

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

In the matter of an application under Article 126 of the Constitution of 1978 of the Democratic Socialist Republic of Sri Lanka.

**SC. (FR) No. 661/10**

1. Wijerathne Mudiyansele Mithila Sheyamani Kumarihamy,  
No. 35/1, Wagolla Road,  
Leywella, Kandy.
2. Himanshi Abeysiriwardane Senarath  
No. 35/1, Wagolla Road,  
Leywella, Kandy.

**Petitioners**

**Vs.**

1. The Principal,  
Mahamaya Balika Vidyalaya,  
Kandy.
2. Mr. A.M. Tilekarathne,  
Chairman, Selection Committee,  
Mahamaya Balika Vidyalaya,  
Kandy.
3. Mr. Upali Gunarathne,  
Chairman,  
Appeal's Board,  
Retd. Asst. Provincial Director,  
(Administration)  
Hill Side, Kamburadeniya Road,  
Godapola, Gelioya.
4. Mr. Keerthi Perera,  
National School Director,  
Provincial Council,  
Peradeniya,  
Kandy.
5. Secretary,  
Ministry of Education,  
'Isurupaya',  
Battaramulla.

6. Director National Schools Department,  
'Isurupaya',  
Battaramulla
7. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents.**

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**BEFORE** : Hon.P.A. Ratnayake, PC.J.  
Hon.Chandra Ekanayake, J. &  
Hon.Priyasath Dep, PC. J.

**COUNSEL** : Trini Gordon Rayen with Yasas Sakalasooriya  
for the Petitioner.  
Rajiv Goonetilleke SC. for the A.G.

**ARGUED ON** : 15-12-2011

**WRITTEN SUBMISSIONS  
OF THE PETITIONER  
TENDERED ON** : 18-01-2012

**WRITTEN SUBMISSIONS  
OF THE RESPONDENT  
TENDERED ON** : 18-01-2012

**DECIDED ON** : 28 -03-2012

**Priyasath Dep, PC. J.**

In this application 1st Petitioner is the mother of a minor child who is the 2nd Petitioner in this application and has filed this application complaining of a violation of Article 12(1) of the Constitution when dealing with an application for admission of the 2nd Petitioner, to Mahamaya Balika Vidyalaya, Kandy. The 1st Respondent, Principal Mahamaya Balika Vidyalaya filed an affidavit objecting to the reliefs claimed by the Petitioners. It is observed that the Petitioners have not filed a counter affidavit controverting the averments in the 1st Respondent's affidavit notwithstanding the fact that the Court gave them an opportunity to do so.

The 1st Petitioner submitted an application for the admission of the 2nd Petitioner in respect of Year 1 Admissions for the year 2009. The Petitioner has applied under the Circular dealing with school admissions and published by the Secretary Ministry of Education who is the 5th Respondent in this case. A copy of the Circular has been produced annexed to the Petition of the Petitioner marked as 'P2'. The 1st Petitioner applied for admission under Paragraph 6.1 of the Circular which deal with admission of children of persons resident in close proximity to the school. 50% of the total intake of students are to be admitted under this category. The Marking Scheme in respect of students to be admitted under this category is given under Paragraph 6.1 of the Circular 'P2' which is in the Sinhala language in the following manner.

" 6.1 පාසැලට ආසන්න පදිංචිකරුවන්ගේ දරුවන් 50%

(අ) මෙම ගණය යටතේ පෝෂිත ප්‍රදේශය (3.5 උප වගන්තියට අනුව) තුළ පදිංචි සියලු දෙනාටම අයදුම් කළ හැකිය.

(ආ) මෙහිදී තෝරා ගැනීම සිදු කරනුයේ පහත දක්වා ඇති ලකුණු ක්‍රමය අනුවය.

**ලකුණු ක්‍රමය**

i. පදිංචිය  
ජන්ද හිමි නාම ලේඛණය මගින් සනාථ කළ යුතුය.

ස්ථීර පදිංචිය - ජන්ද හිමි නාම ලේඛණයේ ගෘහ මූලික වශයෙන් සිටියේ නම් අයදුම් කරන වසරට පෙර වසරේ සිට වසර 5ක් සඳහා වසරකට ලකුණු 7 බැගින් ලකුණු 35

තාවකාලික පදිංචිය - ජන්ද හිමි නාම ලේඛණයේ ගෘහ මූලික වශයෙන් නොසිටියේ නම් අයදුම් කරන වසරට පෙර වසරේ සිට වසර 5ක් සඳහා වසරකට ලකුණු 5 බැගින් ලකුණු 25

උපරිම ලකුණු - 35

ii. පදිංචි ස්ථානයේ සිට පාසැලට ඇති ආසන්නතාව  
(පදිංචි ස්ථානයේ සිට ඉල්ලුම් කරනු ලබන පාසැලට වඩා ආසන්නයේ අදාළ දරුවාට ඇතුළත් වීමට හැකි ප්‍රාථමික අංශය සහිත වෙනත් රජයේ පාසැල් නොමැත්තේ නම් උපරිම ලකුණු ලබා ගත හැකිය. ඉල්ලුම් කරන පාසැලට වඩා පදිංචි ස්ථානයට ආසන්නයේ දරුවාට ඇතුළත් වීමට හැකි ප්‍රාථමික අංශය සහිත වෙනත් රජයේ පාසැල් පිහිටා ඇත්නම් උපරිම ලකුණු ප්‍රමාණයෙන් ආසන්න එක් පාසැලක් වෙනුවෙන් ලකුණු 10 බැගින් අඩු කරනු ඇත.)

උපරිම ලකුණු - 50

iii. ආසන්නතාවය තහවුරු කරන ලේඛණය සඳහා පදිංචි ස්ථානයේ  
□ හිමිකම් ඔප්පුව ලකුණු - 10  
(පැවරුම්/තැඟි) පත්ඉරු හා දෙවන පිටපත් පරීක්ෂා තහවුරු කර ගත හැකිය  
□ ලියාපදිංචි බදු ඔප්පුව ලකුණු - 05  
□ ලියාපදිංචි නොකළ බදු ඔප්පුව ලකුණු - 02

උපරිම ලකුණු - 10

iv. පදිංචිය සනාථ කරන අතිරේක ලේඛණ  
එක් ලේඛණයක් සඳහා එක් ලකුණක් බැගින් ලකුණු 05  
(ජාතික හැඳුනුම්පත/වදුලි බිල්පත්/ජල බිල්පත්/දුරකථන බිල්පත්/විවාහ සහතිකය ආදිය)

උපරිම ලකුණු - 05"

The marks given by the School Selection Committee in respect of the application of the Petitioners were produced marked as 'R1' to the affidavit of the 1st Respondent. The basis of granting marks given by the School Selection

Committee is also given in 'R1'. There is no counter affidavit filed controverting the marks given or challenging the basis of the marks given in the document 'R1'.

In terms of the affidavit given by the father of the child annexed to the petition marked 'P4' and also the oral and written submissions made to Court on behalf of the Petitioners the main ground of objection is for not granting of the total of 35 marks to be allocated under 'Clause i ' of the Marking Scheme which falls under paragraph 6.1 of the school admission circular referred to above and contained in document 'P2'. Clause i of paragraph 6.1 of the Circular states as follows:

" i. පදිංචිය  
ඡන්ද හිමි නාම ලේඛණය මගින් සනාථ කළ යුතුය.

ස්ථීර පදිංචිය - ඡන්ද හිමි නාම ලේඛණයේ ගෘහ මූලික වශයෙන් සිටියේ නම් අයදුම් කරන වසරට පෙර වසරේ සිට වසර 5ක් සඳහා වසරකට ලකුණු 7 බැගින් ලකුණු 35

තාවකාලික පදිංචිය - ඡන්ද හිමි නාම ලේඛණයේ ගෘහ මූලික වශයෙන් නොසිටියේ නම් අයදුම් කරන වසරට පෙර වසරේ සිට වසර 5ක් සඳහා වසරකට ලකුණු 5 බැගින් ලකුණු 25

උපරිම ලකුණු - 35 "

The 1st Respondent in her affidavit has stated that the cut off marks for admission to the school for the relevant year has been 80 marks. 2nd Petitioner has been given 73 marks. She has been given only 28 marks out of 35 marks under 'Clause i' of the marking scheme. She was deprived of 7 marks for the year 2003 as the parents names did not appear in the electoral register in proof of residence. It is admitted by the 1st Petitioner that the name of the parents did not appear in the electoral register for the year 2003. According to the Petition, the 1st Petitioner's husband has been in the United Kingdom "for his carrier enhancement" and the 1st Petitioner has joined the husband in the year 2003. The 2nd Petitioner was born at the South Shields maternity Hospital in the United Kingdom on 13th June 2003. The Birth Certificate produced with petition marked as 'P1' also establish this fact.

The Learned Counsel for the Petitioner advanced an argument that the 'residence' of the Petitioner was not affected due to this temporary absence. In

respect of the interpretation of the word 'residence' in the school admission, Circular he has cited Black's Law Dictionary Ninth Edition and the case of Geethaka and Others Vs. Dissanayake and Others SC. FR. Application No. 35/2011 reported in BASL Law Journal 2011 Vol. 2 page 370. In Geethaka's case, Court held that "residence as implied by the circular would imply a permanent abode which has been used for a continuous period....". In the said case marks given in respect of documents produced in respect of 'residence' ie. clause iii in the Marking Scheme 'P2' was disputed. But in this case it is different. What is disputed are the marks given under Clause i in the Marking Scheme 'P2' which deals with marks to be obtained by the submission of the electoral register.

The marks to be given under Clause i of the marking scheme in the school admissions circular 'P2' is very clear. For each year of the 5 years where the name appears as chief occupant, 7 marks are given. It is an admitted fact that the name did not appear in the electoral register as chief occupant for the year 2003.

The Petitioner has never complained against the name not appearing in the electoral register for the year 2003. The complaint in accordance with paragraph 10 of 'P4' is against the Selection Committee of the School not giving marks for the year 2003 on the basis that their names did not appear in the electoral register. It is the Officials of the Department of the Commissioner General of Elections who has not entered the name in the electoral register and not the Selection Committee of the School. If the name did not appear in the electoral register for the particular year the Selection Committee of the School had no discretion in accordance with the wording of Clause i of the marking Scheme of the school admissions Circular 'P2'. In short as submitted by the Learned Senior State Counsel who appeared for the Respondents "no name in register no marks". Further the Officials of the Elections Department including the Commissioner General of Elections who have made the decision not to include Petitioner's and her husband's name in the electoral register for the year 2003 have not even been cited as parties to the application.

In the circumstances, there is no basis to find fault with the School Selection Committee, the appeals Board, or the officials of the Education Ministry of the Provincial Education Ministry who have been cited as parties to this application.

Accordingly I hold that there is no violation of Article 12(1) of the Constitution committed by the Respondents. Application is dismissed. In all the circumstances I make no order as to costs.

Judge of the Supreme Court

P.A. Ratnayake, PC. J.

I agree

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree

Judge of the Supreme Court