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

In the matter of an Application in the nature of Writs of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 403/2019**

1) U.A.A.J. Ukwatte.

2) U.A.K.L. Ukwatte.

Both of F60, Government Flats,
St. Anthony's Road, Colombo 3.

**PETITIONERS**

Vs.

1) Akila VIraj Kariyawasam,
Hon. Minister of Education.

1A) Dallas Alahapperuma,
Hon. Minister of Education.

2) N.M.Ranasinghe,
Secretary, Ministry of Education.

2A) Padmasiri Jayamanne,
Secretary, Ministry of Education.

3) Director, National Schools.

1st – 3rd Respondents at
"Isurupaya", Ministry, of Education,
Battaramulla.

4) B.A. Abeyratne,
Principal, Royal College.

5) C.V. Gunatilleke,
Vice Principal, Royal College.

6) Channa Gunasekara.

7) Thilakshi.

8) Dulani Bandara.

9) Tharanga Peiris.

10) Dilruk De Silva.

$4^{th}$ – $10^{th}$ Respondents at Royal College,
Rajakeeya Mawatha, Colombo 7.

**RESPONDENTS**

**Before:** **Arjuna Obeyesekere, J**

**Counsel:** Saliya Peiris, P.C., with Pulasthi Hewamanne and Ms. Harindhi Jayawardhana for the Petitioners

Vikum De Abrew, Senior Deputy Solicitor General with Sachintha Dias, State Counsel for the Respondents

**Argued on:** $13^{th}$, $17^{th}$ and $19^{th}$ December 2019

**Written Submissions:** Tendered on behalf of the Petitioners on $6^{th}$ December 2019, $7^{th}$ February 2020 and $17^{th}$ February 2020

Tendered on behalf of the Respondents on $14^{th}$ February 2020

**Decided on:** $12^{th}$ June 2020

**Arjuna Obeyesekere, J**

This application relates to the non-admission of the 2nd Petitioner to Grade One of Royal College, Colombo 7, for the year 2020.

The complaint of the Petitioners arises from an amendment that was effected to Clause 7.2.1.3 of Circular No. 22/2017, annexed to the petition marked '**P3**'[1], when preparing the Circular for admission of children for the years 2019 and 2020, with the Petitioners complaining that the said amendment is illegal, irrational and unreasonable, and is a violation of their legitimate expectation.

Circular relating to the admission of children to Grade 1 – P7

It is common ground that admission of children to Grade One, and to other grades of Government schools, is extremely competitive, with the number of applicants far outnumbering the number of vacancies that are available. The application and selection procedure for admission to Grade One is therefore regulated by the Government, through Circulars issued by the Ministry of Education.

Admission of students to Grade 1 of Government Schools for the year 2020 is governed by Circular No. 29/2019, annexed to the petition marked '**P7**', issued by the Ministry of Education. According to '**P7**', for the year 2020, the maximum number of students that can be admitted to a single class is limited to 36. Of this 36, a maximum of 5 slots are reserved for the children of those serving in the Armed Forces and the Police Force. After making provision for

[1] 'P3' was the Circular that was applicable for admission to Grade One for 2018.

the said reservation, the vacancies are allocated under six categories in the following manner:

| | **Category** | **Percentage of the vacancies** |
|---|---|---|
| 1 | Children of residents in close proximity to the school | 50% |
| 2 | Children of parents who are Past Pupils of the school | 25% |
| 3 | Brothers /sisters of students who are already studying in the school | 15% |
| 4 | Children of persons belonging to the staff in Institutions directly involved In school education | 05% |
| 5 | Children of officers in Government/ Corporations/ Statutory Boards/ State Banks receiving transfers on exigencies of service | 04% |
| 6 | Children of persons arriving after living abroad with the child | 01% |

In terms of '**P7**', under the category of '*Children of residents in close proximity to the school*', a total of 100 marks are allotted under the following four sub-categories.

| **Sub-Category No. in the Circular** | **Description of the Sub-Category** | **Maximum marks** |
|---|---|---|
| 7.2.1.1 | Main Documents in proof of the place of residence[2] | 20 |

[2] පදිංචිය තහවුරු කරන ප්‍රධාන ලේඛන

| | | |
|---|---|---|
| 7.2.1.2 | Additional documents to confirm the place of residence[3] | 05 |
| 7.2.2 | Number of years that the names of the applicant and his spouse have been included in the Electoral Register[4] | 25 |
| 7.2.4 | Number of schools located closer to the place of residence than the school applied[5] | 50 |
| | **Total** | **100** |

To be eligible to apply under the said category of '*Children of residents in close proximity to the school*'[6], which is the category under which the admission of the 2nd Petitioner is sought, the primary requirement is that the parents must be resident within the 'feeder area' to which the school belongs.

"Feeder area" is defined in Clause 4.7 of '**P7**' as follows:

"පෝෂිත ප්‍රදේශය යනු පාසල පිහිට පරිපාලන දිස්ත්‍රික් බල ප්‍රදේශය ..... වේ."

The above definition practically allows any person living within the administrative district of Colombo to apply for any Government school situated within the administrative district of Colombo, under the aforementioned category.

[3] පදිංචිය තහවුරු කරන අතිරේක ලේඛන
[4] පදිංචිය සනාථ කිරීම සඳහා පන්ද හිමි නාම ලේඛනයේ ලියාපදිංචිය
[5] පදිංචි ස්ථානයේ සිට පාසලට ඇති ආසන්නතාව
[6] පාසලට ආසන්න පදිංචි කරුවන්ගේ දරුවන්.

Priority for those living closest to a school

The fact that 50% of the vacancies available in Grade One of a particular Government school are allocated to children of those resident in close proximity to that school, demonstrates the policy of the Government in providing a child with a school that is closest to his or her place of permanent residence. Permanency is considered as having been resident at the same address for a period of five years. The above marks structure is therefore weighted in favour of those who reside:

(a) closest to the school; and

(b) for a minimum period of five years at one address.

The maximum 50% marks due under sub-category 7.2.4 would be allotted to those who have no other school closer to their residence other than the school applied for, with five marks being deducted for each school that is closer to the residence of the applicant than the school applied for.

Proof of residence by way of registration as an elector of the parents of the child for a period of five years preceding the date of the application,[7] entitles an applicant to a maximum of 25 marks under category 7.2.2, with a pro-rata reduction where the period is less than five years.

Further recognition is given to those who live close to a particular school in a house of their own, for a period of minimum five years. This is borne out by the

[7] Vide Clause 7.2.2.1 of 'P7' - **පන්ද හිමි නාමලේඛනයේ ලියාපදිංචියට ලකුණු ලබා දිමේදී ඇයැදුම් කරන වර්ෂයට පෙර වර්ෂය සිට ආසන්න පසුගිය වර්ෂ පහක් සලකා ලකුණු ලැබේ.**

fact that a person who has been the owner of any premises situated within a feeder area for a period of five years or more and who is desirous of having his or her child admitted to a school within the feeder area, would receive the maximum mark of 20 under sub-category 7.2.1.1. Where the period is less than five years, the marks given under sub-category 7.2.1.1 are reduced on a pro-rata basis. Similarly, a person who does not own a property but has taken on lease or rent, any premises five years prior to the closing date of the applications, would receive a maximum of 10 marks. This too is reduced on a pro-rata basis, where the period is less than five years. A similar approach is adopted with the marks given for additional documents in support of residence under sub-category 7.2.1.2.

Marks are allotted for residence based on the current address

A significant feature of the marking structure contained in the aforementioned circular (and the circulars prior to that) is that marks are allotted based on an applicant's residence *at the time of the application*. This Court has examined the Circular '**P7**' and observes that if an applicant changes his residence two years prior to the closing date of applications, under sub-categories 7.2.1.1, 7.2.1.2 and 7.2.2, he would be entitled for marks only for the two year period after the change of residence. Thus, an applicant who changes his residence during the period of five years preceding the closing date of applications stands to lose out, as it runs contrary to the aforementioned objective that is sought to be achieved of providing a child with a school that is closest to his residence for a period of five years. A change of residence, deliberate or otherwise, while being to the detriment of an applicant, can also prevent an applicant gaining an unfair advantage over others who have been resident at the same address for a period of five years. Therefore, the said provision, while

recognizing the principle of five years of residence at the same address, gives priority to those who have remained at the same address for the period of five years preceding the closing date of applications, in the feeder area.

Exception to the rule

There is however one exception to the above rule that marks shall be allotted based on the residence of the parent at the time of the application, and which exception is the bone of contention in this application.

According to the Respondents, that exception was introduced for the first time by Circular No. 19/2012 and reads as follows:

> "පදිංචිය සඳහා ලකුණු ලබාදෙන්නේ දැනට පදිංචි වී සිටින ස්ථානයේ ලිපි ලේඛන මගිනි. එහෙත් දැනට පදිංචි වී සිටින ස්ථානයේ පදිංචි වීමට පෙර පෝෂිත ප්‍රදේශය තුල තවත් ස්ථානයක පදිංචි වී සිට අයදුම්කරුවකු තම අවම වසර 05ක පදිංචිය සනාථ කිරීම සඳහා ජන්ද හිමි නාම ලේඛන ස්ථාන දෙකෙන් ම ඉදිරිපත් කරන විට, **පහත පරිදි කටයුතු කල යුතු ය.**
>
> **ඉල්ලුම් කරනු ලබන පාසලට වඩා ආසන්නයේ අදාල දරුවාට ඇතුලත් වීමට හැකි පාසල් සඳහා අඩු කරනු ලබන ලකුණු නො වෙනස් වන්නේ නම් පමණක් ස්ථාන දෙකෙන් ම ඉදිරිපත් කර ඇති ජන්ද නාමලේඛන, දැනට පදිංචි ස්ථානයේ ජන්ද හිමි නාමලේඛනය සේ සලකා ලකුණු ලබා දිය යුතුය**".

The Respondents have stated that *'due to representations made by various parties, it was decided when issuing Circular No. 19/2012 to give a concession to residents who had moved within the feeder area, but had been resident in the same feeder area for 5 years continuously'*.[8] This being the reason for the introduction of the above clause, an applicant could change his residence

[8] Vide paragraph 6 of the affidavit dated 24th January 2020 of Ms. Kamani Perera, Director of Education.

within the feeder area during the period of five years preceding the date of application, and yet get marks for registration as an elector for the full period of five years, **provided** the number of schools between each of the residences and the school applied for, remained the same.[9] The above amendment introduced by Circular No. 19/2012 is in line with the policy of the Government to give priority to children who live closest to a particular school as the number of schools remaining the same would essentially place a student in the same position he or she would have been if not for the change in residence, in respect of Clause 7.2.2.

This Court must observe that Circular No. 23/2013 which replaced Circular No.19/2012 also contained the above clause. Circular No. 23/2013[10] continued to be applicable for admission to Grade One[11] until it was replaced by Circular No. 22/2017, marked '**P3**', which is the Circular applicable for admission of children for the year 2018. Clause 7.2.1.3 of '**P3**' reads as follows:

> "**පදිංචිය සඳහා ලකුණු ලබාදෙන්නේ දැනට පදිංචි වී සිටින ස්ථානයේ ලිපි ලේඛන මගිනි. එහෙත් දැනට පදිංචිවී සිටින ස්ථානයේ පදිංචි වීමට පෙර පෝෂිත ප්‍රදේශය තුල තවත් ස්ථානයක පදිංචි වී සිට අයදුම්කරුවකු තම අවම වසර 05ක පදිංචිය සනාථ කිරීම සඳහා පන්ද, හිමි නාම ලේඛන ස්ථාන දෙකෙන් ම ඉදිරිපත් කරන විට, ඉල්ලුම් කරනු ලබන පාසලට වඩා ආසන්නයේ අදාල දරුවාට ඇතුලත් වීමට හැකි පාසල් සඳහා අඩු කරනු ලබන ලකුණු නො වෙනස් වන්නේ නම් පමණක් ස්ථාන දෙකෙන් ම ඉදිරිපත් කර ඇති පන්ද හිමි නාමලේඛන, දැනට පදිංචි ස්ථානයේ පන්ද හිමි නාමලේඛනය සේ සලකා ලකුණු ලබා දිය යුතුය.**"

Thus, the position that even where there has been a change of residence during the five year period preceding the closing date of applications, marks

[9] This concession would only apply to Sub-category 7.2.2 and does not apply to Sub-category 7.2.1
[10] Circular No. 23/2013 has been marked 'P17A'.
[11] Subject to amendments introduced by Circulars annexed to the Counter Affidavit, marked 'P17B' – 'P17D'.

will be given for the entire period that the names of the parents appear on the electoral register, on the condition that the number of schools between each of the residences and the school remain the same, continued in respect of admission of children for the year 2018 as well. As observed earlier, this is the only exception to the rule that marks are allotted based on an applicant's current residence.

Amendment to the exception

The above clause continued to be applicable for admission to Grade One until the said clause was amended when the Circular was issued in 2018 for admission of children to Grade One in 2019. The amendment is reflected in Clause 7.2.2.3 of Circular No. 24/2018, marked '**R1**', and reads as follows:

> "පදිංචිය සඳහා ලකුණු ලබාදෙන්නේ දැනට පදිංචි වී සිටින ස්ථානයේ ලිපි ලේඛන මගිනි. එහෙත් දැනට පදිංචිවී සිටින ස්ථානයේ පදිංචි වීමට පෙර පෝෂිත ප්‍රදේශය තුල තවත් ස්ථානයක පදිංචි වී සිට අයදුම්කරුවකු තම අවම වසර 05ක පදිංචිය සනාථ කිරීම සඳහා ජන්ද හිමි නාම ලේඛන ස්ථාන දෙකෙන් ම ඉදිරිපත් කරන විට, එම ස්ථාන දෙකෙහි ම දිම ඉල්ලුම් කරනු ලබන පාසලට වඩා ආසන්න ව පිහිටි ළමයාට ඇතුලත් විය හැකි පාසල්, **එකම පාසල් වන්නේ නම් පමණක්** ස්ථාන දෙකෙන් ම ඉදිරිපත් කර ඇති ජන්ද හිමි නාමලේඛන, දැනට පදිංචි ස්ථානයේ ජන්ද හිමි නාමලේඛන සේ සලකා ලකුණු ලබා දිය යුතුය."

The above clause appears as Clause 7.2.2.3 in Circular '**P7**' as well. Thus, with the amendment introduced by '**R1**', not only should the number of schools remain the same, the schools should also remain **identical,** if an applicant who has changed residence within the feeder area during the five years preceding the closing of applications is to receive marks for being on the electoral list under both residences.

The complaint of the learned President's Counsel for the Petitioner is that the shift from the *same number of schools* to *identical schools* is irrational, unreasonable and violates the legitimate expectation of the Petitioners.

The background facts

This Court shall now consider the facts of this application.

The 1st Petitioner states that *desirous of obtaining a suitable residence to suit the Petitioners family*, he took on lease premises No. 532/3C, Galle Road Kollupitiya, Colombo 3 on 1st July 2014. At that time, the 1st Petitioner's wife was expecting the 2nd Petitioner, who was subsequently born on 6th October 2014. It is clear from the pleadings that the above choice of residence was actuated by the intention of the 1st Petitioner and his wife of gaining admission of their child to a Government School situated in the area, with Royal College, Colombo 7 being high in the order of preference.

The lease agreement relating to the above premises had been notarially executed only on 11th June 2015. This Court has examined the copy of the said lease agreement annexed to the petition marked '**P2A**' and observes that the said premises has been leased to the 1st Petitioner for a period of five years, with effect from 1st July 2014. This Court must note that the above address has been inserted on the following documents:

a) The Birth Certificate of the 2nd Petitioner dated 5th January 2015;[12]

[12] Vide P1.

b) The National Identity Card issued to the 1st Petitioner on 22nd December 2016;[13]

c) The Child Health Development Record of the 2nd Petitioner, dated 2nd July 2015;[14]and

d) The Certificate of Registration of a motor vehicle belonging to the 2nd Petitioner which had been registered on 19th October 2015.[15]

While the residence of the 1st Petitioner at the above address has been certified by the Grama Niladhari, Bambalapitiya,[16] it is not in dispute that the names of the 1st Petitioner and his wife were entered under the above address on the electoral register for the year 2015, and continued to be on the electoral register under that address for the years 2016 and 2017.[17]

The 1st Petitioner states that even though the lease agreement '**P2A**' was valid until 30th June 2019, by a letter dated 31st March 2017, the lessor had issued a notice of termination of the lease agreement with effect from 1st July 2017.[18] It appears that the 1st Petitioner, while being compelled to find a new residence, was alive to the reality that his chances of getting his son admitted to Royal College was now in peril. The 1st Petitioner states further that in view of his desire to seek admission of his son to Royal College, it was important that he found a suitable residence close to Royal College. The 1st Petitioner states that he made inquiries and found that according to Circular No. 22/2017 marked

[13] A copy of the National Identity Card has been annexed to the petition, marked 'P14a'.
[14] A copy of the Child Health Development Record has been annexed to the counter affidavit, marked 'P14b'.
[15] A copy of the Certificate of Registration has been annexed to the counter affidavit, marked 'P14c'.
[16] Vide P15.
[17] Vide Certificate of Residence issued by the Grama Niladari annexed to the counter affidavit, marked 'P12'.
[18] P2B

'**P3**', which was the Circular relating to the admission of children to Grade One of Government schools that was applicable at that time, a change of residence would not be to his disadvantage, at least as far as the marks allotted for having his name on the electoral register was concerned, provided the number of schools between his present and future residence, and Royal College remained the same. The 1st Petitioner states that he accordingly made a diligent survey and found premises which were situated just 500 metres from his current address, and which was within the aforementioned criteria laid down in Clause 7.2.1.3 of the 2017 Circular ('**P3**'). The two residences were therefore situated not only in the same feeder area but also within the same Divisional Secretariat (Thimbirigasyaya) and even the same Grama Niladhari Division (Bambalapitiya No. 191) and the number of schools between the two residences and Royal College, Colombo 07, remained the same.

The 1st Petitioner states that he accordingly took on lease premises bearing Assessment No. F60, Government Flats, St. Anthony's Road, Kollupitiya, Colombo 3, for a period of three years commencing 1st July 2017. The Petitioner has produced with the petition, marked '**P5**', a notarially executed lease agreement dated 22nd September 2017, in respect of the said premises. It is not in dispute that the name of the 1st Petitioner and his wife had been entered in the electoral register under the new address, for the year 2018.[19] The new address also appears on the Insurance Policy obtained by the 1st Petitioner on 4th December 2017, and on the bank statement issued to the 1st Petitioner for the month of January 2018.[20]

[19] Vide document annexed to the Counter Affidavit marked 'P12f'.
[20] Vide documents annexed to the Counter Affidavit marked 'P12d' and 'P12e', respectively.

It is admitted between the parties that there are three schools that are closer to the Petitioners' first residence than Royal College. They are Thurstan College, Mahanama College and St. Mary's College. Even though the Petitioners' second residence is only 500m away from the first residence, and the number of schools between the Petitioners' second residence and Royal College remains the same as with the first residence, the identity of one of the three schools are different, with St. Mary's College being replaced by St. Michael's College.

Application of the 2nd Petitioner

Pursuant to the publication of the Circular '**P7**', the 1st Petitioner states that he submitted an application seeking admission of the 2nd Petitioner to Grade 1 of Royal College, Colombo 7 under the aforementioned category of '*Children of residents in close proximity to the school*'.

The 1st Petitioner states that he presented himself for an interview on 19th August 2019 at Royal College. The interview panel had examined his documents and allotted him the following marks:

| | |
|---|---|
| Sub-category 7.2.1.1 | 8 marks |
| Sub category 7.2.1.2 | 0.7 marks |
| Sub-category 7.2.4 | 35 marks |

However, the Interview Panel had informed him that the schools that were closer to his first residence are different to the schools that are closer to his second residence, even though the number of schools were the same, and that

he could only be given five marks for having his name on the electoral register for the year 2018 under the second residence.

Aggrieved by the said decision of the Interview Panel to allocate only 5 marks under sub category 7.2.2 of '**P7**', the Petitioners filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the Circular '**P7**';

b) In the alternative, a Writ of Certiorari to quash the decision reflected in Clause 7.2.2.3 of Circular '**P7**';

c) A Writ of Prohibition preventing the Respondents from applying Clause 7.2.2.3 of Circular '**P7**' to the Petitioner;

d) A Writ of Mandamus directing the Respondents to recalculate the marks allotted to the Petitioner, ignoring Clause 7.2.2.3 of '**P7**'.

As noted earlier, the learned President's Counsel for the Petitioners challenged the said amendment in Circular '**P7**' on two grounds. His first argument was that the amendment is irrational and unreasonable. His second argument was that the amendment violates the legitimate expectations of the Petitioners.

Tests for unreasonableness

In **Council of Civil Service Unions v Minister for the Civil Service**[21] (the GCHQ Case), Lord Diplock stated that a decision which is '*so outrageous in its defiance of logic or of accepted moral standards that no sensible person who*

[21][1985] AC 374 at 410-411.

*had applied his mind to the question to be decided could have arrived at it*' is an irrational decision. The standard adopted by Lord Diplock in the GCHQ case is intrinsically linked to Lord Greene's dicta in the case of **Associated Provincial Picture Houses, Limited v. Wednesbury Corporation**[22] which was the birth of *Wednesbury unreasonableness* and one of the first instances where English Courts recognised that there was no requirement to justify judicial intervention on the basis of a mistake of law, inferred or otherwise, where the decision was '*something so absurd that no sensible person could ever dream that it lay within the powers of the authority.'* The famous example of the red-haired teacher who was dismissed because of the colour of her hair, illustrates the threshold for 'unreasonableness' that was expected.

A common feature in these two cases is that for Courts to intervene, the decision of the public authority in question must not just be unreasonable, but must be manifestly unreasonable, which emphasises the fact that judicial scrutiny of decisions of public authorities, in the absence of illegality or procedural impropriety, should only be in exceptional circumstances.

However, there is growing precedence to show that English Courts have attempted to broaden the scope of *Wednesbury Unreasonableness,* particularly in light of the European Convention on Human Rights, to allow Courts to monitor and ensure a better quality of decisions by public authorities. In doing so, English Courts have adopted varying standards of *Wednesbury Unreasonableness* which demonstrates that Courts are concerned

[22] 1948 1 KB 223.

about ensuring that a correct decision is taken with due regard to the context, and that the *Wednesbury* standard is not 'monolithic'.[23]

In **Secretary of State for Education and Science v Tameside Metropolitan Borough Council**[24] (the Tameside case), Lord Diplock described "unreasonableness" as follows:

> *"In public law "unreasonable" as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which* ***no sensible authority acting with due appreciation of its responsibilities would have decided to adopt****."*

The test used in Tameside was cited with approval in the case of **R v Chief Constable of Sussex (Ex parte International Trader's Ferry Ltd)**[25] (ITF Case), where it was held as follows:

> *"Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223, an apparently briefly--considered case, might well not be decided the same way today; and the judgment of Lord Greene M.R. twice uses (at 230 and 234) the tautologous formula "so unreasonable that no reasonable authority could ever have come to it." Yet judges are entirely accustomed to respecting the proper scope of administrative discretions. In my respectful opinion they do not need to be warned off the course by admonitory circumlocutions. When, in Secretary of State for Education and Science v. Tameside Metropolitan Borough*

[23] Wade and Forsyth page 304.
[24] [1977] AC 1014.
[25] [1998] UKHL 40.

*Council, the precise meaning of "unreasonably" in an administrative context was crucial to the decision, the five speeches in the House of Lords, the three judgments in the Court of Appeal and the two judgments in the Divisional Court all succeeded in avoiding needless complexity.* ***The simple test used throughout was whether the decision in question was one which a reasonable authority could reach. The converse was described by Lord Diplock as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt." These unexaggerated criteria give the administrator ample and rightful rein, consistently with the constitutional separation of powers."***

In a previous judgment of this Court[26], it was held that '*the standard adopted in Tameside appears to be more realistic, and balanced*' as opposed to adopting the tortuous *Wednesbury* standard as required in the GCHQ case.

The Petitioners have cited the case of **Sirimal v Board of Directors of the CWE**[27] where it was held as follows:

"*The grounds enumerated above have to be assessed in the light of the principle of unreasonableness expounded in the judgment of Lord Greene, M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporations. Two meanings have emerged of the term 'unreasonable' from this judgment.* ***These relate to deviation from purpose*** *and deviation from fundamental principles. Unreasonableness in the first sense is used as a synonym for a host of more specific grounds of attack such as taking into account of irrelevant considerations, acting for improper purposes*

[26]Colonel U.R. Abeyratne v. Lt. Gen. N.U.M.M.W. Senanayake and Others, CA (Writ) Application No. 239/2017; CA Minutes of 7th February 2020.
[27][2003] 2 Sri LR 23 at 32.

*and acting mala fide. The second meaning is the substantive sense which would include a decision so unreasonable that no reasonable body could have made it. (Administrative Law P.P. Craig - 4th Edition 1999 Edition page 537).*"

Having laid out the test for determining reasonableness, this Court shall now consider whether the decision to amend Clause 7.2.1.3 of Circular '**P3**', would meet the threshold set out in *Tameside*, as well as in *Wednesbury* and *GCHQ*.

The position of the Respondents

At the time this Court issued formal notice of this application, this Court informed the learned Senior Deputy Solicitor General that the Respondents would have to apprise this Court of the rationale for the above amendment and the manner in which the said amendment was effected. This was done particularly in view of the fact that the requirement of the same number of schools that had been introduced in 2012 had remained without any amendment until 2018, and as the effect of the amendment was to negate the concession granted since 2013.

This Court shall now consider the position of the Respondents, which has been set out in (a) the limited Statement of Objections filed at the time this Court considered the application for interim relief, (b) the Statement of Objections supported by an affidavit of Ms. Kamani Perera, Director of Education, dated 29th November 2019, and (c) the affidavit of Ms. Kamani Perera, dated 24th January 2020, which was filed after the conclusion of the oral submissions.

In its limited Statement of Objections, the Respondents have stated as follows:[28]

a) *The said clause, Clause 7.2.2.3 was introduced by Circular No. 24 of 2018 in order to* ***facilitate a minor change of residence, for instance, within the same compound****, without losing the marks allocated for being registered in the electoral register for five years*;

b) *The reason for this change in Circular No. 24 of 2018 is that, were it to be the number of schools that were considered when regarding two addresses as one for the purposes of marks given for the electoral register, a significant change in address within the feeder area would still have to be considered as one address*.

This Court is unable to accept the above explanation, for two reasons.

The first is, any person changing residences within the same compound can probably arise only if the applicant is living in an apartment complex. That certainly was not the intention when the clause was first introduced in 2012, as borne out by the following paragraph of Ms. Kamani Perera's affidavit filed on 24th January 2020: '*due to representations made by various parties, it was decided when issuing Circular No. 19/2012 to give a concession* ***to residents who had moved within the feeder area****, but had been resident in the same feeder area for 5 years continuously.*'

The second is, the definition of 'feeder area' encompasses the entire administrative district within which a school is situated, and it is open to an

[28] Vide paragraphs 3(ii) and (v) of the Limited Statement of Objections.

applicant to change his residence within the feeder area, although such change can be to his or her detriment. Such change can be significant on paper, but in view of the safety mechanism that the number of schools remains the same if marks are to be allotted for being registered as an elector under both residences, in reality the change will not be significant.

Procedure followed when amending Clause 7.2.1.3 in P3

This Court shall now consider the affidavit of Ms. Kamani Perera annexed to the Statement of Objections of the 2nd and 3rd Respondents, which (a) seeks to explain the procedure that was followed when the amendment was introduced for the first time in the 2019 Circular, and (b) seeks to demonstrate that the amendment was well considered, and has a rational basis.

Ms. Perera states that the then Secretary, Ministry of Education, by an internal memorandum dated 9th March 2018 titled "රජයේ පාසල් වලට පලමු ශ්‍රේණියට සිසුන් ඇතුළත් කිරීමේදි භාවිතා වන 22/2017 චක්‍රලේඛය සංශෝධනය කිරීම සඳහා මූලික කමිටුවක් පත් කිරීම"[29] had appointed a Committee for the following purpose:

> "2018 වර්ෂයේ දි පලමු ශ්‍රේණියට සිසුන් ඇතුළත් කර ගැනීම සඳහා බල පවත්වන 22/2017 චක්‍රලේඛය ට සහ එහි සංශෝධන වලට අනුකූලව කටයුතු කිරීමේදි **මතු වූ යම් යම් ගැටලු අවම කිරීම සඳහා** 2019 වර්ෂයේ දි සිසුන් ඇතුලත් කර ගැනීමේදි ඇති කල යුතු සංශෝධන සඳහා යෝජනා ඉදිරිපත් කරන ලෙස අදාල පාර්ශවයන් මේ වන විට දැනුවත් කර ඇත. ඒ අනුව විවිධ පාර්ශව වෙතින් ඉදිරිපත් වන යෝජනා හා අදහස් පිලිබඳව සලකා බැලීම සඳහා"

[29] Vide document marked 'A' annexed to the Statement of Objections of the 2nd and 3rd Respondents.

There are two observations that this Court wishes to make with regard to the purpose for which the above Committee was formed. The first is that the Committee was required to consider clauses that had given rise to problems in its implementation (**එහි සංශෝධන වලට අනුකූලව කටයුතු කිරීමේදී මතු වූ යම් යම් ගැටලු අවම කිරීම සඳහා**), and not interfere with clauses that had not posed an issue, unless of course the Committee was of the view that an amendment was required to reflect the policy of the Government. The second is the Committee was a preliminary Committee and was required to submit its proposals, which means that the recommendations of this committee were not meant to be final, and that the decision whether to accept the changes so proposed was to be taken by another body or person.

Ms. Perera states that proposals of interested parties including the Ministry of Defence, the Elections Commission, Members of Parliament, Teachers Unions, and Principals of different Schools were received by the Committee. She states further that at a meeting of the Committee held on 19th April 2018, the *contents of paragraph 7.2.1.3 of Circular No. 22/2017 was discussed based on the* proposals *submitted by the Principal, Richmond College*.[30] This Court has examined the said proposals of the Principal, Richmond College and finds that the said proposals do not contain any reference to Clause 7.2.1.3, nor to the marks given for being registered as an elector.

The only instance where the Principal, Richmond College has referred to **ආසන්න පාසැල්** is when he referred to the situation where marks are deducted for schools that are situated closer to the residence of an applicant than Richmond

[30] Vide document marked 'B' dated 9th April 2018, annexed to the Statement of Objections of the 2nd and 3rd Respondents.

College (being the school applied for), even though such schools may not have the same facilities or stature as Richmond, and the unfairness that would be caused by deducting marks in such situations. His concern has been that marks must be deducted only where the school applied and the school that is closer to the residence can be classified as a **සමාන පාසැල්** (or similar schools) in the context of facilities and not otherwise. This is an issue that affects the marks that are given under the sub-category of '*number of schools located closer to the place of residence than the school applied*', and has no nexus to the marks given for being on the Electoral Register. This Court is therefore at a loss to understand how the issue raised by the Principal, Richmond College could have led to a discussion to amend Clause 7.2.1.3.

A copy of the draft Circular for 2018 on which the amendments discussed at the meeting held on 19th April 2018 have been effected, has been produced marked '**D2**'. This Court has examined '**D2**' and observes that even though the words, "**එකම පාසැල්**" have been written by hand next to Clause 7.2.1.4, the fact that no clear decision to amend the clause was taken is evident by the inclusion of the words "**දරුවාට ඇතුලු විය හැකි පාසැල සමාන පාසල් වන්නේ නම්**".

The next meeting of the Committee has been held on 4th May 2018 where this matter was discussed once more. Ms. Perera has submitted a document marked '**E2**' which is said to be a document containing *the matters discussed at the said meeting*.[31] This Court has examined '**E2**' and notes that it does not contain any reference to Clause 7.2.1.4. However, the following words have been inserted by hand against Clause 7.2.2.2 – "**පදිංචිය දුර ස්ථානයට වෙනස් වූ විට**

[31] Vide paragraph 9 of the affidavit of Ms. Kamani Perera.

මුලු වන්ද ලකුණු දිය හැකිද? (තව දුරටත් සාකච්චා කල යුතුය)" Thus, even on 4th May 2018, no finality has been reached on amending the relevant clause.

Ms. Perera has submitted another document marked '**E2a**' which is said to be the decision reached on the *proposal submitted by the Principal of Richmond College, Galle.* This Court has examined '**E2a**' and it appears that '**E2a**' contains the list of matters that was agreed at the meeting held on 4th May 2018. The decision that relates to the clause in question is re-produced below:

| යෝජනාකරු | යෝජනාව | අදාල වගන්තිය | යෝජනාව සලකා බලන ලද්දේද? |
|---|---|---|---|
| රිච්මන්ඩ් විදුහල්පති | පදිංචිය ස්ථාන 2කින් ඇති විට සමාන පාසල් වලට ලකුණු අඩු වන්නේ නම් පමනක් ජන්ද ලේඛණ සඳහා ස්ථාන 2ට සම ලකුණු ලැබීම | _ _ _ | චකුලේඛයට ඇතුළත් කරන්න |

This Court must note that even though '**E2a**' contains the above decision, the rationale for introducing this amendment has not been set out in '**E2a**'. Be that as it may, it was the position of the learned President's Counsel for the Petitioner that there is a significant difference between '**සමාන පාසල්**' which are the words used in '**E2a**' and '**එකම පාසල්**' which are the words that finally appeared in Circular '**R1**'. The Respondents have not clarified whether '**සමාන පාසල්**' is a reference to 'similar schools' in the context of being similar in facilities etc, which was the proposal of the Principal, Richmond College, or whether it is a reference to 'identical schools' (**එකම පාසල්**) as in the identity of the schools concerned being the same. This Court takes the view that the best evidence on this matter could have come from the Principal, Richmond College, which was not to be.

According to Ms. Perera, several other meetings had taken place thereafter. While details of such meetings have not been provided to this Court, Ms. Perera states that *at the meeting held on 14th May 2018 the change from paragraph 7.2.1.3 in Circular No. 22/2017 to paragraph 7.2.2.3 in Circular No. 24/2018 was confirmed along with the rationale for the change.* Annexed to her affidavit is a document marked '**F2**', which Ms. Perera describes as being *the proposals confirmed at the said meeting with relevant justifications*. An extract of '**F2**' is re-produced below:

| **අංකය හා පැවති වගන්තිය** | **අංකය හා නව වගන්තිය** | **සාධාරණීකරණය** |
|---|---|---|
| 7.2.1.1 **ජන්ද හිමි නාම ලේඛණයේ ලියාපදිංචිය එක් අයෙකුට එක් වර්ෂයකට - ලකුණු 3 උපරිම ලකුණු 30 (ආසන්න ගණය)** | 7.2.1.2 **ජන්ද හිමි නාම ලේඛණයේ ලියාපදිංචිය එක් අයෙකුට එක් වර්ෂයකට ලකුණු 2.5 උපරිම ලකුණු 25** | **පදිංචියට වැඩි ලකුණු ලබා දීම නිසා** |
| | 7.2.1.3 **සමාන පාසල් පමනක් වන්නේ නම් මුලු ලකුණු ලබා දිය යුතුය** | |

Thus, even though '**F2**' contains the new clause, the rationale for introducing such clause has not been set out in '**F2**'. Here too, the reference is to '**සමාන පාසල්**' and not to '**එකම පාසැල්**'.

Ms. Perera has produced another document marked '**F2a**', which is said to contain *the change material to this application along with the justification for the same*.

An extract of the said document is re-produced below:

| අංකය හා පැවති වගන්තිය | අංකය හා නව වගන්තිය | සාධාරණීකරණය |
|---|---|---|
| 7.2.1.3 පන්ද හිමි නාම ලේඛණ ස්ථාන දෙකකින් ඉදිරිපත් කරන විට ආසන්න පාසල් සඳහා අඩුවෙන ලකුණු නොවෙනස් වන්නේ නම් පමනක් ස්ථාන දෙකෙන්ම ඉදිරිපත් කරන ලේඛන දැනට පදිංචි ස්ථානයේ ලේඛන ලෙස සැලකීම | 7.2.2.3 පන්ද හිමි නාම ලේඛණ ස්ථාන දෙකකින් ඉදිරිපත් කරන විට ආසන්නයේ දරුවාට ඇතුලත් විය හැකි පාසල් එකම පාසල් වන්නේ නම් සථාන දෙකෙන්ම ඉදිරිපත් කරන ලේඛන දැනට පදිංචි ස්ථානයේ ලේඛන ලෙස සැලකීම | එකිනෙකට ඉතා ආසන්නව පදිංචිය වෙනස් වීම නිසා පමනක් සිදුවන අවාසිය සලකා බැලීම |

Thus, the only explanation that has been offered so far for the amendment is that the concession granted since 2012 shall now be limited to situations where the change of residence is between places situated close to each other – i.e. **එකිනෙකට ඉතා ආසන්නව පදිංචිය වෙනස් වීම**, or, as set out in the limited Statement of Objections, '*to facilitate a minor change of residence*'. The irrationality and the unreasonableness of the above explanation in '**F2a**' however is evident when one considers the argument of the Petitioners that the identity of the schools would have been different even if the 1st Petitioner had changed his residence by 100m, as opposed to the real difference of 500m. A change in residence of 100m and for that matter, even 500m would, in the view of this Court qualify under **එකිනෙකට ඉතා ආසන්නව පදිංචිය වෙනස් වීම**, but if the effect is to shut out the Petitioner whose shift in residence would fall within **එකිනෙකට ඉතා ආසන්නව පදිංචිය වෙනස් වීම**, that by itself demonstrates that the amendment is unreasonable and contrary to the policy of the Government, and has not been considered by the Committee.

However, what concerns this Court is not only the lack of a rationale behind the amendment set out in '**F2a**'. Annexed to Ms. Perera's affidavit after the above document is an unmarked draft copy of the 2018 circular with the words "ඇමුනුම් 10 ට අදාල සටහන" and "2018.05.14" written on top of it. Clause 7.2.1.4 appears at the bottom of page 9 and is carried over to page 10. Written by hand on the left corner of the said clause are the words, "මෙම යෝජනාවට කම්ටුව එකඟ නැත", which means that the Committee was not agreeable to what was set out in '**F2a**'.

This Court shall now summarise the several issues that it has with the explanation of the Respondents, which demonstrates that there has not been a proper deliberation and/or consideration of the amendment. To start with, a suggestion to amend Clause 7.2.1.3 did not emanate from the Principal of Richmond College, as claimed by Ms. Perera. Even if it did, the said document has not been produced to this Court. Even though the mandate of the Committee was to discuss clauses that had given rise to problems and to minimise same, no material has been placed before this Court to establish that Clause 7.2.1.3 of '**P3**' had given rise to problems in implementation. The discussion on Clause 7.2.1.3 of '**P3**'and the re-numbered Clause No. 7.2.1.4 appears to have come mid-stream, during the discussions, and the explanation for the amendment does not appear to this Court to have any rational basis. The last mentioned document states that the Committee is not agreeable with the proposed amendment, thus adding to the confusion, and amply demonstrating the lack of coherence in decision making by the Committee. This Court has in fact examined the attendance sheets of the three meetings and observes that the Co-Chairmen of the Committee had not even participated at the first two meetings held on 19th April 2018 and 4th May 2018,

thus demonstrating the lack of seriousness on the part of at least some of the members of the Committee.

Admission of children to Grade One of Government Schools is a significant event for parents who have a child between the ages of five and six, as at the closing date of applications. As the Respondents themselves have submitted, there are an estimated 300,000 applications that are received each year. Formulating guidelines and implementing these guidelines is not an easy task. This Court recognises the fact that the necessity to amend a particular clause or to increase or decrease the marks that are given for a particular clause may arise, and that the guidelines cannot remain static or inflexible. This Court is therefore of the view that the Government must be free to amend the provisions of the said Circular, where necessary. It is certainly not the intention of this Court to fetter the power of the Respondents to amend the Circular in order to cater to an abnormality that has arisen or in order to make the provisions clearer, or for any other similar reason. However, this Court is of the view that such amendments must be done after proper deliberation, and that the underlying rationale for the amendments must be reasonable and justifiable.

It is admitted that the Committee was appointed to minimize the issues that had arisen when implementing the applicable Circular.[32] This Court has been told that the proposal to amend Clause 7.2.1.3 of '**P3**' emanated from the Principal, Richmond College. This Court has already observed that the detailed proposals of the Principal do not have any reference to this issue. Assuming

[32] Vide document marked 'A' - 22/2017 – "චක්‍ර ලේඛයට සහ එහි සංශෝධන වලට අනුකූලව කටයුතු කිරීමේදී මතු වූ යම් යම් ගැටලු අවම කිරීම සඳහා."

the said issue was raised during deliberations, it was open to the Respondents to have annexed an affidavit from the Principal, Richmond College setting out the rationale for *proposing* such amendment. This has not been done. This Court has not been presented with a report of the said Committee, nor has any material been presented to this Court to explain the action taken by the Secretary, Ministry of Education. Even though it is said that the Committee agreed to the amendment, the Respondents' own document, (i.e. the document that appears after '**F2a**') contradicts this position.

Where do all these concerns leave this Court with? Firstly, this Court takes the view that Clause 7.2.1.3 of '**P3**' has not given rise to any issue in its implementation. Secondly, there has not been a proper deliberation of the amendment. Thirdly, an acceptable rationale for the said amendment has not been placed before this Court. Fourthly, it appears that even the Committee has not agreed to the said amendment. In these circumstances, it is the view of this Court that the decision to amend Clause 7.2.1.3 in '**P3**' and replace it with Clause 7.2.2.3 in '**R1**' (and '**P7**') is unreasonable and irrational, and is therefore liable to be quashed by a Writ of Certiorari.

Further justification by the Respondents

After the conclusion of the oral submissions, the Respondents tendered to this Court a further affidavit of Ms. Perera dated 24th January 2020, seeking to explain the reasons for the said amendment. Although belated, and although the explanation now offered does not bear any reference to the deliberations of the Committee, this Court nonetheless wishes to consider the said explanation.

It is the position of Ms. Perera that[33]:

*"(a) The core principle underlying the circular for admission of students to Grade One under the proximity category is to give* ***priority to children of permanent residents within close proximity to the school***;

*(b) Under the proximity category, marks are awarded by considering documents relevant to the* ***current place of residence***;

*(c) Due to representations made by various parties, it was decided when issuing Circular No. 19/2012 to give a concession to residents who had moved within the feeder area, but had been resident in the same feeder area for five years continuously*;

*(d) The sole exception to the principle that marks are awarded for the current place of residence is found in the provision under consideration in this case, namely Section 7.4.2.3 in Circular No. 22/2017[34] and Section 7.2.2.3 in Circular No. 24 of 2018, where marks are given for the parents names appearing on the electoral register, even if there has been a change in residence, provided the change is within the feeder area*;

*(e) The formula for awarding such marks for the electoral register under a previous address within the feeder area in Circular No. 22/2017 was if the number of schools which are closer to the applicant than the school applied to, and for which marks will consequently be deducted, remains the same at both addresses.*"

This Court is in agreement with the above explanation.

[33] Vide paragraphs 4-8 in affidavit dated 24th January 2020.
[34] It is assumed that this is a reference is to Clause 7.2.1.3 of 'P3'.

Ms. Perera then goes onto state, with reference to a map of the area where Royal College is situated, as follows:

> "*This concession has been disadvantageous to the permanent residents as demonstrated in the example below:*
>
> *"The map depicts as 'P' a permanent resident and as 'H1' and 'H2', the current residence and prior residence, respectively, of a person who has moved within the feeder area. As per the attached map, a person resident at 'H2' would have marks deducted for School No. 7, 30, 6 and 14. When the person moves to 'H1', marks will be deducted for school No. 23, 29, 16 and 32. Thus, the number of schools for which marks will be deducted will be the same and such person will obtain the marks for the electoral register at the previous address despite moving more than 2.5km from the previous residence. The permanent resident at 'P' meanwhile will have marks deducted for school No. 2, 11, 23, 31, 29, 16 and 14 when preferring an application to Royal College.*
>
> *The breakdown of marks for a person resident at 'P' and a person who has moved from 'H2' to 'H1' can be illustrated as follows. The person resident at 'H1' (assuming she was resident for 2 years at 'H2' and 3 years at 'H1" on a lease) will receive a maximum of 6 marks for residence, 25 marks for the electoral register, 3 marks for additional documents and 30 marks (50-4 schools x 5 marks) for proximity to the school, amounting to a total of 64 marks. The person who was resident permanently for five years at 'P' would receive 15 marks for residence, 25 marks for the electoral register, 5 marks for additional documents and 15 marks for proximity to the school (50 – 7 schools x 5 marks) amounting to 60 marks.*

*In order to minimize such disadvantage, it was decided to restrict this concession to movements within an extremely small area to give the advantage to genuine residents who had moved, for instance, within the same compound.*

*Therefore, in order to retain the awarding of marks for the electoral register at the previous address only in instances of* ***a minor change of residence****, the basis for awarding marks for the electoral register for a previous residence was changed to situations where the schools for which marks would be deducted remained the same upon the change of residence (Section 7.2.2.3 in Circular No. 24/2018 marked R1).*

*The underlying principle of giving priority to permanent residents living within close proximity to the school and allocating marks for the current place of residence is given weight by limiting the scope of the exception to the same and that no representations had been made to further change the circular. This section has remained unchanged in Circular No. 28/2019*[35]*."*[36]

This Court has several concerns with the above explanation. The first is, the Respondents have not challenged the genuineness of the application of the Petitioners nor have the Respondents submitted any material that would create a doubt regarding the genuineness of the application or the documents submitted by the Petitioners. This is in spite of this Court having allowed the Respondents an opportunity of filing a further round of pleadings pertaining to the genuineness or otherwise of the information included in the application

[35] The reference should be to '29/2019'.
[36] Vide paragraph 9 of affidavit dated 24th January 2020.

submitted by the Petitioner to Royal College.[37] Furthermore, the interview panel has not raised concerns with regard to the authenticity of the documents submitted by the 1st Petitioner, even though the marks allocated at the interview were adjusted after the filing of this application, for different reasons.

The second concern that this Court has with the above explanation is that the position of resident 'P' is not affected by the change in residence from 'H2' to 'H1'. 'P' continues to remain in the same position, as far as the marks that he or she is entitled to under Category 7.2.2, are concerned.

The third concern that this Court has is that the comparison is wrong. One must compare 'H' with an equal, which means that 'P' in the above example must be a person who only has three schools that are closer to his residence than Royal College. If that is done, the marks would be as follows:

| **Category** | **P** | **H** (where he has not changed residence) | **H** (where he has changed residence) - **Aggregate of H2 and H1** |
|---|---|---|---|
| 7.2.1.2 | 10 (all five years) | 10 | 06 (only three years) |
| 7.2.1.2 | 05 (all five years) | 05 | 03 (only three years) |
| 7.2.2 | 25 (all five years) | 25 | 25 (all five years) |
| 7.2.4 | 35 | 35 | 35 |
| Total | 75 | 75 | 69 |

[37] Vide proceedings of 19th December 2019.

Thus, as a result of the change in residence from 'H2' to 'H1', 'H' has lost 6 marks when compared to 'P'. Thus, the change in residence has affected 'H' but 'P' remains where he is.

This Court shall now take the case of 'P' as presented by the Respondents, and compare it with an applicant whose application has been produced by the Respondents marked '**4Rb1**'. The latter applicant has been a resident of Colombo 5, for a period of five years. The number of schools that are closer to the residence of the applicant than Royal College is eight. Thus, five marks are deducted for each of the eight schools, and the applicant would only get 10 marks for sub-category 7.2.4. The applicant has been allotted 25 marks for five years on the electoral register. Together with the marks given for the other two sub-categories (15 marks for 7.2.1.1 and 3.3 for 7.2.1.2), the applicant has received a total of 53.3 marks. Supposing the said applicant changes his residence to Cambridge Place, situated opposite Royal College, one year prior to the closing date of applications, he would receive full marks under sub-category 7.2.4, as there are no other schools that are situated closer to his new residence at Cambridge Place, than Royal College. This would take his aggregate marks to 93.3, subject to a deduction of 12 marks under sub-category 7.2.1.1 and a further 2.6 marks under sub-category 7.2.1.2, as a result of not having five years of residence at the new address, leaving him with 78.7 marks.

If not for the condition stipulated in Clause 7.2.1.3 of '**P3**' that to receive full marks for the electoral register in the event of a change in residence midstream, the number of schools must be the same, the applicant in '**4Rb1**' would receive full marks for registration on the electoral register, and an

aggregate of 78.7 marks, which would guarantee admission to Royal College. However, such an abuse of the marking scheme cannot take place in view of the limitation placed in Clause 7.2.1.3 that the number of schools remain the same.

Thus, the applicant in '**4Rb1**' changing his residence to Cambridge Place one year prior to the closing date of applications – 30th June - would not get any marks under sub-category 7.2.2 (for the reason that electoral registers are amended on 1st June of each year), and his total marks would be marginally higher at 53.7. Thus, the protection that the Respondents say they need to afford to 'P' can be achieved by the requirement that the number of schools remain the same. If that be so, on the Respondents own explanation, there is no rationale for amending the requirement of the same number of schools to identical schools.

Nexus between failure to give reasons and irrationality

The reasons provided for a decision would allow Courts to effectively scrutinize the decision and detect what factors have influenced the decision maker. In the present application, it is clear that the reasons provided by the Respondents do not justify their actions. In **De Smith's Judicial Review**[38] it is observed that '*Irrationality may also sometimes be inferred from the absence of reasons.*[39] *When reasons are required, either by statute or by the growing common law requirements, or where they are provided, even though not strictly required, those* ***reasons must be both "adequate and intelligible"****. They*

[38]Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* [8th Edition, 2018] Sweet Maxwell, page 605.
[39]Padfield v. Minister of Agriculture Fisheries and Food [1968] AC 997 at 1032.

*must therefore both **rationally relate to the evidence in the case**[40], and be comprehensible in themselves*[41]*.'*

It is the view of this Court that the reasons provided by the Respondents for the amendment, do not rationally relate to the Policy of the Government in providing admission to children who live in close proximity to the school they are applying for. The exception that was brought in by Circular 19/2012 was to give a concession to residents who had moved within the feeder area, subject to the number of schools being identical. The amendment in '**R1**' fails to distinguish and credit those who shifted residences within the feeder area and those who shifted residences from a different administrative district, thereby negating the concession granted in 2012.

As explained above, the requirement that the number of schools remain the same, in order to be awarded marks for the number of years that the names of the applicant and his spouse have been included in the Electoral Register prior to moving to the present place of residence, is considered to act as a safeguard to abuses of process and to protect *bona fide* applicants.

In the case of **Padfield v Minister of Agriculture, Fisheries and Food**[42] Lord Pearce opined:

> "*If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason what-*

[40] Re Poyser and Mills' Arbitration [1964] 2 QB 467 at 478.
[41] R v. Hammersmith and Fulham LBC Ex parte Earls Court Ltd, The Times.
[42] [1968] AC 997.

*ever for taking a contrary course, the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions*."

In the above circumstances, it is the view of this Court that the decision of the Respondents to amend Clause 7.2.1.3 of '**P3**' is not only a decision which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt, it is a decision which is so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at. This Court is therefore of the view that the aforementioned decision to amend Clause 7.2.1.3 is liable to be quashed by a Writ of Certiorari.

In view of the above finding, this Court is of the view that the necessity for this Court to consider the second ground urged before this Court by the learned President's Counsel for the Petitioners, namely that the amendment of the Circular '**P3**' is contrary to his legitimate expectation, does not arise.

Does the conduct of the 1st Petitioner disentitle the Petitioners to relief?

The next matter that this Court must consider is the prayer of the Petitioners for a Writ of Mandamus. Prior to doing so, this Court would like to consider three matters that the learned Senior Deputy Solicitor General has placed before this Court.

The first is the claim that the Petitioner is guilty of suppression of a material fact, in that the Petitioner did not divulge to this Court that the above amendment was in fact effected by '**R1**' and was applicable for admission of

children to Grade One in the year 2019. The position of the 1st Petitioner is that he became aware of the amendment only when the Interview Panel refused to allot marks under Clause 7.2.2.3 for both residences. This explanation is acceptable when one considers the fact that a person who wishes to admit his son or daughter to Grade One in 2020 does not have a need to examine the Circulars of the previous year. In the absence of any material to contradict this position, the Petitioners cannot be faulted for not divulging the existence of '**R1**'. Furthermore, this Court is of the view that the amendment having taken place in 2018 is not a material fact, as the said clause appeared in the 2019 Circular without any further consideration thereof by the Respondents. Hence, this Court does not agree with the submission that the Petitioners have suppressed '**R1**'.

The second is the submission of the learned Senior Deputy Solicitor General that there are several inconsistencies in the narration of events by the 1st Petitioner with regard to the manner in which the Petitioner has changed his residence, and that the 1st Petitioner has misrepresented material facts. The reference here is to the fact that the first lease agreement was executed almost a year after the Petitioner claims he took on lease the premises at No. 532/3C, Galle Road, Colombo 3, and to the purported discrepancies in the invoices issued by Sri Lanka Telecom.

Quite apart from the fact that the Interview Panel has not had an issue with the genuineness of the application of the 1st Petitioner, a matter which this Court has already addressed, this Court must observe that the 1st Petitioner has not presented the impugned invoices with his application. While it is true that the first lease agreement was executed eleven months after the date that

the Petitioner claims he took on lease the said premises, that by itself does not taint the hands of the 1st Petitioner, especially when this Court considers the fact that this address had been used at the time the birth of the 2nd Petitioner was registered in January 2015.

Is proceeding with this application futile?

The third matter that this Court would like to advert to is the submission of the learned Senior Deputy Solicitor General that this application is futile. He has pointed out that (a) quashing the entire Circular '**P7**' would jeopardise the admission of children to Grade One of Government Schools for the year 2020 and that it would have catastrophic results; (b) quashing paragraph 7.2.2.3 of '**P7**' or the decision to amend Clause 7.2.2.3 in '**P7**' would mean that the Petitioners would receive only 5 marks under Sub category 7.2.2. The learned Senior Deputy Solicitor General therefore submitted that this Court cannot grant any relief prayed for and therefore, proceeding with this application is futile.

In support of his argument, the learned Senior Deputy Solicitor General has cited the judgment of this Court in **Surangi vs Rodrigo**[43] where this Court had held that "*No court is entitled or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaint.*" In that case, during the trial before the District Court, the plaintiff had sought to raise an issue relating to permanent alimony, although the prayer in the plaint did not contain such a relief. This Court, while agreeing that issues are not restricted to pleadings, had arrived at the above conclusion for the specific reason that Section 40(e) of the

[43] [2003] 3 Sri LR 35.

Civil Procedure Code enacts that the plaint shall contain a demand of the relief which the plaintiff claims.

While this Court cannot grant relief where none has been prayed for,[44] this Court has the power to issue a Writ which has been prayed for, albeit in a modified form. In **Premachandra and Dodangoda vs Montague Jayawickrema and Bakeer Markar**[45] the relief sought had been *inter alia* a Writ of Mandamus compelling the Governor to appoint the Petitioner as Chief Minister. It had however been conceded that appointment of the Chief Minister must be done by the Governor according to law and that Court cannot compel the appointment of any particular person. This Court had accordingly issued a Writ of Mandamus on the Governor to appoint a Chief Minister of the Province according to law, which was not the prayer of the Petitioner.

This Court is in agreement with the learned Senior Deputy Solicitor General that quashing the entire Circular would be catastrophic, and that quashing the decision to amend Clause 7.2.2.3 will not by itself entitle the allotment of marks for the electoral register under both residences. However, this Court does not agree with the submission that proceeding with this application is futile, and is of the view that this Court can nonetheless consider the prayer for the other reliefs prayed for by the Petitioner. In **Paudgalika The Kamhal Himiyange Sangamaya v. Mr. H.D. Hemaratna and 5 Others**[46] the Supreme Court held that the reasonable price formula for tea leaves was unreasonable. However, the Court acknowledged that the quashing of older circulars setting out the said reasonable price formula would lead to serious consequences, and

[44] Vide Dayananda vs Thalwatte (2001) 2 Sri LR 73.
[45] [1993] 2 Sri LR 294.
[46] SC Appeal No. 47/2011; SC Minutes of 9 March 2015.

as such declined to quash the said circulars. However, the Court proceeded to issue a Writ of Certiorari to quash the letters by which compliance with the said circulars were sought to be enforced. Thus the Supreme Court declined to take an overly technical view on the issuance of prerogative writs and was willing to tailor the relief to remedy the injustice in a particular case.

In **Ranjanee Pathirana vs Secretary, Ministry of Environment and Natural Resources and Others**[47], the Supreme Court held that, "*In the field of public law the writ of mandamus is a powerful weapon the Courts use freely to prevent breach of duty and injustice.*"

It is trite law that a Writ of Mandamus would issue where an applicant has a legal right to the performance of a legal duty by the parties against whom the mandamus is sought.[48] The requirement that the number of schools remain the same, having been introduced in 2012, has survived without any issues until 2018. This Court has no reason to believe that the said position would not have continued, if not for the irrational and unreasonable decision of the Respondents to amend the reference to the same number of schools to identical schools.

The effect of this Court holding that the decision to amend the clause is irrational and unreasonable, would be to restore the status quo that prevailed prior to the amendment. The 2nd Petitioner would therefore be entitled to receive 20 marks on the strength of his parents names being on the electoral register under both residences, and it is the duty of the Respondents to allocate such marks to the 2nd Petitioner. That is the legal entitlement of the

[47] SC Appeal No. 78/2006; SC Minutes of 5th March 2000.
[48] See Credit Information Bureau of Sri Lanka v. Messrs Jafferiee & Jafferjee (Pvt) Ltd [2005] 1 Sri. L.R. 89 at 93

2nd Petitioner and it is the legal duty of the Respondents to allocate marks that the 2nd Petitioner is entitled to, in the absence of the impugned amendment. In these circumstances, this Court is of the view that the Petitioners are entitled to a Writ of Mandamus, directing the Respondents to allocate marks for the period that the 1st Petitioner and his wife had their names on the electoral register under both residences.

Certiorarified Mandamus

This Court is of the view that even if the Petitioners had not prayed for a Writ of Certiorari at all, and had limited their relief to the Writ of Mandamus, that would not have prevented this Court from issuing the Mandamus without formally quashing the impugned decision.

This Court in **Dr. Lokuge vs Dr. Dayasiri Fernando and Others**[49] having traced the development of what is now known as *Certiorarified Mandamus* has quoted the following passage from **De Smith on Judicial Remedies**:[50]

> "*In some situations, however, mandamus has been granted to undo what has been done; the courts merely treat the unlawful act as a nullity and order the competent authority to perform its duty as if it had refused to act at all in the first place*".

**Administrative Law** by Wade and Forsyth,[51] explains in the following manner how a *Certiorarified Mandamus* would operate:

[49] CA (Writ) Application No. 160/2013; CA Minutes of 16th October 2015.
[50] Judicial Review of Administrative Action; 5th Edition page 699-700.
[51] H.W.R. Wade, C.F, Forsyth, *Administrative Law* [11th Edition, 2014] Oxford University Press; page 527.

"*Defective decisions are frequently quashed by a quashing order without any accompanying mandatory order. Once the decision has thus been annulled, the deciding authority will recognise that it must begin again and in practice there will be no need for a mandatory order. If on the other hand a mandatory order is granted without a quashing order, the necessary implication is that the defective decision is a nullity, for it is only on this assumption that a mandatory order can operate. A simple mandatory order therefore does the work of a quashing order automatically*."

This Court had thereafter held in **Dr. Lokuge** that, "*This gladsome development has to be welcome and it has to be said that certiorarified mandamus would be available in Sri Lanka to quash an invalid exercise of power*". The view expressed in **Dr. Lokuge vs Dr. Dayasiri Fernando and Others**, which this Court is in agreement with, has since been followed by this Court in **Sunil Anthony Embuldeniya and Others vs Secretary, Ministry of Urban Development and Others**.[52] In these circumstances, this Court is of the view that the effect of issuing a Writ of Mandamus would be to quash the impugned decision to amend the said clause.

Quite apart from legal niceties, where this Court agrees with a petitioner that a decision is irrational or unreasonable, and very importantly, where the petitioner has invoked the jurisdiction of Court at the first available opportunity, then, this Court will have the power to quash that decision and ensure that the ends of justice are met. This Court shall not allow itself to be hampered or obstructed by any technicalities placed in its path in the pursuit

[52] CA (Writ) Application No. 314/2016; CA Minutes of 10th October 2018.

of justice. As the Supreme Court has stated, Mandamus is a powerful weapon available to the Courts to be used freely to prevent a breach of duty and injustice.

Conclusion

This Court issued formal notice of this application on 8th November 2019, after hearing the submissions of the learned President's Counsel for the Petitioner and the learned Senior Deputy Solicitor General. On that date, this Court, with a view of preserving the entitlement of the 2nd Petitioner to gain admission to Grade One of Royal College for the year 2020, should the Petitioners be successful at the end of the hearing of this application, directed the 4th Respondent to notify the 5th – 10th Respondents (the members of the Interview Panel) to provisionally allot 20 marks under Category 7.2.2 for the application presented by the 1st Petitioner (as opposed to the 5 marks that the Interview Panel had allotted), and to continue to process the application of the Petitioners and all other applications.[53]

The 4th Respondent, the Principal of Royal College, by an affidavit dated 24th January 2020, has tendered to this Court a copy of the final list of applicants selected under the Close Proximity Category, marked '**4RA**'. This Court has examined '**4RA**' and observes that 123 candidates have been selected, with the cut off mark being 54.15. In the said affidavit, the 4th Respondent has informed this Court that one place has been reserved for the 2nd Petitioner. Together with the additional 15 marks that the Petitioner is entitled to receive, the 2nd

[53] This Court must note that the Respondents have reduced six marks allotted to the 2nd Petitioner under category 7.2.1.1 but there is no complaint from the Petitioners that the said deduction is wrong.

Petitioner would be entitled to be allotted a total of 57.6 marks, which is above the cut off mark for admission to Grade One of Royal College for the year 2020.

This Court accordingly issues a Writ of Mandamus, as prayed for in paragraph (g) of the prayer to the petition, directing the 4th – 10th Respondents to allocate 20 marks to the 2nd Petitioner under sub category 7.2.2 of '**P7**'.

In his affidavit filed on 24th January 2020, the 1st Petitioner has complained to this Court that there has been a delay in the implementation of the above interim order. Hence, this Court directs the 4th Respondent to admit the 2nd Petitioner to Grade One of Royal College, Colombo 7, within 42 days of the date of this judgment.

This Court makes no order with regard to costs.

**Judge of the Court of Appeal**