

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

*In the matter of an application in terms  
of Article 126 read with Article 17 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

S C (F R) Application No. 140/ 2019

1. Khalique Jaaffer,
2. Mohamed Shaheem Khalique Jaaffer,  
(Minor)  
Both of 562/16 (also referred to as  
562/16 B),  
Lower Bagatalle Road,  
Colombo 03.

**PETITIONERS**

-Vs-

1. B A Abeyrathna,  
Principal,  
Royal College,  
Colombo 07.
2. Thushantha Amaratunga,

3. Uditha Malalasekara,

4. D K Wickramasinghe,

5. Lalith Ganewatte,

1<sup>st</sup> to 5<sup>th</sup> Respondents are all members of the Interview Board (on admission of children to Grade 1 - year 2019),

C/O Royal College,

Colombo 07.

6. Sanjeewa Tharanga Leelarathne,

7. D S P Kalubowila,

8. L M D Dharmasena,

9. Y I Liyanage,

10. Dilani Suriyarachchi

6<sup>th</sup> to 10<sup>th</sup> Respondents are all members of the Appeal and Objection Investigation Board (on admission of children to Grade 1 - year 2019),

C/O Royal College,

Colombo 07.

11. Jayantha Wickremayake

Director, National Schools,

Ministry of Education,

Isurupaya,

Battaramulla.

12. Padmasiri Jayamanne  
 Secretary to the Ministry of Education,  
 Ministry of Education,  
 Isurupaya,  
 Battaramulla.

13. Akila Viraj Kariyawasam,  
 Minister of Education,  
 Ministry of Education,  
 Isurupaya,  
 Battaramulla.

14. Hon. Attorney General,  
 Attorney General's Department,  
 Hulftsdorp,  
 Colombo 12.

## **RESPONDENTS**

**Before:** **Buwaneka Aluwihare PC J**

**P. Padman Surasena J**

**E. A. G. R. Amarasekara J**

Counsel: Viran Corea with Sarita de Fonseka and Thilini Widanagamage for the Petitioners.

Rajiv Goonetillake SSC for the Attorney General.

Argued on : 23 - 10 - 2019

Decided on: 01 - 11 - 2019

## **P Padman Surasena J**

The 1<sup>st</sup> Petitioner is the father of the 2<sup>nd</sup> Petitioner who is a minor and whose admission to Grade 1 of Royal College Colombo, was sought by an application<sup>1</sup> made by the 1<sup>st</sup> Petitioner to the said school. Upon the 2<sup>nd</sup> Petitioner becoming unsuccessful in securing the admission to the said school, the 1<sup>st</sup> Petitioner has appealed to the Appeals Panel appointed by the School authorities. The Petitioners have not been successful at the said appeal too.

At the outset, this Court needs to bear in mind that the process of selection of children to Public schools is conducted in accordance with the provisions of the circular dated 31<sup>st</sup> May 2018 produced marked **P 2** by the Petitioners. The 1<sup>st</sup> Respondent also has produced the said circular marked **R 1**. The said process envisaged by the said circular is a competitive process. According to clause 6.0 of this circular, a specified percentage of children are admitted to Grade 1 in public schools in each year, from each of the six categories set out below.

- I. 50% of children of residents in close proximity to the school,
- II. 25% of children of parents who are Past Pupils of the school,
- III. 15% of children who are brothers/sisters of students already studying in the school,
- IV. 05% of children of parents who are employed in an institution engaged in work directly related to public school education under the Ministry of Education,
- V. 04% of children of parents of Government institutions/corporations/Statutory Boards/State Banks, who are

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<sup>1</sup> The application submitted by the 1<sup>st</sup> Petitioner has been produced by the 1<sup>st</sup> Respondent annexed to his affidavit marked **R 2**.

transferred on the exigencies of Government service or on annual transfer schemes,

VI. 01% of children of parents returning to the country after been abroad for some time.

As the process of admission of children to Grade 1 in public schools is a competitive one, the circular has devised a marking system<sup>2</sup> relating to each of the above categories. The school authorities, after evaluation according to the marking scheme, prepares a list placing all the applicants according to the marks they have scored. It is thereafter that the school authorities decide on a cut-off mark and admit only the children who are placed above the said cut-off mark.

In the instant case, the 1<sup>st</sup> Petitioner (father) had sought admission of his son (the 2<sup>nd</sup> Petitioner) under the category of applicants who reside in close proximity to the school. It would be convenient as requested by the learned counsel for the Petitioners, to turn at this stage to some of the averments in the affidavit dated 20<sup>th</sup> September 2019, filed by the 1<sup>st</sup> Respondent who is the Principal of the school relevant to this application. Paragraph 11 and 12 are reproduced below for convenience.

#### Paragraph 11

“In terms of proximity, marks were deducted for two schools more proximate to the Petitioner than Royal College; (i) Mahanama College and (ii) Thurstan College Colombo. Thus the Petitioner was awarded 32 marks for proximity.”

#### Paragraph 12

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<sup>2</sup> Clauses 6.1 to 6.6 of **P 2** (also marked **R 1** by the 1<sup>st</sup> Respondent).

"In total, the Petitioners' school admission application was awarded 55.2 marks. The cut off mark was 57.15 marks and hence the 2<sup>nd</sup> Petitioner was not selected for admission to Grade 1, Royal College."

This Court can observe that the marking scheme embodied in this circular is designed to pave the way for the parents to admit their children to the Public school closest to their residence more conveniently than to the others. However, if a parent wishes to admit the child to a school of his or her choice which is not the public school closest to his residence, then he will lose four marks each in respect of each of the other public school situated closer to the residence of such parent than the school of his or her choice.<sup>3</sup>

According to paragraph 11 of the affidavit filed by the 1<sup>st</sup> Respondent the Petitioners' marks have been deducted in respect of two schools namely;

- (i) Mahanama College and
- (ii) Thurstan College Colombo.

This was on the basis that the said two schools are situated closer to the Petitioners' residence than Royal College. It is in this manner that the school authorities have calculated and awarded 32 marks to the Petitioners for the close proximity of their residence to Royal College.

However, as has been pointed out by the learned counsel for the Petitioners, clause 7.2.4 of the circular marked P 2,<sup>4</sup> has specified the criteria to be adopted when making a decision to deduct marks for the presence of other public schools situated closer to the residence of the applicant than the school of such applicant's choice. (i.e. the school, such applicant has applied for). It is important to note that the said clause 7.2.4 does not authorize

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<sup>3</sup> Clause 7.2.4 of P 2 (R 1)

<sup>4</sup> (Also marked R 2 by the 1<sup>st</sup> Respondent).

deduction of marks for the mere presence of other Public schools closer to the residence of the applicant than the school of such applicant's choice.

Accordingly, marks must be deducted only in respect of any public school to which the child of such applicant could be admitted as per the criteria set out in the said clause. In the instant case, marks can be deducted only in respect of any public school to which the 2<sup>nd</sup> Petitioner could be admitted as per the criteria set out in the said clause (clause 7.2.4).

This Court bearing in mind, the provisions in clause 7.2.4 must now consider whether the deduction of four marks when evaluating the Petitioners' application by the school authorities for the presence of Mahanama College in closer proximity to the Petitioners' residence than Royal College.

As has been pointed out by the learned counsel for the Petitioners, letter dated 02<sup>nd</sup> August 2018 produced by the Petitioner marked **P 27 (a)** has confirmed that Mahanama College admits only the Buddhist children. According to the said letter, that is the reason given by Mahanama College for the rejection of the Petitioners' application for that school. Thus, it is clear that Mahanama College would not have admitted the 2<sup>nd</sup> Petitioner to Grade 1 of that school under any circumstance due to the sole reason that the Petitioners are not Buddhists. Therefore, it is clear that the deduction of four marks from the marks of the Petitioners for the presence of Mahanama College in closer proximity to the Petitioners' residence than Royal College is unlawful. This is because Mahanama College cannot be considered in terms of clause 7.2.4 of the circular, as a school falling under the category of schools specified in that clause for the purpose of deducting such marks.

It was the position of the learned counsel for the Petitioners that he is able to advance several arguments to show that there are several instances

where School authorities have unlawfully deprived the Petitioners marks which should have been otherwise lawfully awarded to them. However, in view of the fact that it is less than two more marks which the Petitioners need, to secure the admission of the 2<sup>nd</sup> Petitioner to Royal College, the learned counsel for the Petitioners informed Court at the very commencement of the argument, that he would be content if the Court upholds his argument that the school authorities should not have deducted four marks in respect of Mahanama College on the basis that Mahanama College is situated in closer proximity to the residence of the Petitioners than Royal College and held that Mahanama College is a school falling under the category of schools specified in clause 7.2.4 of the circular for the purpose of the application of the Petitioners.

As the deduction of four marks from the marks of the Petitioners for the presence of Mahanama College in closer proximity to the Petitioners' residence than Royal College is unlawful, the total of the marks scored by the Petitioners in respect of their application should have been 59.2 marks. This is well above the cut-off mark of 57.15 marks. This means that the school authorities are obliged to admit the 2<sup>nd</sup> Petitioner to Royal College Colombo 07.

Although the Petitioners have advanced strong arguments to establish that they are in fact residing in the address No. 562/16 and that the premises bearing No. 562/16 and the premises referred to as 562/16 B are one and the same and that the Petitioners have used both numbers inter-changeably, it would be unnecessary for this Court to make any pronouncement in that regard as this Court is able to grant the relief prayed for by the Petitioners in the instant application only upon the above conclusion.

This Court on 30-05-2019 having heard the submissions of the learned counsel for the Petitioners and the submissions of the learned Senior State Counsel who appeared for the Respondents, had decided to grant leave to proceed in respect of the alleged violations of Article 12(1) of the Constitution.

Article 12(1) of the Constitution reads as follows;

"All persons are equal before the law and are entitled to the equal protection of the law".

The above facts demonstrate that the school authorities have failed to apply the law in its correct perspective in respect of the application of the 1<sup>st</sup> Petitioner seeking to admit his son (the 2<sup>nd</sup> Petitioner) to Royal College Colombo 07. The respondent school authorities are obliged to adopt the same method, the same marking system and the same yardsticks set out in the circular marked **P 2**, to evaluate the application of the Petitioners also when they select students to the classes of that school in Grade 1.

In these circumstances and for the foregoing reasons, this Court holds that the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution have been infringed. Therefore, the Petitioners are entitled to the declaration they have prayed from this Court.

Hence, this Court decides to;

- I. declare that the failure of the 1<sup>st</sup> to 10<sup>th</sup> Respondents to admit the 2<sup>nd</sup> Petitioner to Grade 1 of Royal College Colombo 07 has infringed the fundamental rights of the Petitioners guaranteed under Article 12(1) of the Constitution;

II. direct the 1<sup>st</sup> to 10<sup>th</sup> Respondents to admit the 2<sup>nd</sup> Petitioner to Grade 1 of Royal College Colombo 07 on the basis that they have scored more marks than the cut-off mark as pointed out above.

In all the circumstances of this case, this Court decides to award neither compensation no costs.

**JUDGE OF THE SUPREME COURT**

**Buwaneka Aluwihare PC J**

I agree,

**JUDGE OF THE SUPREME COURT**

**E. A. G. R. Amarasekara J**

I agree,

**JUDGE OF THE SUPREME COURT**