

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

In the matter of an Application 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.

C.A. (WRIT) 340 /2018

Chamari Rasika Serasinghe
No. 375/24
Arnold Rathnayake Avenue
Colombo 10.

PETITIONER

- Vs -

1. S.M. Keerthirathne
Principal
Ananda College
Colombo10.
2. R.M.C. Randeni
Head of Primary Section
Ananda College
Colombo 10.
3. P.A.D.D.P. Perera
C/o. The Principal
Ananda College
Colombo 10.
4. K.D.P. Wijesinghe
C/o, The Principal
Ananda College
Colombo 10.

5. T.C.M.Sethunga
C/o. The Principal
Ananda College
Colombo 10.
6. R.M.M. Ratnayake
The Principal
D.S. Senanayake Vidyalaya
Colombo 08.
7. M.B.S. Gunathilleke
C/o. The Director-National Schools
Ministry of Education
"Isurupaya"
Pelawatte
Battaramulla.
8. P. Senanayake
C/o. The Principal
Ananda College
Colombo 10.
9. Indunil Udaya
C/o. The Principal
Ananda College
Colombo 10.
10. K.S.P. Dalpadadu,
C/o The Principal,
Ananda College,
Colombo 10.
11. W.M. Jayantha Wickremanayake
Director- National Schools,
Ministry of Education,
"Isurupaya", Pelawatte,
Battaramulla.

12. Sunil Hettiarachchi

The Secretary,
Ministry of Education, "Isurupaya",
Pelawatte, Battaramulla.

12A. M. N Ranasinghe

The Secretary,
Ministry of Education, "Isurupaya",
Pelawatte, Battaramulla.

13. The Human Rights Commission of Sri Lanka

No. 14, R.A. De Mel Mawatha,
Colombo 04.

RESPONDENTS

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Rasika Dissanayake instructed by Manjula Balasooriya for the
Petitioner
Manohara Jayasinghe SSC for the Respondents.

Written Submissions: By the Petitioner on 03.09.2019.
By the Respondent on 16.10.2019.

Argued on: 06.08.2019

Judgment on: 15/07/2020

The Petitioner has preferred this Writ Application before the Court of Appeal, seeking inter alia a mandate in the nature of Writ of Mandamus, to compel the 1st to 7th Respondents to take necessary steps to;

1. Adhere to the observations dated 2018-04-07 given by the Human Rights Commission of Sri Lanka
2. to direct any one or more of the Respondents to admit the Petitioner's child to grade 1 of Ananda College, Colombo 10.

Facts of the case briefly as follows;

Petitioner preferred two separate applications to admit her youngest child to Grade 1 of Ananda College for the year 2018 based, on the proximity from their residence as well as

under the Brother Category since both the elder sons of the Petitioner, are also studying in the Ananda College,

The petitioner says that the Ananda College, Colombo 10, is the most convenient and suitable school for her youngest child to be admitted whereas both the elder sons of the Petitioner are studying in the Ananda College and the Petitioner and her family members permanently reside at Arnold Ratnayake Mawatha, Colombo 10. By letter dated 24.07.2017 the Petitioner was summoned for the interview to be held on 11/08/2017 for the admission of the Petitioner's youngest son to Ananda College under the "Brother" category. At the interview the board had questioned the Petitioner as to her elder sons, who are already studying in the Ananda College and the Petitioner established before the interview board that the Petitioner and her family members are residing within a radius of just 400 meters away from the Ananda College.

The petitioner says that, at the said Interview under the Brother Category, several documents were submitted by the Petitioner to prove the Residence as well as the documents to establish the relationship of the two elder sons of the Petitioner. The said documents are as follows;

- i. P 5 (i) and P 5 (ii). - The birth Certificate of Ranasinghe Arachchige Peshala Adithya Ranasinghe who is the elder brother of the 2nd Petitioner.
- ii. P 6 - School Report Card of the Ranasinghe Arachchige Peshala Adithya Ranasinghe who is the eldest son of the Petitioner.
- iii. P 7 - Ananda College School Admission card of the Ranasinghe Arachchige Sanjana Nakesh Ranasinghe who is the 2nd eldest son of the Petitioner.
- iv. P 8 - Character Certificate of the Ranasinghe Arachchige Peshala Adithya Ranasinghe who is the elder son of the Petitioner.
- v. P 9 (i) to P 9 (ix). - Extracts of electoral registers for the years since 2009 to 2017.
- vi. P 10 -Tenancy Agreement which was given by the Colombo Municipal Council in favour of the Serasingha Wasanthadevi who is a blood relation of the Petitioner (namely the sister of the Petitioner's father).
- vii. P 11 - Affidavit given by the said Serasinghe Wasanthadevi testifying that the Petitioner, as well as her family members are residing in the above captioned address.

- viii. P 12 - Letter issued by the Grama Niladhari testifying that the Petitioner, as well as her family members are residing in the above captioned address since 2009.
- ix. P 13 - National Identity Card of the 1st Petitioner and the National Identity card of the said Serasinghe Wasanthadevi.

The Principal of Ananda College had informed the Petitioner to sign a document which contained the marks allocated for Petitioner's Application in terms of which she had secured, 64.5 marks, The Petitioner says that accordingly at the interview the Petitioner had been specifically told that her youngest son would be admitted to the Grade 01 of Ananda Collage for the year 2018. After signing the document the Petitioner had inquired from the 1st Respondent as to whether there is any necessity to attend the interview for the Chief Occupant category which was to be held in the future and accordingly the 1st Respondent had informed the Petitioner that there is no necessity to attend the interview for the Chief Occupant category.

On 08/11/2017 the 1st Respondent had published a "Temporary Lists" of the students who had been selected to be admitted to Grade 1 of Ananda College.

The name of the son of the Petitioner did not appear in the said list although the cut off mark for the Brother category as per the Temporary List was 19.9 marks. By letter dated 20/11/2017, the Petitioner tendered a formal appeal to the 1st Respondent requesting to reconsider the decision not to admit the Petitioner's son to the Ananda College. The Petitioner appeared before the Appeal board upon inquiry the Petitioner was informed that the reason to refuse the admission of the Petitioner's son was due to the failure to prove the residence of the Petitioner.

On 2017-12-26 the Respondents published the final list containing the names of the selected students to be admitted to the Ananda College. The Petitioner's son's name did not appear in the said final list as well despite the fact as per the Respondents' own calculation the Petitioner's son had secured 64.5 marks while the cut off mark for the Brother Category was 19.9 marks.

In terms of the circular marked P17, issued by the 12th Respondent, the Secretary to the Ministry of Education specifically makes provisions that the total marks earned by a candidate should not be deducted merely because the applicant has failed to satisfy one segment of the marking scheme. It was mentioned that the elder sons of the Petitioner namely, Peshala Adithya Ranasinghe and Ranasinghe Arachchige Sanjana Nikesh Ranasinghe are also residing at the same address and attend Ananda College, the Respondents without even considering the same have denied the admission of the youngest son of the Petitioner.

In the case of Anjali Thivaak Pushparajah Rohan Vs. Akila Viraj Karivawasam SC FR 06/2017, it was decided that once marks are given under clause 6.1 for Electoral Register Extracts which satisfied the criterion of residence then such applicant is entitled to marks under clause 6.1.iv"

When I was going through the documents submitted by the petitioner, I found that the petitioner has submitted sufficient documents to prove the residence and therefore the necessary marks should have been allocated for that category. It is my view that those marks should not be deducted.

On 24/01/2018 the Petitioner had made a complaint marked P18, to the Human Rights Commission about the arbitrary and capricious treatment meted out against the Petitioner by the Respondents.

After perusing all the documents and the other materials tendered by both parties, the Human Rights Commission delivered its recommendation, marked P20 dated 2018-07-04 stating inter alia;

- i. The Respondents have failed to consider the provisions of the circular bearing No. 22/2017 and the circular bearing No.22/2017(i),
- ii. The Petitioner's son is entitled to be admitted to Grade 01 of the Ananda College, for the year 2018.
- iii. the Respondents have violated the Fundamental Rights of the Petitioner guaranteed by the Article 12(1) of the Constitution.

The Human Rights Commission made a direction to the Respondents to comply with the said order on or before 15/08/2018. The Respondents failed and neglected to take any step to admit the Petitioner's child to Grade 1 of the Ananda College as per the recommendation and order of the Human Rights Commission. The Respondents have failed to comply with the said order without any valid reason.

The Respondents have stated that there are no vacancies to admit the Petitioner's son, from time to time but several students have been admitted to Ananda College. Some of them have been admitted as per the directions of the Human Rights Commission.

In the above circumstances, the petitioners argue that the refusal of the Respondents to admit the Petitioner's youngest child to Year 1 of Ananda College for the Year 2018 is, discriminatory, arbitrary, unreasonable and violative of the relevant Circulars.

The Petitioner's argument can be categorically summarized upon three grounds;

1. The fact that the Human Rights Commission has made a recommendation that the child be admitted to Ananda College and that compliance with a Human Rights Commission recommendation is mandatory. Thus, the Respondents have acted in violation of the laws as they have failed to implement a Human Rights Commission recommendation which the Petitioners claim to be binding on the Respondents.
2. The other children who are alleged to be in similar circumstances to the Petitioner have been admitted to Ananda College. Therefore, the refusal to admit the

Petitioner's child is discriminatory, inequitable, unfair and amounts to an abuse of discretion.

3. The interview board acted unlawfully in refusing admission to the Petitioner's child when he, according to the Petitioner, fulfilled all the requirements for admission under the Brother Category.

To these aforementioned arguments of the Petitioner, the Respondents claim that the Supreme Court has not in fact laid down a rule that Human Rights Commission recommendation must mandatorily be implemented by the agency to whom such recommendations are addressed. They further state that the Petitioner's argument is irreconcilable with provisions of the statute that created the Human Rights Commission. The Human Rights Act requires the responded agency or authority to submit a report on what steps they have taken to implement the Commission's recommendation.

Where the Commission is of the view that no satisfactory measures have been taken, the matter can be reported to the President. No obligation is cast on the President to take any remedial measures. A Petitioner should not be permitted to expand the nature of his case by making fresh allegations in the counter affidavit and a Respondent should not be compelled to answer a case that is wider than what has been set out in the Petition. In any event the Respondents submit that they have not acted discriminatorily.

It is necessary to evaluate some authorities pursuant to the aforesaid;

In *SILVA AND OTHERS VS. DIRECTOR OF HEALTH SERVICES AND OTHERS* 2010 (1) SLR 285; It was held that there is no provision in the Act to enforce the recommendation of the Commission. If the Commissioner's recommendations are not complied with, the Commission can only report to the President and in turn it can be placed in Parliament.

It was held in the case of Mahanayaka vs Chairman Ceylon Petroleum Corporation and others 2005 (2) SLR 193, that the Human Rights Commission is a body which can only make a recommendation. This recommendation neither creates a legal right for the Petitioner to claim re-instatement nor does it create a legal duty for Respondent Corporation to reinstate the Petitioner.

The Respondents state that all the precedent cases illustrated by the Petitioners to be situations where Petitioners have submitted documentary proof of entitlement to the property they claimed to be their residence and fulfilled the requirement of residence under the circular. The Respondents state that their only infirmity was that these documents were not duly registered at the appropriate time. However, upon a further consideration of the matter and there being no reason to doubt the credibility of their claim of residence, the Secretary of the Ministry of Education instructed the Principal of Ananda College to admit these children.

The Respondents further state that the current situation is different from the precedent cases illustrated by the Petitioner. The Petitioner had no proof of residence as required by the applicable Circular. The purported Lease Agreement with a person they claim to be their aunt, is not a recognized document under the Circular. The Respondents further state that the Circular, properly understood, insists upon some documentary proof of entitlement. Circular 22/2017 read with the Amending Circular makes it a fundamental requirement to establish residence in the feeder area.

It was further argued in the absence of documentary proof of entitlement, the Petitioner cannot be said to have established residence. The appearance of the applicant's name in the electoral register under that address claimed to be the residence does not establish residence for the purpose of Circular 22/2017. The Respondents emphasize that while this will not necessarily eliminate fraudulent applications, it will significantly impede the efforts of an unscrupulous person to cheat the system.

The Respondents submit that in the absence of documentary proof as set out in Section 7.4.3, of the circular the Petitioner cannot be said to have fulfilled the fundamental requirements of establishing residence in the feeder area as required by Section 4.7 and in terms of the Circular read with the Amending Circular which repeated Section 7.1.3 the Petitioner (notwithstanding that the child cleared the threshold) cannot be considered as eligible under the Brother Category.

The Respondents further state that in any case, if the Petitioner is not entitled to be admitted under the Circular, the fact that others who were similarly ineligible were admitted is not a ground for mandamus in favor of the Petitioner. I cannot agree with the submission of the Senior State Counsel. If the residence is proved by the petitioner and in the absence of title deeds does not create a situation for the response to come to a conclusion that the ownership has not been established and reject the application to admit the child.

However, it is my view, that the Petitioner should be awarded the remedy he seeks for. It is important to consider that the Human Rights Commission has made a recommendation that the child be admitted to Ananda College.

Moreover, other children who are alleged to be in similar circumstances to the Petitioner have been admitted to Ananda College. Therefore, the refusal to admit the Petitioner's child is discriminatory, inequitable unfair and amounts to an abuse of discretion.

KARUNATHILAKA AND ANOTHER v. JAYALATH DE SILVA AND OTHERS 2003 (1) SLR 35, it was held that the refusal to admit the child to Dharmashoka Maha Vidyalaya was not on a reasonable basis, but was a decision that rested on arbitrariness violative of the 2nd petitioner's rights.

Per Bandaranayake, J.

'The basic principle governing the concept of equality is to remove unfairness and arbitrariness. It profoundly forbids actions which deny equality and thereby become discriminatory. The hallmark of the concept equality is to ensure that fairness is out

It was decided in the case of HAPUTHANTIRIGE AND OTHERS V ATTORNEY GENERAL 2007 (1) SLR 101, that the petitioners in all the applications allege infringement in respect of the refusal to admit the several children named in the petition to Grade 1 of the respective National Schools. The allegations are related to unequal, arbitrary and capricious application of the Circular. The scheme of the Circular is to state the National Policy for admission of student to schools. The circular also states that the National Policy has been affirmed by the Cabinet of Ministers.

S.N. Silva, C.J. held that

"Both from the perspective of the application of the equal protection of law from the perspective of national policy, the objective of any binding process of regulation applicable to admissions of students to schools should be that it assures to all students equal access to education".

The requirement stated by Brewer J., in the case of Gulf Colorado and Santa Railway Co. v Ethis - (1897) 165 US 150 165

"classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

It was decided in the case of Menura Nanwivudu Rambukkanage and others vs B.A. Abeyrathne, Principal Royal Collage and Twelve others SC (F/R) Application No. 62/2018

"In the matter now before this Court, the application was made under category (3) namely, Brother Category, where the older brother studying in school is the key factor. None of the documents tendered as proof of the older brother studying in school by the Petitioners had been considered by the Interview Board. These include older brothers School Record Book, Junior Prefect Certificate, Boys Scouts Patrol Leader Certificate, Grade V Government Schools Scholarship Exam Merit Certificate and many other Certificates. The failure of the interview board to consider and assess these documents and Certificates and award marks, I consider caused grave injustice to the younger brother, of the Petitioner in this application.

At this juncture, I wish to consider Clause 3 of the Circular once again. It refers to six categories, namely;

- Children of residents in close proximity to the School
- Children of parents who are past pupils of the School
- Brothers / Sisters of students already studying in the school
- Children of persons in the staff of institutions directly involved in school education

- Children of officers on transfer
- Children of persons returned to Sri Lanka after living abroad.

When an applicant has fulfilled the basic qualification for admission namely the minimum age and resident in the feeder area or the Administrative District in which the School is situated (excepting for past pupil category) such an applicant can submit an application under any one or more of the above referred categories. The key factor to be established is proximity, sibling studying in School, parents involved in School Education, Public Officers on transfer and Children returned from abroad.

The Admission Circular has been in existence for the last two decades and the 12th Respondent and his predecessors would have had good reasons to categories applications under Clause 3 of the Circular in this manner. The object of separate categorization of applicants would be rendered nugatory, if the key factor is over looked and an additional threshold criterion is applied by schools in admitting children under this Circular creating another hurdle on the parent, not envisaged by the Circular and there by violating the Circular itself.

This Court is very much aware that there is fierce competition within the Categories itself, to be successful to gain a slot for the limited number of vacancies under the particular category. Thus in the absence of an elimination process as envisaged in Sub Clause 7.4.4 (where it is clearly laid down that no marks will be given, if Sub-Clause 7.4.3 is not fulfilled) marks should be allocated under each and every Sub-Clause of the particular category and selections made based on the total marks to achieve the objects of the Circular. Sub-Clause 7.1.3, heavily relied upon in these proceedings only reiterates the above proposition. The repeal of the Sub-Clause does not envisage that a threshold criterion should be applied violating the provisions of the Circular."

The Learned Senior State Counsel who appeared for the Respondents in the present case as indicated that the above mentioned judgement in the Supreme Court "appears to be Identical" but he argued that the Supreme Court has without analysis assumed that the clarification letter supports the case of the Petitioner in the said fundamental rights case. Both in the argument and written submissions, the Respondents in this case extensively explained that the Secretary's letter, properly understood, supports the decision taken by the Ananda College interview board and in all likelihood may have also justified the Royal College interview board decision in the said Supreme Court case.

Accordingly, the Learned Senior State Counsel submitted that, the judgment of the Supreme Court cannot be taken to be an authoritative pronouncement on the most crucial question in this case.

I cannot accept the position taken up by the Senior State Counsel and I reject the said argument.

After a thorough analysis of the aforementioned Circular, it occurs to me that the Petitioners have fulfilled all the requirements for admission under the Brother Category. Therefore, I believe that not allowing the Petitioner to go to Ananda College is ex facie arbitrary and capricious and would amount to an abuse of administrative authority. Therefore, Petitioner's application should be allowed and the relief the Petitioner seeks for, shall be granted.

As the said application was preferred to enter the child to year 1 in 2018, he should now be admitted to year 3 in 2020 at Ananda College, Colombo 10.

This Court issue a Writ of Certiorari under prayer (b) of the Petition, to quash the decision of the 1st and 11th Respondents which reflected in P -17 and P- 22, respectively.

Further, we issue a Writ of Mandamus under prayer (c) and (d) of the Petition, against the 1st to 12th Respondents, to admit the Petitioner's son, Ranasinghe Arachchige Sampath Dhananja Ranasinghe to year 3 in 2020, of Ananda College, Colombo 10,

Considering the circumstances we make no order for cost.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal