

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

In the matter of a Fundamental Rights application under and in terms of Article 126 reads with Article 17 of the constitution in respect of the violation of the Fundamental Rights of the Petitioners guaranteed under Article 12 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Mallawa Weerage Chaminda Sri Lal Wijesekara,
No. 17, Noel Senevirathna Mawatha,
Kurunegala.
2. Mallawa Weerage Tharushi Chathurya Wijesekara,
No. 17, Noel Senevirathna Mawatha,
Kurunegala.

Petitioners**SC /FR/ Application No 05/2017**

Vs,

1. Mrs. Soma Rathnayake,
Principal,
Maliyadeva Balika Vidyalaya, Kurunegala.
2. Director of National Schools,
Ministry of Education,
Isurupaya, Baththaramulla.
3. Secretary,
Ministry of Education,
Isurupaya, Baththaramulla.
4. K. Narasinghe, Member,
(Interview Board to admit students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.

5. B.H.C.M. Abeysinghe, Member,
(Interview Board to admit students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
6. P.H.N. Karunasiri, Member,
(Interview Board to admit students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
7. S.M.P.B. Siriwardhana, Member,
(Interview Board to admit students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
8. D.M.B. Dissanayake, Chairman,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
9. S.A.N. de. Silva, member,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
10. Ms. E.M.P. Senehelatha, Member,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
11. Ms. U.N. Biso Menike, Member,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
12. C.D. Kahandawaarachchi, Member,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
13. W. Ananda Weerasinghe, Member,
(Appeal Board to Admit Students to Grade 01)
Maliyadeva Balika Vidyalaya, Kurunegala.
14. Hon. Attorney General,
Department of Attorney General,
Colombo 12.

Respondents

Before: S.E. Wanasundera PC J

B.P. Aluwihare PC J

Vijith K. Malalgoda PC J

Counsel: Dr. S.F.A. Cooray with Buddhika Gamage for the Petitioners

Suren Gnanaraj State Counsel for the Respondents

Argued on: 26.07.2017

Judgment on: 31.10.2017

Vijith K. Malalgoda PC J

Out of the two Petitioners before this court, the 2nd Petitioner is a minor aged five years and the first Petitioner is the father of the 2nd Petitioner.

The 1st Petitioner as the father, applied for admission of the 2nd Petitioner to grade one of Maliyadewa Balika Vidyalaya Kurunegala under the category, children of residents in close proximity to the school as laid down in clause 6.1 of the circular No. 17/2016 dated 16th May 2016, which governed the school admission to grade one, for the year 2017.

Clause 6 (a) of the said circular had identified seven categories under which children were admitted to government schools, and the criteria for selection and the marking scheme in respect of each category are laid down in the said circular issued by the 3rd Respondent. It is not disputed that the application submitted to Maliyadeva Balika Vidyalaya by the 1st Petitioner was under the category of children of the parents of close proximity which is identified under clause 6 a (i) of the circular.

Under clause 6.1, 50% of the total numbers of vacancies are allocated to the children who come under the said category. How such parents should establish their residence and how the marks should be allocated based on the documents produced by the Applicant is identified under the said clause.

As observed by this Court maximum of 35 marks are allocated for establishing the residence by the Electoral Registers during the last five years. If the names of the both parents were included in the electoral register for 5 years, the applicant is eligible to obtain the maximum 35 marks under that category. Maximum of 50 marks are allocated to the distance and maximum of 10 marks are given to the nature of the ownership to the property and the balance 5 marks given for the additional documents submitted in proof of the residence under the said circular.

Out of the 50 marks allocated to the proximity, 5 marks are deducted to each school that come within the distance between the Applicant's house and the school applied for, which has a primary section where the applicant can gain admission.

As revealed before us the Petitioner had applied for admission of the 2nd Petitioner to grade one of Maliyadewa Balika Vidyalaya under the aforesaid category and in support of his application, submitted several documents including, Title Deeds and extracts of Electoral Registers. At the time the Petitioner submitted the application, his permanent residence was at No. 17, Noel Senevirathne Mawatha, Kurunegala.

When the Petitioner attended the interview he was issued with a document where he has to enter marks according to the circular and according to the Petitioner, he could obtain 97.5 marks under the said category. Petitioner when faced the interview, had entered 97.5 marks in the relevant column. However the interview board had given only 71.2 marks to the Petitioner at the interview

and the said marks were entered in the third column of the document given to the Petitioner. When the final selection list was displayed, the 1st Petitioner was made to understand that, the cut of mark for the proximity category was 84 marks and therefore the application by the 2nd Petitioner was rejected. Being dissatisfied with the said decision, the 1st Petitioner had submitted an appeal under the provisions of the said circular and faced an appeal hearing, but the decision of the Selection Board was not changed by the Appeal Board.

The present application is against the decisions of both the Selection Board and the Appeal Board, where the Petitioner complains that the Fundamental Rights guaranteed under Article 12 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka had been infringed by the decisions referred to above.

As observed by me, the Petitioners' complaint before this court was mainly based on the allocation of marks under the category of establishing residence through Electoral Register, where the Petitioner is entitled to obtain 35 marks to gain admission.

In this regard the Petitioners had placed the following material before this court;

- a) That the Petitioners resided at No. 79, Negombo Road, Kurunegala from 2008 to 2013 under a lease agreement attested by Buddhadeva Gunarathne Notary Public. In support of the said lease, the Petitioners have submitted before the interview panel,
 - i. Lease agreement for the said period
 - ii. Copy of the National Identity Card
 - iii. The Electoral Registers
 - iv. Bank statements

- b) That the distance from the said premises to Maliyadeva Balika Vidyalaya was 711.9 meters
- c) That the Petitioners had shifted to their present residence at No.17, Noel Senevirathne Mawatha, in September 2013, when the 1st Petitioner purchased the said premises on 20th September 2013 by Transfer deed No520 attested by Buddhadeva Gunarathne Notary Public.
- d) That the distance from the new premises to Maliyadeva Balika Vidyalaya was 257.7 meters.
- e) That both the residences referred to above; i.e. No 79, Negombo Road and No 17, Noel Senevirathne Mawatha comes under the same Polling Division (Kurunegala –'O') and Grama Niladhari Division (No. 839).

In the said circumstances the Petitioners have submitted that allocation of only 14 marks out of 35 marks under the said category was arbitrary, unreasonable, illegal and the said refusal to grant full marks under the said category when the 1st Petitioner had lived over 7 years in the same Grama Niladhari Division was discriminatory and in violation of the equal protection of the law guaranteed under Article 12(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

When considering the above material placed before this court it appears that the case before us requires careful analysis of the provisions of circular 17/2016, issued by the Secretary, Ministry of Education with regard to the school admissions for Grade 01, in the year 2017. As revealed above, the Petitioners have shifted their place of residence in the year 2013 but, continued to stay within the same Grama Niladhari Division and the Polling Division. When the 1st Petitioner submitted the application to Maliyadeva Balika Vidyalaya in the year 2016 for admission of the 2nd Petitioner for

the year 2017, the Petitioner's family had stayed only two years in the new address at No.17, Noel Senevirathne Mawatha.

As observed by this court, when an applicant had relied on his Residence in more than one place for the purpose of school admission, how the marks should be allocated in such a situation is also identified under the same circular.

The 1st Respondent who is the principal of Maliyadeva Balika Vidyalaya, whilst denying the fact that the decision to grant 14 marks, both by the Interview Panel and the Appeal Board was made arbitrary, illegally and unreasonably, had placed the following material before this court;

- a) In terms of clause 6.0 (g) of the circular 17/2016 an applicant is required to submit documents in proof of residence, only with regard to the residence at which he resides at the time the application is submitted.
- b) According to clause 6.1 (1) (c) of the said circular, marks should only be awarded in relation to documents submitted in connection with the place of residence at the time of submitting the application.
- c) However the following exception is provided to the above rule by the said clause,

“Where an applicant has been a resident at another address within the same area during the five years period prior to the date of application, his application can be considered for granting marks, provided that the amount of marks that would be deducted for other schools (under clause 6.iii (a)) in close proximity to such residence would be the same in respect of both addresses.”
- d) When the two addresses provided by the Petitioner is considered under the above provision it is revealed that,

- i. The address at No 79, Negombo Road, Kurunegala, (previous address for the period 2011, 2012 and 2013) there are two schools within close proximity, for which 10 marks are deductible from the total of 50 marks

The two schools are Holy Family Balika Maha Vidyalaya and Wayamba Royal College

- ii. The current address at No.17, Noel Senevirathne Mawatha, (for the period 2014 and 2015) no marks would be deductible since no other schools were in close proximity.

e) In the said circumstances the Petitioners are not entitled to be considered under the provisions of clause 6.1 (1)(c) of the said circular, since the amount of marks deductible for the two addresses are different to each other.

f) Therefore both, the interview panel and the Appeal Board were prevented from allocating any marks for the years 2011, 2012 and 2013. The only marks that could be allocated to the Petitioners were, for the years 2014 and 2015 and 14 marks were allocated to the Petitioner by adhering to the above provisions of the circular.

When considering the above material placed before this court by the 1st Respondent, it is observed that, under the provisions in clause 6.0 (g) read with clause 6.1 (1) (c), the documents can only be produced with regard to the residence at which the Applicant resides at the time the applications are submitted and the only exception to the above rule is the proviso to clause 6.1 (1) (c) which was referred to above.

Under the provisions of the said proviso, amount of marks that would be deducted for other schools in both addresses should be the same and when the deductible marks defer from each

other, the powers of the interview panel is limited to grant marks only to the address where the Applicant resides at the time the applications are submitted.

As revealed during the arguments before us, no marks were to be reduced with regard to the address where the Petitioner resides at the time the applications were submitted, but 10 marks were to be reduced for the earlier address namely No. 79, Negombo Road, Kurunegala. In the said circumstances the Petitioner was only entitled to obtain marks for the address where he resides at the time he submitted the application.

The Petitioner could only prove residence at the new address i.e. No. 17, Noel Senevirathne Mawatha, for two years only and in the said circumstances, he could only obtain 14 marks under the said category.

The interview panel as well as the Appeal Board had given only 14 marks under the said category, and the said decision of the interview panel and the Appeal Board were based on the provisions of the circular 17/2016 dated 16th May 2016 which governed the school admissions to grade one for the year 2017.

A perusal of the material facts and a careful consideration of the said facts and the submissions, clearly indicate that the Interview Panel and the Appeal Board had strictly adhered to the provisions laid down in the circular pertaining to the admissions of children to Grade one for the year 2017 issued by the 3rd Respondent. The provisions in clause 6.1 (1) (c) is quite clear and there are no complexities on its application. Also one cannot find fault with the interpretation given by the said Panels in the allocation of marks under clause 6.1 (1) (c).

When considering the material discussed above there is no doubt that the authorities have allocated the relevant marks to the Petitioner in terms of the circular issued by the 3rd Respondent.

The Petitioner had alleged the violation of Fundamental Rights guaranteed in terms of Article 12 (1) of the Constitution by failure to admit the 2nd Petitioner to Maliyadeva Balika Vidyalaya. Article 12 (1) of the Constitution deals with the right to equality and equal protection of Law. The guarantee of equality ensures that among equals the law should be equal and should be applied equally.

Even though the Petitioners have alleged that they are entitled to get 35 marks for establishing the residence by the electoral registers for the past 5 years, it was very clear as to how the marks were allocated to the Petitioner under clause 6.1 (1) (c) of the circular. It is to be noted that the Petitioner did not show that he was singled out for such discrimination as alleged by the Petitioner.

If a person complains of unequal treatment, the burden is on that person to place before this court, material that is sufficient to infer that unequal treatment had been meted out to him.

In the case of ***Ashutosh Gupta V. State of Rajasthan (2002) 4SCC 41*** the Indian Supreme Court, discussed this position as follows;

“There is always a presumption in favour of the constitutionality enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles. The presumption of constitutionality stems from the wide power of classification, which the legislature must, of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the legislature understands and correctly appreciates the need of its own people.”

The Petitioner therefore must show that there were others who were situated similarly as the Petitioners, but were treated differently. The Petitioners failed to satisfy the above before this court.

For the reasons stated above I hold that the Petitioners have failed to establish that their Fundamental Rights guaranteed under Article 12 (1) of the Constitution had been violated by the Respondents. This application is accordingly dismissed. I make no order with regard to costs.

Judge of the Supreme Court

S.E. Wanasundera PC J

I agree,

Judge of the Supreme Court

B.P. Aluwihare PC J

I agree,

Judge of the Supreme Court