

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

In the matter of an application under and in terms
of Articles 17 and 126 of the Constitution

01. Paalawa Rankoth Gedara Kenudi Dilandi

02. Peramuna Kankanamge Achala Dilrukshi

all of,

No. H2/4, National Housing Scheme,

(Commonly known as Chithra Lane Flats),

Chithra Lane, Colombo 05.

Petitioners**SC /FR/ Application No. 13/2020****Vs,**

01. Sandamali Aviruppola,

The Principal, Visakha Vidyalaya,

No. 133, Vajira Road, Colombo -05.

02. Kalani Sooriyapperuma,

The Deputy Principal,

Administration,

Visakha Vidyalaya,

No. 133, Vajira Road, Colombo -05.

03. Sumudu Weerasinghe,

The Deputy Principal,

Education and Development,

Visakha Vidyalaya,

No. 133, Vajira Road, Colombo -05.

04. Jeevana Ariyaratna,

The Deputy Principal,

Co-Curricular and Extra Curricular,

Visakha Vidyalaya,

No. 133, Vajira Road, Colombo -05.

05. Ranjith Chandrasekara,
Director of National Schools
Ministry of Education,
Isurupaya, Baththaramulla.

06. N.H.M. Chithrananda,
Secretary, Ministry of Education,
Isurupaya, Baththaramulla.

07. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda PC,
Justice P. Padman Surasena,
Justice A. L. Shiran Gooneratne,

Counsel: Thishya Weragoda with Stefania Perera and Niluka Dissanayake, for the Petitioners
Rajiv Goonetilleke DSG with Navodi De Soyza SC for the Respondents

Argued on: 25.05.2022

Judgment on: 29.09.2022

Vijith K. Malalgoda PC J

The 1st Petitioner Paalawa Rankoth Gedara Kenudi Dilandi and her mother, 2nd Petitioner Peramuna Kankanamge Achala Dilrukshi had come before this Court alleging the violation of the fundamental rights guaranteed under Article 12 (1) of the Constitution of 1st Petitioner by denying the admission to Grade 1 of Visakha Vidyalaya for the academic year 2020.

As revealed before this Court, the 2nd Petitioner being the mother of the minor, the 1st Petitioner, applied for admission to grade one of Visakha Vidyalaya, under the category, children of residents in close proximity to the school as laid down in clause 7.2 of the circular No. 29/2019 which governed the school admission to grade one for the year 2020.

Under clause 7.1 (i) of the said circular, 50% of the total number of vacancies were allocated to the children belonging to the said category and the requirement that need to establish the child's residence and allocation of mark based on the documents produced by the applicant is identified under clause 7.2 of the circular. Under clause 7.2 the applicant needs to reside at the premises and that has to be established by documents. The circular has further provided for a site inspection under clause 9.3.3 in order to establish the physical presence.

The circular had provided three ways, an applicant could establish the residence by documents and maximum of 20 marks out of 50 marks were allocated for the main documents in proof of residency of the parents (clause 7.2.1). another 5 marks were allocated under clause 7.2.1.2 for the additional documents in proof of the residence of the parents making total of 25 marks out of 50 marks. The balance 25 marks were allocated for the electoral registration of the parents.

The balance 50 marks were given for the proximity to school from the place of residence of the applicant and under clause 7.2.4 of the circular, 5 marks were to be deducted to each school comes within the distance between the residence of the applicant and the school applied for, which has a primary section where the child could gain admission.

The Petitioners grievance before this Court was based on the allocation of marks under clause 7.2.1 of the circular, for the main documents the 2nd Petitioner had submitted in establishing their residence. In the said circumstances it is not necessary to consider at length the allocation of marks under other clauses of the circular.

Under the provisions of clause 7.2.1, two types of documents could be used in establishing the residence namely, main documents and additional documents. Following documents were identified as the main documents under clause 7.2.1.1.

7.2.1.1 Main documents in proof of residence

- a. Title Deeds
- b. Bimsaviya Certificates
- c. Gift Deeds
- d. Deemana Pathra (දීමනා පත්‍ර)
- e. Government Grants
- f. Deeds issued under Buddhist Temporalities Ordinance and certificates issued by Viharadhipathi's certified by Commission General of Buddhist Affairs
- g. Declaration deeds with proof of extracts for more than 10 years
- h. Agreements for Houses purchased on instalment basis and payment receipts

According to the provisions of the said clause, the main document is in the name of the applicant or the spouse, he or she is entitled to get maximum of 20 marks in proof of the residency. However, the main document is in the name of the father or mother of the applicant or spouse, the applicant will get only 15 marks. In order to get full marks for the proof of residence, the main document should be 5 years old.

In addition to the Main document holders, the circular has further provided for applicants who are lessees, tenants (maximum of 10 marks), applicants with proof of occupancy in a state land for more than 10 years certified by the Municipality Commissioner or the Divisional Secretary. (5 marks), applicants who does not possess a certificate referred to above but has proof of occupancy with other acceptable documents (4 marks) and applicants who has proof of occupancy more than 6 years but does not posses any of the above documents but has proof of occupancy (maximum of 4 documents) by Electricity or Water bills, Tax receipts, Birth Certificates (0.5 marks for each documents).

As revealed before us the 2nd Petitioner had attended the interview for the admission of the 1st Petitioner to Visakha Vidyalaya under the category of residence in close proximity on 18th September 2019 with required documents.

At the interview the Petitioner was allocated 55 marks whereas the cut-off mark, as learnt by the Petitioner subsequently was 62.40 marks. The Petitioner was provided with a copy of the allocation of marks at the conclusion of the said interview and according to the said mark sheet she had been allocated marks as follows,

Main document in proof of Residence	05
Additional Document in proof of Residence	05
Registration in the Electoral Register	25
Proximity to school	<u>20</u>
	<u>55</u>

Being dissatisfied with the said decision, specially with regard to the allocation of 05 marks to the Main Document in proof of the Residence, the Petitioner had submitted an appeal under clause 10.1 of the said circular and was summoned for the appeal inquiry on 24th December 2019.

The Petitioner had not received any favourable response even after the Appeal Inquiry and therefore decided to come before the Supreme Court challenging the decision to grant only 05 marks for Main Document in proof of Residency, whereas the Petitioner is entitled to receive 20 marks under Clause 7.2.1.1 (f) in the said category.

The Petitioner had received full marks for additional documents (05 marks) and Registration in the electoral register (25 marks), she had also received 20 marks for the proximity deducting 30 marks for 6 schools situated between the school and house of the Petitioner but the Petitioner had not challenged the allocation of the said 20 marks for proximity.

As already referred to in this judgment, the Petitioners only challenge was the granting of 05 marks to the main document in proof of Residency and in this regard, she had submitted the following;

- a) That the Petitioner was a resident at No. 127/19 Chithra Lane, prior to the construction of low-income flats at Chithra Lane. The said premise was acquired for the purpose of constructing the above flats and thereafter she was allocated the house bearing No. S4/H/2/4 from the said scheme in November 2001
- b) The Petitioner had entered into a sales agreement on 28th November 2001 with the Urban Development Authority with regard to the above premises (P9a)
- c) In the said agreement the Petitioner had agreed to pay in instalment basis a sum of Rs. 530000/- in 720 equal instalments.
- d) In the said agreement, Urban Development Authority had agreed to issue a Title deed in the name of the Petitioner when she made the full payment either in instalment basis or as a full payment

- e) It is also agreed between the two parties that the Petitioner is entitled to possess the premises from the date of signing the said agreement and it is the duty of the Petitioner to maintain the premises and make all payments such as taxes, water and electricity bills.
- f) By letter dated 26.05.2011 and 12.06.2019 National Housing Development Authority the management agency, had confirmed the ownership of the Petitioner to the premises bearing No. S4/H/2/4 at Chithra Lane Housing scheme and legality of the agreement that was signed between the Petitioner and Urban Development Authority. (P10a) and (P10b)

Whilst submitting the above, the Petitioner had taken up the position that the agreement, she had produced mark P-9(a) fulfils all the requirements that need to be fulfilled under Clause 7.1.1 (f) and therefore refusing to accept P-9(a) under the above clause and allocate 05 marks was arbitrary and in violation of her fundamental rights guaranteed under Article 12 (1) of the Constitution.

The petitioner had further challenged the decision of the Respondents to grant 05 marks to P-9(a) the document she produced in proof of her residency. As already referred to by me, there is Provision under circular to grant 05 marks to a main document, if it appears that the document produced is only the proof of occupancy in a state land for more than 10 years certified by the Municipal Commission or by the Divisional Secretary. It was the position taken by the Petitioner that she never submitted a document issued either by the Municipal Commissioner or by the Divisional Secretary but what was produced is an agreement signed between the Urban Development Authority and the Petitioner agreeing to sell /purchase a housing unit on instalment basis from the Chithra Lane Housing Scheme.

Whilst admitting that the Petitioner had submitted an application to admit her child to Visakha Vidyalaya for the academic year 2020 under the category of Children of Residents in close proximity, the Respondents had taken up the position that allocating 05 marks to the main document in proof of Residence, was made strictly according to the provisions of the School Admission Circular No. 29/2019.

In this regard the Respondents have taken up the position that,

- a) P-9 (a) is not a Registered sale and purchase agreement
- b) The Petitioner was in occupation of a state land, and when the said state land was developed by the state a "housing unit" had been given to the Petitioner on "Punasthapana Padanama"
- c) In the circumstances the petitioner was only entitled to get 05 marks on the basis of having been in occupation of a state land for a period more than 10 years.

The Respondents have submitted the copies of the document maintained by the interview panel marked R2. According to the said document, the interview panel had first granted 20 marks to the main document submitted in proof of Residence by the Petitioner and entered in the marksheet, “ඉල්ලුම්කාරියගේ නමින් ගෙවීමේ පදනම මත නාගරික සංවර්ධන අධිකාරිය සමඟ එළඹ ඇති ගිවිසුමක් 2001/11/28 දින සිට පවතී. ගෙවීම් කිරීමට අදාළ ලදුපත් ද ඉදිරිපත් කර ඇත.” but cut the said entry and the marks given and given 05 marks to the Petitioner, but failed to enter the basis under which the said 05 marks were given.

When considering the argument raised in favour of granting 05 marks to the Petitioner along with the copy of the original marksheet produced before us, it appears that 05 marks could only be given to a main document if the said document is certified either by the municipal Commissioner or by the Divisional Secretary stating that the person concerned is in occupation of a State Land for more than 10 years. In the instant case I can't find a certificate issued by any of the officers referred to in the circular but what is produced is an agreement signed between the Urban Development Authority and the Petitioner supported by payment receipts.

The Respondents tried to justify the above decision by referring to the basis on which the allocation of the Housing Unit was made to the effect “පුනස්ථාපන පදනම” but I see no merit in the said argument. According to P-10 b the allocation of Housing Unit bearing No. S4/H/2/4 was made on “පුනස්ථාපන පදනම” but it does not mean that there was only an exchange of a house that had taken place in the year 2001. From the material that is before us, it is clear that the decision to allocate a house to the petitioner was made since she had earlier possessed a house bearing No. 127/19 in Chithra Lane, but after the said allocation was made, she had to enter into an agreement to purchase the said house for sum of Rs. 530000/- and also agreed to pay the said sum in 720 equal instalments. In these circumstances it is clear that the document produced marked P-9a, the document on which the Petitioner relied as the main document in proof of her residence, is an agreement signed between the Urban Development Authority and the Petitioner to purchase the house bearing No. S4/H/2/4 by the Petitioner.

During the arguments before us, it was further revealed that, the Petitioner could have obtained the Transfer Deed from the National Housing Development Authority, if she was able to make the full payment, instead of paying it in instalments, but the Petitioner was unable make the full payment due to financial constraints. In those circumstances it was submitted on behalf of the Petitioner that her financial status has deprived the opportunity of admitting the 2nd Petitioner to Visakha Vidyalaya, even

after fulfilling all the requirements, due to an arbitrary decision by the interview panel and the appeal board of Visakha Vidyalaya.

As already referred to by me, Chitra Lane Housing scheme is constructed as a low-income scheme and therefore the allottees were permitted to pay the perche price in 720 equal instalments.

This was a concession granted by the state to a law income family and can that facility be considered against the Petitioner when deciding the validity of the agreement signed between the two parties under the school admission circular 29/2019.

When the Petitioner initially supported this matter before this court, this court having considered the material placed, decided to grant leave to proceed for the alleged violation of Article 12 (1) of the Constitution.

Article 12 (1) of the Constitution refers to equality and states as follows;

“All persons are equal before the law and are entitled to the equal protection of the law”

In the case of ***T.G. Samadi Suharshana Ferdinandis and Another V. Mrs. S. S. K. Aviruppola and Others*** **SC FR 117/2011**, SC Minute 25.06.2012, the question of equality before law was discussed by Shirani Bandaranayake CJ as follows;

“The Constitutional provision guarantees the concept of equality before law which has been recognized as a dynamic concept with many facets within the concept itself.

However, this concept does not mean that all persons in a society are always equal, as such a mechanical concept may create unnecessary injustice in a society. The true meaning of the concept therefore is that equals should not be treated as unequal’s and similarly unequal should not be treated as equals”

As already observed in this judgment Clause 7.2.1.1 (f) of the School Admission Circular 29/2019, “Agreements for houses purchased on instalment basis and payment receipts” are identified as main documents in proof of residence and if it is proved, the person who submits such document is entitled to obtain full marks, i.e., 20 marks.

The Petitioner in addition to the agreement that was signed between the Petitioner and the Urban Development Authority (P-9a) had provided further proof to establish the nature of the said document mark P-10(a) and P-10(b). In the absence of any challenge to the said documents by the Respondents as

fresh documents, I presume that those material were available before the interview board when the Petitioner appeared before them.

P-10 (a) which was issued in the year 2011 confirmed the ownership of the Petitioner and stated that,

- a) The house bearing No. S4/H/2/4 at Chithra Lane Housing Scheme was transferred to the Petitioner for occupation on a sales agreement
- b) If the balance payment is paid in full National Housing Development Authority is prepared to issue a title deed
- c) The sales agreement signed on 28.11.2001, is a legally binding document

P-10(b) which was issued in 2019 had also confirmed the above position and the Respondent when justifying the decision to grant 05 marks for main documents, had made use of the 2nd paragraph of the said letter and submitted that the Petitioner was an illegal occupant of a state land which was subsequently used to construct the housing scheme and therefore, she was only entitled to obtain 05 marks under the circular.

However, P-10 (b) does not refer to the above facts but it only confirms that the basis for the allocation was her prior occupation at house No. 127/19 which premises was also used to construct the housing scheme. The most important paragraphs of the said letter to the effect that the National Housing Development Authority is prepared to transfer the premises to the Petitioner if she makes the full payment and she is the lawful owner to the premises No. S4/H/2/4 was overlooked by the Respondents when making the said submission.

In the absence of a specific requirement for the registration of the agreement in the circular, the Respondent made an attempt to establish that the registration made under the Prevention of Frauds Ordinance is a must, when accepting a document of this nature at the interview. I am not inclined to go into detail of this argument since that might create unnecessary issues when accepting documents at the interviews but only state that the requirement under the circular is to submit the "Agreement for the house purchased on instalment basis and payment receipts" and nothing else.

When the Petitioner had submitted those with additional proof to the said document, I see no reason for the interview panel or the appeal board to refuse granting full marks to the said document.

Urban Development Authority and the National Housing Development Authority are statutory bodies established under statute and are empowered to implement the state policy on housing and urban

development. When these entities entered into an agreement in fulfilling its functions vested by the statute, can those documents be rejected, merely for the reason that the said document is not registered agreement, in the absence of any allegation of fraud or forgery. On the other hand, there was no doubt as to the genuineness of the said documents and the authority of the National Housing Development Authority and Urban Development Authority to enter into such agreement under the terms referred to in the agreement.

As already referred to in this judgment National Housing Development Authority was willing to transfer the property to the Petitioner, if full payment was made, but we must not forget the fact that these are low-income houses and therefore the payment is divided into 760 equal instalments for the convince of the allottee. There is no doubt that the Second Petitioner is one such allottee and she cannot be deprived of her right to admit her child to Visakha Vidyalaya for the reason that the National Housing Development Authority and Urban Development Authority had permitted her to pay the purchase price in 760 equal instalments in consideration of her financial status.

In the said circumstances I am not inclined to accept the argument advanced on behalf of the Respondents, that the Petitioner is not entitled to obtain full marks i.e., 20 marks for the document she submitted in proof of her residence.

As revealed before court the Petitioner had obtained 55 marks at the interview with 05 marks allocated for the proof of the main document. If she is given full marks for the main document, her marks will increase to 70, which is 7.60 marks above cutoff mark and would be eligible to gain admission to Visakha Vidyalaya.

As already referred to in this judgment the Respondent's position before this court was, that granting 05 marks to P9a, the main document the Petitioner submitted at the interview was in accordance with the school admission Circular 29/2019. This position is clear from the 5th paragraph of the affidavit of the Present Principle of Visakha Vidyalaya that was filed before this court along with motion dated 27th April 2022.

After the arguments were concluded, both parties were permitted to file written submissions and the written submission that was tendered on behalf of the Petitioner along with motion dated 10th June 2022 had referred to the above position taken by the Respondents in paragraph 5 of the written submission as;

5. it is submitted that,

- a) in paragraph 6 of the statement of objections of the 1st Respondent states the following;

“I state that in terms of paragraph 7.2.1.1. of the relevant admission marks are given for document’s in proof of residence. The Petitioners do not possess a Registered Deed or a lease nor Registered Sale and Purchase Agreement”
- b) due to this reason the 1st Respondent awarded only 05 marks on the residential proof of the application of the 1st Petitioner

and had only responded to the above position taken up by the Respondent.

However, on behalf of the Respondents, the written submission was tendered at the Registry along with motion dated 17th June 2022 and in the said written submission the Respondents have submitted that, (page 5)

“At the hearing it was submitted on behalf of the Respondents that when this matter was referred to the Secretary to the Ministry of Education for a decision, he had taken the view that the Petitioners documents could be given further 05 marks (i.e., 10 marks instead of 05) treating it as a rent purchase document where by it would be considered a rental document since the Petitioners are not yet the owners of the premises.”

and a copy of the letter dated 08.04.2022 addressed to the Hon. Attorney General with a Copy to principle Visakha Vidyalaya was annexed to the written submission marked ‘X’

On behalf of the Respondents, it was further submitted in the written submission that, (page 6)

“Even after considering the decision of the Secretary, Ministry of Education to grant a further 05 marks to the Petitioners, they would be entitled to 60 marks and still below the cut off mark of 62.4 for admission to the school.”

As already referred by me, the position taken by the Respondents when filing objections and at the argument before this Court was the justification of granting 05 marks at the interview but the new position now submitted in the written submission was never taken up before this Court by the Respondents.

The letter that was produced along with the written submission marked 'X' was written by the Secretary, Ministry of Education on 08th April 2022 addressed to the Hon. Attorney General with a copy to the Principle Visakha Vidyalaya, and as observed by this court, the affidavit of the 1st Respondent was tendered to the Registry along with a motion dated 27th April 2022. The affidavit of the 1st Respondent was affirmed before a Justice of Peace on the 25th April 2022.

If the letter marked 'X' was issued by the Secretary on 8th April, with specific instruction to the 1st Respondent "please reassess the mark of the Petitioner accordingly" the 1st Respondent cannot take-up a different position before this Court on 25th April 2022. However, this court is not bound to act on any material that was not submitted and/or available at the argument stage and therefore not prepared to accept or to act on the letter marked 'X' and the submissions made with regard to the said document.

In Clause 7.2.1.1 (f) agreements for houses purchased on instalment basis and payment receipts had been clearly identified as a main document in proof of residence but lease agreement and documents relating to Government quarters to which 10 marks to be allocated, had been separately identified. The Petitioner had never submitted a Lease or Rent agreement before the interview board for the Secretary, Ministry of Education to issue the ruling as per 'X' to the principle.

The requirement under clause 7.2.1.1 of the circular **(P-2) (a)(i)** is the proof that the applicant has agreed to purchase the house he occupies on installment basis. In the special circumstances of this case, and in view of the documentary proof adduced by the Petitioner and not denied by the Respondents, this Court is satisfied that the Petitioners have proved the fact that they have agreed to purchase the house on the said basis as per P 9 (a).

When considering the totality of the evidence placed before this Court, I hold that the 1st Petitioner is entitled to obtain full marks to the document produce marked as 9A, the main document in proof of the Residence of the Petitioner. The 1st Petitioner is therefore entitled to get 70 marks at the interview making the 1st Petitioner eligible to gain admission to grade one of Visakha Vidyalaya Colombo 05 under the category of "Children of Residences in close proximity to the school" thus the Petitioners have established that their fundamental rights guaranteed under Article 12 (1) of the Constitution had been infringed by the Respondents.

Whilst confirming that the Petitioner's Fundamental Rights guaranteed under Article 12(1) of the Constitution had been infringed by the above conduct of the Respondents, I direct the 1st Respondent

to take steps to admit the 1st Petitioner namely Paalawa Rankoth Gedara Kenudi Dilandi to Grade One or to the appropriate grade of Visakha Vidyalaya. I make no order with regard to costs.

Application allowed.

Judge of the Supreme Court

Justice P. Padman Surasena,

I agree,

Judge of the Supreme Court

Justice A. L. Shiran Gooneratne,

I agree,

Judge of the Supreme Court