

**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 / 448 / 2019

**1. Bamunu Arachchige Sadew
Nethum
Ganganatha,**

**2. Bamunu Arachchige Sujith
Ganganatha**

Both of
125 / 2 / 1, Galle Road,
Colombo 04

PETITIONERS

-Vs-

**1. Akila Viraj Kariyawasam
(M.P)**

Hon. Minister of Education,
Ministry of Education,
“Isurupaya” Battaramulla.

1A. Dallus Alahapperuma (M.P)

Hon. Minister of Education,
Ministry of Education,
“Isurupaya” Battaramulla.

2. M.N. Ranasinghe,

Secretary – Ministry of Education
“Isurupaya” Battaramulla.

2A. N.H.M. Chitrananda,

Secretary – Ministry of Education
“Isurupaya” Battaramulla.

3. Ranjith Chandrasekara,

Director National Schools,
Ministry of Education,
“Isurupaya” Battaramulla.

3A. G.M. Silva,

Director National Schools,
Ministry of Education,
“Isurupaya” Battaramulla.

4. B.A. Abeyrathna,

Principal – Royal College,
Colombo 07.

5. M.U.S. Gunathilake,

Member – Interview Board,
(Admissions to Grade 01)
Royal College,
Colombo 07.

6. Harshana Mataraarachchi,

Member – Interview Board,
(Admissions to Grade 01)
Royal College,
Colombo 07.

7. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Murdu N.B. Fernando, PC, CJ

Yasantha Kodagoda PC, J

A.H.M.D.Nawaz J

Counsel: Rabindranath Dabare with Sevanthi Perera and
Arundathie Divisekera for the Petitioners

Rajitha Perera SSC for the 1B, 2B, 3B, 4th and 7th
Respondents

Argued on: 06.07.2021

Decided on: 25.07.2025

A.H.M.D. Nawaz, J.

1. This application has been instituted by the 2nd Petitioner, acting on behalf of the 1st Petitioner, a minor, alleging an infringement of their Fundamental Rights guaranteed under Article 12(1) of the Constitution. The gravamen of the complaint concerns the refusal to admit the 1st Petitioner to Grade 1 at Royal College, Colombo 07, for the academic year 2020.
2. The Petitioners have maintained continuous possession of their residential premises within the feeder area for over 15 years, commencing in 2003, under successive lease agreements. These lease agreements, first executed in 2009, were subsequently renewed every three years. As of the date of the application, the Petitioners' permanent address was No. 125/2/1, Galle Road, Colombo 4.

3. The 2nd Petitioner, who is the father of the 1st Petitioner, submitted the application under Clause 7.2 of Circular No. 20/2019 dated 24.05.2019, issued by the 2nd Respondent. The application was made under the category “children of residents in close proximity to the school,” which governs admissions to Grade 1 in all government schools.
4. Under Clause 7.2, 50% of the total number of vacancies were allocated to children falling within the "close proximity" category. The clause also outlines the criteria for establishing parental residence and the method for allocating marks based on the supporting documents submitted by the applicant.
5. By virtue of Clause 7.2.1.1 of the circular, an applicant is entitled to 10 marks if the property is leased or rented, provided that the applicant can establish that the lease or rental agreements have been continuously registered in the name of the applicant or the applicant’s spouse for a period of five years or more.
6. In support of the application and to establish permanent residence at the aforementioned address, the 2nd Petitioner submitted several documents, including the lease agreements referred to above, extracts from the Land Registry, extracts from the electoral register for the years 2014 to 2018, a certificate of residence issued by the Grama Niladhari, the marriage certificate of the applicant and his spouse, birth certificates of his other children, and various other supporting documents.

7. It must be borne in mind that, at the time of submitting the application, Lease No. 1878 was in force and valid for a period of three years, commencing on 20th March 2017 and expiring on 19th March 2020.
8. The Petitioners aver that, pursuant to the submission of their application, they were summoned by Royal College to appear for an interview scheduled on 18.08.2019. At the said interview, the Petitioners tendered the requisite documents in conformity with the stipulations set out in the relevant circular. However, the interview panel, comprising the 4th to 6th Respondents, declined to evaluate the application or award any marks to the Petitioners, on the ground that the lease agreement submitted by them was not valid for a period extending one year beyond the closing date of applications, as required by the said circular. They were not allotted under clause 7.2.1.2 for *additional documents in proof of living*.
9. The Petitioners preferred an appeal for reconsideration of the decision to deny admission to Royal College.
10. Subsequently, Clause 7.2.1.1 of the circular was amended by the 2nd Respondent and it was notified by a letter dated 06.09.2019. In terms of the amendment, the validity period set out in clauses 7.2.1.1 and 7.4.2 was amended. I will presently refer to it in the course of the judgment.

11. Upon the appeal made by the 2nd Petitioner, the application was reconsidered on 16.10.2019 by the Interview Board consisting of the 4th to 6th Respondents. However, the said respondents rejected the appeal and proceeded to give zero marks to the 2nd Petitioner on the basis that the registration date of the lease bond should be before 30.08.2019. This date 30th August 2019 came into existence only in the amendment I have referred to in paragraph 10 above. It is in evidence that the lessor of the Petitioners had extended the lease only from 20th March 2020 by Lease Agreement bearing No 2009 and dated 08.10.2019. Since the extension began from 20th March 2020, it was long after the stipulated date in the amendment namely 30th August 2019 and that paved the way for the rejection of the appeal under the amendment.

12. Thus it boils down that both under the circular and the amendment brought about on 06.09.2019, the 1st Petitioner stood disqualified for admission. I hasten to point out that it is not clear as to how the date 30th August 2019 was so chosen as the date before which lease agreements must be registered or renewed. The reason as to why this date 30th August 2019 was taken has not been forthcoming in the case and I would specifically refer to the jurisprudence of *Menura Nanwidu Rambukkanage and Another v B.A.Abeyrathne and another*¹ wherein Her Ladyship Justice Murdu Fernando (as Her Ladyship the Chief Justice was then) alluded to the hurdles

¹ SCFR 62/2018 dated 12.12.2018

that a prospective applicant should necessarily overcome in order to become eligible for admission of Grade 1 of a school.

13. This was a case where the application was made under the Brother category. The question was that on refusing to give marks in respect of a last will which is produced to establish ownership to the residence, the interview panel, quite contrary to the circular and other relevant letters considered in the case, failed to allocate marks for the fact that the applicant already had an elder brother as a student in the school and for his performance, since he was in Grade 10 and was a junior prefect. The judgment stated that the non-allocation of marks (although the rejection of the last will since it was a contingent right - was accepted) in respect of or the heads except the residence was wrong. The school was directed to take the child in question either to its grade 1 or an appropriate grade. At page 5 of the judgment, Justice Murdu Fernando (as the Chief Justice then was) stated that although the first respondent- the Principal of Royal College moved for time before the Human Rights Commission to consider the marks and documents pertaining to brother category and residence category he did not tender them to the Human Rights Commission until the Fundamental Rights application was filed before the Supreme Court.

14. This court had not been told as to how an arbitrary date was fixed so as to deny a particular category of applicants who had registered their leases after 30th August 2019. Here was an

applicant who had been living in close proximity to the school for over 15 years and the Petitioners had in their possession successive lease agreements.

15. In respect of this question, in the case decided by Her Ladyship Justice Murdu Fernando, she made some pertinent observations which I consider should merit a recall. She highlighted that whether the school authorities took cognizance of the classification made by the 12th Respondent (the Secretary to the Ministry of Education) is a matter that should engage the attention. A repeal of a provision of the circular does not ipso facto mean that the application should be rejected in toto. In this type of situations as we encounter in this case, the response of the respondents had been that doing so would have led to an overhaul of the entire evaluation process in respect of all applicants whose applications had been rejected on the same premise-see page 6 of the judgment. This is a seemingly harmless way of saying that the wrong done to A cannot be redressed since if it is done the same wrong committed in respect of B, C and D also will have to be corrected. What principle of law, justice or common sense would support such a proposition is a matter that needs to be pondered, especially on the basis that this is a question of the entitlement of the citizen for education.

16. Her Ladyship Murdu Fernando observed at page 13 of the judgment-

“I cannot accept the reasons given by the respondents in not reevaluating the applications in the best interests of the child as contemplated by the letter of the Secretary, Ministry of Education...

Her ladyship was echoing the rights of the child which Sri Lanka quite rigorously pursues in its obligations under the Convention on the Rights of the Child (CRC).

17. Having given careful consideration to the circular and its amendment, I take the view that if this date so arbitrarily chosen does not stand in the way of this child, he would have the period of 6 months that the amendment seeks to introduce. According to the Petitioners they have maintained continuous possession of the said premises within the feeder area for over 15 years, since 2003. In any event, the introduction of the date with would amount to a breach of the procedural legitimate expectation that any Petitioner would have before the policy is changed.

18. Though I do not seek to declare invalid the amended criteria, I would hold that the arbitrary date that precludes the application of this child being considered for admission to Royal College should not be factored into the evaluation of the application of the child for reasons I have adumbrated about such as the disappointment of procedural legitimate expectation and other criteria that the petitioner satisfies.

19. In the circumstances, I determine that the denial of admission of the child to grade 1 at Royal College is discriminatory and it has caused an infringement of the fundamental rights of the petitioners as guaranteed under Article 12 (1) of the Constitution. Accordingly, I would order that the respondents should take steps to admit the child to an appropriate grade to Royal College. This determination is solely confined to the facts immanent in this application of these Petitioners.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, CJ.

I agree

CHIEF JUSTICE

YASANTHA KODAGODA, PC, J.

I agree

JUDGE OF THE SUPREME COURT