

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

S.C. (F/R) No. 13/2009

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

Dona Dinaya Nimdini Wijayaweera,

No. 36/4,

Galle Road,

Colombo 4.

Appearing by her next friend

Don Kapila Dhamminda Wijayaweera,

No. 36/4,

Galle Road,

Colombo 4.

Petitioner

Vs.

1. Ms. B.M. Weerasuriya,
Principal,
Visakha Vidyalaya,
Vajira Road,
Colombo 4.
2. Ms. A.R.M.P.N. Sooriyabandara, Chairperson,
3. L.L.B. Tennakoon, Member,
4. D.L.J. Wijesinghe, Member,

5. Ms. S. Siriwardena, Member,
Appeal and Opposition Board in relation to admission
to Grade 1 of Visakha Vidyalaya for the year 2009,
Visakha Vidyalaya,
Vajira Road, Colombo 4.
6. G.M.A.N. Pandithasekara, Chairman,
7. S. Illeperuma, Member,
8. S. Jayasinghe, Member,
9. G. Wijyaratne, Member,
Interview Board for admission to Grade 1 of Visakha
Vidyalaya for the year 2009,
Visakha Vidyalaya,
Vajira Road, Colombo 4.
10. A.K. Pahathkumbura,
Deputy Principal,
Visakha Vidyalaya,
Vajira Road, Colombo 4.
11. Attorney General,
Attorney-General's Department,
Colombo 12.

Respondents

BEFORE : **Ms. S. TILAKAWARDANE.J**
SRIPAVAN.J &
RATNAYAKE.J

COUNSEL : Manohara de Silva, P.C., with Amrith Rajapaksha
instructed by Priyantha Upali Amarasinghe for the petitioner.
Ms. S. Barrie, S.C., for the respondents.

ARGUED ON : 14.10.2009.

DECIDED ON : 06.05.2010

Ms. S. TILAKAWARDANE.J

The Petitioner was granted leave to proceed on 03/02/2009 on the alleged infringement of Article 12(1) of the Constitution of Sri Lanka. The minor Petitioner who appeared by her father Don Kapila Dhamminda Wijayaweera, contended that her fundamental right to equality has been violated by the failure of the Respondents to offer her admission to Grade 1 of Visakha Vidyalaya.

The Petitioner had preferred two separate applications under the categories of “Proximate Residence” and “Brother/Sister currently attending the same school” (hereinafter referred to as the sister category), in terms of the ***Circular No 2008/21 dated 16/05/08 on the Admission of Children to Grade 1 of Government Schools issued by the Secretary, Ministry of Education*** marked P1. The Petitioner argues that she would be qualified for admission to the said school under both categories.

In her application under the “proximate residence” category, the Petitioner claimed that they have been resident at the given address of No.36/4, Galle Road, Colombo 04, since 1999 up to the present time. The Petitioner also claimed that she is eligible for admission under the “sister category” since her elder sister who had been admitted to Grade 1 of Visakha Vidyalaya in 2006, is presently studying in Grade 4 of the same school. The Petitioner had been allocated marks under both categories and there is no dispute regarding the marks obtained by the Petitioner which consists of 52 under the sister category and 67 based on the proximate residence category.

The Petitioner's application under the sister category, subsequent to an interview held on 08.09.2008 had been rejected by the letter dated 02.02.09 on the basis that the actual residence of the Petitioner had not been proved. The Petitioner contends that she also attended the interview in relation to the application based on proximate residence, on 25.09.2008 and obtained a total mark of 67. However the Petitioner's name did not appear on the temporary list of children admitted under either category.

The Petitioner preferred two appeals in accordance with the Circular marked P1. Thereafter the Petitioner presented her case before the Appeal and Opposition Board on 01.12.2008. The Petitioner was nevertheless refused admission by the decision of the Appeal and Opposition Board. The Petitioner alleges that the Board has acted maliciously and in excess of their powers by disqualifying her applications and thereby violating her fundamental right to equality under Article 12 (1) of the Constitution.

The crux of the 10th Respondent's objections is that the Petitioner has not established actual residence in the premises given in the application. School authorities have conducted site visits on three occasions. Firstly on 08.09.2008 prior to the finalization of the temporary list, secondly on 04.12.08 in consideration of the appeal made by the Petitioner and finally on 11.02.09 under a new principal, consequent to the filing of this Fundamental Rights Application and inquiry into the matter by the Ministry of Education.

On all three occasions the Petitioner and the family were found not to be resident at the given address. Thus the Respondents state that even though the Petitioner was eligible under both categories for admission in terms of the Circular, she had failed to establish the necessary requirement of actual residence which was a threshold essential mandatory prerequisite for admission. Moreover the Petitioner was bound to submit honest and accurate documents and

statements of fact in support of her application, failure to do so would result in the application being disqualified under the Circular.

The main issue before this Court is to determine whether the Petitioner has proved the fact of residence for the purpose of admission to the school. The Respondents' argument that the fact of residence is crucial to both applications under the proximate residence and sister category is accurate in terms of the relevant circular. This is evident from Article 3.5 of the Circular referred to above.

It appears that even though the Petitioner claims one James Patrick Raj to be his landlord, the testimony given by James Patrick Raj does not indicate that he has rented part of the premises of No.36/4, Galle Road, Colombo 04, where he runs a granite shop to the Petitioner's father. The Lease Agreement marked 10R-C1 reveals that James Patrick Raj is himself the tenant of the Premises. Under the said Agreement one Prem Rodrigo is the landlord who presently resides in Canada. The Lease Agreement also discloses that Mr. James Patrick Raj is prohibited from subletting the premises; hence he has no authority to rent out the premises to the Petitioner's father.

Therefore the contention of the Petitioner that James Patrick Raj is his landlord is not borne out by credible evidence. It appears that James Patrick Raj has put forward several contradictory versions of the Petitioner's residence in the course of this case – Patrick Raj initially claimed that the Petitioner was his tenant; he then claimed that the Petitioner was a relative living with him and subsequently that the Petitioner was staying in his house based on a mutual agreement – none of which satisfactorily establish the Petitioner's residence for the purpose of school admission.

If anything, the statements by Patrick Raj prove no more than an assumed agreement to live. Even the Birth Certificates of the Petitioner and her sister indicate a place of residence which is different from that provided in the application. It only seems probable that the Petitioner's residence in the premises is occasional and based on a "mutual understanding" as stated by James Patrick Raj himself

by letter dated 11.02.09. Such an arrangement does not satisfy the requirement of 'residence' under the criteria laid down by Article 3.5 of the Circular. In fact Article 3.5 of the Circular contemplates 'permanent residence' as opposed to the mere fact of staying in the premises or transitory occupation of the premises.

Where eligibility for school admission based on prescribed criteria is at issue, the burden is on the applicant to prove residence for the purpose of admission. This burden is to be discharged based on documents presented to the school authorities, which must be validated through a scrutiny and check conducted by the school authorities at the time the application was presented. Site visits by the school are expressly authorised under Article 8(1)(3) a of the Circular.

It must be noted that the Petitioner has not submitted any documents to this Court to prove his actual residence or the fact that he is occupying a specific portion of the said premises. Therefore where 'actual residence' is a pre-condition for admission, mere assertions, unsubstantiated by credible evidence are insufficient to qualify the petitioner for school admission under the procedure laid down by law.

On a consideration of all the facts and the arguments made by both counsel for the Petitioner and the Respondents, It is hard to conceive that the Petitioner has proved actual residence. It appears that the Respondents have allocated marks reasonably in view of the Petitioner's applications under both the categories, only on the assumption that his claim to be resident at the given address was not credible.

As it has been correctly highlighted in the Report of the Inquiry Officer appointed by the Ministry of Education consequent to the filing of this application, the said marks for the Petitioner had been allocated for the purpose of school admission only on the condition that upon site visits to be

conducted, the given residence is well established. In fact the Petitioner has placed his signature to the document (marked as 10R –C3) which states that the final selection would be varied if the documents are found to be inaccurate or residence not established.

There is no dispute on the fact that school authorities visited the premises three times. The final visit was under a new principal and in compliance with a Court Order to that effect and there can be no allegation of bias or malicious intent guiding the scrutiny conducted by the school authorities. The court finds no fault in the “surreptitious” manner in which the site visit was conducted.

It is clear, under the prescribed procedure, that even though marks may be allocated as part of the admission process, the school will then scrutinise and check the assertions made in the application as to residence, before confirming the applicant's place on the school list. Any attempt to mislead or fabricate information provided in the application would disqualify the application and deny the applicant a place on the school list.

In the instant case, the Petitioner has clearly provided misleading and false information as to residence in the application for school admission. The falsity of this assertion, was clearly borne out by the site visits conducted by the school authorities, wherein it was revealed that there was in fact a granite shop operating from the said premises, and that there was “no sign that the Petitioner actually lived “at the given address.

Having considered the arguments put forward by both parties and having regard to the applicable law, this Court holds that the Respondents have rightly refused the Petitioner admission to the school in view of the failure on the part of the Petitioner to prove existent, genuine and actual residence in the address provided in the application for school admission.

The application of the Petitioner is dismissed. No costs.

JUDGE OF THE SUPREME COURT

SRIPAVAN.J

I agree.

JUDGE OF THE SUPREME COURT

RATNAYAKE.J

I agree.

JUDGE OF THE SUPREME COURT