

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  
Certiorari and Mandamus and in terms  
of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

R. R. Chaminda R. Samaradiwakara  
83/27/A, Ampitiya Road,  
Kandy.

On behalf of

T. K. Nellegoda Samaradiwakara.  
(Minor)

Petitioner

CA Writ Application: 170/22

Vs.

1. Shashikala Senadhira  
Principal,  
Mahamaya Girls School,  
Kandy.

2. K. W. D. Upali Chandrakumara  
Principal,

Kingswood College,  
Kandy.

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

- a. M. Nihal Ranasingha  
Secretary,  
Ministry of Education,  
Isurupaya, Battaramulla.

4. K. L. G. Kithsiri  
Director of National School,  
Isurupaya, Battaramulla.

5. Hon. Dr. Ramesh Pathirana  
Minister of Education,  
Ministry of Education  
Isurupaya, Battaramulla.

- a. Hon. Susil Premajayantha  
Minister of Education,  
Ministry of Education  
Isurupaya, Battaramulla.

6. Attorneys General  
Attorneys General Department,  
Colombo 12.

## **Respondents**

**Before** : Sobhitha Rajakaruna, J.  
Dhammika Ganepola, J.

**Counsel** : Lakshan Dias with Diani Gunaratna for the  
Petitioner.  
Mihiri de Alwis, SSC for the Respondents.

**Argued On** : 03.10.2023

**Written Submission** : Petitioner : 27.09.2023  
**tendered On** Respondents : 24.01.2024

**Decided On** : 31.01.2024

Dhammika Ganepola, J.

***Factual Matrix of the application***

The Petitioner is the father of a minor child named Thurya Kishali Nillegoda Samaradiwakara who sought to get his minor child admitted to Grade One of Mahamaya Girls' School, Kandy for the year 2022 under the category of "Children of residents in close proximity to the school". The Petitioner appeared before the Interview Board on 15.11.2021 and was awarded 79.4 marks out of 100 by the said Interview Board. Subsequently, the Principal and the members of the Interview Board had conducted the first site inspection for proof of residency on 21.12.2021 at around 5.45 p.m. The Petitioner states that he was present at home at that instance. However, the Principal and the members of the Interview Board had spoken with the Petitioner near the gate

and had obtained his signature on the relevant documents. On a later date, the Petitioner had been informed by the Interview Board that they came for an inspection of proof of residency again and no one was present at the residence. Subsequently, it had been revealed that the name of the Petitioner's child is not in the temporary enrolment name list under the "Children of residents in close proximity to the school" published on 28.01.2022 on the school notice board.

Then the Petitioner appealed to the School Appeal Board of Admission of Children to Grade One against the rejection of the enrolment of his child to the school. The members of the Appeal Board had come to the Petitioner's house on 25.02.2022 for investigation of proof of residency. When the Appeal Board visited the residence neither the Petitioner nor his wife had been present at home. The signature of the Petitioner's brother-in-law, Chandana Gamagedara, who was at home at the time had been obtained for a statement of ownership of the downstairs of the house bearing No.83/27/A, Ampitiya Road, Kandy by the members of the Appeal Board. However, the Petitioner states that his brother-in-law Chandana Gamagedara has transferred the said downstairs of the house to the Petitioner by the Deed of Gift bearing No.1801 dated 20.01.2017 marked P6b. It is submitted that the brother-in-law of the Petitioner owns the upstairs of the house.

Finally, the Petitioner's application for enrolment of the child to the Mahamaya Girls' School Kandy was rejected by the Appeals Board by its letter dated 18.03.2022 marked P18 on the basis that the Petitioner obtained insufficient marks which is less than the minimum marks required as the Petitioner failed to prove the residency in three site inspections. The Petitioner states that he has fulfilled all the requirements as per the relevant Circular and obtained sufficient marks at the interview. Therefore, the Petitioner claims that he had a legitimate expectation that his daughter would be admitted to Grade 01 of the Mahamaya Girls' School, Kandy under the category of "Children of residents in close proximity to the school". Accordingly, the Petitioner states that the 1<sup>st</sup> Respondent has violated her authority and has acted against the law by neglecting Guidelines/Instructions and Regulations regarding admission of children to Grade 01 in Government Schools (marked P3A) issued by the Ministry of Education. It is further claimed that the refusal to enroll the child to the school under such a category is

unreasonable, unlawful, and contrary to the rules of natural justice. Therefore, the Petitioner seeks an order in the nature of a Writ of Certiorari to quash the letter of rejection marked P18 and a Writ of Mandamus against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents requiring them to enroll his daughter to the Mahamaya Girls' School, Kandy under the category of Children of Residents in Close Proximity to the school.

The 1<sup>st</sup> to 5<sup>th</sup> Respondents contend that the application of the Petitioner was considered under the provisions of Circular 29/2019 marked P26 and the corresponding media statement marked R6 issued by the Secretary to the Ministry of Education. However, the Interview Board and the Board of Appeals identified many discrepancies in the Deed of Gift P6 on which the Petitioner claims title to the house. In terms of the said Circular P26 residence of the applicant should be established physically and also in written form. Therefore, a mere obtaining of 79.4 marks at the interview based on the documentation does not guarantee the admission of the child to school. Therefore, the Respondents claim that the decision to reject the impugned application of the Petitioner was legal and was in accordance with the principles of natural justice.

### ***Proof of Residence***

As per Section 9.3.3 of Circular P26 in the event where the residence in proximity to the school cannot be ascertained by a site inspection on three occasions, the name of the relevant child should be removed from the temporary list. The Interview Board had endeavoured to inspect the house on six subsequent occasions and had been unable to do so as the house was padlocked and since there was no response upon ringing the bell. When the Board of Appeals and Objections conducted the site inspection neither the Petitioner nor his wife nor their daughter were present at home. Further, on inspection of the house, it had been found that the room which was told to be the Petitioner's did not contain any clothes or shoes of the Petitioner nor his family members and only a few toys were present outside the room and near the main entrance. It had been found that the said residence had been advertised as a tourist hotel named 'Gamagedara Inn'. Under such circumstances, the residency of the Petitioner could not have been physically ascertained. Accordingly, the Respondent states that there were valid and

lawful grounds to refuse the application of the Petitioner in terms of Circular P26.

The Petitioner's application for the admission of the child to the Mahamaya Girls' School for the year 2022 has been submitted under the category of Children of Residents in Close Proximity to the School in terms of provisions of the 'Guidelines/Instructions and Regulations regarding Admission of Children to Grade I' issued by the Secretary to the Ministry of Education (P3A). The Petitioner's application has been considered under the provisions of the relevant Circular no. 29/2019 marked P26 issued by the Secretary to the Ministry of Education. As per Clause 7.2 of the aforementioned P26, it is mandatory for applicants who apply under the Close Proximity Category to reside at the place of residence stated in their application and they must provide proof that they are essentially residing in the aforementioned place of residence. Further real residency of the Applicant should be established psychically by way of site inspection and written form by examining the main document related to the residency. Said Clause 7.2 is as follows.

*“මෙම ගණය යටතේ පෝෂිත ප්‍රදේශය තුළ (4.7 උප වගන්තියට අනුව) පදිංචිව සිටින සියලු දෙනාටම අයදුම් කළ හැකිය. මෙහිදී අයදුම් කරන ස්ථානයේ පදිංචිව සිටීම සහ ඒ බව සනාථ කිරීම අනිවාර්ය වේ. අයදුම්කරුවන්ගේ සැබෑ පදිංචිය භේතුකව සනාථ කර ගැනීම මෙම වක්‍ර ලේඛනයේ 9.3.3. හි සඳහන් ස්ථානීය පරීක්ෂණය මගින් ද ලිඛිත ව සනාථ කර ගැනීම පදිංචියට අදාළ ප්‍රධාන ලේඛන මගින්ද සිදු කළ යුතුය.”*

It is also observed that under Clause 6.1(a) of the document marked P3A that it is compulsory under such category all persons residing within the feeder area should confirm the same physically and by submitting the relevant documents. Said Clause 6.1 (a) is as follows.

*“Under this category all persons residing within the feeder area (as per sub section 3.6 of this notice) are eligible to apply. Here, residing within the feeder area and confirming the same physically and with documents is compulsory.”*

Accordingly, the documentary proof as well as the physical inspection are essential in establishing the residency of the applicant. At the interview held on 15.11.2021, the Petitioner was granted 79.4 marks out of 100 by the Interview Board based on the documentation submitted by the Petitioner. It is apparent that mere documentary proof does not guarantee the admission of children under the Close Proximity category as per the above provisions of Circular no. 29/2019 marked P26.

### ***Documentary proof***

A few concerns have arisen at the interview in respect of the documentation. It is on the common ground that the Deed of Gift which the Petitioner claims title to the property upon included certain discrepancies/errors in respect of the registration, subject property, assessment number of the property, etc. The Petitioner has been given an opportunity to submit a Deed of Declaration clarifying the above defect and a letter from the respective Grama Niladari confirming the assessment number of the house by the Interview Board. The title of the Petitioner was questionable as the impugned property no.83/27A was leased out by Hitihamy Mudiyanseelage Udula Chandana Bandara Gamagedara transferor of Deed of Gift bearing no. 1801 dated 20.01.2017 to another person called D.A.R. Ramanayake in the year 2020 by Deed no.112 dated 28.12.2020 (P12). The Petitioner submitted a document marked P13 to support that the said Gamagedara has leased out only the upstairs of the property but not the downstairs. However, said document P13 is not a notarial executed document.

### ***Physical inspection***

The Interview Board arrived at the Petitioner's residence for the first time on 23.11.2021 at 4.45 p.m. The Respondents state that the Petitioner was away from the residence on that occasion, and he had arrived at the scene nearly one hour later at about 5.45 p.m. only upon being contacted. Until such time the Respondents had visited another location nearby for an inspection. However, following the arrival of the Petitioner, having considered the time, the members of the Interview Board had determined that it was too late for an inspection of the Petitioner's residence on that particular day. The members of the Interview Board had left the premises without inspecting the Petitioner's house on that occasion, but they had obtained the signature of the Petitioner to demonstrate the arrival of the Interview Board at the premises.

However, the Petitioner's narrative is quite contrary to that of the Respondents. The Petitioner denies the fact that he was not at home on such an occasion. The Petitioner states that his wife, daughter and himself were at the home on the occasion and he invited the Interview Board to inspect the house. Nevertheless, the Principal has said that they were very tired and

marked the presence of the Petitioner, wife and their daughter obtained the signature of the Petitioner. Nonetheless, both parties do not dispute the fact that the Interview Board was unable to inspect the house on that occasion in order to ascertain the genuineness of proof of residence. It must be observed at this juncture that a mere visit without inspecting the house would not satisfy the requirement of proof of residency in terms of Clause 7.2 of Circular No.29/2019 marked as P26 as well as Clause 6.1 of the document marked P3A.

As per document P8, even after the first visit, the Members of the Interview Board visited the Petitioner's house on another six occasions, that is on 01.12.2021, 03.12.2021, 29.12.2021, 16.01.2022, 18.01.2022 and on 19.01.2022. In all such occasions, the gate of the Petitioner's house had been locked with a padlock. Hence, the members of the Interview Board were unable to conduct a site inspection. Nevertheless, the Petitioner claims that during the entire month of December 2021 and the month of January 2022, the Petitioner and his family were at their alleged residence. The Petitioner states that, on some days the Petitioner was out of Kandy for his Visa processing works and on 29.12.2021 he went to Kurunegala to obtain medical treatments leaving his wife and children at his wife's mother's house at Pilimathalawa. The Petitioner further stated that on the occasions when he was not at home, his wife went to her mother's house to stay with their children because she could not attend to all the work on her own. It is not in dispute that the involvement of the Petitioner's day-to-day essential professional and personal commitments need to be attended to and could not be disturbed. However, the Petitioner's awareness of the impending visit for a site inspection at any time during that period must also be taken into consideration. Under such circumstances, a duty would be cast on the Petitioner to take all reasonable measures to be present at the residence in anticipation of such site inspection. Therefore, the Petitioner cannot be allowed to waive all responsibility to be present at the residence at all possible times during that period owing to his personal involvements and difficulties. It is also difficult for this Court to accept the claim that the Petitioner was away from his residence on all the 7 occasions the members of the Interview Board visited the Petitioner's house due to his professional and personal commitments.



Clause 9.3.3 of Circular No.29/2019(P26) stipulates that in the event that the residence of children under the category of 'Residence in proximity to the School' cannot be confirmed by a site inspection on three occasions, the name of the relevant child should be removed from the temporary list as well as supplementary list. It is noteworthy that the members of the Interview Board have arrived at a finding that the physical residence of the Petitioner is not proved after visiting the Petitioner's residence six times. Therefore, it appears that the Interview Board has made reasonable endeavours to confirm the residence of the Petitioner. Under such circumstances, a question arises as to whether a prudent personality would be able to come to a finding that the residency of the Petitioner is confirmed by physical site inspection.

The failure to prove satisfactorily the physical residence by the Petitioner at the site inspection has also contributed to the Interview Board's decision to deviate from the previously awarded score.

Based on the above reasons, I am of the view that the decision made by the Interview Board that the Petitioner has failed to establish his residence during the six site inspections is the only justifiable and reasonable decision that could be arrived at based on the available material and the circumstances.

### ***Legitimate expectation***

The Petitioner claims that he had a legitimate expectation that his child would be admitted to the Grade 1 of Mahamaya Girls' School, Kandy as he obtained sufficient marks at the interview. A legitimate expectation would only arise in the mind of the claimant wherever he has been led to understand that a certain procedure will be followed in reaching a decision. Both parties admit that the correct procedure to be followed in making the decision in this particular instance is set out in Circular No. 29/2019 (marked P26) and the "Guidelines/instructions and Regulations regarding admission of Children to Grade I" marked as P3A. It is observed that, as per Clauses 7.2 and 9.3.3 of Circular No.29/2019, the marks obtained at the interview are subject to the physical establishment of residence at the site inspection. Hence, the Petitioner cannot claim legitimate expectation merely based on the marks obtained at the first interview unless physical residence has been established.

It is important to notice that even at the occasion of the site inspection conducted by the Appeal Board on 25.02.2022, neither the Petitioner nor the family members of his family were present at the house. One Mr. Gamagedara, brother-in-law of the Petitioner who claimed to be the owner of the upper floor of the house had been present at such an instance. Further, on such occasion, the Appeals Board had been unable to find any clothes or shoes of the Petitioner or his family members at the location. However, a few toys had been found outside the premises and near the main entrance. In addition, it is worth noting that, upon the arrival of the Appeal Board at the premises, the residence had been under renovation as a tourist guest house. Under such circumstances, the Appeal Board has concluded that the residency of the Petitioner has not been established during the site inspection.

On the above circumstances, I am of the view that the selection process for admission had been conducted by the Interview Board and the Appeal Board complying with the relevant provisions of the Circular and the Respondents had had all the valid, reasonable and lawful grounds to reach at its impugned decision. Therefore, the Respondents do not owe any public duty towards the Petitioner to admit his daughter to Grade 01 of Mahamaya Girls' School Kandy as the Petitioner had failed to establish the residency of the Petitioner under the category of "Children of residents in close proximity to the school" during the physical site inspections. The Petitioner seeks a Writ of Mandamus to compel the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to enroll his child to the Mahamaya Girls' School Kandy. The foundation of a Writ of Mandamus is the existence of a legal right. A court generally should not issue a Writ of Mandamus to enforce a right which is not legal and is not based upon a public duty (see **Credit Information Bureau of Sri Lanka vs. M/S Jafferjee (Pvt) Limited 2005 1SLR 89**). Accordingly, I view that the Petitioner is not entitled to a Writ of Mandamus as prayed for in the prayer to Petition.

In the instant application, the Petitioner further seeks a Writ of Certiorari to quash the document marked P18. However, the manner in which the interview and the site inspection were conducted do not reflect any illegality, irrationality or procedural impropriety which would empower this Court to issue a Writ of Certiorari to review such determination. Therefore, the

Petitioner is not entitled to a Writ of Certiorari as prayed for in the prayer to the Petition.

***Conclusion***

In the circumstances and the reasons given above, the Application of the Petitioner is dismissed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal