

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

In the matter of an application for orders in the  
nature of writ of Mandamus and in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

1. T. Udayasooriyan,  
No. 01,  
A. A. Dharmasena Mawatha,  
Kandy.

On behalf of Udayasooriyan Oneliya Steffani,  
(Minor)

**PETITIONER**

**CA No. CA/Writ/0294/2020**

v.

1. M. Abeygunasekara,  
Principal,  
Kandy Girls High School,  
Kandy.
2. S. M. S. C. Weerakoon,

President of the Interview appeal board,  
Principal, Sri Rahula College,  
Katugasthota.

3. Mr. M. N. Ranasinghe,  
Secretary,  
Ministry of Education,  
Isurupaya.  
Battaramulla.

3A. Prof. K. Kapila C. K. Perera  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

3B. Mr. M. N. Ranasinghe  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

4. W. M. Jayantha Wickramanayake,  
Director of National Schools,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

4A. Mr. Prabath Nalaka,  
Director of National Schools,

Ministry of Education,  
Isurupaya,  
Battaramulla.

4B. K. L. G. Kithsiri,  
Director of National Schools,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

5. Minister of Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

5A. Hon. Susil Premajyantha,  
Minister of Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

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

## **RESPONDENTS**

**BEFORE**

: M. Sampath K. B. Wijeratne J. &  
M. Ahsan. R. Marikar J.

**COUNSEL** : Lakshan Dias with Asher Stephen for the  
Petitioner.

Y. Fernando, DSG with I. Madarasinghe  
for the Respondents.

**ARGUED ON** : 10.11.2023 & 05.12.2023

**DECIDED ON** : 31.05.2024

**M. Sampath K. B. Wijeratne J.**

### **Introduction**

The Petitioner is the father of minor child Udayasooriyan Oneliya Steffani<sup>1</sup> who sought admission to Grade 1 of Girls High School, Kandy (hereinafter referred to as the ‘GHS, Kandy’).

The 1<sup>st</sup> Respondent is the Principal of GHS, Kandy and the 2<sup>nd</sup> Respondent is the president of the Interview Appeal Board for Grade 1 admissions to the school for the year 2020. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are respectively Secretary to the Ministry of Education, Director in charge of National Schools and the Hon. Minister of Education. The 6<sup>th</sup> Respondent is the Hon. Attorney General and according to the Petitioner, was named in compliance with the constitution and the rules of this Court. However, the 1<sup>st</sup>, 3A and 5A Respondents stated that there is no constitutional or procedural requirement to name the Hon. Attorney General in proceedings of this nature.

The Petitioner, being the father of the aforesaid child, instituted these proceedings seeking *inter-alia*, a writ of *mandamus* directing the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to

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<sup>1</sup> Birth certificate ‘P 1’.

enrol the Petitioner's daughter Udayasooriyan Oneliya Steffani to the school under the category of close proximity and based on Christianity.

The 1<sup>st</sup>, 3A and 5<sup>th</sup> Respondents filed their objections seeking to dismiss the Petition.

In reply, the Petitioner filed a counter affidavit.

### **Factual background**

The Petitioner submitted an application<sup>2</sup> to the 'GHS, Kandy' seeking to enrol his child Udayasooriyan Oneliya Steffani to Grade 1 of the school. The Petitioner states that he submitted all necessary documents to substantiate his claim to be qualified under the 'close proximity' category and 'Christianity basis', in terms of circular No.29/2019 ('1 R 1'/P 3(a)') issued by the Ministry of Education.

It was revealed during the argument that the copy of the circular annexed to the Petition marked 'P 3 A' was incomplete, and the parties subsequently agreed to follow the circular submitted by the Respondents marked '1 R 1'. However, the Circular provided with the objections was missing some pages. Therefore, the Respondents later submitted the full text of the circular along with a motion.

In response to the Petitioner's claim that he submitted all necessary documents, the Respondents argued that the documents did not substantiate the 'proximity' required to secure the necessary marks for that category. Addressing the 1<sup>st</sup>, 3A, and 5A Respondents' contention, the Petitioner stated in his counter affidavit that he explicitly mentioned in the first section of his application 'P 3' that he was seeking enrolment for his child on the 'Christianity basis,' under the 'close proximity category.' Specifically, the Petitioner wrote in his application<sup>3</sup>, 'ක්‍රිස්තියානි ආගමික පදනම (ආසන්නතම ක්‍රිස්තියානි ධර්මය උගන්වන පාසල)' as the category.

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<sup>2</sup> 'P 3', 1<sup>st</sup> cage.

<sup>3</sup> 'P 3'.

The Respondents correctly pointed out that Circular No. 29/2019 does not include a category under Clause 3 as described by the Petitioner. The only applicable category under Clause 3 for the Petitioner's application is the proximity category<sup>4</sup>. The Petitioner clarified that his application to enrol his child in the nearest school where the Christian religion is taught. The religious basis is not a distinct category under Circular No. 29/2019; rather, it is a consideration within the categories listed in Clause 3.

It is important to note that while the Circular acknowledges religious basis, there is no specific section in the application for stating this basis, though there are sections for stating the religion of the parents. Therefore, the Petitioner cannot be faulted for including this basis in section 1, where the application category is indicated. Be that as it may, GHS, Kandy considered the Petitioner's application under the proximity category and maintained that the child could not be admitted due to a limit of six allocated seats.

The Petitioner attended the interview for admission to GHS, Kandy, and his child received only 32 out of 100 marks<sup>5</sup>. Subsequently, the Petitioner appealed to the 1<sup>st</sup> Respondent, the Principal of GHS, Kandy. After a hearing, it was decided that no change in the marks was necessary, and consequently, the child did not qualify for admission.

The Petitioner alleges that he was not informed of the decision to reject his appeal. However, the Respondents contended that the decision was communicated to the Petitioner, as indicated by letter 'P 8'. 'P 8' is a letter sent in response to an application made by the Petitioner under the Right to Information Act. It states that the rejection letter was sent on 27<sup>th</sup> December 2019, via registered mail, but a copy could not be issued as one was not retained. According to Clause 2.6 of Circular No. 29/2019, applicants who were not selected must be informed by a letter bearing the signature and seal of the principal. This letter should follow the format

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<sup>4</sup> Clause 3.1.

<sup>5</sup> 'P 6'.

specified in Schedule V of the circular and should include both the cut-off marks for the category under which the application was made and the marks obtained by the candidate.

Under Clause 18.3, comprehensive records of such letters must be maintained at the school. However, letter 'P 8', the response sent to the Petitioner by the Information Officer of GHS, Kandy, does not include the information requested by the Petitioner regarding the marks obtained by his child. The letter states that copies of the rejection letters are not retained, and thus the requested information cannot be provided. If comprehensive records had been maintained as required, there should have been no difficulty in providing this information. Therefore, the only reasonable inferences the Court can draw are that either the 1<sup>st</sup> Respondent failed to comply with the Circular, constituting a procedural error, or they avoided providing the information because it was adverse to the Respondents.

### **Analysis**

According to the Petitioner, they are baptised Christians<sup>6</sup>. The Petitioner asserts that there are no other schools teaching non-Roman Catholic Christianity in the area, and GHS, Kandy is the only school within the feeder area where the Petitioner's child can be admitted, as per Circular No. 29/2019. Clause 4.7 of the Circular states that the feeder area for GHS, Kandy encompasses the entire administrative District.

The Respondent denied this claim, stating that there are other Christian schools in the area, including St. Anthony's Girls' College, Kandy, and Ampitiya Berrewaerts College<sup>7</sup>. However, it is important to note that the Respondents did not consider these two schools when deducing marks for the other nearby schools and instead considered seven other schools stated below in this judgement. Hence, I am of the view that the interview panel has acted irrationally.

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<sup>6</sup> 'P 9' and 'P 9A'.

<sup>7</sup> Paragraph 10 (a) of the objections.

Nonetheless, the Petitioner categorically denied the above contention, stating that there are no other schools in the feeder area, aside from GHS, Kandy<sup>8</sup>, that admit 10% or more non-Roman Catholic Christian students.

Since the Respondent argued that the Petitioner failed to establish residence and therefore, the Petitioner's child could not be admitted under the proximity category, it is crucial for this Court to consider the marks awarded to the Petitioner by the interview panel. The Petitioner received only 15 out of 50 marks for proximity. The interview panel purportedly deducted 5 marks each for the seven schools mentioned in 'P 6', following Clause 7.2.4 of the Circular. Clause 7.2.4 defines that schools with a primary section to which *the child could be admitted* are those with the desired medium of study, girls', boys', or mixed schools as it is applicable to the child, and that admit 10% or more children from the child's religion. However, the interview panel arbitrarily decided, as reflected in the document marked '1 R 7', to consider all schools with a primary section when deducting marks for other available schools in the proximity. The learned Counsel for the Petitioner contended that none of these schools teach non-Roman Catholic Christianity or admit 10% or more students from the child's religion. The learned Deputy Solicitor General did not dispute this position in her submission, and there are no other materials before the Court that contradict the Petitioner's learned Counsel's above submission. Hence, I am inclined to accept this as correct.

The learned Counsel for the Petitioner argued with utmost confidence that, in accordance with Clause 3.2 of Circular No. 29/2019, GHS, Kandy is obliged to admit his child to the school.

Admittedly, GHS, Kandy was vested to the Government under Gazette Notification (Extraordinary) No. 12,839 dated 30<sup>th</sup> December 1961<sup>9</sup>, at which time the school had a total of 968 students. Of these, 373 were Christian students: 81 were Methodists and the remaining 292 belonged to other denominations of

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<sup>8</sup> Paragraph 11 of the counter affidavit.

<sup>9</sup> '1 R 4'.



Christianity<sup>10</sup>. Accordingly, Christians comprised 38% of the student population, with 8% being Methodists and 30% belonging to other denominations. Additionally, at that time, the school had approximately 5.8% Hindu students, 48% Buddhist students, and 7% Muslim students.

The number of students admitted to Grade 1 for the year 2020 is 175<sup>11</sup>. The Respondent stated that out of these 175 students, 25 were admitted based on their parents' service in operational areas, the Sri Lanka Police, or the three-Armed Forces.

The quota allocated to the Sri Lanka Police and the three-Armed Forces is categorised under Clause 13 of Circular No. 29/2019. According to Clause 13, a special concessionary quota is granted to the Sri Lanka Police and the three-Armed Forces, with five children to be admitted to each Grade 1 class under this scheme. The Respondents stated that there were five Grade 1 classes in total in the year 2020. Therefore, admitting 25 children based on this criterion is in accordance with Circular No. 29/2019.

The Petitioner claimed that based on the proportion existing at the time the school was vested to the Government, a total of 72 Christian students<sup>12</sup> should have been admitted to GHS, Kandy for the year 2020. However, in the written submission filed by the Petitioner, the learned Counsel submitted that out of the total 175 seats, 50% of them, amounting to 87 seats, should be allocated to the 'close proximity category' as per Clause 7.1 of the Circular. Furthermore, out of these 87 seats, 38%, which is 33 seats, should be allocated to Christian students. Specifically, according to Circular No. 29/2019, this allocation should consist of 8% Methodist students and 30% students of other denominations of Christianity, totalling 38% of Christian students.

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<sup>10</sup> '1R5' and 'P 10'.

<sup>11</sup> Paragraph 21 of the Petition and paragraph 12 (e) of the objections.

<sup>12</sup> Paragraph 22 of the Petition.

The Respondent states that the seats allocated to the 'close proximity' category was 75, which is 50% of 150<sup>13</sup>, a point which I concede. After admitting 25 children from the Sri Lanka Police and three Armed Forces, as per Clause 13 of Circular, the remaining seats for the categories mentioned under Clause 3 amount to only 150. Among these, 50% should be allocated to the 'close proximity' category<sup>14</sup>, resulting in 75 seats. Accordingly, 38%, or 28 students, should be admitted from the Christian community. Within this 38% of Christian students, 8% should be Methodists and 30% from other Christian denominations.

However, the Respondent contends that the school has consistently admitted only 8% Christian students, and therefore, admitted 6 students who met the criteria. Based on this established ratio, the Respondent argues that GHS Kandy does not qualify as a school admitting 10% or more Christian students, as per Clause 7.2.4 of Circular. Therefore, the Respondent asserts that GHS, Kandy is entitled to deduct marks for each school within the feeder area. However, this argument lacks merit since the correct ratio for admission of Christian students should have been 38% and not 8%.

As I have analysed above, it is evident that the Petitioner's application for the admission of their child to GHS, Kandy falls under the category of 'close proximity'<sup>15</sup>. Clause 4.2 of Circular, stipulates that in admitting students to a school vested to the state under the Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960 and Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961, available vacancies should be divided according to the specified categories and religions outlined in the Circular. Clause 9.1.1 further specifies that the interview panel of a school where religious basis is applicable must first seek applications according to religion before examining them<sup>16</sup>.

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<sup>13</sup> Paragraph 12 (g) of the objections.

<sup>14</sup> Clause 7.1 i.

<sup>15</sup> Clause 3.1 of the Circular No. 29/2019 ('1R1').

<sup>16</sup> Clause 4.2.

If there are fewer applicants than the number allocated to a specific religious sector, the remaining slots should be proportionally distributed among candidates from different sectors within the same religion. Should there be no candidates or insufficient numbers to fill the allotted slots, those vacancies should then be proportionally distributed among applicants from other religions.

### **Close Proximity Category**

Under this category, the aerial distance from the applicant's residence to the school is taken into consideration. If there are no other primary schools to which the *child could be admitted*, the applicant should receive the full 50 marks<sup>17</sup>. However, if there are other government schools closer to the residence, 5 marks should be deducted for each such school. According to the definition provided in Clause 7.2.4, schools to which the *child could be admitted* include those with the desired medium of study, whether they are girls', boys', or mixed schools, as applicable to the child. Additionally, these schools must admit 10% or more children from the religion to which the child belongs.

The Respondents argued that the Petitioner failed to establish residence based on the fact that the Petitioner only obtained 32 marks, falling short of the cutoff marks of 35% out of 100 as indicated in the documents marked '1R7'. However, as I have already observed regarding the deduction of marks for every school having a primary section within the feeder area, this decision is arbitrary by the interview panel since there is no rule in the Circular authorizing such action.

### **Cutoff mark**

While the Circular does provide provision for the panel of interview to shortlist applicants, it does not include any provision to impose a cutoff mark<sup>18</sup>. The cutoff mark cannot be set up in advance. The cutoff mark should be determined according to the slots available in the school for the relevant year.

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<sup>17</sup> Clause 7.2.4.

<sup>18</sup> Clause 9.3.

As per Clause 9.1.2 of Circular, the number of applicants called for the interview should be four times the number of available slots. Petitioner has successfully overcome this hurdle. Following the interview, a list of applicants, ranked from highest to lowest marks obtained, must be prepared, and the marks of the child whose name appears last among the available slots should serve as the cutoff mark.

Therefore, introducing a pass mark of 35% by the panel of interviewers through the document marked '1R7' is also arbitrary.

### **Allocation of Marks**

#### For the documents

The Petitioner was granted 12.5 marks out of 25 for registering their name in the electoral register, a main document according to the Circular<sup>19</sup>. Since only the Petitioner's name was registered, the interview panel followed the Circular's guidelines and awarded the allotted marks accordingly.

Under the category of other documents for proof of residence, 1.5 marks were allocated for water bills, electricity bills, and the agreement ('P 5(a)'). However, it's noted that the agreement P 5(a) does not fall within the same category as water and electricity bills. Instead, it could be considered under a distinct category where applicants could earn 5 marks if they possess a certificate issued by the Municipal Commissioner in their name.

The Learned Counsel for the Petitioner argued<sup>20</sup> that by presenting the agreement between the Petitioner's father and the Municipal Council of Kandy, the Petitioner is entitled to the marks allocated for such a document. However, the Circular explicitly states that if such a certificate is not in the name of the applicant, marks should not be awarded. Since 'P 5(a)' is in the name of the Petitioner's father, the Petitioner is not entitled to the 5 marks.

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<sup>19</sup> Clause 7.2.2.

<sup>20</sup> At paragraph 21 of the Written submission.

Furthermore, as mentioned earlier, while the Petitioner is entitled to 0.5 marks each for the electricity bills and water bills in accordance with Clause 7.2.1.1 of the Circular, the Petitioner is not eligible for the 0.5 marks assigned for the agreement 'P 5(a)'.

However, the Petitioner should have been awarded marks for presenting his birth certificate<sup>21</sup>, which serves as proof of residence. Additionally, the panel of interviewers granted an additional 3 marks under the additional documents category, as the Petitioner provided their national identity card<sup>22</sup>, marriage certificate<sup>23</sup>, child's birth certificate<sup>24</sup>, and bank passbook<sup>25</sup>. According to Clause 7.2.1.2, the Petitioner should have received 4 marks for these 4 documents but was awarded only 3 marks.

Consequently, the marks earned by the Petitioner for the documents should be 18, but only 17 marks were allotted.

#### For the proximity

The Petitioner's child received only 15 marks out of 50 for the proximity to the school<sup>26</sup>. The learned Counsel for the Petitioner argued that since GHS, Kandy is the only Christian girls' school admitting 10% or more Christian students as per the Circular, the Petitioner is entitled to the full 50 marks under the proximity category. However, the Respondents countered this by stating that there are seven other schools available for the Petitioner's child, namely Viharamahadevi, Rasingdev, Gothami, Mahamaya, Hemamali, Badi Ud Din, and President's College<sup>27</sup>. As I have already stated above in this judgment, the Petitioner denied that these schools admit 10% or more Christian children.

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<sup>21</sup> 'P 5(e).

<sup>22</sup> 'P 2'.

<sup>23</sup> 'P 5(c)'.

<sup>24</sup> 'P 1'.

<sup>25</sup> 'P 5(l)'.

<sup>26</sup> *Vide* 'P 6'.

<sup>27</sup> 'P6' and '1R3'.

Consequently, it was argued by the learned Counsel for the Petitioner that the Petitioner is entitled to the full 50 marks under the proximity category, increasing the total marks to sixty-seven, thus making his child eligible for admission to GHS, Kandy under the proximity category, subject to the religious quota.

Based on the analysis provided above, I concede that the Petitioner should have been awarded the full marks of 50 under the proximity to school category. Additionally, as per the previous analysis, they are entitled to 18 marks. Therefore, the Petitioner should have received a total of 68 marks, which exceeds the purported cutoff mark.

The Respondents have not disclosed the cutoff mark of the 150<sup>th</sup> child, the last one admitted to the school. The 50% of this number, which amounts to seventy-five, must be allocated to the proximity category as per Clause 7.1 of Circular. Out of these seventy-five seats, 38% of them, which is 28 seats, must be allocated to Christian students. Within this 38%, 30% of the seats, totalling 22, must be allocated to non-Methodist Christians like the Petitioner, while 8% should be allocated to Methodists, amounting to six seats.

The learned Deputy Solicitor General for the Respondent argued that as per Clause 6.2.6 the interview panel has the authority to make decisions regarding the admission of students to the school. However, it's important to note that the same Clause specifies that student admissions should be in accordance with the Circular. The discretion granted to the interview panel is intended for considering all relevant factors and arriving at suitable decisions, within the framework of the Circular. Therefore, in my opinion, the discretion afforded to the interview panel under Clause 6.2.6 is not unrestricted, but rather aimed at making and implementing appropriate decisions within the confines of the Circular. Thus, from my perspective, the interview panel has overstepped the bounds of discretion afforded to them by the circular, thereby abusing the discretion.

The learned Deputy Solicitor General cited the judgment of Aluwihare P.C., J. in the case of *R.M. Dayawathi v. The Principal, Girls' High School Kandy and three others*<sup>28</sup>, where His Lordship held that the religious quota is a special factor for consideration and not a separate tier of admission. Accordingly, it was argued that the Petitioner's application must be considered under the proximity to the school category.

As I have analysed above in this judgment, no doubt can exist the Petitioner's application falls under the proximity category<sup>29</sup>. The religious basis is not a separate category but a factor that should operate within each category, subject to the percentages that existed when the schools were vested to the government.

As outlined above in this judgment, the Petitioner's grievance is that his child was not admitted to GHS, Kandy under the proximity category, considering the religious quota.

In the case of *B. M. Asiri Tharanga and another v. the Principal, Kingswood College, Kandy and three others*<sup>30</sup> Her Ladyship Eva Wanasundara PC. J., observed as follows;

*'If the documents show that he is a Christian and if the number of Christian children already admitted are not above the allowed percentage (...) under the religious category, then that child has a right to be admitted under Clause 3.2 of the Circular.'*

*'No body can ignore the law provided by two statutes of Parliament, namely, Act No. 5 of 1960 and Act No. 9 of 1961. The school authorities and the Ministry of Education cannot turn a blind eye to the provisions of law already in force.'*

I am unable to find any statutory provision in the Assisted Schools and Training Colleges Act No. 5 of 1960, Act No. 9 of 1961, or the Assisted Schools and

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<sup>28</sup> S.C. Application No 459/17 (FR).

<sup>29</sup> Paragraph 2 of the Respondent's written submission.

<sup>30</sup> SC/FR application No. 335/2016.

Training Colleges (Amendment) Act No. 65 of 1961 that mandates maintaining the religious ratio that existed when the schools were vested with the government. Nevertheless, the Supreme Court has clearly emphasized that the provisions in the Circular regarding the religious basis must be implemented.

### **Conclusion**

In light of the analysis provide in this judgement, there is no evidence that the number of applicants exceeded the number of seats allotted to Christian students under the proximity category. As previously stated in this judgment, the number allotted to Christian students in GHS, Kandy should have been 28, whereas GHS, Kandy allocated only 6 seats. Therefore, under Clause 4.2 of Circular, the Petitioner's child is entitled to be admitted to GHS, Kandy as a matter of right. Consequently, this Court is inclined to grant the writ of *mandamus* prayed for in prayer (b) of the Petition directing the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to enrol the Petitioner's child Udayasooriyan Onelia Steffani to the Girls' High School, Kandy.

### **JUDGE OF THE COURT OF APPEAL**

**M. Ahsan. R. Marikar J.**

I Agree.

### **JUDGE OF THE COURT OF APPEAL**