

**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

1. **H.M. Ranaweera**, Hitigegama, Hatton
2. **W.M. Wimalaratne**, Galgodehinna, Morohenegama
3. **W.G. Siriyaratne**, Pitakanda, Hitigegama, Hatton
4. **W.A. Shriyani**, Hitigegama, Hatton
5. **P.W.G.S. Sunil Jayawardana**, Parathalawa, Polpitiya, Pitawala

**Petitioners**

**SC /FR/ Application No 507/2012**

Vs,

1. **S. M. Gotabhaya Jayaratna, Secretary, Ministry of Education**, "Isurupaya" Pellawatte, Battaramulla.
- 1A. **W.M. Bandusena, Secretary, Ministry of Education** "Isurupaya" Pellawatte, Battaramulla.
- 1B. **Mr. Sunil Hettiarachchi, Secretary, Ministry of Education**, "Isurupaya" Pellawatte, Battaramulla.
2. **M. Premawansa, Secretary, Provincial Ministry of Education**, Central Provincial Council, Kandy.
3. **Principal**, Madeniya Maha Vidyalaya, Hitigegama, Hatton.
4. **Divisional Secretary, Ambagamuwa Divisional Secretariat Division**, Divisional Secretariat Office, Ginigathhena.

5. **S.U. Wijeratne, Additional Secretary (Planning) Ministry of Education, “Isurupaya” Pellawatte, Battaramulla.**
6. **Mr. Milton Premasiri, Principal, Sir Nissankamalla Maha Vidyalaya, Hitigegama, Hatton.**
7. **R.S. Senaratne, Divisional Director of Education, Ambagamuwa Division, Divisional Education Office, Ginigathhena, Hatton.**
- 7A. **P.B. Wijerathne, Divisional Director of Education, Ambagamuwa Division, Divisional Education Office, Ginigathhena, Hatton.**
8. **Hon. the Attorney General, Attorney General’s Department, Colombo 12.**

### **Respondents**

**Before:** Hon. Justice Nalin Perera  
Hon. Justice Vijith K. Malalgoda PC  
Hon. Justice L.T.B. Dehideniya

**Counsel:** Mr. J.C. Weliamuna, PC with Senura Abeywardena for Petitioners  
Ms. Viveka Siriwardena, DSG for the Attorney General

Argued on: 26.07.2018

**Judgment on: 10.10.2018**

**Vijith K. Malalgoda PC J**

The Petitioners to the present application namely, H.M Ranaweera, W.M. Wimalaratne, W.G. Siriyaathne, W.A. Shriyani and P.W.G.S. Sunil Jayawardena who are parents of the students studying at Madeniya Maha Vidyalaya in the Divisional Secretariat Division of Ambagamuwa in the Hatton Educational Zone of the District of Nuwara Eliya had come before this court alleging the violation of their children's fundamental rights guaranteed under Article 12 (1) of the Constitution.

The Petitioners whilst referring to the said Madeniya Maha Vidyalaya, had submitted that the said school with a total student's population of 250 students has classes from grade one up to the G.C.E. Advance Level in the Commerce and Arts streams. It is further submitted that the said school is also considered a secondary school for 05 other Primary Schools namely, Velhela Polpitiya Vidyalaya, Morothotawatta Primary School, Minuwandeniya Maha Vidyalaya, Kehelwarawa Vidyalaya and Kothalla Maha Vidyalaya.

The Petitioners have alleged before this court that one or more of the Respondents, have unlawfully, arbitrary, unfair and discriminatorily decided to cancel the selection of the said school to be developed as part of the 1000 secondary schools development programme and also the arbitrary selection of the Sri Nissankamalla Maha Vidyalaya as the school to be developed under the said programme, was a violation of their children's fundamental rights guaranteed under Article 12 (1) of the Constitution.

In support of their contention the Petitioners have submitted before this court that,

- a) In 2010 the Government announced a programme to develop 1000 schools and a circular was thereafter issued in 2011 by the then Secretary of the Ministry of Education with the criteria for selection.
- b) Madeniya Maha Vidyalaya is one of the few schools in the Ambagamuwa Education Division which offer Advanced Level classes (Arts and Commerce streams) in the Sinhala medium
- c) There are only two Central Schools in the said Division which offer Advance Level classes in science stream in the Sinhala Medium
- d) There are at least 04 primary schools which are feeder schools to Madeniya Maha Vidyalaya
- e) According to the said circular, Schools are selected depending on the geographical location taking into account, access to school, common amenities, the number of students in the Primary and secondary schools, the student flow, the distance between the schools cultural and environmental factors,
- f) Each Divisional Secretary Division should have 2-3 secondary schools to be developed
- g) Such identified schools should have at least 3-5 feeder Primary Schools in close proximity
- h) Based on the above criteria Madeniya Maha Vidyalaya had all the requirement to be selected as one of such school in the Ambagamuwa Divisional Secretary Division
- i) Since there were rumours in year 2011 that the political authorities were arbitrarily selecting schools for Development under the said programme, the school Development Society made representation to the Zonal Director of Education, the Chief Minister and the Minister of Education to interfere and do justice to Madeniya Maha Vidyalaya
- j) In December 2011, the 3<sup>rd</sup> Respondent, Principle of Madeniya Maha Vidyalaya received the circular dated 24<sup>th</sup> November 2011 (P-2) along with an annexure disclosing that the

school has been selected under the said programme and the primary section will be removed in 5 years

- k) Even though, Madeniya Maha Vidyalaya, was selected to be developed under the said programme, the Petitioner later learnt that the said selection of the school to be developed under the said programme has been revoked and Sri Nissankamalla Maha Vidyalaya had been inserted in the place of Madeniya Maha Vidyalaya

Whilst denying the above position taken up by the Petitioners, the 7<sup>th</sup> Respondent the Divisional Director of Education, Zonal Education Officer Hatton had submitted before this court that,

- a) the selection of schools to be developed under the said programme was carried out by the Officers of the Education Department by strictly adhering to the concept paper prepared by the Ministry of Education (R1)
- b) Sri Nissankamalla Maha Vidyalaya was included in the initial selection list of schools on the basis that it satisfied the criteria for selection
- c) Once the selections were made, the Island wide selections including the selection for Ambagamuwa Divisional Secretarial Division, was published in News Papers on 12<sup>th</sup> June 2011. (R-3) In the said advertisement numbers 113-116 referred to the selections for Ambagamuwa Divisional Secretariat Division, including, Ginigathhena Madya Maha Vidyalaya, Sri Nissankamalla Maha Vidyalaya, Lakshapana Central College and Ambagamuwa Maha Vidyalaya
- d) However representations were made to include Madeniya Maha Vidyalaya by interested parties
- e) Since both schools are located within close proximity to each other, it was not possible to include Madeniya Maha Vidyalaya into the Programme but two reports were submitted

one by the 7<sup>th</sup> Respondent (R-5) and another by a team comprising of a Director of Education and a Deputy Director of Education from the Provincial Education Department and an Assistant Director of Education and a Development Assistant from the Department of Education (R-6) considering the representation made with regard to the suitability of the school to be selected under the said programme. Both those reports recommended Nissankamalla Maha Vidyalaya as the most suitable school to be developed under the said programme.

- f) In the said circumstances steps were taken to include Nissankamalla Maha Vidyalaya into the said programme

However when going through the documents submitted before this court it appears that the school authorities of Madeniya Maha Vidyalaya as well as Nissankamalla Maha Vidyalaya were getting ready to get their names into the said programme by dropping their grade one classes for the year 2012 but both these schools cannot be included in the said programme since the two schools were situated within close proximity.

Even though the Petitioners alleged that the impugned decision to drop Madeniya Maha Vidyalaya was taken in the latter part of year 2011 after sending the circular in November 2011, from the document produced marked R-3, it is clear that there is a decision to include Nissankamalla Maha Vidyalaya into the programme much prior to the above date. In the said circumstances it is clear that, even if there is a decision in the latter part of 2011, the said decision had only affirm the decision already taken to include Nissankamalla Maha Vidyalaya into 1000 schools programme.

The Petitioners before this court had failed to challenge the original decision taken prior to June 2011, which was published in the News Papers on 12<sup>th</sup> June 2011.

In the said circumstance I see no merit in the application before us. The Petitioners have failed to establish that the fundamental rights of their children guaranteed under Article 12 (1) had been violated by anyone of the Respondent.

I therefore make order dismissing this application.

Application is dismissed no costs.

**Judge of the Supreme Court**

**Justice Nalin Perera**

**I agree,**

**Judge of the Supreme Court**

**Justice L.T.B. Dehideniya**

**I agree,**

**Judge of the Supreme Court**