

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

In the matter of an application
under and in terms of Article 126
of the Constitution.

SC / FR 123 / 2015

Mohammed Mukthar Aisha,
No 230, Kumaratunga Mawatha,
Matara.

Petitioner

Vs.

1. W.B. Piyatissa,
The Principal,
(Chairman of the Interview Board)
St. Thomas Boys College,
Matara.
2. Hon. Akila Viraj Kariyawasam,
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.
3. Upali Marasinghe,
The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
4. The Chairman of the Appeal Board
Grade 1 Admission Year 2015,
St. Thomas Boys College,
Matara.

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

Respondents

BEFORE : B. P. ALUWIHARE, PC, J.
UPALY ABEYRATHNE, J.
ANIL GOONARATNE, J.

COUNSEL : Razik Sarook PC with Rohana Deshapriya
and Chanakya Liyanage for the Petitioner
Yuresha De Silva SSC for the Attorney
General

ARGUED ON : 27.11.2015

DECIDED ON : 14.07.2016

UPALY ABEYRATHNE, J.

The Petitioner Mohammed Mukthar Aisha made an application to St. Thomas College Matara for the admission of her child Akib Ahamed to Grade 1 for the year 2015. The Petitioner preferred the said application which was produced with the Petition marked P 2, under the 'proximity category' of the circular bearing No. 23/2013, on admission of students to Grade 1 of the Government schools. In her said application she has mentioned that her residence was at No 230, Kumaratunga Mawatha, Matara. When she was called for an interview she has produced the documents marked P 3(i) to P 3 (xi) in order to

prove her residence and on the said documents she has received 85 marks. The Petitioner has complained that although the cut of mark was 85 her child's name was included in neither the temporary list nor the permanent list.

The 1st Respondent in his statement of objections has stated that the cut-off mark for the admission to Grade 1 of the St Thomas' College, Matara, for the year 2015 was 86 marks and not 85 marks. Hence the Petitioner's position that cut-off mark was 85 is erroneous.

The Petitioner has further complained that 5 marks were not awarded to her child in the proximity category on the basis that there was another school namely Medananda Vidyalaya closer to her residence than St Thomas' College, Matara. But according to the plan P 4 the St Thomas College was the closest school to her residence and thus she should have been given 90 marks at the interview.

It is clear from the document produced by the 1st Respondent marked 1R3 that the Petitioner was given 85 marks subject to a site inspection which was a requirement under the said circular. No doubt that the Petitioner was aware of the said requirement of site inspection to be carried out after the interview to ascertain the truthfulness of the documents produced by the Petitioner in order to establish the Petitioner's residence since she had preferred the application to admit her child to the St Thomas' College under the proximity category of the said circular.

The Petitioner has further stated that although the closest school to her residence was St. Thomas' College, Matara, she was not given full marks for the proximity category and 05 marks which she was entitled had been reduced on the basis that Medananda Vidyalay is closer to her said residence than St. Thomas College. She has produced a surveyor plan marked P 4 to prove that the St.

Thomas College was the closest school to her residence. The 1st Respondent too has produced a map of St. Thomas' Kumara Vidyalaya, Matara, prepared by the Survey Department, marked 1R4 to prove that Medananda Vidyalaya was closer to the Petitioner's residence than St. Thomas' College.

It must be noted that the alleged violation of the fundamental rights of the Petitioner has to be established by cogent evidence having a high degree of probability which is proportionate to the subject matter. The Petitioner does not discharge her burden merely by placing a bulk of documents before court to fulfil the task of establishing her case when the authenticity of the same documents is in question.

The Petitioner has produced the plan P 4 to establish the closest school to her residence. It is to be noted that from a perusal of plan P 4 the author of the document cannot be ascertained. The most vital descriptions such as the number of the plan, the name of the surveyor and the date of preparing the same are not available. Hence the authenticity of P 4 has not been established by the Petitioner. One M. L. M. Rashmi claimed to be a Surveyor and Court Commissioner has made certain entries on P 4 in red colour. He has highlighted a certain point of the said plan as 'A' in red and has drawn a red line from point A to St Thomas' College which is depicted on the east and also an another red line to a pond which is depicted on the west of the said plan P 4. The surveyor has described the said point 'A' as No 230 of Kumaratunge Mawatha, Matara. The learned President Counsel submitted that the Medananda Vidyalaya is situated at the place where the said pond in P 4 is depicted. Except the said submissions there is no iota of evidence to show that the Medananda Vidyalaya is situated where the said pond is depicted in P 4.

Also on the other hand the place shown as No 230 of Kumaratunaga Mawatha by the said surveyor Rashmi, has been depicted in P 4 as No 186, Kumaratunga Mawatha. Hence the Petitioner, by plan P 4, has failed to establish that St. Thomas' College is closer to her residence than Medananda Vidyalaya. Therefore reducing the 5 marks from the total of 50 marks given to proximity category is correct.

Now I deal with the next submission of the Petitioner that whether the Petitioner was able to establish that she was residing at No. 230, Kumaratunga Mawatha, Matara.

The question of residence has to be considered paying attention to the averments contained in paragraph 22 of the statement of objection filed by the 1st Respondent. In proof of the said averment he has produced a site inspection report dated 10.10.2014 marked 1R6 prepared by the members of the interview board who had carried out the site inspection after the interview. According to observation made by the said team in 1 R 6, they had discovered that No 230 was a building which was situated among the boutiques along Kumaratunga Mawatha. At the time of the inspection the Petitioner was not at the given address. They had observed that one Abusalam Abdul Cadar was running a medical centre called "Suwasewa" at No 230, Kumaratunga Mawatha. They had also observed that the said premises No 230 had only one door for entrance and exit both. Accordingly they had come to the conclusion as contained in 1 R 6 that "a person by the name Mohammed Mukthar Aisha was not in occupation of the premises No 230".

It must be noted that the Petitioner in her counter affidavit dated 07th of October 2015 except a general denial contained in paragraph 10, has not specifically denied the averments contained in paragraph 22 of the statement of

objection of the 1st Respondent and also has not answered to the averments contained in paragraph 22 of the said statement of objection. Also it must be noted that the Map of Matara Town which was produced with the counter affidavit marked P 13 does not provide any evidence as regard the Petitioner's residence at No 230, Kumaratunga Mawatha. P 13 does not contain the assessment or premises numbers of the buildings depicted in the said map. Also it does not show a road by the name Kumaratunga Mawatha. At least the Petitioner in her counter affidavit or her witness M. L. M. Rashmi in his affidavit dated 24.09.2015 have not identified the Kuaratunga Mawatha among the roads depicted in the said map P 13.

The Petitioner has produced a lease agreement bearing No 318 dated 8th September 2014 to establish the fact that she was in occupation of No 230, Kumaratunga Mawatha. Although a defined portion from the front portion of the premises No 230 has been rented out to her uncle to carry on an Ayurveda Dispensary, the Petitioner has not given any description about a remaining portion of the said premises which was occupied by her as claimed as her residence.

The Petitioner has produced a letter sent to the Divisional Secretary, Matara, dated 20.01.2012 marked P 3(X) F. By the said letter she had requested to delete the name of one B. L. A. Dayawathie Nagahawatta which appears in the water bill and to enter her name therein. It is clear from the water bill produced marked P 3(X)A, which was for the period commencing from 07th June 2011 to 07th July 2011, had been issued in the name of said Dayawathie Nagahawatta. Furthermore the said letter dated 20.01.2012 marked P 3(X) F crystallized the fact that said B. L. A Dayawathie Nagahawatta was the tenant of the said premises No 230 and the Petitioner had instituted a case bearing No L 9512 against said Dayawathie Nagahawatta seeking a declaration of title and under the decree entered in the said case No L 9512, which was produced marked P 3(iii)b, the

Petitioner became entitled to the land and the said premises No 230. In the said case it has been decreed that said Dayawathie Nagahawatta to be ejected from the land and the said premises No 230 and vacant possession thereof to be handed over to the Petitioner. But the Petitioner, in her petition and affidavit, has not averred the date of issue of a writ of possession and also the date of handing over the vacant possession of the said premises No 230 to her under the said decree. Accordingly said documents P 3(X) F and P 3(iii) b clearly show that the petitioner was not in occupation of the said premises at least until July, 2011.

The Petitioner has produced an extract from the Muslim Divorce Register dated 15.10.2011 marked P 3(V) to establish that the marriage between the Petitioner and Mohamed Ahlam Mohamed Ariff has been dissolved. According to P 3(V) the Petitioner's residence at the time of divorce was at No 236/5, Kumaratunga Mawatha, Matara.

The 3rd Respondent has produced a letter sent by the Petitioner to the Coordinating Secretariat of the Member of Parliament for Hambantota dated 19.11.2014. In the said letter she has mentioned her address as No 236/5, Kumaratunga Mawatha, Matara.

P 3(ii) is a certificate on residence and character of the Petitioner issued by Grama Niladari of 417B, Kade Veediya South. In the said certificate Grama Niladari had stated that the Petitioner was known to him from 02nd May 2012, during the tenure of his office in the area.

Facts aforementioned clearly reveal that the Petitioner was not able to establish that she was residing at No. 230, Kumaratunga Mawatha, Matara, during the 05 years preceding to the year 2015 as required by the said circular No 23/2013.

When I consider the facts and circumstances of the instant application I am of the view that the Petitioner has failed to establish the requirements under the proximity category as stipulated in Circular No 23/2013. Hence I hold that by not admitting the Petitioner's child to grade 1 of the St Thomas College, Matara, for the year 2015, the Respondents have not violated the fundamental rights of the Petitioner under Article 12(1) of the Constitution. Therefore I dismiss the instant application of the Petitioner without costs.

Judge of the Supreme Court

B. P. ALUWIHARE, PC, J.

I agree.

Judge of the Supreme Court

ANIL GOONARATNE, J.

I agree.

Judge of the Supreme Court