

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

In the matter of an application under Articles
17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

SC (FR) Application No. 139/12

1. Mahapitiya Gedera Shanuka Gihan
Karunaratne (Minor)
Shantha Stores,
Nagahapola,
Akuramboda.

Appearing through his Next Friend:

Mahapitiya Gedera Ananda Karunaratne
(Father)
Shantha Stores,
Nagahapola,
Akuramboda.

2. Purijjala Puwakpitiyegedara Amila Dilshan
Puwakpitiya (Minor),
Thalwatte Road,
Nillannoruwa,
Madupola.

Appearing through his Next Friend:

Purijjala Puwakpitiyegedara Neeladasa

Puwakpitiya (Father),
Thalwatte Road,
Nillannoruwa,
Madupola.

PETITIONERS

-VS-

1. Lory Koswatte
Deputy Principal,
M/Weera Keppetipola Madya Maha Vidyalaya,
Pallepola,
Akuramboda.
2. H.M. Gunasekera
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
3. Chief Inspector of Police Abeysinghe
Officer-in-Charge,
Mahawela Police Station,
Mahawela.
4. N.K. Illangakoon
Inspector General of Police,
Police Headquarters,
Colombo 01.

5. Hon. Attorney General
Attorney Generals' Department,
Colombo 12.

RESPONDENTS

BEFORE: Buwaneka Aluwihare, PC, J.
A.H.M.D. Nawaz J.
A.L.S. Gooneratne J.

COUNSEL: Shantha Jayawardema with Hirannya Damunupola for Petitioners.
W. Dayaratne PC with Ms. R. Jayawardena for 1st Respondent.
Madhawa Tennakoon DSG for 3rd to 5th Respondents.

ARGUED ON: 26. 07. 2021

WRITTEN SUBMISSIONS; 02.08.2021

DECIDED ON: 13.10.2022

Judgement

Aluwihare PC. J.,

- (1) The 1st Petitioner, Mahapitiya Gedera Shanuka Gihan Karunaratne and the 2nd Petitioner, Purijjala Puwakpitiyegedara Amila Dilshan Puwakpitiya, being minors, invoked the fundamental rights jurisdiction

of this Court through their next friends, Mahapitiya Gedera Ananda Karunaratne and Purijjala Puwakpitiyegedara Neeladasa Puwakpitiya respectively. The Petitioners by way of this application challenge, *inter alia*, the torture and/or cruel, inhuman and degrading punishment or treatment meted out to them by the 1st Respondent by severely caning them and causing injuries in violation of the Circulars of the Ministry of Education and thereby violating their fundamental rights guaranteed under Article 11 and further violating their fundamental rights guaranteed under Article 12 (1) of the Constitution for having meted out corporal punishment on them.

- (2) This Court granted leave to proceed against the 1st Respondent for the alleged violation of the Petitioners' fundamental rights guaranteed under Articles 11 and 12 (1) of the Constitution. Leave to proceed was also granted against the 3rd Respondent for the alleged violation of the Petitioners' fundamental rights guaranteed under Article 12 (1) of the Constitution.
- (3) The Petitioners had complained of inaction, on the part of the 3rd Respondent [the Officer -in-Charge of Mahawela Police station] as he had failed to take any action against the 1st Respondent for alleged assault. During the hearing of this Application, however, it was brought to the attention of the Court that the 3rd Respondent, had in fact taken steps to file action against the 1st Respondent in the magistrate's court of Naula, based on the complaint made against him by the Petitioners and as such, it was intimated on behalf of the Petitioners that they do not wish to pursue the reliefs sought against the 3rd Respondent. Therefore, this court is left to decide, as to whether the 1st Respondent had committed the alleged violation.

The Facts

- (4) The 1st and 2nd Petitioners were students of Veera Keppetipola Madya Maha Vidyalaya, Pallepola, Akuramboda at the time of the incident.

- (5) According to the Petitioners, on the day in question [24th October 2011], during school hours, the Petitioners together with some classmates were chatting under the mango tree, in close proximity to the school dining hall. Some others who were unknown to the Petitioners had pelted stones at a mango tree. Some stones had strayed and damaged a few glass panes of a building which housed the said dining hall.
- (6) The 1st Respondent was the Deputy Principal of the school, who was acting for the principal who was on leave on that day. The 1st Respondent states that on being informed by the acting Matron of the girls' hostel that she had heard the shattering of the glass panes of the dining hall, the 1st Respondent had gone to inspect the said hall and found around fifteen students bustling inside and outside the hall. The 1st Respondent states that he apprehended three students and upon questioning them, came to the conclusion that the 1st and 2nd Petitioners were the main instigators. Thereafter the 1st Respondent had wanted the Petitioners to meet him at his office.
- (7) The 1st Petitioner states that his colleagues and he, ran away on seeing the 1st Respondent near the said dining hall and went to their respective classrooms. While the 1st Petitioner was in the science laboratory, a classmate named Premaratne informed the 1st Petitioner that the 1st Respondent had wanted all of them to meet him. Thereafter the 1st Petitioner, Premaratne and two other classmates who had been with them under the mango tree, namely Edward and Wasantha, proceeded to the school office.
- (8) When the 1st Petitioner arrived at the office, he had seen the 2nd Petitioner and another student, kneeling near the office door. According to the 1st petitioner, the 2nd Petitioner was crying and appeared to be in severe pain.
- (9) The 1st Petitioner has averred that the 1st Respondent came out from the office and asked him; "who is Karunaratne?". When the 1st Petitioner stated that it was he, the 1st Respondent had administered four cuts with

a cane on his buttocks and then caned the other students who had accompanied him to the school office.

- (10) The 1st Petitioner claims that he was thereafter taken to the corridor outside the office and was asked whether he broke the window. When he intimated that he was not responsible for the incident and that he was unaware as to who was responsible for the damage caused to the windows, the 1st Respondent had again caned the 1st Petitioner on his buttocks. Due to the force of the assault, the 1st Petitioner states that he fell to the ground, and begged the 1st Respondent not to hit him. Disregarding his pleas the 1st Respondent had continued to cane him on the back of his chest and shoulders. The 1st Petitioner further claims that the 1st Respondent continued to cane him, till the cane broke.
- (11) The 1st Petitioner's version as to the assault, is supported by the Affidavits of two other students who had accompanied the 1st Petitioner to the school office, namely Manoj Priyankara Premaratne ('P1') and Wasantha Jayalath Wickramasinghe ('P2').

The version of the 2nd Petitioner

- (12) Following the incident [of pelting stones], the 2nd Petitioner had returned to his classroom and had observed the 1st Respondent leading away some students. The 2nd Petitioner states that, a little while later, the 1st Respondent had come to his classroom with a student named Wijeweera and had inquired as to who Puwakpitiya was. The 2nd Petitioner had stood up and the 1st Respondent then had asked him to collect his bag and to come to his office.
- (13) The 2nd Petitioner relates that at the office, the 1st Respondent had gone through his bag and had asked him whether he broke the window. When the 2nd Petitioner answered in the negative, the 1st Respondent had rudely remarked in response; 'Do you think this is your mother's and father's inheritance?'
- (14) The 2nd Petitioner claims that the 1st Respondent then had dealt him several blows on the back of his chest and the shoulders with a cane and that some strokes had also alighted on his arms causing him immense

pain. After the beating, the 2nd Petitioner had been forced to kneel on the ground near the office door and the unbearable pain made him cry.

- (15) Following the assault on him, the 2nd Petitioner alleges that the 1st Respondent proceeded to hit another student named Kumara and demanded from him, the names of the other students who were near the dining hall. Kumara had then given the names of the 1st Petitioner and of the students, Edward and Wasantha.
- (16) The 2nd Petitioner claims that the 1st Respondent hit the 1st Petitioner, Edward and Wasantha when they arrived at the office. He further states that he saw the 1st Respondent taking the 1st Petitioner to the corridor and that he heard the 1st Petitioner pleading with him not to hit him.
- (17) The 1st Respondent thereafter had approached the 2nd Petitioner to cane him as well, but was interrupted by the ringing of the telephone. The Petitioners state that when the 1st Respondent returned after answering the phone, he had written down the names of the Petitioners and the other students who were present and had retorted, “this is the last day, if you have money, do whatever you can and show me, go to Court or the Police or any place you want”, and ordered that they get back to their respective classrooms.
- (18) The Petitioners state that the assault occurred in the presence of other members of staff and students which caused them a great deal of humiliation.

The version of the 1st Respondent

- (19) The 1st Respondent had admitted the fact that he caned the Petitioners. [Paragraph 10 of the statement of objections]. The relevant portion of the said paragraph is as follows; “*The 1st Respondent... states that he warned the students for damaging the said windows and when he wanted to cane them on their palms all of them refused to raise their palms and therefore the 1st Respondent caned them on their buttocks and sent them to their respective classes.*” The 1st Respondent has further reaffirmed this in paragraph 11 of his Affidavit.

- (20) The Petitioners state that, as a result of the caning, they were in immense pain and informed their parents about the assault using the telephone facility available at a cooperative store. Their parents had arrived at the school premises and having informed the respective class teachers about the thrashing, had taken the Petitioners out of the school at around 11.30 am. The parents, thereafter, had lodged complaints at the Mahawela Police station regarding the incident.
- (21) 1st Respondent too had made a complaint at the Mahawela Police station alleging that a group of Grade 11 students had pelted stones at the roof and at the windows of the dining hall of the girls' hostel and had caused damage to the school buildings. In the statement the made to the police [3R4], the 1st Respondent has stated that he admonished the students who were allegedly involved in the incident.
- (22) The Petitioners had been admitted to the District Hospital, Matale on 24th October 2011 for treatment of the injuries sustained and had been treated as 'in-house patients' till 26th October 2011. The Petitioners had been subjected to a medical examination which revealed that the 1st Petitioner had sustained two contusions over the posterior chest wall and contusions over the lateral aspect of both thighs (P3) while the 2nd Petitioner was found to have sustained multiple contusions and abrasions over the posterior chest wall and abrasions over the right posterior-lateral aspect of the upper arm. (P4). The 1st Petitioner was also treated for anxiety and adjustment disorder (P3a).
- (23) The Petitioners had been examined by the Judicial Medical Officer as well on 26th October 2011. As per the medico-legal reports (P5 and P6) the injuries sustained by both Petitioners were recorded as consistent with the Petitioners being assaulted with a linear rigid weapon with a circular shaped cross section similar to a cane. The judicial medical officer has also made an observation that the appearance of the injuries is consistent with the history given by the injured. The extent of the physical harm caused to the bodies [the injuries] of the Petitioners is

amply demonstrated by the photographs marked and produced as P8 (a) and P8(b).

- (24) Subsequent to the filing of this application the Petitioners and five other students of the school had been prosecuted by the Police before the Naula Magistrate's Court for having caused mischief. All seven students had pleaded guilty to the charge and the learned Magistrate, without proceeding to convict them had warned and discharged them and had ordered each of them to pay Rs. 1000/- as state costs.
- (25) The 1st Respondent contends that the punishments which were of 'disciplinary' nature were vindicated by the fact that the petitioners accepted liability. The 1st Respondent further contends that he had had no intention of subjecting the Petitioners to cruel and inhuman treatment or punishment and acted in good faith with the objective of maintaining discipline in the school and with the intention of discouraging such behaviour among the students, in the future. Furthermore, the 1st Respondent strongly denies that he caned the Petitioners in the manner alleged by them and refutes the allegation that the injuries of the Petitioners were as a result of his caning.

Violation of Article 12 (1)

- (26) It was contended on behalf of the Petitioners that, as per Circular No. 2005/17 dated 11th May 2005 issued by the Secretary to the Ministry of Education, that there is a total prohibition on the infliction of corporal punishments on students in government schools as a disciplinary measure. It is the Petitioners' position that the 1st Respondent by his blatant violation of the said Circular, has violated their fundamental rights under Article 12 (1) of the Constitution.
- (27) The decision to issue the circular banning corporal punishment from our schools as a form of discipline, undoubtedly would have been taken after careful study by the relevant authorities of its adverse impacts on a child based on medical studies.

- (28) In addition, international instruments relating to the rights of children to which Sri Lanka became a signatory or a party also may have influenced the decision to ban corporal punishment in schools as Sri Lanka is bound to discharge its obligation to the international community.
- (29) Research had shown that corporal punishment is less effective than other methods of behaviour management in schools, and "praise, discussions regarding values, and positive role models do more to develop character, respect, and values than does corporal punishment". They say that evidence links corporal punishment of students to a number of adverse outcomes, including: "increased aggressive and destructive behaviour, increased disruptive classroom behaviour, vandalism, poor school achievement, poor attention span, increased drop-out rate, school avoidance and school phobia, low self-esteem, anxiety, somatic complaints, depression, suicide and retaliation against teachers". What is recommended are a number of alternatives to corporal punishment, including various nonviolent behaviour-management strategies, modifications to the school environment, and increased support for teachers.
- (30) Steven R. Poole in a joint Article *"The Role of the Paediatrician in Abolishing Corporal Punishment in Schools"* [1st July 1991 PEDEATRICS] says;
- "A number of medical, pediatric or psychological societies have issued statements opposing all forms of corporal punishment in schools, citing such outcomes as poorer academic achievements, increases in antisocial behaviour, injuries to students, and an unwelcoming learning environment."
- The United Nations Committee on the Rights of the Child has defined corporal punishment as; *"any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light."*

- (31) Sri Lanka became a signatory to The United Nations Convention on the Rights of the Child, [herein after the UNCRC] on 26th January 1990 and ratified it on 12th July 1991, thus furthering its commitment towards protecting and upholding the rights of the child. With respect to discipline, Article 28 of the UNCRC has laid down fundamental standards to be followed in formulating school disciplinary policies. The said Article requires all States Parties to take “*all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*”
- (32) This Article must be read in conjunction with Article 19 of the UNCRC which states that state parties should take, “*all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*”
- (33) The infliction of corporal punishment has been condemned by numerous international instruments, in particular the UNCRC, as being violative of the rights of the child to human dignity and physical integrity. In 2006 the United Nations Committee on the Rights of the Child, the international body charged with monitoring compliance with the UNCRC, issued General Comment 8, discussing the right of the child to protection from corporal punishment. The Committee drew the conclusion that Article 19 of the UNCRC; “*does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.*”
- (34) With reference to Article 28 of the UNCRC, the Committee also noted that corporal punishment “*directly conflicts with the equal and*

inalienable rights of children to respect for their human dignity and physical integrity.”

- (35) The negative perception of corporal punishment has been recognised by many other international instruments and conventions. For instance, the Committee on Economic, Social and Cultural Rights, the body charged with overseeing the International Covenant on Economic, Social and Cultural Rights (ICESCR), states in General Comment 13 (on the right to education) as follows;

“In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual.” (UN Committee on Economic, Social and Cultural Rights, General Comment 13, Article 13, The Right to Education, UN Doc. E/C.12/1999/10 (1999), para. 41.[Emphasis is mine]

- (36) The Ministry of Education in its endeavour to discourage the practice of corporal punishment in National schools, had issued the Circular No. 2005/17 dated 11th May 2005, containing provisions which are consonant with the principles enunciated relating to corporal punishment in the international instruments referred to earlier. The Petitioners, in substantiating their case, relied on the said circular. It was submitted that the circular was promulgated with the intention of fostering a school environment in which corporal punishment is eliminated and replaced by more conducive methods of disciplining students having regard to their inherent dignity, physical integrity, as well as their mental well-being. The Circular acknowledges the rise in the abuse of school children at the hands of academic as well as non-academic staff and states that in light of the global movement towards promoting and protecting the rights of the child there can be no leeway for children to be subjected to any form of harassment or abuse in schools.

- (37) Paragraph 2.0 of the aforesaid Circular which is titled ‘Physical Punishment’, states that school principals and teachers should not inflict corporal punishments on students. Paragraph 2.1 lists out the negative effects of corporal punishment on children, for example, that it increases the chances of child abuse, leads to increased child aggression and anti-social behaviour, has a negative effect on a child’s cognitive functioning, self-regulation and social-emotional development. It is also noted in the Circular that if a teacher is incapable of disciplining a student without resorting to corporal punishment, it is a clear indication of that teacher’s weak disciplinary capability.
- (38) The Circular not only places a blanket prohibition on corporal punishment, but by Paragraph 2.2 lists alternative and positive methods of discipline such as informing the students of the school rules and clearly setting out what is expected of them, providing proper guidance and counseling, advising the child on his wrongdoings and/or informing the child’s parents/guardian, suspending the student for a maximum of 2 weeks in the case of serious misdemeanors upon verification by an inquiry.
- (39) Paragraph 2.3 sets out the legal consequences of resorting to corporal punishment. It is specifically stated that corporal punishments on students will give rise to a cause of action with respect to the infringement of fundamental rights under Article 11 of Chapter III and Article 126 of Chapter XVI of the Constitution. A cause of action may also arise with respect to the offence of cruelty to children in terms Section 308A of the Penal Code as well. It is further stated that the teacher concerned would be liable to disciplinary action by the Education Ministry under the Establishment Code if it is proved that he/she had resorted to corporal punishment.
- (40) The 1st Respondent admitted that he caned the students and the consequent physical and mental trauma experienced by the Petitioners as evidenced by their medical reports support the inference that they were indeed subjected to corporal punishment.

- (41) The 1st Respondent's assertion is that he did not act out of malice and had no intention of subjecting the Petitioners to cruel and inhuman treatment and tried to act within the limits of the Circular and followed Paragraph 2.2, which provides alternative methods to discipline students. He has even attempted to justify his decision to cane the Petitioners by arguing that the reason why he did not follow Section 2.2 of the Circular and suspend the Petitioners was due to the fact that they were about to sit for their Ordinary Level Examination and he did not wish for their studies to be hampered. He also claims in his Affidavit (1R9) that it is his firm belief that the Circular can only be followed with respect to activities within the classroom and that the Circular cannot be solely depended on and followed, with respect to illegal activities that occur inside or outside the classroom.
- (42) The arguments made on behalf of the 1st Respondent neither mitigates nor diminishes the gravity of his action. Furthermore, the views formed by the 1st Respondent regarding the laws and regulations that regulate his duties and responsibilities as a teacher attached to the State sector, cannot in any way be regarded as an excuse for his actions. All evidence suggests that he has clearly violated the guidelines laid down by the Circular, in particular Section 2.00. I am unable to accept the assertion of the 1st Respondent that the impugned acts on the part of the 1st Respondent involved disciplinary action not violative of fundamental rights.
- (43) In the present case the action of the 1st Respondent not only is a clear violation of the relevant circular, but also tantamount to the commission of an offence under Section 308A of the Penal Code. As held in the case of **Reddiar v. Van Houten and Others** (1988) 1 SLR 265, violation of a circular applicable to a citizen, amounts to the violation of the Article 12 (1). Therefore, it can be held that the violation of Circular No. 2005/17 by the 1st Respondent amounts to a violation of the Petitioners' fundamental rights guaranteed under Article 12 (1) of the Constitution.

Violation of Article 11

(44) The Petitioners claim that the merciless assault by the 1st Respondent which left them with multiple injuries as well as mental trauma and suffering, amounts to torture and/or cruel, inhuman or degrading treatment or punishment, and as such the action of the 1st Respondent violated their fundamental rights guaranteed under Article 11 of the Constitution.

(45) Article 11 of the Constitution declares the right to be free from torture. It reads; “*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*”

(46) Article 37 of the United Nations Convention on the Rights of the Child [UNCRC] imposes an obligation on state parties to protect children from torture or other cruel, inhuman, or degrading treatment or punishment and the said Article stipulates; “*State Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.*”

(47) In addition to the UNCRC, there are numerous international instruments by which states are under an obligation to protect the child’s right to be free from any form of physical violence. These international conventions

guarantee that the fundamental rights of the child encompass protection against all forms of torture and inhuman and degrading activities. For instance, Article 9 of the International Covenant on Civil and Political Rights delineates; *“Everyone has the right to liberty and security of person”* and both the Article 7 of the ICCPR as well as the Article 5 of the Universal Declaration of Human Rights states that, *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

- (48) In the instant case, it has been established that the Petitioners suffered injuries due to the corporal punishment meted out by the 1st Respondent. As discussed earlier, within the context of human rights, corporal punishment can be perceived as a violation of children’s fundamental right to physical integrity and human dignity. Thus, it can be regarded as cruel, inhuman or degrading treatment and could even amount to physical abuse and/or torture if administered frequently and severely.
- (49) The jurisprudence developed over time has recognized that corporal punishment can amount to a violation of Article 11 of the Constitution. In the case of **Bandara v. Wickremasinghe (1995) 2 SLR 167** in which the Petitioner, a school student had been assaulted during school hours by the Deputy Principal, Vice Principal and a teacher, Kulatunga J. observed that *“the discipline of students was a matter within the purview of school teachers and that whenever they act with the objective of maintaining discipline, they act under the colour of office. Therefore, if in doing so, they exceed their power, they may become liable for the infringement of fundamental rights by executive and administrative action.”*
- (50) Another conclusion that can be drawn from this is that the State cannot deny responsibility with respect to the actions of a civil servant done under the colour of office. As was held in **Lister v. Hesley Hall [2002] 1 AC 215**, vicarious liability can arise for unauthorized, intentional wrongdoings committed by an employee acting for his own benefit, in so

far as there exists a connection between the wrongdoings and the work for which he was employed to render it within the scope of employment. In the instant case, the 1st Respondent caned the Petitioners during school hours, within the school premises. One of the duties of the 1st Respondent was to maintain school discipline and therefore the fact that he abused his authority does not sever the connection with his employment. There exists a sufficient connection between the duties of the 1st Respondent and the abuse he committed to render it within the scope of employment. Accordingly, the State cannot evade liability.

- (51) Children constitute a unique category given their dependency on others, their state of development, their maturity as well as their vulnerability. Therefore, they require a higher degree of protection from all forms of violence. This Court has been conscious of the natural disposition of a child when deciding cases regarding an alleged violation of Article 11 of the Constitution.
- (52) For instance, Kulatunga J in the case of **Bandara v. Wickremasinghe** (*supra*) acknowledged the fact that harsh disciplinarian tactics which involve the excessive use of force would also have a detrimental impact on the mental constitution of a child. His Lordship observed that in granting relief, the Court must “*reassure the petitioner that the humiliation inflicted on him has been removed, and his dignity is restored. That would in some way guarantee his future mental health, which is vital to his advancement in life.*”
- (53) In a similar vein, it was observed in the case of **Wijesinghe Chulangani vs. Waruni Bogahawatte** SC FR App No. 677/2012 (Supreme Court minutes; 12th June 2019) that while it is established law that in addition to a high degree of certainty, that a very high degree of maltreatment is also required to make a finding on cruel, inhumane, degrading treatment under Article 11, “... *what amounts to a ‘high degree of maltreatment’ in relation to an adult does not always resonate with the mental*

constitution of a minor. Therefore, when a minor complains of degrading treatment, the Court as the upper guardian must not be quick to dismiss the claims for failing to meet the same high threshold of maltreatment. Instead, it must carefully consider the impact the alleged treatment may have had on the mentality and the growth of the child.”

- (54) Therefore, it is clear that in instances where a child has allegedly been subjected to torture and/or cruel, inhuman or degrading treatment or punishment, the approach adopted by the Court in examining and weighing the alleged violation should be influenced by the fact that the victim is a growing child whom the law and society as a whole must protect at all times from all forms of violence.
- (55) In the instant case, despite the 1st Respondent’s assertion that he did not intend to harm the Petitioners and was solely acting with the aim of preventing further damage being caused to school property, the medical evidence placed before this Court supports the Petitioners’ version of events and establishes that the impugned uninhibited assault was both violent, degrading and had a detrimental impact on the physical and mental wellbeing of the Petitioners. The 1st Respondent acting under the colour of office, had clearly exceeded his powers as a disciplinarian and subjected the Petitioners to cruel, inhuman and degrading treatment or punishment in violation of Article 11 of the Constitution.
- (56) For the reasons set out above, I hold that the Petitioners have succeeded in establishing an infringement of their fundamental rights guaranteed by Article 12(1) and 11 of the Constitution by the 1st Respondent. There is no material before this court to come to such a finding against any of the other Respondents cited in this application.

In the circumstances of the case, I make order directing the 1st Respondent to pay a sum of Rs.75,000 each to 1st and 2nd Petitioners. I further direct the State to pay the 1st and 2nd Petitioners a sum of Rs. 25,000 each as compensation.

Application allowed

JUDGE OF THE SUPREME COURT

JUSTICE A.H.M.D. NAWAZ

I agree

JUDGE OF THE SUPREME COURT

JUSTICE A.L.S. GOONERATNE

I agree

JUDGE OF THE SUPREME COURT