

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

In the matter of an application for Orders in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kalubandhanage Rushith Thamodya
Sarath Kumara,
No. 33, Deiyannewela Road,
Kandy.

PETITIONER

C.A. Case No. WRT/0616/25

Vs.

1. Lt. Col. M.R.P. Mayadunne,
Principal,
Vidyarthi Vidyalaya,
Kandy.
2. Hon. Harini Amarasuriya,
Minister of Education,
Ministry of Education,
“Isurupaya”,
Battaramulla.
3. K.M.G.S.N. Kaluwewa,
Secretary to the Ministry of Education,
“Isurupaya”,
Battaramulla.

4. Anura Abeywickrama,
Director of Education,
Physical Education and Sports,
Ministry of Education,
“Isurupaya”,
Battaramulla.
5. D.W.M. Nimmana,
Secretary,
Sri Lanka Schools Rugby Football
Association,
Principal, Kiriporuwa Vidyalaya,
Eheliyagoda.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Varun Senadhira with Sandamali Manathunga, Ifran Batcha, Umayanka Kurian, and Angelika Perera, instructed by Indika Bandara Abeykoon, for the Petitioner.

Malik Hannan, instructed by M. M. M. Ramzi for the 5th Respondent.

Manohara Jayasinghe, DSG for the 1st Respondent.

ARGUED ON : 18.07.2025

DECIDED ON : 21.07.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J

1. The petitioner is currently a student of Kingswood College, Kandy, and is a talented rugby player and sportsman. He joined Kingswood College in March 2024 to Grade 13, and upon joining, the petitioner was desirous to participate in sports, especially rugby. However, as per the Circular marked X-19 issued by the Ministry of Education, being Circular No. 03 of 2022, there is a requirement to obtain a No Objection Letter from all the Principals of the schools in which such a student has been during the preceding year. This is provided for by Rule 1.1.9 of the said Circular. It reads as follows:

“1.1.9 ශිෂ්‍යයකු / ශිෂ්‍යාවක වෙනත් පාසලකට ඇතුළත් වීමෙන් පසු එම ඇතුළත් වූ දිනයේ සිට වසරක කාලයක් ඇතුළත නව පාසල යටතේ ක්‍රීඩා තරගවලට ලියාපදිංචි වන්නේ නම් ඔහු / ඇය දැනට ඉගෙනුම ලබන පාසල යටතේ ක්‍රීඩා වලට ඉදිරිපත්වීමට විරුද්ධත්වයක් නොමැති බවට පසුගිය වසර තුළ ඉගෙන ගත් සියලුම පාසල් වල විදුහල්පතිවරුන්ගෙන් ලිඛිත අවසරයක් ලබා ගෙන අධ්‍යාපන අමාත්‍යාංශයේ අධ්‍යාපන අධ්‍යක්ෂ, ශාරීරික අධ්‍යාපන හා ක්‍රීඩා වෙත ඉදිරිපත් කර අනුමැතිය ලබා ගත යුතුය. 6 ශ්‍රේණිය හා 12 ශ්‍රේණිය සඳහා පළමුවරට ඇතුළත් වූ සිසුන්ට පාසල නියෝජනය කිරීමට ද ක්‍රීඩා පාසල් සඳහා ඇතුළත් වන ක්‍රීඩා ශිෂ්‍යත්වලාභීන්ටද තම ක්‍රීඩා පාසල නියෝජනය කිරීමට ද ඉහත 1.1.8 ට යටත්ව මෙම නීතිය බලනොපැවැත්වේ.”

2. The petitioner has sought the said No Objection Letter, however the 1st respondent Principal of Vidyarthi College, by letter X-26 dated 09.04.2025, granted consent for the petitioner to participate in football, however, had given several reasons as to why he cannot issue the No Objection Letter in respect of rugby. The tenor of the said letter X-26 is that the Principal has not issued the No Objection Letter to the petitioner to play rugby for Kingswood College.
3. According to the learned Counsel for the petitioner, the 1st respondent Principal was summoned for an inquiry at the Human Rights Commission Sub-Office in Kandy. This was to inquire into the non-issue of the Leaving Certificate as well as the No Objection Letter. According to X-7, the application to the Human Rights Commission, the

letter annexed thereto, it is evident that the complaint and the relief expected includes both the obtaining of the Leaving Certificate as well as the No Objection Letter to engage in sports upon joining the new school (item 20 of X-7).

4. The inquiry had been held on 07.02.2025. The inquiry notes are found in page 98, marked X-13, according to which the 1st respondent has informed that the Leaving Certificate could be issued. However, as for the No Objection Letter, the 1st respondent appears to have informed that if such a Circular containing such a requirement is brought to his notice, he could consider that request as well (*vide* X-14). The relevant portion as recorded by the HRC proceedings, marked X-13 reads as follows:

“අදාළ මගේ විරෝධතාව නොදැක්වීමේ ලිපිය නැමැති ලිපිය මේ දක්වා නිකුත් කර නොමැති බැවින් විදුහල්පති විසින් එවැනි ලිපියක් නිකුත් කිරීමේ බලයක් තිබෙන බවට වූ චක්‍ර ලේඛනයක් පවතින්නේ නම්, එය ඉදිරිපත් කළහොත් එය නිකුත් කිරීමේ හැකියාව පිළිබඳ ~~සලකා~~ අවශ්‍යතාවය බැලිය හැකි බවයි. පැමිණිලි පාර්ශවයට දන්වා සිටින්නේ එවැනි චක්‍ර ලේඛනයක් පවතින්නේ නම් එහි පිටපතක් විදුහල්පතිතුමා වෙත ඉදිරිපත් කරන බවය. විදුහල්පතිතුමා වෙත දන්වන ලද්දේ අදාළ ලේඛනය සහ විරෝධතාව නොදැක්වීමේ සහතිකය නිකුත් කිරීම පිළිබඳ වාර්තා කර සති 2ක කාලයක් තුළ කොමිසම වෙත ඉටු කරන ලෙසයි.”

5. After the said inquiry, the petitioner has met the 1st respondent and requested for the Leaving Certificate as well as the No Objection Letter. The 1st respondent has by letter X-18, dated 21.02.2025, informed the HRC that he is not in a position to issue the Leaving Certificate due to the poor academic performance, and also alleged that the petitioner has unlawfully participated in the rugby match between Kingswood College and Maliyadewa College, Kurunegala, and that there is a pending disciplinary inquiry; as such, there is a difficulty to issue the Leaving Certificate. However, the Leaving Certificate X-4 was issued on 06.03.2025. There is no mention of any matter as reflected in X-18, in the Leaving Certificate. Thereafter, the 1st respondent has issued X-26, on 09.04.2025, by which he had informed that he had no objection to

the petitioner participating in football, but he had not granted his No Objection Letter in respect of rugby.

6. The petitioner's application is based on legitimate expectation arising from the holding out and the undertaking that appears in X-14, and also it was submitted that the refusal is unreasonable and is based on extraneous considerations. Further it was submitted that in view of the provisions of Rule 1.1.9, the 1st respondent is not empowered to grant the no objection on a conditional or selective basis for a particular sport only. It is the submission that the no objection should be granted in relation to sports in general. As opposed to this, the learned DSG, Mr. Manohara Jayasinghe submitted that the rationale in promulgating the Rule 1.1.9 is to prevent what is popularly known as 'poaching' of talented players. It is an open secret that schools induce and attract talented sportsmen from other schools to enhance and boost their respective teams. In this context, Mr. Jayasinghe submitted that selective No Objection Letters can be issued in that form and in fact, such selective no objection would in the end enure to the benefit of the student concerned. He vehemently submitted that the 1st respondent has never acted maliciously and in fact that he did consent and agree to the petitioner playing two rugby matches for Kingswood College after this application was filed.
7. The letter X-26 certainly is a selective No Objection Letter, where the 1st respondent provides his consent/no objection only in respect of football. He clearly withholds providing his consent/no objection in respect of rugby. I would now consider if the withholding of his no objection is reasonable. On the face of X-26, the primary emphasis is placed on the large sums of money allocated and incurred to develop rugby. The amount spent during 2023 and 2024 are Rs. 2.6 million and 2.9 million respectively. Further, the Old Boys too have spent Rs. 16.2 million. The 1st respondent places great emphasis on this enormous amount spent for the advancement of rugby in refusing to issue the No Objection Letter. Thereafter he has also mentioned that there may be

others who may so leave and this will be to the detriment of the school's sports and the morale of other students, teachers, and trainers/coaches. To my mind, the fact that an enormous sum being expended for the promotion and advancement of rugby and rugby players is not a reasonable or relevant ground to withhold consent. Spending large amounts and allocating such sums by the school and by Old Boys may be the current trend, but financial commitments made by the school and others cannot be a fetter or a valid reason to prevent a talented player in engaging in sports activities after moving to another school, even mid-stream. This will relegate talented students to the position of bonded labourers, so to say. This cannot be and is not the object of Rule 1.1.9 of the Circular.

8. The primary driving force and consideration being financial is evident and clear from the complaint and statements made to the Human Rights Commission (hereinafter referred to as "HRC"). According to X-7, the application to the HRC, it is evident that the 1st respondent is alleged to have refused to issue both the Leaving Certificate and the No Objection Letter as per paragraph 20 of X-7.
9. X-8a is a written complaint made by the petitioner to the HRC. This narrates in detail the undue pressure and threats perpetrated by an Old Boy who appears to have been assisting the school rugby at Vidyarthi College by providing financial assistance. Therefore, the issue of providing funds and financial assistance has been a primary consideration that has been present from the very inception of this dispute, and it appears to be the main consideration and reason for the refusal to issue the No Objection Letter. This is manifested once again, in X-26, as being the main reason for the refusal to grant the No Objection Letter.
10. The rationale and object of Rule 1.1.9 is certainly to prevent poaching of sportsmen. However, a student who is talented in sports cannot be deprived or denied an opportunity to join a school which such student believes to be offering better opportunities. However, in such

circumstance, when such talented sportsmen move mid-stream, the Principal of the first school is entitled to withhold his No Objection Letter to discourage such poaching. This object and the basis should be manifested and be evident as the primary and pivotal consideration. However, as stated above, the primary and foremost reason stated in X-26 is the financial commitment and the expense. The decision to grant a conditional No Objection Letter, and specifically to not issue the No Objection Letter in respect of rugby, is clearly based on financial reasons. This, to my mind, is an irrelevant and extraneous consideration rendering the decision *ultra vires* and unreasonable.

11. The 1st respondent at the HRC has clearly held out that if there be a Circular empowering him to issue a No Objection Letter and if it is brought to his notice, that he may consider the necessity of issuing the same, which is as follows: “අදාළ මගේ විරෝධතාව නොදැක්වීමේ ලිපිය නැමැති ලිපිය මේ දක්වා නිකුත් කර නොමැති බැවින් විදුහල්පති විසින් එවැනි ලිපියක් නිකුත් කිරීමේ බලයක් තිබෙන බවට වූ වක්‍ර ලේඛනයක් පවතින්නේ නම්, එය ඉදිරිපත් කළහොත් එය නිකුත් කිරීමේ හැකියාව පිළිබඳ සලකා අවශ්‍යතාවය බැලිය හැකි බවයි.” This is a manifestation and holding out that 1st respondent would consider the issuing such letter if the Circular was brought to his notice. The petitioner’s position is that this, to some extent, creates an expectation that the 1st respondent will grant the No Objection Letter in due course. The learned DSG takes the view that this utterance at the HRC is no more than an indication that he would consider the request if there is a mandatory requirement.
12. According to the objections, the 1st respondent does not deny the contents of the Inquiry Notes and proceedings of the HRC as depicted in X-13. However, at paragraph 12 and 24, the 1st respondent gives his interpretation of what he claims to have meant when he said so. The respondent’s position is that he was aware of the Circular well before that day, however, the respondent was not aware of any Circular which makes the issuance of the said No Objection Letter “mandatory,” thereby casting a legal obligation on him a legal obligation which can be enforced by a writ of mandamus. At paragraph 24, the respondent avers that what

was meant by him before the HRC is that he would issue the No Objection Letter upon being shown a Circular which made the issuance of the same mandatory.

13. I have reproduced the relevant portion of the proceedings hereinabove.

On plain reading, it is apparent and clear that the respondent is alleged to have informed the petitioner to make available a copy of such Circular, if any, and if so, he would consider the issuing of the said No Objection Letter. Further, the said Inquiry Notes state that upon the receipt of such Circular, the respondent is required to report within two weeks as regards to the issue of the said No Objection Letter. If the 1st respondent was aware beforehand of the Circular X-19, then he ought to have known if there was a provision which provides for the issue of such a letter. If the interpretation of the 1st respondent is accepted, it demonstrates a clear malicious disposition on his part by throwing a challenge to the petitioner, so to say. The HRC complaint has been made in November 2024. The 1st respondent has been notified to appear by letter X-8, dated 17.12.2024. That being so, by 07.02.2025, the 1st respondent had sufficient time to have ascertained the relevant Circular and of any other relevant amendment if any. The utterance, throwing in the face of a student a challenge to provide a copy of the Circular, clearly demonstrates that the 1st respondent was not well-disposed and was malicious. It was his duty if at all to consider the relevant Circular and inform his decision either way. The fact that he throws this challenge at the HRC Inquiry demonstrates some arrogance and the temperament of the 1st respondent.

14. In this backdrop, the conduct of the 1st respondent from the very inception is very relevant. The petitioner, at paragraph 16, specifically states that he requested for the Leaving Certificate as well as the No Objection Letter from the 1st respondent in November 2024. The 1st respondent however, at paragraph 7, denies the petitioner's averments in paragraph 16. However, the complaint to the HRC has been made in November 2024, as averred in paragraph 18 of the petition. The fact that

the HRC complaint was so made is confirmed by X-7. Then, X-8 confirms that on 17.12.2024, the 1st respondent was notified of the HRC complaint. According to X-7 the petitioner had informed that the relief he is seeking is the obtaining of the Leaving Certificate and the No Objection Letter. The sum total is that on a consideration of the totality of this material, it is apparent that the petitioner did in fact request for the Leaving Certificate as well as the No Objection Letter in November 2024. Therefore, the denial made in paragraph 07 cannot be correct and true.

15. Upon the 1st respondent being required to report on the progress of the issue of the No Objection Letter, within two weeks he, by X-18 dated 21.02.2025 informs of certain impediments to issue the Leaving Certificate. However, on 06.03.2025, the Leaving Certificate is issued. It neither contains an adverse remark on the petitioner's academic performance, nor any reference to any illegal participation at a rugby match with Maliyadewa College. Thereafter, the 1st respondent by letter dated 09.04.2025 (X-26) formally informs that there is no objection in respect of football, but does not grant the No Objection Letter in respect of rugby. This letter does not make any reference to the alleged illegal participation at a rugby match between Kingswood College and Maliyadewa College. On a consideration of the aforesaid, the 1st respondent notwithstanding giving an undertaking to consider the issue of the No Objection Letter as well as the Leaving Certificate, has on 21.02.2025 made two allegations, both of which are not reflected in any of the subsequent correspondence. If what was alleged in X-18 was in fact true and in existence, these issues should necessarily be relevant in issuing the Leaving Certificate as well as the consideration of the No Objection. Therefore, the allegation made of *mala fides* cannot be disregarded in view of the conduct of the 3rd respondent as aforesaid.

16. The substantive basis of the application of the petitioner as it transpired during the argument is that a legitimate expectation is created by the utterance and undertaking made by the 1st respondent at the HRC. I

have reproduced the same as recorded in the HRC Inquiry Notes, above. The 1st respondent does give a different interpretation as stated above. However, according to the petitioner, it is clearly a holding out or an undertaking that the 1st respondent would issue the same provided a particular Circular is made available. The petitioner and the 1st respondent take up competing interpretations and positions as to the said utterance. To resolve this, one may get some assistance from letter X-20. This is a letter written by the HRC to the Secretary of the Education Ministry of the Central Province, according to which it is clearly stated that,

“ඉහත අංක යටතේ කොමිෂම වෙත ගොනු කරන්නට යෙදුණ පැමිණිල්ලට අනුව මහනුවර විද්‍යාර්ථ විදුහලේ විදුහල්පති කැඳවා පරීක්ෂණයක් සිදු කරන ලදී. එහිදී අදාළ ලිපි නිකුත් කිරීමට විදුහල්පති එකඟ වී ඇත.

රුසින් තමෝද්‍ය නැමැති පාසැල් සිසුවාගේ අස්වීම් සහතිකය නිකුත් කර ඇතත් විරෝධතා ලිපිය මෙතෙක් ලබා දීමට කටයුතු කර නොමැති අතර තම අයිතිවාසිකම් ලබා නොදීම සම්බන්ධව විද්‍යාර්ථ විද්‍යාලයේ විදුහල්පති තමාගේ අයිතිවාසිකම් කඩ කර ඇති බවට කොමිෂමට පැමිණ දන්වා සිටී.”

17. This clearly depicts that the 1st respondent has in fact agreed to issue both the Leaving Certificate as well as the No Objection Letter. This read in conjunction with the HRC Inquiry Notes, it makes it sufficiently apparent that the 1st respondent has held out and agreed to issue the No Objection Letter as requested for during the inquiry. This in my view is sufficient to create a legitimate expectation in the petitioner. I will now endeavour to consider the legal position and the principle of legitimate expectation as is relevant to this application. Prof. Craig in Administrative Law (11th Ed., at pg.22-001), defines procedural and substantive legitimate expectation as follows:

*“The phrase “**procedural legitimate expectation**” denotes the existence of some process right the applicant claims to possess as the result of a promise or behaviour by the public body that generates the expectation... The phrase “**substantive legitimate expectation**” captures the situation in which the applicant seeks*

a particular benefit or commodity, such as a welfare benefit or a licence, as the result of some promise, behaviour or representation made by the public body.”

18. The ideology of ‘substantive legitimate expectation’ originated in the landmark case of **R vs. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd.** [1995] 2 All ER 714 where Sedley, J., held as follows:

*“Legitimacy in this sense is not an absolute. It is a function of expectations induced by government and of policy considerations which militate against their fulfilment. The balance must in the first instance be for the policy maker to strike; but if the outcome is challenged by way of judicial review, I do not consider that the Court's criterion is the bare rationality of the policy maker's conclusion. While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern (as of course the lawfulness of the policy). **To postulate this is not to place the judge in the seat of the Minister...but it is equally the court's duty to protect the interests of those individuals whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it.**”* [emphasis added].

19. The abovementioned dictum has been cited with approval in **Dayaratne vs. Minister of Health and Indigenous Medicine** (1999) 1 SLR 393, **Nimalsiri vs. Fernando** (SC/FR/256/2010, decided on 17th September 2015), and in **M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others** (SC/FR/444/2012, decided on 30th July 2019). In **M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others** (supra), Prasanna Jayawardena, PC, J., after an extensive and all-encompassing analysis on the doctrine of legitimate expectation, cited with approval the following dicta of Dehideniya, J., in the decision of **Zamrath vs. Sri**

Lanka Medical Council (SC/FR/119/2019, decided on 23.07.2019), as the rationale underlying the doctrine of legitimate expectation:

“The legitimate expectation of a person...further ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of the rule of law which this court attempts to uphold as the apex court of the country. The public perception of legal certainty becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so generated expectations.”

Further, in **Siriwardane vs. Seneviratne and four others** [2011] 2 SLR 1, Dr. Shirani Bandaranayake, J. (as she was then) held that,

“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.”

20. Considering the above authorities and dicta, I am satisfied that a legitimate expectation is created in the petitioner. On a consideration of the sequence of events and the conduct of the 1st respondent, it is clear and apparent that he had been withholding the issue of both the Leaving Certificate and the No Objection Letter, up until the petitioner complained to the HRC. The petitioner clearly had, on many occasions, requested for the same. However, the Leaving Certificate had been issued on 06.03.2025. It is relevant to note that the 1st respondent could not have refused to issue the Leaving Certificate. He had delayed the issue of the same for almost 04 months. This shows that he was acting with malice. Thereafter, with the complaint being made to the HRC, his disposition appears to have further changed which is evident by X-18.

That being so, the primary and substantive reason adduced for the refusal to issue the No Objection Letter to play rugby is none other than the substantial sums claimed to have been invested and expended by the school and the Old Boys. This, to my mind, cannot be a valid or lawful reason to refuse the issue of the No Objection Letter in respect of rugby. The object and purpose of the Circular as submitted by the learned DSG is to prevent 'poaching' of talented players. In letter X-26, the said reason has been very vaguely mentioned down the line. Accordingly, the primary reason for the refusal to issue the No Objection Letter is an extraneous and irrelevant consideration.

21. In this regard, I would refer to the following passage from Administrative law by Wade and Forsyth (11th Ed., at pg. 323):

"There are many cases in which a public authority has been held to have acted from improper motives or upon irrelevant considerations, or to have failed to take account of relevant considerations, so that its action is ultra vires and void. It is impossible to separate these cleanly from other cases of unreasonableness and abuse of power, since the court may use a variety of interchangeable explanations, as was pointed out by Lord Greene. Regarded collectively, these cases show the great importance of strictly correct motives and purposes. They show also how fallacious it is to suppose that powers conferred in unrestricted language confer unrestricted power."

Further, A.H.M.D. Nawaz, J., in **Tennakoon Mudiyanseelage Janaka Bandara Tennakoon vs. Hon. Attorney General and Others** CA/WRT/335/2016, decided on 15th November 2020, held as follows:

"In administrative justice, failure to take into account relevant considerations and taking into account irrelevant considerations would taint and nullify the decision as illegality which is an aspect of Wednesbury unreasonableness. Our attention has not been drawn to any analysis or consideration of these matters before a decision was made to indict the Petitioner."

The above, considered in conjunction with the conduct of the 1st respondent which strongly savours of malice, makes the decision not to issue the No Objection Letter *mala fide*, *ultra vires*, and illegal, as it has relied and is based on extraneous and irrelevant considerations.

22. Accordingly, I hold that the petitioner is entitled to relief as prayed for by prayers (ii), (vi) and (vii) of the petition and the following writs are issued:

- a. a writ of *certiorari* as prayed for by paragraph (ii) to quash the said decision refusing the grant of the No Objection Letter in respect of rugby as depicted in letter X-26;
- b. a writ of *mandamus* as prayed for by paragraph (vi) directing the 1st respondent to issue a No Objection Letter to the petitioner to participate and engage in rugby and other sports representing Kingswood College, Kandy as required by paragraph 1.1.9 of Circular bearing No. 03 of 2022; and
- c. a writ of *mandamus* as prayed for by paragraph (vii) directing the 5th respondent to register and permit the petitioner for participation in the Sri Lanka Schools Under 19 Dialog League Rugby Tournament 2025 representing Kingswood College, Kandy.

23. The No Objection Letter and registration as directed should be issued and made not later than 01:30 p.m. of 24.07.2025. To give effect to the relief as granted, I observe that the 4th respondent Director of Education – Physical Education & Sports of the Ministry of Education is also required to issue the concurrence as required by Rule 1.1.9 of the Circular. Accordingly, as a consequential remedy, the 4th respondent is directed to issue the concurrence.

24. The Registrar is directed to convey this order to the 4th respondent Director of Education – Physical Education & Sports of the Ministry of

Education and the petitioner is permitted a serve a copy of the same on the said Officer so such Officer can act accordingly.

25. Application is allowed; however I make no order as to costs.

JUDGE OF THE COURT OF APPEAL