

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

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

1. Madaduwage Susil de Silva

11/1, Kaluwadumulla Pathumawatha,

Kaluwadumulla, Ambalangoda

2. Madaduwage Dilina Yeshan de Silva(Minor)

11/1, Kaluwadumulla Pathumawatha,

Kaluwadumulla, Ambalangoda

Petitioners

SC/FR/No. 31/2011

Vs.

1. M.G.O.P. Panditharathne,
Principal,

Ambalangoda Dharmashoka Vidyalaya
Galle Road, Ambalangoda.

2. M.H.T. Wasantha (Secretary)

3. H.D.U. Chandima

4. Tharaka Maduwage

5. W. Ranaweera de Silva

All members of the Interview Board (On admissions to Year 1, 2011), Ambalangoda Dharmashoka Vidyalaya, Galle Road, Ambalangoda

6. R.B. Methananda (President)
7. K.K. Kema Chandani
8. Dharmasiri Ginige
9. K. Indunil de Silva
Members of the Appeal Board (On admissions to Year 1, 2011), Ambalangoda Dharmashoka Vidyalaya, Galle Road, Ambalangoda
10. Director – National Schools,
Isurupaya, Battaramulla.
11. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondents

BEFORE : HON. AMARATUNGA, J.
HON. EKANAYAKE, J.
HON. PRIYASATH DEP PC, J.

COUNSEL : J.C. Weliamuna with Pulasthi Hewamanne
for the Petitioner.
M. Gopallawa, Senior State Counsel for the

Respondents

Argued on : 14-09-2011

Decided on : 28-03-2012

Priyasath Dep ,PC. J.

This is fundamental rights application pertaining to an admission of a student to year 1 class of a National School. The 1ST Petitioner is the father of the 2nd petitioner (minor), on whose behalf he submitted an application for admission to the year 1 class of Dharmasoka Vidyalaya, Ambalangoda. The 1st Petitioner after submitting the application for admission to the school took necessary steps to get the 2nd Petitioner admitted to the above school.

The first Respondent is the Principal of the school and 2nd to 5th Respondents are the members of the Interview Board. The 6th to 9th Respondents are the members of the Appeal Board (on admissions to Year 1, 2011). The 10th Respondent is the Director of Nation Schools and the 11th Respondent is the Hon. Attorney General.

The admissions to Government Schools are governed by Circular No. 2010/21 dated 31st May 2011 which was annexed to the Petition as marked P2. The Applicants are furnished with another document referred to as "Guidance for admission of students to year 1" which was annexed to the petition marked P3

The percentages of students to be admitted under different categories under the above circular are given below:

| <u>Categories</u> | <u>Percentage</u> |
|---|-------------------|
| Children of Residents living in close proximity to the school | 50% |
| Children of Old boys/girls of the school | 25% |
| Brothers/sisters of students currently studying in the school | 15% |
| Children of Staff members under the Ministry of Education | 05% |
| Children of Transferred public servants | 04% |

The 1st Petitioner submitted two applications on behalf of the 2nd Petitioner for admission. One under “Children of Residents living in close proximity to the school category” (hereinafter referred to as Residents Category) and the other under “Brothers/Sisters of students currently study in the school category” (hereinafter referred to as Brother/Sister category).The circular and guidelines marked P2 and P3 provide a marking scheme under different categories including “Residents Category” and also under “Brother/Sister category” The said marking schemes are given below:

Children of Residents living in close proximity to the school category(Residents Category)

- a) Proof of residency established by the production of the extracts of electoral list register including the names of parents for a continuous period of 5 years preceding the year of submission of the said application (7marks per year)

- Total 35 marks

- b) Production of title deeds to confirm residency :

- Total 10 marks

- c) Production of other documentation establishing residency : National Identity Card, telephone Bills, Electricity Bill, Water Bills and other bills (1 mark per document)

- Total 5 marks

- d) Proximity to the said school; Hereunder,an applicant would be allocated the maximum marks (50) unless there are other schools with Year 1 classes within the feeder area which are in closer proximity to the applicant’s resident. 5 marks are deducted for each such school.

-Total 50 marks

Brothers/sisters of students currently studying in the school Category:

- a) Brothers/Sisters attending the school

- i. 3 marks for each year the brother or sister has been in the school maximum being 30 marks.
- ii. Only one brother/Sister is considered

- Total 30 marks

- b) Proof of residency established by the production of the extracts of electoral registers including the names of parents for a continuous period of 5 years proceeding the year of submission of the said application.

- Total 15 marks

- c) Proximity to the said school; Hereunder an applicant would be allocated the maximum marks (35) unless there are other schools with Year 1 classes within the feeder area which are in closer proximity to the applicant. 5 marks are deducted for each school

-Total 35 marks

- d) Production of title deeds under the name of the applicant or spouse to confirm residency.

- Total 10 marks

- e) Marks on the achievements of the brothers/sisters and for assistance rendered to the school.

-Total 10 marks

The Petitioner states that they received a letter dated 31.08.2010 to attend an interview on 23.09.2010 on the basis of "Residents Category" .The Petitioner received another letter dated 06.09.2010 requiring them to attend an interview on 29.09.2010 on the basis of "Brother /Sister in School" category. The Petitioner states that the first Petitioner attended the interview on "Residents Category" on 23.09.2010. The 1st Petitioner had submitted following documents among other documents:

- (a) Unregistered Lease Agreements executed in 2005 and 2008 (annexed to the Petition marked P7-A and P7-B respectively.
- (b) Certificate of residence issued by Gramaseva Niladhari (P7-C)

- (c) True Copies of extract sheets from the electoral register for the years 2000,2001,2004,2006, 2008 and 2009 (marked P7-D, P7-E,P7-F, P7-G,P7-H and P7-I respectively)
- (d) National Identity card of the wife of the 1st Petitioner and the mother of the second Petitioner. (P7-J)

The first petitioner states that at the interview the Board examined the documents submitted by him and he was informed that his application received 85 marks in that category and he was required to sign a document . The Petitioners however submit that they are entitled to more marks under this category.

The Petitioners state that the 1st Petitioner attended the interview on 29.09.2010 under “Brother/Sister in School” category. The 1st Petitioner states that at the interview he submitted the following documents in addition to the documents marked P7(A-J), which he submitted at the interview held under “Residents Category” .

- a) Birth certificate of the brother (P8-A)
- b) A letter given by the class teacher of 2nd Petitioner’s brother dated 17.09.2010.(P8-B)
- c) Certificates for achievements received by the brother in school(P8-C, P8-D, P8-E)
- d) Assistance rendered to school by parents (P8-F)

1st Petitioner states that at the Interview, the Interview Board examined the relevant documents and informed the 1st Petitioner that the applicant had received 69.4.

The Petitioner states that on or about 05.11.2010 the “temporary list“of the students selected for admission were published on the Notice Board of the school. The Petitioner states that the name of the 2nd Petitioner was not in any of the temporary lists. The Petitioner states that cut-off mark under “Residents Category” was 89.5 marks and cut off marks for the “Brother/Sister in school” category was 57 marks.

The 1st Petitioner states that on or about 08.11.2008 he met the 1st Respondent (Principal of the school) and inquired from him as to why the 2nd Petitioner was not selected in spite of the fact that he had received sufficient marks. He was informed by the Principal (1st Respondent) that several persons have complained against the Petitioner stating that he did not reside in the address given in the application. The 1st petitioner denied the allegation and requested the 1st respondent to conduct a site inspection. Thereafter the 1st Petitioner submitted an appeal to the Appeal Board. A copy of the appeal submitted to the 1st Respondent was marked as P11. The 1st Petitioner appeared before the Appeal Board on 22.12.2010. The wife of the 1st

Petitioner too attended the hearing and produced documents pertaining to their residency for the past 10 years. At the hearing they observed that the Interview Board had not given marks for unregistered Lease Agreements and had deducted 5 marks on the basis that there is another school closer to the Petitioner's resident. The Petitioner had demonstrated on the laptop using Google Earth that there was no such school within close proximity to his residence. The 1st Petitioner states that he was able to secure the marks reduced incorrectly by the Interview Board. The Petitioner states that he had requested the Board to conduct a site inspection to verify his residency. However, no such inspection was carried out by the School authorities.

The 1st Petitioner states that in the final list for admission to year 1, to his utter shock and dismay the 2nd Petitioner's name was not on the list. The cut off marks on the final list for the "Residents Category" was 89 marks and for 'Brother/sister in school category was 57 marks". The 1st Petitioner states that the 2nd Petitioner had secured 69.4 marks under 'Brother/Sister in school category" and was eligible to be admitted to school.

Thereafter the Petitioners appealed to the Secretary to the Ministry of Education and also submitted a complaint to the Human Rights Commission of Sri Lanka.

The Petitioner states that non-selection of the 2nd Petitioner for the admission to year 1 of the school is discriminatory, arbitrary and in violation of the rights guaranteed to the Petitioner under Article 12 (1) of the Constitution and the circulars and guidelines issued by Ministry of Education. Petitioner also stressed the fact that equal access to education is a basic safeguard recognized by the Constitution in Article 27(2) (h) and the Respondents by their conduct had detracted from the said duty towards the children such as the 2nd Respondent.

The 1st Respondent, the Principal of Dharmasoka Vidyalaya filed an affidavit denying the allegations made against him and the Interview Board of which he was the Chairman and also against the Appeal Board. He states that in the letters calling for interviews it was specifically mentioned under 'General Instructions' that if any of the documents submitted by the applicants are found to be false the application for admission would be rejected and legal proceedings would be instituted against the applicants.

The 1st Respondent states that the 1st Petitioner presented himself before the Interview Board on 23.09.2010 under the "Residents Category" referred to by the Petitioner as "residents in the feeder area category" and submitted documents in support of his application. The Petitioner received 82.5 marks under "Residents Category". The 1st Petitioner also presented himself before the Interview Board in support of his application under the "Brother/Sister in school category". The Petitioner was awarded 66.9 marks by the Interview Board.

The Petitioner in proof of residency submitted two Lease Agreements dated 20.02.2005 (P7A) and a Lease Agreement dated 26.02.2008 (P7B). The 1st Respondent received a letter sent by five residents of the area objecting to the selection of the 2nd Petitioner on the basis that the Petitioners are not residing in the address given in the application. It was stated in the letter that the Petitioners are in fact residing in Madampe and that the 1st Petitioner had moved furniture into the premises to show that the Petitioners family is residing in the given address. Further it was stated in the letter that the owner of the premises was living abroad . The persons who wrote the letter appealed to the Principal to consider this fraudulent act of the Petitioner and to do justice to their children as they are residents of that area. The 1st Respondent had marked the letter sent by the residents of the area objecting to the application of the Petitioners as 1R2. The 1st Respondent states that the Interview Board considered the objections and they were satisfied that the documents submitted by the Petitioners are false and nullified the marks initially awarded to the 1st Petitioner's Application. The application of the Petitioner was rejected under section 8-2 (a) and (f) of Circular 2010/21 Issued by the Ministry of Education. (P2) The Appeal Board did not vary the decision of the Interview Board.

The 1st Respondent along with his objections annexed the letter of objections sent by five residents of Kaluwadumulla Ambalangoda marked 1R2. These residents subsequently had given affidavits to the 1st Respondent after the filing of this application reiterating matters stated in their letter of objections. These Affidavits are marked as 1R3, 1R3A, 1R3B and 1R3C. The 1st Petitioner in proof of his residency had submitted two unregistered Lease Agreements, copies of which are annexed to his Petition marked as P7A and P7B respectively. According to the lease Agreement dated 20.02.2005 the Lessor K.L. Sudath Premakantha has leased his premises to the 1st Petitioner for a period of 3 years commencing from 1st March 2005. In the 2nd Lease agreement a lease was granted for a period of 3 years commencing from 1st March 2008 and ending on 28.02.2011. This agreement was dated 26.02.2008. After the filing of this Application the Respondents made inquiries from the Controller General of Immigration and Emigration and it was revealed that the lessor Premakantha was living overseas from 07.09.2007 to 08.07.2008 and he did not visit Sri Lanka during this period. Therefore it is not possible for Premakantha to sign the Agreement on 26.02.2008. Travel details of Premakantha given by Controller General of Immigration and Immigration was annexed to the objections marked 1R4.

The 1st Respondent states that the Interview Board considered the objections and they were satisfied that the information given by the Petitioners regarding the place of residence was false and for that reason nullified the marks initially awarded to the 1st Petitioner's application. The application of the Petitioner was rejected under section 8-2 (a) and (f) of Circular 2010/21 Issued by the Ministry of Education. (P2). According to the said circular in the event of information or the documents submitted are found to be incorrect or false the

interview Board could reject the application The Appeal Board did not vary the decision of the Interview Board.

I find that the Petitioner had given false information regarding his residence and the Respondents are justified in rejecting the Application submitted by the 1st Petitioner. The Respondents had acted in terms of the Circular 2010/21 issued by the Ministry of Education. I hold that there is no violation of the fundamental rights of the Petitioners.

I dismiss the Application. Costs fixed at Rs 10,000 payable by the 1st Petitioner to the State.

Judge of the Supreme Court

Gamini Amaratunge J

I Agree

Judge of the Supreme Court

Chandra Ekanayake J

I Agree

Judge of the Supreme Court