on the five year period immediately prior to the last date of submitting applications. An applicant who proves residency for five or more years will receive the maximum of one hundred percent marks for the documents proving residency.

Documents proving residency are divided into two categories namely “main” and “additional” documents. Clause 7.2.1.1 set out the type of documents that are considered “main” documents proving residency. It recognizes, *interalia* Deeds of transfer and Deeds of gift as “main” documents confirming residency. These main documents are further divided into two sub-categories based on the person in whose benefit such documents have been executed. A description of these two sub categories are found in sub clauses (i) and (ii) of clause 7.2.1.1. Further the said sub clauses set out the maximum marks that can be assigned under each of these two sub categories. First sub - category described under sub clause (i) of clause 7.2.1.1 is the documents that are in the name of the applicant or the spouse of the applicant. Maximum of 30 marks can be awarded to the documents that would fall under the said sub category. The second sub category recognised under sub clause (ii) of clause 7.2.1.1. is, the documents that are in the name of either of the parents of either the applicant or the spouse of the applicant. Maximum of 23 marks is assigned for the documents under this category.

It is pertinent to note that the circular has no specific provision either prohibiting or allowing the aggregation of marks that can be awarded for the documents that would fall under the two sub categories of documents recognised under sub clauses (i) and (ii) of clause 7.2.1.1.

When the objective of clause 7.2 is considered in its context, it is clear that the said clause set out the criteria under which school admissions will be made under the proximity category. The prime focus under this category is the place of

residence of an applicant. The circular recognizes two types of documents that can be taken into account in proof of place of residence. They are the “main documents” and “additional documents”. While clause 7.2.1.1. describes different types of documents that will be considered as “main documents” sub clauses (i) and (ii) of the said clause determine the maximum marks that can be assigned to such documents depending on the person under whose name, such document exists. The actual marks that can be awarded is determined according to the different percentages of the maximum marks prescribed to each category, based on the age of the document. Further, the same clause specifically excludes assigning any marks to documents made in favour of any person other than the categories recognised under sub clauses (i) and (ii). Therefore, to qualify to receive any marks for a document that can be classified as a “main document” such document should be in the name of the applicant, the spouse of the applicant, mother or father of the applicant or the mother or father of the spouse of the applicant (hereinafter referred to as “accepted parties”). The actual marks will depend on two factors. Namely, first the person in whose name the document exists, and second the age of the document. It is clear that the detailed scheme of marks will ensure that a maximum of 30 marks will be awarded to an applicant who produces a “main document” that is five years or older in the name of the applicant or the spouse of the applicant. Lowest of 1.15 marks will be awarded to an applicant who produces a “main document” that is less than 6 months old which is in the name of either of the parents of the applicant or the spouse of the applicant.

The over all scheme set out above ensures that marks are assigned on a reasonable scale when the proof of residency is considered, under the proximity category. It is pertinent to emphasise that the core factor in this category is the "residency" of the applicant and the threshold maximum period of residency considered is five years prior to the closing date of the applications. The scheme set out above clearly accepts the residency at premises belonging either to the applicant or the spouse or either parents of the applicant or the spouse. Therefore if an applicant had been residing at premises belonging to a parent of either the applicant or the spouse and had continued to reside in the same premises after it was transferred to the applicant or the spouse should have the benefit of receiving marks covering the full term of residency. Depriving any marks due to the change of lawful ownership between the "accepted parties" will not only be arbitrary but also causes grave prejudice to an applicant.

The second petitioner had resided in the premises since his childhood along with his parents. In the year 2004, the mother of the second petitioner had become the lawful owner of the same premises by the Deed 1232 dated 24 November 2004. Thirteen years therefrom she had transferred the lawful ownership of the premises to the second petitioner by the Deed of Gift executed on 18 October 2017. Therefore during the immediate prior five year period from the closing date of applications namely between 1st July 2013 and 30th June 2018, the second petitioner who is the applicant and his mother had been the lawful owners of the premises for periods of eight months and four years and four moths respectively. There has been no interruption on the legal ownership of the premises other than the transfer between the second petitioner and his mother.

It is also pertinent to observe that the Petitioners would have been awarded with 23 marks for "main documents" if no change of ownership took place between the mother and the second petitioner and continued to remain with the mother of the second petitioner.

Therefore, in my view the contention that no aggregation of marks is possible in situations where the lawful ownership had changed between "accepted parties" (change between parents and grand parents of the child) without a specific provision permitting such aggregation, is not only contrary to the whole scheme relating to the proximity category set out under the Circular but also causes prejudice to such applicants.

I have considered the Judgment of this Court in **S.M.N.S. Thilakaratne and another v M.W.D.T.P Wanasinghe and others** (SC FR 30/18, SC minutes of 28.05.2019). In the said Judgment one of the issues that had been considered is whether the denial to award marks for a title deed in the name of the father of the applicant was in violation of the Circular 22/2017. The Court did not accept the Petitioner's contention that marks should have been awarded to the deed, which was in the name of the father in addition to the marks assigned to the deed in her name. The Court reached this decision based on two factors. First that the circular 22/2017 speaks only of "one person" when it says that, if five or more years have lapsed between the date of the deed on which the deed relating to proof of residency has been made in the name of the "relevant person" full marks should be awarded. Second, that *"it (the circular) impliedly indicates that the relevant person aforementioned is the person who holds the relevant document in*

his/her name as at the final date given to tender applications". I further observe that the language in both these Circulars – Circular 22/2017 and Circular 24/2018 are similar in relation to the documents in proof of residency.

However, it is accepted law that a *"classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced and shall be treated alike"* [Royster Guano Co v Commonwealth of Virginia – 1920-253 US 412 at 415 cited with approval in **Haputhantirige and Others v Attorney-General** [2007] 1 SLR 101 at 117]. It is further held, that a Court should consider the object of the relevant law and whether a classification could be related to reasonably achieving such object, when the Court has to consider if any classification violates the principle of equality. Similar views are expressed by this Court in **M.K.Wijethunga & two others v the Principal, Southlands College** [SC FR 612/2004, Decided on 07.11.2005, 2005 B.L.R 19at 22]

On examination of the scheme and the scope of these Circulars, it is clear that one of the categories under which an application for admission to grade one can be made is the "proximity category". For an applicant to succeed under this category it is essential to prove his or her residency. Title deeds of premises is one type of document that can be submitted to establish such residency. These deeds *interalia* are considered "main documents establishing the residency". However, the marking scheme further classifies these type of documents based on two main factors. First the time period of residency that can be establish through

these deeds and secondly the person under whose name, such deeds are made. One such classification made is the documents that establish residency for five or more years. Documents falling within this classification will attract one hundred percent of the marks assigned. Marks assigned are scaled down depending on the time period and the minimum percentage of five percent is awarded for documents that are valid for a period of less than 6 months, as at the date of closing applications. The other factor taken into account is the person in whose name such deed is made. Distinction made under this classification is between the applicant or his spouse and either of the parents of the applicant or the spouse. Different marks are assigned to these two groups. As provided under Circular 24/2018, a maximum of 30 marks to the documents in the name of the applicant of the spouse and a maximum of 23 marks for the documents in the name of either of the parents of the applicant or the spouse. In addition, a further classification made under the said clause is the total exclusion of documents that are in the name of any person other than the persons who are recognised under (i) and (ii) of clause 7.2.1.1.

All these classifications specifically recognised under clause 7.2.1 of the Circular reasonably achieves the over all object of provisions relating to the applications submitted under the "proximity" category. The duration of residency as well as the person in whose name the main document to establish residency are criteria based on which a reasonable classification can be made in assigning marks. However a further classification restricting these marks, defeats the overall objective of the scheme set out in the selection process relating to applicants who come under the "proximity" category.

Examination of the Mark sheet relating to the Petitioner, which is produced marked R3, clearly reflects that provision is made to assign marks under three broad headings. They are (i) Registration in the voters list to establish residency, (ii) Documents establishing residency and (iii) Proximity to the school from the place of residence. Under heading (i) the period that has to be considered is the five-year period from 2013 to 2017. The applicant had been awarded full marks assigned under the heading Registration in the voters list (25 marks) as he had proved that the names of the applicant and the spouse was registered covering the entire period of 2013 to 2017. The fact that the applicant had been awarded full marks under heading (i) above is indicative of the fact that the Petitioners had been resident at the address in question since 2013. Under the second heading – Documents establishing residence – one sub category is Ownership of the place of residence. This sub category is further divided into two sub categories namely Deeds written in the name of the applicant or the spouse and the deeds written in the name of the Mother or Father of the Applicant or Spouse. These two sub categories are recognised as independent from each other. They are not set out as alternate sub categories. Petitioners had been awarded 03 marks for the deed in the second petitioner's name that had been made on 18 October 2017. This is the Deed of Gift made by the Mother of the second petitioner. This deed is produced marked P-4(b)(ii). However, no marks have been awarded under the subcategory - deeds made in the name of mother or father of the applicant or the spouse.

In my view assigning marks under the sub category "Ownership of the place of residence" coming under the heading "Documents establishing residence" must be considered in the backdrop of the chain of events that had taken place relating to the title of the property during the relevant period – the immediate past five year period from the closing date for applications. By the execution of the deed of gift in favour of the second petitioner in 2017 his right to occupy the premises at the given address was not diminished but on the contrary enhanced.

Hypothetically if the deed of gift was not executed, the Petitioner would have been entitled to full marks assigned under the sub category "deeds in the name of the mother or father of the applicant or the spouse". Thus it would seem artificial to deprive the marks that ought to have been assigned to the applicant because of the intervening act of executing the deed that enhanced the rights of the petitioner and the opportunity to occupy the house, now as the owner.

It is pertinent to note that the paper notice relating to school admissions for the year 2020 which was produced marked R2 makes a specific provision for aggregation of marks in situations where a transfer of ownership had taken place between the accepted parties within the immediately preceding five year period from the closing date of applications. Presumably, the reason for aggregation of marks was made possible in the 2020 school admission circular, would have been to eliminate the injustice that might result from a situation of this nature.

For the reasons I have enumerated hereinbefore the denial of any marks to the Deed of Transfer made by the National Housing Development Authority in the

name of the mother of the applicant on 24th November 2004, which is produced marked P-4(b)(i) fail to achieve the object of the Circular. Further the said denial is contrary to the object and purpose of the circular as well as the scheme of marks developed for the proximity category Such denial in my view is arbitrary, unfair and unreasonable. It defeats the purpose of the whole scheme developed by the Circular.

This Court in, **Karunathilaka and another v Jayalath de Silva and others**, [2003] 1 SLR 35 at 41-42 held *"The basic principle governing the concept of equality is to remove unfairness and arbitrariness. It profoundly forbids actions, which deny equality and thereby becomes discriminative. The hallmark of the concept of equality is to ensure that fairness is meted out."*

Under these circumstances I hold that the failure to award marks to the deed of transfer reflecting the lawful ownership of the mother of the second petitioner is a violation of Rights guaranteed under Article 12(1) of the constitution. Therefore the denial to assign marks on the deed in the name of the mother of the second petitioner is a violation of the Rights guaranteed under Article 12(1) of the Constitution.

This court appreciate that the hands of the Respondents were tied to an extent with regard to the assigning marks in the absence of any guidelines as to how marks should be assigned in a scenario of this nature.

In granting relief to the Petitioners, I am mindful of the fact that the application was submitted to admit the first petitioner to grade one at Sirimavo Bandaranayake Vidyalaya, Colombo 7 for the year 2019. The academic year 2019 had already come to an end. Therefore it is just and equitable to direct the first respondent – the Principal of Sirimavo Bandaranayake Vidyalaya, Colombo 7 - to admit the first petitioner to the second grade of Sirimavo Bandaranayake Vidyalaya, Colombo 7 forthwith, enabling the first petitioner to commence her education at the said school without further delay.

Taking into account the importance of the subject matter in relation to this application namely, the education of a child and the need to ensure that no unfair or unnecessary disruption is caused on any child's education, the Registrar is directed to send copies of this Judgment to the Principal of Sirimavo Bandaranayake Vidyalaya, Stanmore Crescent Colombo 7 and the Secretary of the Ministry of Education, Isurupaya, Pelawatte, Battaramulla for appropriate steps. The Honourable Attorney-General is directed to provide necessary advise to the relevant state authorities to ensure that necessary steps are taken to give effect to this judgment, without any delay.

Chief Justice

L.T.B. Dehideniya, J
I agree.

Judge of the Supreme Court

E.A.G.R. Amarasekera, J

I had the advantage of reading in draft, the Judgment written by His Lordship the Chief Justice. With all due respect to his lordship's analysis of facts and conclusions, I intend to dissent and come to a different conclusion with regard to the facts revealed before us in this case. Since his lordship has summarized the facts of this case, I need not repeat some of them here again.

His lordship has referred to the judgment of this court in **S.M.N.S. Thilakaratne and another M.W.D.T.P. Wanasinghe and others** (SC FR 30/18, SC minutes of 28.05.2019) which was decided in relation to the Circular 22/2017. The Circular relevant to the case at hand is Circular 24/2018 of the Ministry of Education which is marked as P2. The relevant provisions in Circular 24/2018 in relation to the main documents in proof of residency are similar to the provisions in relation to documents in proof of residency discussed in the aforesaid case in relation to Circular 22/2017.

The document marked as R1 which seems to be the Circular relevant to school admissions in 2013 indicates that there were specific instructions in the past when there was a change of ownership from Grand Parent to the Applicant Parent. As per the instructions given in R1, it appears that the policy of the Ministry of Education at that time was not to aggregate the ownership of the parent and the grand parent of the child to be admitted in giving marks for the documents in proof of residency, but to consider the total period of ownership as

that of the grand parent if the ownership of the parent of the child was less than 3 years or else if the ownership of the parent of the child was more than 3 years not to consider the period of ownership of the grand parent. However, it appears that with the change of policy such instructions were taken away from the circulars relating to 2017 and 2018. There was no indication that such instructions were taken away to provide for the aggregation of the ownership of the parent and the grand parent. It should also be noted that the policy existed prior to the said circulars as mentioned above, was not for the aggregation of ownership. In that backdrop, I find it difficult to find fault with the Respondents, who had to interpret the Circular 24/2018 which does not have instructions how to give marks when there is a change of ownership from a grand parent to a parent, when they interpret relevant provisions as per the plain language used in the said circular.

As per the clauses 7.2.1 and 7.2.1.1 of the said Circular 24/2018, which provides a marking scheme for the documents in proof of residency in a similar manner to the clauses 7.2.2 and 7.2.2.1 of Circular 22/2017 discussed in the aforesaid case **S.M.N.S.Thilakarathne and Another V M.W.D.T.P. Wanasinghe**, marks are given for the deeds or documents that proves the title or entitlement of the relevant person to the place of residence. A careful reading of the relevant clauses indicates that the relevant person referred to above has to be one of the following persons:

- The applicant (one of the Parents or Legal Guardian)
- The spouse of the applicant
- The father or mother of the applicant
- The father or mother of the applicant's spouse.

The clause 7.2.1 of Circular 24/2018 allocates marks for the documentary proof of title or entitlement in the following manner;

- If the document in proof of residency shows the title or entitlement of the relevant person to the place of residence for five years or more as at the final date given to tender applications – Full marks (100%).
- If it is less than five years and more than four years—80% of the full marks.
- If it is less than four years and more than three years – 60% of the full marks.
- If it is less than three years and more than two years – 40% of the full marks.
- If it is less than two years and more than one year – 20% of full the marks.
- If it is less than one year and more than six months - 10% of the full marks.
- If it is less than six months - 05%

As per the said clauses 7.2.1.1 of Circular 24/2018, the maximum one can gain under the heading 'Main Documents in Proof of Residency' is 30 marks. However, when one reads clause 7.2.1 with clause 7.2.1.1 (i), and (ii), it is clear that;

- If the ownership or entitlement to the place of residence is in the name of the applicant/spouse, the applicant can gain the maximum of 30 marks subject to the percentages referred to above in relation to the period of ownership.

- If the ownership or entitlement is in the name of the mother/father of the applicant/spouse, the applicant can gain only 23 marks out of the maximum of 30 marks, which is further subject to the percentages referred to above in relation to the period of ownership.
- If the applicant's residency is based on a registered leasehold right or as an occupant of a government quarter or as a tenant under the Rent Act, the applicant can gain only 12 marks out of the maximum 30 marks subject to the percentages referred to above in relation to his entitlement to the residential property.

The Petitioner's contention is that marks should have been considered under clause 7.2.1.1 (ii) for the 2nd Petitioner's mother's deed and the Respondents failed to give marks for the said deed. However, I cannot find fault with the Respondents since the plain reading of clause 7.2.1 gives marks to the document in proof of residency which is in the name of the relevant person. It contemplates only one relevant person and not many. In the instant case, it is the Petitioner not her predecessors in title.

Furthermore, as per the clause 7.2.1, to give marks time is counted from the date the ownership or entitlement was transferred to the name of the relevant person to the final date given to tender applications. Since the time is counted until the final date given for applications, it impliedly indicates that the relevant person aforementioned is the person who holds the relevant document in his/her name as at the final date given to tender applications. The mother of the 2nd Petitioner,

the predecessor in title, did not hold the ownership in her name at the final date given to tender applications, since she gifted her right to the 2nd Petitioner by executing deed marked as P4(b)(1). Therefore, it is my view that the Respondents cannot be blamed for not giving marks for the deed in the name of the predecessor in title since the plain reading of the relevant clause does not warrant to consider further marks for the deed of the predecessor in title as she was not the relevant person who held the title as at the final date given to tender the applications. On the other hand, there is no allegation that for any of the applicants, marks were given for his/her or his/her spouse's title documents as well as for the title documents of the father/mother of the applicant or his spouse causing discrimination.

It is now revealed that the Ministry of Education has again amended the Policy for the year 2020 allowing aggregation of the period of ownership of the Parent with the ownership of the grand parent when there is a change of ownership - Vide R2. Such a benefit was not there for the Respondents of this case when they consider the application of the Petitioners. Hence, I cannot hold that there is a violation of fundamental rights of the Petitioners by the Respondents since they have given a possible literal Interpretation to the relevant clauses.

Judge of the Supreme Court