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.

1. Imihamy Mudiyanselage Chathura Sri Lalitha Bandara,
   143/2, Preethisena Mawatha,
   Hathalispahuwa,
   Polgahawela.

Appearing by his next friend –

2. Imihamy Mudiyanselage Nimal Gamini Bandara,
   143/2, Preethisena Mawatha,
   Hathalispahuwa,
   Polgahawela.

Petitioners

Vs.

SC/FR Application No. 461/2012

1. K. K. L. Ramya De Silva,
   Sir John Kothalawala Maha Vidyalaya,
   Kurunegala.

2. W. M. Saman Indraratna,
   Principal,
   Sir John Kothalawala Maha Vidyalaya,
   Kurunegala.

3. Sirimewan Podinilame,
   Regional Director of Education,
   Regional Education Office,

Kandy Road, Gattuwana,
Kurunegala.

4. Officer-in-Charge,
Police Station,
Kurunegala.

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

Respondents

BEFORE: **YASANTHA KODAGODA, PC, J**
K. PRIYANTHA FERNANDO, J
SOBHITHA RAJAKARUNA, J

COUNSEL: Anil Silva, PC with Arinda Silva instructed by Nandana Perera for the Petitioner.
Upul Kumarapperuma, PC with Radha Kuruwitabandara and K.H. Dilrukshi instructed by Darshika Nayomi for the 1st and 2nd Respondents.
Nayanthara Balapatabendi, SC for the Hon. Attorney General.

ARGUED & DECIDED ON: 9th July 2025

JUDGMENT

YASANTHA KODAGODA, PC, J

1) In this matter the 1st and 2nd Petitioners (son and father, respectively) have jointly invoked the jurisdiction of this Court conferred on it by Article 126 of the Constitution read with Article 17 thereof. On a consideration of the material placed before this Court, on 23rd November 2012, a differently constituted bench of this Court had granted *Leave to Proceed* against the 1st and 2nd

Respondents (only) in respect of the alleged infringement of the 1st Petitioner's Fundamental rights under Article 11 and 12(1) of the Constitution.

2) The Petitioner was a student studying in class "F" of Grade 11 of the Sir John Kothalawala Maha Vidyalaya, Kurunegala. The 1st Respondent was the 'class teacher' of 11F, and taught the English language. The Petitioners verily believe that the 1st Respondent entertained a lurking suspicion that the 1st Petitioner had originated a petition against her. The 1st Petitioner's understanding of the English language was poor, and this resulted in the 1st Respondent constantly harassing the 1st Petitioner. This led to the 1st Petitioner being hesitant to attend school regularly. In May 2012, the 1st Petitioner's mother met with both the Principal (2nd Respondent) and the Deputy Principal of the school and complained against the 1st Respondent. However, there was no improvement of the situation.

3) On 9th July 2012, while the 1st Petitioner was proceeding to the examination hall in which the 2nd Term Tests were being conducted, another teacher of the school named Susil De Silva (a brother of the 1st Respondent) accosted him, and took him to the 1st Respondent. Susil De Silva asked the 1st Respondent to advise the 1st Petitioner to get a haircut before attending school on the following day. In response, without giving advice to the 1st Petitioner, the 1st Respondent got into a rage and mercilessly assaulted the 1st Petitioner on his head. He was then instructed to proceed to the examination hall and sit for the exam. Unable to tolerate the pain due to the 'punishment' imposed on him by the 1st Respondent, mid-way during the examination, he left the school and went home. Thereafter, the 2nd Petitioner took the 1st Petitioner to the Polgahawela Hospital. Following and initial examination, he was transferred to the Kurunegala Teaching Hospital, where he was treated for a perforation caused to his ear drum.

4) In view of the subsequent prosecution of the 1st Respondent and the conviction imposed on her, learned President's Counsel for the 1st Respondent did not seriously canvas this narrative of the incident given by the Petitioners. Furthermore, it was conceded by learned President's Counsel for the 1st Respondent that when imposing the afore-stated 'punishment', the 1st Respondent was acting under the colour of her office, as a teacher of the Sir John Kothalawala Maha Vidyalaya, Kurunegala, which is a public school, and not in her private capacity. The 2nd Respondent was the Principal of that school, against whom there is also an allegation that he did not take independent and

effective action against the 1st Respondent. Thus, there is no room to argue that the conduct of the 1st and 2nd Respondents do not amount to 'Executive action' for the purposes of Articles 17 and 126 of the Constitution.

5) Soon after the incident, the Petitioners have lodged a complaint with the 2nd Respondent regarding the assault by the 1st Respondent. The Petitioners have also sought and obtained treatment at a government hospital. The Petitioners have presented to this Court forensic medical evidence following a clinical examination by Judicial Medical Officer Dr. N.C.A.P. Chaminda in support of the allegation, which clearly reveal that the assault on the left cheek of the 1st Petitioner's head resulted *inter alia* in the occurrence of a traumatic perforation of the left ear-drum (*tympanic membrane* also referred to as the *myringa*) which necessitated in-house treatment being provided to the 1st Petitioner at the Kurunegala Teaching Hospital for a couple of days.

6) It appears from the evidence placed before this Court that the afore-stated incident of assault had been brought to the attention of the 2nd Respondent (Principal of the School) following a complaint lodged by the 2nd Petitioner. He, after a purported inquiry which primarily centered around recording of statements said to have been made by some students and teachers of the same school, concluded that it was a false complaint. It also appears that the 2nd Respondent has not taken the elementary step of checking from the relevant hospital authorities as to whether the 1st Petitioner had suffered any injury and if so, it's cause, as well as possible consequences arising from the injury.

7) The 3rd Respondent (Regional Director of Education, Kurunegala) to whom this matter had been reported had also not performed his official duties in any manner better than how the inquiry was conducted by the 2nd Respondent. Be that as it may, this Court is restrained in arriving at a finding against the 3rd Respondent, because, prior to the filing of objections, this Court had not granted *Leave to Proceed* against the 3rd Respondent.

8) However, when a complaint was made by the Petitioners to the Officer-in-Charge of the Kurunegala Police Station, regarding the assault by the 1st Respondent and the injury sustained, he had caused the conduct of the criminal investigation into this matter which resulted in the collection of necessary investigational material and forensic expert opinion. It led to the Hon. Attorney General forwarding indictment against the 1st Respondent for having committed cruelty to the 1st Petitioner, an offence punishable under section 308

A(2) of the Penal Code (as amended). Founded upon that indictment, the case had proceeded to trial before the High Court of Kurunegala and the learned Judge of the High Court had found the 1st Respondent-Accused *"guilty"* of having committed the offence contained in the indictment. Following conviction, the 1st Respondent had been sentenced to a period of 2 years of rigorous imprisonment and ordered to pay a fine of Rs. 10,000.00 carrying a default sentence of 3 months simple imprisonment.

9) The convicted 1st Respondent had appealed against the conviction and the sentence to the Court of Appeal. The Court of Appeal having considered a series of attendant facts and circumstances, had decided rather peculiarly to amend the charge contained in the indictment to one under section 314 of the Penal Code (causing hurt) and on that premise had taken into consideration the maximum sentence attaching the committing of the offence of 'hurt' and imposed a substantive term of 6 months rigorous imprisonment which sentence the Court of Appeal had deemed fit to suspend for a period of 5 years. I shall refrain from commenting on the legality and the appropriateness of the course of action adopted by the Court of Appeal and the substituted sentence imposed. That is primarily because the Hon. Attorney General for reasons not disclosed to this Court, does not seem to have been aggrieved or perturbed by the altered conviction and the lessor sentence imposed and therefore had not presented an Appeal to this Court in respect of the Judgment of the Court of Appeal. Thus, I shall leave that matter at rest, though the decision of the Court of Appeal and the subsequent inaction by the Honourable Attorney-General gives rise to considerable concern to this Court.

10) We have carefully considered the evidence in this matter. It is clear that there is cogent and credible evidence in support of the allegation of the Petitioners that the 1st Respondent assaulted the 1st Petitioner on the afore-stated occasion, resulting in the infliction of a serious grievous injury, namely, perforation of the ear-drum which resulted in *inter-alia* temporary impairment of hearing.

11) In our view, the nature of the assault and its impact amounts to cruel, inhuman, degrading treatment or punishment. It also constitutes the criminal offence contained in the Convention for the Elimination of Torture Act as well as the corresponding international Convention. That the conduct of the 1st Respondent amounted to 'cruelty' as defined in section 308A of the Penal Code is quite apparent.

12) In the circumstances, this Court concludes that the conduct of the 1st Respondent amounts to both an offence and also an infringement of Article 11 of the Constitution.

13) This Court also concludes that the 2nd Respondent had not conducted an impartial initial fact finding or inquiry in terms of the applicable and governing administrative circulars which necessitates him to conduct an impartial and comprehensive investigation into allegations of this nature. His motive for the laxity with which he conducted the inquiry is quite apparent – that being to shield the 1st Respondent from any liability or sanction. Therefore, the conduct of the 2nd Respondent has deprived the 1st and the 2nd Petitioner to the equal protection of the law. In the circumstances, the 2nd Respondent has infringed the 1st Petitioner's Fundamental right guaranteed under Article 12(1) of the Constitution.

14) In the circumstances, this Court issues declarations that –

(a) the 1st Respondent has infringed the Fundamental right of the 1st Petitioner guaranteed by Articles 11 of the Constitution,

(b) the 2nd Respondent has infringed the Fundamental right of the 1st and 2nd Petitioner guaranteed by Article 12 (1) of the Constitution.

15) In view of the power vested in the Supreme Court by Article 126 (4) of the Constitution, this Court would have ordinarily imposed a requirement for the payment of heavy compensation to the 1st Petitioner by the 1st Respondent. However, in this case we have taken into consideration the fact that the 1st Respondent had been in remand custody for a period of seven (07) months and had also complied with the order of the Court of Appeal for the payment of compensation.

16) This Court takes cognizance of the fact that in terms of the law there cannot be any form of corporeal punishment on a student imposed either as a measure of discipline or due to any other reasons. This is particularly in view of the compelling need to respect the rights of children, their Fundamental rights and to ensure that no form of discipline has an adverse impact on the physical and psychological wellbeing of any child.

17) In this regard, the Court observes the need for the Ministry of Education to issue a fresh Circular addressed to all Teachers and Administrators of all schools stating clearly that no physical or psychological harm should be

inflicted on any child as a means of punishment or for any other reason. The Circular must state that there will be zero tolerance of any form of corporeal punishment, and perpetrators will be dealt in terms of the law. Accordingly, the Secretary to the Ministry of Education is hereby directed to issue such a Circular within nine (09) months of the date of this Judgment. The Attorney-General is directed to advise the Secretary to the Ministry of Education in that regard. Court also notes that it would be desirable for the Ministry of Education to undertake a programme aimed at creating awareness among school Administrators and Teachers regarding non-harmful means of sanctioning school children who engage in misdemeanours and act in violation of school discipline. Such non-harmful and lawful forms of punishment may include imposition of measures of positive discipline, positive behavioural interventions and supports, and also non-punitive forms of punishment.

18) Accordingly, this Application is allowed.

19) The Petitioners will be entitled to recover the cost of this action from the 1st Respondent.

20) The Registrar of this Court is directed to forward copies of this Judgment to the Attorney-General and to the Secretary to the Ministry of Education.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J
I agree.

JUDGE OF THE SUPREME COURT

Dr. SOBHITHA RAJAKARUNA, J
I agree.

JUDGE OF THE SUPREME COURT