

**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 of the
Democratic Socialist Republic of
Sri Lanka.

SC /FR 353 / 2016

A. B. T. Rasanga,

No. 193/13, Uda Peradeniya,

Peradeniya.

Petitioner

Vs.

1. The Principal,
Kingswood College,
Kandy.
2. The Director - National Schools,
Ministry of Education,
‘Isurupaya’
Battaramulla.
3. The Secretary,
Ministry of Education,
‘Isurupaya’ , Battaramulla.
4. Hon. Attorney General,
Attorney General’s Department
Colombo 12.

Respondents

BEFORE : PRIYASATH DEP, PC, CJ.
PRIYANTHA JAYAWARDENA, PC, J.
UPALY ABEYRATHNE, J.

COUNSEL : Elmore Perera for the Petitioner
Suren Gnanaraj SC for the Respondents

ARGUED ON : 01.06.2017

DECIDED ON : 04.08.2017

UPALY ABEYRATHNE, J.

The Petitioner has complained to this court that his fundamental right to equality guaranteed by Article 12(1) of the Constitution of Sri Lanka has been infringed by the 1st Respondent, by refusing admission of his son, A. B. Abishek Anuhas to Grade 01 of Kingswood College, Kandy.

The Petitioner, in his application dated 6th October, 2016, has averred that he was baptised as a Cristian on 15th April 1979 and his wife Samanthika Swarnamali was baptised on 16th October 1994. Their son, A. B. Abishek Anuhas who was born on 17th April 2011, who was baptised on 12th June, 2011. Their place of residence placed within the limits of administrative district of Kandy. He had averred that his son A. B. Abishek Anuhas possesses the basic qualifications necessary to gain admission to Kingswood College, Kandy in accordance with Paragraphs 2.0 and 3.6 of the Instructions and Regulations regarding admission of Children to Grade 01, 2017. On 23.06.2016, the Petitioner had submitted a school admission application to the 1st Respondent, for admission of his son to Grade 01 in Kingswood College in 2017 under the quota allocated to Christian students.

After the interview, on 30.09.2016, a list of selection was posted on the school notice board indicating that his son had not been selected for admission but had been placed as No. 6 on a 'waiting list'.

The Petitioner contended that his son was entitled to gain admission to Grade 01, of Kingswood College in 2017 upon the document produced with the petition marked P 11. The Petitioner has produced P 11 in order to consider his application in terms of Regulation 3.2 of the Instructions related to the admission of children to Grade 01 in the Government Schools for the year 2017. Said Regulation 3.2 stipulates that "In filling vacancies in schools vested to government under Assisted Schools and Training Schools (Special Provisions) Act No 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No 08 of 1961, the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and the number of vacancies in the said school shall be accordingly divided among different religions and categories."

The 1st Respondent, in paragraph 10 of the statement of objection, answering the paragraph 13 of the petition which has been set out on P 11, has averred that there was no record or log entry available in the school which shows the number of Christian students who were studying at the Kingswood College in the year 1961. In the absence of confirmed statistics relating to the religious composition of students enrolled at Kingswood College in the year 1961, the school is unable to implement Clause 3.2 of the School Admission Circular marked R 1.

Accordingly, the 1st Respondent has admitted that he was unable to implement Clause 3.2 of the Instructions related to the admission of children to

Grade 01 in the Government Schools for the year 2017 due to the absence of confirmed statistics relating to the religious composition. This is not a justifiable answer. He has neither challenged nor denied the contents in P 11. In the circumstances, I have no option but to consider the Petitioner's application on the strength of the material provided by the Petitioner. According to P 11, the Petitioner should not have been denied admission to Grade 01 of Kingswood College because he was well within the percentage set out in P 11. The Respondents have failed to consider the said position in dealing with the application of the Petitioner.

Therefore, I am of the view that by not considering the said clause 3.2 in accordance with the relevant percentage, the 1st Respondent has acted arbitrarily and unreasonably and thereby infringed the Petitioner's fundamental rights. Accordingly, I hold that the Petitioner's fundamental rights guaranteed under Article 12(1) of the Constitution has been violated by the 1st Respondent. I therefore direct the 1st Respondent to admit the Petitioner's son A. B. Abishek Anuhas to Grade 01 of Kingswood College, Kandy. I make no order with regard to costs.

Judge of the Supreme Court

PRIYASATH DEP, PC, CJ.

I agree.

Judge of the Supreme Court

PRIYANTHA JAYAWARDENA, PC, J.

I agree.

Judge of the Supreme Court