

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 read along with Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC. FR. No. 138/2013**

1. Akuretiyage Onethra Amavindi  
Through her father
2. Akuretiyage Mahesh Kumar Lanka  
No. 6, Thotupala Lane,  
Poramba,  
Amabalangoda.

**Petitioners**

**Vs.**

1. M.G.O.P. Panditharatne  
Principal,  
Dharmashoka Vidyalaya,  
Ambalangoda.
2. T. Matheesha Deeptha De Silva
3. H.D.U. Chandima
4. W. Chandana Sisira
5. Sumith Petthawadu

All members of the Interview Board  
(on admission to year 1 – 2013)  
Dharmashoka Vidyalaya,  
Ambalangoda

6. Wasantha Siriwardhena

7. A.W. Sriyani Chandrika

8. M. Anura De Silva

9. M. Janaka Wimalasuriya

All members of the Appeal Board  
(on admission to year 1 – 2013),  
Dharmashoka Vidyalaya,  
Ambalangoda.

10. S.M.S.R. De Silva

Through his mother  
K.K.A. Krishanthi  
No. 12, Watarauma Road,  
Enderamulla,  
Amabalangoda.

11. Hon. Bandula Gunawardena

Minister of Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

12. Gotabhaya Jayaratne

Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

13. Director- National Schools,

Ministry of Education,  
Isurupaya,  
Battaramulla.

14. Hon. Attorney General,

Attorney General's Department,  
Colombo 12.

**Respondents.**

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**Before** : Tilakawardane, J.  
Marsoof, PC. J. &  
Wanasundera, PC,J.

**Counsel** : Athula Perera with Chathurani de Silva for Petitioners.  
S. Rajaratnam, DSG. for Respondents.

**Argued On** : 08.11.2013

**Written**  
**Submissions filed** : By the Petitioners on 20.11.2013  
By the Respondents on 20.11.2013.

**Decided On** : 18.12.2013

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**Wanasundera, PC.J.**

The Petitioners in this case complain that the fundamental rights guaranteed to them under Article 12(1) of the Constitution have been violated by one or more of the Respondents when they did not admit the 1<sup>st</sup> Petitioner to Grade 1 of Dharmashoka Vidyalaya, Ambalangoda.

The 2<sup>nd</sup> Petitioner is the father of the 1<sup>st</sup> Petitioner child who was not admitted to Grade 1 in January 2013. The application made to the school for admission of the 1<sup>st</sup> Petitioner was done under the category of “children of parents who are past pupils of the school”. Admissions to school are governed by Circulars issued by the Ministry of Education and notifications issued in that regard from time to time. Applications are prepared in conformity with the specific application forms issued under the notifications. When the Petitioners applied for admission to Grade 1, they were called for an interview held by the Interview Board comprising of 1<sup>st</sup> to 5<sup>th</sup> Respondents. When the child did

not get admission, the Petitioners appealed to the Appeal Board comprising of 6<sup>th</sup> to 9<sup>th</sup> Respondents.

At the hearing of this case on behalf of the Petitioner, it was argued that the marks given to the Petitioners under the past pupils category as mentioned in '1R1', the mark sheet which was produced to Court by the 1<sup>st</sup> Respondent, contained marks given wrongfully under the category '3 अ(1)' and category '4 अ'. I observe that in '1R1', '3 अ(1)' the 2<sup>nd</sup> Petitioner being a member of the Badminton Team has been given 1 mark for the same; the 2<sup>nd</sup> Petitioner being the captain of the Volleyball Team has been given 2 marks for the same; the 2<sup>nd</sup> Petitioner being a member of the Athletic Team has been given 1 mark for the same; all adding up to 4 marks. The Petitioner's claim is that it should be 5 marks. They contest that in the Senior Volley Ball Team the 2<sup>nd</sup> Petitioner was a member and that he should get 1 mark for that position, as well as the 2<sup>nd</sup> Petitioner being the captain of the Junior Volley Ball Team the 2<sup>nd</sup> Petitioner should get 2 marks, adding the same to 3 marks which would bring the total marks under '3 अ(1)' to 5 marks. I observe that the Interview Board is directed by the notification issued by the Ministry that the position in one sport will be taken into account only once. Therefore the 2<sup>nd</sup> Petitioner has been given 2 marks for being the captain of the Junior Volleyball Team and in the same sport he cannot be given 1 more mark for having been a member of the Senior Volleyball Team. It is justifiable to consider the higher position and give marks undermining the lower position in the same sport. It is not done arbitrarily but done according to the rules which applied to all others who faced the interview. I therefore conclude that 4 marks at the interview given under '3 अ(1)' is correct.

The next contention of the Petitioners is that under category '4 अ' the 2<sup>nd</sup> Petitioner has been given 1 mark each, taking into account the qualifications of 1 year Technical College Course, and another 6 months Technical College Course which deserves 1 more mark and the addition should be 2 marks under '4 अ'. In this instance also, I observe that for the one year course 1 mark should be given and the half year course 0.5 marks should be given according to the specific marking scheme given under each category in each cage of the marking sheet. I therefore conclude that only 1.5 marks

should be given to the 2<sup>nd</sup> Petitioner in this regard. Therefore the total number of marks that the 2<sup>nd</sup> Petitioner has acquired adds up to 52.5 marks.

According to Clause 6.2/i-iv of Circular No. 18 of 2011 the Petitioners have been given only 52 marks. But I am of the opinion that they should be given 52.5 marks. The Petitioners are not entitled to 54 marks as they claim. Under the past pupils category only 25% of the total intake of students for Grade 1 is filled. I have noticed with regret that the marks indicated in the mark sheet '1R1' has not been done neatly. Yet the total number of marks adds up to only 52.5 and as such does not fulfill the requirement of reaching the cut-off mark of 54.

As such I dismiss the application without costs. However, at the hearing on behalf of the Respondents it was submitted that the 1<sup>st</sup> Petitioner is placed as No. 6 in the waiting list for admission to Grade 1 in the year 2013. I direct that the 1<sup>st</sup> Petitioner be placed in the correct placement on the waiting list taking into account the number of marks which should have been awarded to the 1<sup>st</sup> Petitioner as 52.5.

**Judge of the Supreme Court**

Tilakawardane, J.

I agree.

**Judge of the Supreme Court**

Marsoof, PC. J.

I agree.

**Judge of the Supreme Court**



