

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

In the matter of an Application for under and in terms of Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR Application No. 109/2014

1. Nadesan Balamurali
2. A. Anbalgan
3. R. Vijayakumaran

(All members of the School Development Society Talawakelle Tamil Maha Vidyalaya, Talawakelle,)

Petitioners

Vs.

1. W.J.L.S Fernando,
Project Director, Upper Kotmale
Hydro Power Project,
Ceylon Electricity Board,
No. 385, Fourth Floor,
Landmark Building Galle Road,
Colombo 03.
2. Ceylon Electricity Board,
No. 72, Ananda Kumaraswamy
Mawatha,
Colombo 07

3. S.G.K Bodhimanna,
Divisional Secretary,
Divisional Secretariat Office,
Nuwaraeliya
4. M.G.A Piyadasa,
Zonal Director Education,
Zonal Education Office, Nuwaraeliya
5. H.M Wijayasiri,
Provincial Director of Education,
Provincial Department of Education,
Central Province, Kandy
6. R. Krishnasamy,
Principal,
Tallawakelle Tamil Maha Vidyalaya,
Talawakelle
7. Hon. Attorney General,
Attorney Generals' Department,
Colombo 12

Respondents

Before: Jayantha Jayasuriya, PC, CJ.
L.T. B Dehideniya, J.
S. Thurai raja, PC, J.

Counsels: Shantha Jayawardena with Ms. Thilini Vidanagamage for the Petitioners
Nihal Jayawardena, PC with Malik Hannan for the 1st and 2nd Respondents
Ms. Yuresha de Silva, DSG for the 3rd and 7th Respondents
Uditha Egalahewa, PC with Ranga Dayananda for the 4th -6th Respondents

Argued on: 04.04.2022

Decided on: 30.09.2022

L.T.B. Dehideniya, J.

The Petitioners invoke the jurisdiction of this court alleging the infringement of Fundamental Rights guaranteed under the Article 12(1) of the Constitution by the Respondents.

The Petitioners are members of the School Development Society of Talawakelle Tamil Maha Vidyalaya and argues that they have a vested interest in the wellbeing of the school and the right to education of the students. The alleged infringement is based on the failure of the 1st and 2nd Respondents to build the new Auditorium of the school as agreed by them. The school was relocated as the land on which previous buildings of the school was situated was acquired for Upper Kothmale Hydro Power Project. The Respondents' position is that the Petitioners have no legal standing to file the present application and the Learned President's Counsel submits that when filing a legal action on behalf of a society by members of a society, it is necessary to satisfy the Court by proving that they have been authorised by the respective society to file such an action. It is further submitted that School Development Society cannot simply file an action without passing a resolution by the members of the society at an Executive Committee Meeting. However, The Respondents have not tendered any evidence or authorities to substantiate the above legal context

A School Development Society consists of parents / guardians of the children of a School. It is clear that the parents have a fair right and a duty to stand for their children if an authority deprives the future wellbeing of the school children. In par with the said view, the legal standing of the School Development Society of Talawakelle Tamil Maha Vidyalaya can be discussed in a child rights perspective.

When considering the Sri Lanka's legal position in protection of the rights of the child, Sri Lanka ratified the UN Convention on the Rights of the Child (CRC) on 12 July 1991. Even though the CRC has not been directly incorporated into national law, Sri Lanka has, however,

expressed its view that many of the provisions of the CRC are in line with many of the current rights espoused by the 1978 Sri Lankan Constitution (Constitution). Following the ratification of the CRC, in 1992 Sri Lanka adopted the Children's Charter with a view to ensuring the standards of the Convention. CRC sets a general obligation of preserving the interests of the child on the state authorities and the courts of law in all actions concerning children. **Article 3 (1)** of the CRC declares that,

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Furthermore, to give effect to its obligations under the International Covenant on Civil and Political Rights (ICCPR), the Sri Lankan Parliament passed the **ICCPR Act No. 56 of 2007**.

Section 5(2) of the Act states as follows:

“In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interest of the child shall be of paramount importance.” (emphasis added)

Thus, the ICCPR Act codifies the internationally recognized principle of ‘securing the interests of the child shall be of paramount importance.’ Article 5(2) of the ICCPR Act can be identified as a similar provision to Article 3(1) of the CRC. In accordance with the aforesaid legal context, Sri Lanka being a state party to the CRC and adopting the Children's Charter with a view to ensuring that standards of the Convention and further assuring the interests of the children by the ICCPR Act, it is noteworthy that, in the case of children who encounter the law, among other relevant factors, it is essential for Courts to acknowledge the interests of children to assure the protection of law the children deserve.

Moreover, under the **Article 27(13)** (directive principles of the state policy and fundamental duties) of the Constitution, government is duty bound to promote interests of children and youth with special care, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.

Under the **Article 27(2) (g)** of the Constitution, Sri Lanka is pledged to raise the moral and cultural standards and ensure the full development of human personality of people including children. Under the **Article 27(2) (h)** it is further provided that Sri Lanka is obligatory to eradicate of illiteracy and to assure all persons of the right to universal and equal access to education at all levels. Therefore, it is apparent that this Court should emphasise the importance of the obligation on the State to ensure ‘education’ to children as recognised by the Constitution and international treaty obligations.

Aforementioned state obligation has been reassured in a range of case law. In the case of *Kirahandi Yeshin Nanduja De Silva and another v. Sumith Parakramawansha et al* (SC/FR 50/2015, SC minutes dated 02 August 2017) it was held that though the right to education has not been recognized as a fundamental right in the Sri Lankan Constitution, under the Article 27 of the Constitution, the government is obliged to take into consideration the Directive Principles of State Policy when enacting laws and taking action regarding governance. It was further held that it is paramount to give equal access to education in order to establish free and just society.

Per Priyantha Jayawardena PC, J at p.8;

“Though the right to education has not been recognized as a fundamental right in the Sri Lankan Constitution, the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels have been recognized as a directive principle in the

Constitution. Thus, the Government is obliged take into consideration the Directive Principles of State Policy when enacting laws and taking action regarding governance. In this context, I am of the view that it is paramount to give equal access to education in order to establish a free and just society.”

In the case of **Holidays (Amendment Bill)** (SC/SD 6-7/2019, “Decisions of the Supreme Court on Parliamentary Bills” 2019-2020 Vol XV 25 at 34-35) this Court has emphasized the importance of assuring proper education and it was held that any attempt to undermine the overall objective of Education by limiting or restricting or attaching undue prominence to text book related or school curricular exam-orientated education, will erode the Right to Education but also will not only defeat the rationale of Education.

In April 2003 the Principle of the school had informed the needs of the school in the context of proposed relocation and an Auditorium was identified as one such infrastructure facility. In this context it is noteworthy that the school concerned is an upper secondary school having classes up to G.C.E Advanced Level in Science, Commerce and Arts streams which needs an Auditorium for the educational purposes of the students. Accordingly, when carefully observing the factual matrix and the aforementioned legal obligations on Sri Lanka to secure the Right to Education, it can be noted that the Auditorium in question is important to guarantee proper education of the school children.

Under the **Article 17** of the Constitution every person is protected against the infringement of the fundamental rights. The term used in the Constitution is ‘every person’. If there is an infringement on rights of the children, they have the right to come before the Supreme Court for redress. As it was discussed earlier, School Development Society who has a vested interest on the education of the school children has a right to invoke the jurisdiction of the Supreme Court.

Under the **Article 126** states that the Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right. As such, the Supreme Court has a power to intervene in all cases concerning a violation of fundamental rights.

When considering the protection of the interests of the children and the constitutional powers vested upon the Supreme Court as discussed above, members of the School Development Society of Talawakelle Tamil Maha Vidyalaya have a right to invoke the jurisdiction of the Supreme Court on the infringement of the fundamental rights guaranteed by the **Article 12(1)** of the Constitution on behalf of the students of Talawakelle Tamil Maha Vidyalaya. In the instant application the Petitioners have invoked the jurisdiction of this Court by way of an application for fundamental rights as provided by the Constitution.

By February 2013, the School Development Society, Past Pupils Association with School PSI Committee has raised concerns with the 1st Respondent on the issue of incompleteness of infrastructure facilities. It is pertinent to note that the principal (6th Respondent) is the President of said three associations. In this communication they had drawn the attention of the 1st Respondent on the promise to construct the Auditorium (Block-I) according to the initial plan marked **P-5**. In the letter dated 05.04.2013, the Principal had conveyed the adverse consequences that would be caused to the studies of the students if the Auditorium is not constructed. Nevertheless, the letter of the Principal dated 17.07.2013 indicates that the 1st Respondent had failed to reply a series of communications on this matter.

The 6th Respondent –the Principal, who is also the president of the school development society (**P-12**) confirmed that the three Petitioners were the Secretary and two committee members of the school development society. School Development Society or any other

society who has an interest on matters relating to the school had not intervened at the initial stages of the relocation of the school. However, when the conduct of the 1st and 2nd Respondents became apparent that the interests of the school will be adversely affected (due to the deviation from initial plans) School Development Society and other societies who have an interest on the wellbeing of the school had intervened. (vide **P-12** dated 2013.02.15). Therefore, none of the three Petitioners be identified as “*a mere busy body or a meddlesome interloper*” when they invoked the jurisdiction of this Court. The said legal context is discussed in the case of *Ajith P. Dharmasuriya v. Mahaweli Authority of Sri Lanka* (SC/ FR 330/2015, SC minutes dated 09 January 2017)

K. Sripavan, C.J. at p.5;

“The strict rule of standing which insists that only a person who had suffered a specific legal inquiry can maintain an action for judicial redress is relaxed and a broad rule evolved which gives standing to any member of the public who is not a mere busy body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or its agencies by citizen will induce the State or its agencies to act with greater responsibility and care thereby improving the administration of justice.”[emphasis added]

Therefore, this court has a vested responsibility to question whether there has been a violation of fundamental rights and to make an appropriate decision on the instant issue.

When analysing the scope of ‘executive or administrative action’ under Article 126, it is necessary to delve into the law to examine whether the actions of 1st and the 2nd Respondents falls within executive or administrative action as referred to in said Article of the Constitution. The term ‘executive or administrative action’ is not specifically defined in the

Constitution. Nevertheless, **Article 4(d)** of the Constitution refers to the term '*organs of the government*' in relation to respecting, securing and advancing the fundamental rights guaranteed by the Constitution. This legal position is discussed in a range of case law. In the case of *Reinzie Perera v. University Grants Commission* [1978-79-80] 1 Sri L.R 128 it was held that fundamental rights operate only between individuals and the State and in the context of fundamental rights the 'State' includes every repository of state power. It was further observed that the expression 'executive or administrative action' embraces executive action for the state or its agencies or instrumentalities exercising governmental functions.

A similar view had been expressed in the case of *Wijethunga v. Insurance Corporation and Another* [1982] 1 Sri L.R 1 at p.6. Sharvananda A.C.J. held that the term executive action comprehends official actions of all Government Officers.

Moreover, according to the Section 2(2) of the Ceylon Electricity Board Act No. 29 of 1979, the Ceylon Electricity Board is a body corporate having perpetual succession, which can sue and be sued in such name. Further, when observing the provisions contained in the Act as a whole it appears that the Minister exercises appreciable control over the Ceylon Electricity Board in appointing members, General Manager, Chairman to the Board. In terms of Section 8 of the Act the Minister is empowered to give general and special directions to the Board. Therefore, when considering the Constitutional provisions together with statutory provisions and case law jurisprudence, it can be arrived at conclusion that the Petitioners can invoke the jurisdiction of this Court in terms of Articles 17 and 126 of the Constitution in relation to the alleged conduct of the 1st, 2nd Respondents.

The Petitioners submit that in or around 2001-2003, School Administration of Talawakelle Tamil Maha Vidyalaya was informed by the 1st and the 2nd Respondents that due to the Upper Kothmale Hydro power project the school needed to be relocated. Petitioner argues

that according to the letter dated 18.08.2004 (document marked **P-5**), the Respondents have agreed to relocate the school and rebuild the facilities as listed in **P-5**. Further, the Petitioners consider the document P-5 as the initial agreement to the proposed plan of the constructions. The Petitioners contend that the 1st and the 2nd Respondents have neglected or failed to construct the Auditorium (listed in **P-5** as Block-I) as agreed by the letter marked **P-5** and such conduct is arbitrary, irrational and unreasonable. The Respondents' position is that **P-5** is not an agreement, but a letter which has been addressed to the Provincial Director (Central) Department of Education Kandy seeking his approval at the earliest to the plans submitted pertaining to the construction of buildings.

When carefully examining the letter marked **P-5**, it appears that the said letter contains a promise given by a state authority (Ceylon Electricity Board) to the School to construct the infrastructure facilities including the Auditorium. Furthermore, it has been admitted by the 1st and 2nd Respondents in the letter marked as **P-5** that “..*Principle of the Talawakelle Tamil School has verbally agreed to the new layout plan and plan of the buildings*”. **P-5** contains of the layout plan of the proposed buildings and proposed dimensions of the said buildings.

It is a question of great importance before this Court whether a breach of a promise made by a state authority can be considered as an infringement of Article 12(1). According to the existing law a breach of a promise made by a public authority can be challenged from the perspective of Legitimate Expectation and Public Law on the basis of an alleged infringement of the fundamental right to equality guaranteed by Article 12(1) of the Constitution. This view has been adopted in a range of case law.

In the case of *Wickremesinghe v. Ceylon Petroleum Corporation and Others* [2001] 2 Sri. L.R 409 S.N Silva CJ. considered whether a breach of a promise/agreement can be challenged under the Article 12 of the Constitution and held that;

At p. 410

“Since the termination of the Agreement is challenged on the basis of an infringement of the right to equality guaranteed by Article 12(1) of the Constitution, the legality of the termination has to be reviewed not in the light of the law of contract but in the domain of the Constitutional guarantee of equality enshrined in Article 12”

At p. 412

“..In that respect the termination of the Petitioners dealership is in compliance with specific terms of the Agreement (PI) and the Petitioner may not be entitled to any relief in respect of the termination under the law of contract and the common law on the subject. But, that is from the perspective of the Private Law. In these proceedings, the termination is challenged from the perspective of Public Law on the basis of an alleged infringement of the fundamental right to equality, guaranteed by Article 12(1) and (2) of the Constitution. Therefore the matters to be considered transcend the mere examination of the terms of the Agreement and a review of the legality of the termination in the light of the Law of Contract and enter the domain of the constitutional guarantee of equality enshrined in Article 12.”

A similar view was expressed in the case of ***Kalidasage Roshan Chaminda v. Kurunegala Plantations Limited and Others*** (SC FR. Application No. 24/2013, SC minutes dated 03.09.2014). Eva Wanasundara PC. J, considered the observations of the Chief Justice S.N Silva in ***Wickremesinghe v. Ceylon Petroleum Corporation and Others*** (supra) at p. 413;

“Therefore the impugned termination of the Dealership Agreement by P4, should be reviewed in these proceedings not from the narrower perspective of only the

terms of the Agreement but from broader perspective of the exercise of executive or administrative action by an agency of the Government and the constitutional guarantee of equality which should guide the exercise of power under the Agreement.”

Eva Wanasundara PC. J at P. 8-9

“I am of the opinion that the 1st Respondent’s refusal to extend the lease period should be reviewed not from the narrow perspective of only the terms of the agreement but from the broader perspective of the exercise of executive and administrative action. The refusal to extend the lease period by the 1st Respondent is an act of agency of the Government and the Constitutional guarantee of equality should guide the exercise of power under the agreement. Every instance of unfairness to an individual will not give rise to a justiciable grievance under the ideology of the rule of law and equality under the law but the party which is seemingly more powerful in this instant case, after the conclusion of signing the contract, being a state entity should not have abused the power in its hands. The conduct of the Respondents seem to be arbitrary even though mala fides has not been pleaded in the petition.”[emphasis added]

Considering the above discussed case law jurisprudence, it appears that breach of the promise refers to in the **P-5** can be challenged under the Article 12(1) of the Constitution.

The Petitioners’ contention is that upon the assurance given in terms of the document marked **P-5**, the Petitioners entertain a *legitimate expectation* that the School will be relocated to a suitable location with the facilities agreed as per the said document, including the Auditorium (Block-I). In the eyes of the law an expectation is considered to be legitimate where it is founded upon a promise or practice by the authority that is said to be bound to fulfil the

expectation and the applicability of the doctrine of legitimate expectation should be based on the facts and circumstances of each case. In the case of *Dayaratne v. Minister of Health and Indigenous Medicine* [1999] 1 Sri L.R 393 Amarasinghe J. held that destroying of a legitimate expectation is a ground for judicial review which amounted to a violation of equal protection guaranteed by Article 12 of the Constitution.

A similar view was expressed in the case of *Ginigathgala Mohandiramlage Nimalsiri v. Colonel P.P.J. Fernando and Others* (SC FR. Application No. 256/2010, SC minutes dated 17.09.2015) and Justice Priyantha Jayawardena PC. has further discussed the application of the concept of legitimate expectation in the context of infringement of fundamental rights.

Priyantha Jayawardena PC. J, at p. 8-9

“In Sri Lanka the said doctrine of legitimate expectation is applied in the fields of public law, fundamental rights law and in labour law. In labour law the said doctrine is applicable to the state sector and the private sector in like manner. The doctrine of legitimate expectation applies to situations to protect legitimate expectation. It arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practices of an authority.” [emphasis added]

At p.9

“In order to seek redress under the doctrine of legitimate expectation a person should prove he had a legitimate expectation which was based on a promise or an established practice. Thus, the applicability of the said doctrine is based on the facts and circumstances of each case.” [emphasis added]

In light of the above legal context and the facts and circumstances of the instant application, it is evident that the Petitioners have entertained a legitimate expectation with regard to the

promise made by the 1st and 2nd Respondents to relocate the school and construct all the facilities in terms of the document marked **P-5**. Nevertheless, when considering the evidence submitted by both parties, it appears that the 1st and the 2nd Respondents have failed or neglected to construct the Auditorium (Block I) as promised. The Petitioners on behalf of the students of the School relies on the promise made by the 1st and 2nd Respondents to construct the buildings including the Auditorium to ensure the quality and undisturbed education of the students. The Petitioners submits that the 1st and 2nd Respondents deviated from the promise to construct the Auditorium due to political involvement of the Ceylon Workers' Congress (CWC). The 1st and 2nd Respondents have stated in the letter dated 01.03.2013 (document marked **P-13**) that they had to sign a Memorandum of Understanding (MOU) with the CWC to stop demolition of the old buildings and to agree upon sharing the Auditorium building with the Saumaya Moorthy Thondaman Foundation.

The letter dated 01.03.2013 marked as **P-13**, at p.1

“..At the time of demolition of the Old Tamil School buildings, CWC intervened to stop demolition. They demanded a building for Saumaya Moorthy Thondaman Foundation and insisted to sign MOU with CEB before demolition. At that stage, CEB had no option but to sign the MOU on the advice of the Ministry of Power and Energy to continue project activities without hindrance. However, in the MOU it was agreed to share auditorium and library with Tamil Maha Vidyalaya.”

The Petitioners, further submits that the 1st and 2nd Respondents have acted under dictation of a superior authority (political party or any other undisclosed party) or has abdicated their power vested on such authority. Such conduct had resulted in depriving the School of the new Auditorium as promised by the initial contract. In the eyes of the law, when law vests discretionary powers in a designated authority or an official, it is the said authority who has

to exercise the same according to its judgement and discretion; and no one else. There is, however, a distinction between seeking advice or assistance on the one hand and acting under dictation on the other hand. Advice or assistance may be taken and then discretion may be exercised by the authority concerned genuinely without blindly or mechanically acting upon the advice.

The legal basis of which is more fully discussed by the jurist Christopher Wade in Administrative Law, H.R.W Wade and C.F Forsyth (10th Edition at p.269- Chapter: Surrender, Abdication and Dictation) as follows:

“Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercise by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void.” [emphasis added]

Aforesaid legal position is adopted in the case of ***R.P Karunarithna Bandara v. P.B Disanayaka and Others*** (SC/FR Application No.356/2016, SC minutes dated 28.06.2018) and decided that such conduct of an authority amounts to an infringement of Petitioner’s fundamental rights guaranteed under Article 12(1) of the Constitution.

Per H.N.J Perera J. at p.11

“..In the instant case there is material to show that the 8th Respondent has surrendered and abdicated her discretion to the 5th Respondent and had acted

under the dictates of the 5th Respondent. The 8th Respondent is prohibited from acting under dictates of the 5th Respondent.

‘An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else’ (vide: Chapter 10 of ‘Administrative Law’ Wade and Forsyth, 10th Edition, page 259)’

1st and the 2nd Respondents have admitted that at the time of demolition of the old Tamil School buildings, CWC intervened to stop demolition and they demanded a building for Saumaya Moorthy Thondaman Foundation and insisted to sign MOU with CEB before demolition, therefore; CEB had no option but to sign the MOU (vide document marked **P-13**).

The Respondents’ position is that they had to deviate from the initial plans due to threats of landslides. Nevertheless, for the first time the Respondents had taken up this position in document marked **P-13** dated 01 March 2013 whereas issues on the ‘auditorium’ and intervention by Thondaman Foundation had commenced from March 2011 (document marked **P-8**). It is further observed that 1st and 2nd Respondents in their statement of objections filed in the High Court of Nuwaraeliya in HC/NE (Writ) 16/2013 on 17 December 2013 had admitted the delay in completing the school relocation but failed to take up the specific position that an issue on landslides had either delayed or forced them to change the initial plan (vide document marked **1R3**). Furthermore, 1st and 2nd Respondents failed to produce any material before this Court (either by way of an Affidavit, report or correspondence from and authority who could have made such claim) to substantiate their position.

Therefore, when carefully examining evidence of the present application, it appears that 1st and the 2nd Respondents have acted under dictation or influence of a political party in implementing the promise given to the school by CEB. Consequently, the 1st and the 2nd Respondents have deviated from the initial promise and failed/neglected to build the Auditorium (Block I) as promised. 2nd Respondent entering into a MOU with a third party is a violation and disregard to the promise made to the School and this conduct is not only unlawful but arbitrary as well.

As discussed above, Legitimate Expectation has been described as a concept which derives from an undertaking given by someone in authority. In the instant case it is the promise given by the Respondents to construct the Auditorium (Block-I) as laid out in the initial lay out plan marked **P-5** which establishes the Legitimate Expectation on the School including students and the parents of the students. Due to the incompleteness of the Auditorium the students had to continue their education with limited facilities and the co-curricular activities of the students have been paused without a proper Auditorium Building. Further the Principle of the school had duly informed the Respondents of the need to have the required facilities as promised in **P-5** for the wellbeing of the students (vide document marked **P-7**). The Petitioners' complaint that the fundamental rights guaranteed in terms of Article 12(1) had been violated is based on the concept of legitimate expectation as they had such an expectation that the Respondents would construct the Auditorium building as promised in order to continue proper education of the students of Talawakelle Tamil Maha Vidyalaya. Therefore, it is the view of this Court that the arbitrary decision of the Respondents to deviate from the initial plan due to extraneous reasons including intervention by political authority had resulted in a violation of the Article 12(1) of the Constitution.

Moreover, 1st and 2nd Respondents have raised the issue of time bar regarding the Petitioners' application. This application had been filed on 11 April 2014. Although a

possible deviation from the initial plan (**P-5**) promised by the Respondents had been surfaced for the first time in 2011, parties had been on constant discussions on the possible options. Even on July 2013, the Respondents had sought the intervention of Secretary Ministry of Power and Energy. Thereafter, 1st and 2nd Respondents in their statement of objections filed in the High Court of Nuwaraeliya in HC/NE (Writ) 16/2013 on 17 December 2013 had admitted the delay in completing the school relocation. However, the Respondents did not claim the relocation process is completed (**vide 1R3**).

Therefore, the alleged violation due to non-compliance with the initial agreement had been a continuing violation and it was only on 16 October 2014 (six months after the filing of the present application), the 1st Respondent had handed over the newly constructed buildings to the Divisional Secretary who in turn handed over it to the Provincial Director of Education (**vide document marked 1R1**). Hence there is no merit in submission of the Respondents that this application is out of time.

As per the legal context discussed above, 1st and the 2nd Respondents as public authorities had no reason to deviate from the initial promise with the School by handing over the discretion to a political party or any other undisclosed authority. Further, 1st and 2nd Respondents are bound by the Contractual obligation to build all the buildings including the Auditorium (Block-I) as promised to ensure the undisturbed education of the students.

Therefore, by concluding the Judgement, this Court declares that, the Fundamental Rights guaranteed to the Petitioner under the Article 12 (1) of the Constitution have been infringed by the 1st and the 2nd Respondents by not building the Auditorium (Block I) as set out in the document marked **P-5**.

Thus, this Court directs the 2nd Respondent to construct an Auditorium for Thalawakele Tamil Maha Vidyalaya in a suitable location according to specifications promised in P-5, in

consultation with all stake holders including 4th, 5th, and 6th Respondents and School Development Society of Talawakelle Tamil Maha Vidyalaya. I further order the 1st Respondent to pay Rs. 25000/= as costs to each of the three Petitioners.

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ

I agree

Chief Justice

S. Thurairaja, PC, J

I agree

Judge of the Supreme Court