

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

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

C.A. WRIT/ 205/2019

1. **Dilhani Gayathri Ranasinghe**

No. 01,

Jayapathirana Avenue,

Bauddhaloka Road,

Kurunegala.

2. **Hathishya Yehara Jayasinghe (minor)**

No. 01,

Jayapathirana Avenue,

Bauddhaloka Road,

Kurunegala.

PETITIONER

-Vs-

1. **The Secretary**

Ministry of Education,

“Isurupaya”,

Pelawatta,

Battaramulla.

2. **Director of Education (National Schools)**

Ministry of Education,

“Isurupaya”,
Pelawatta,
Battaramulla.

3. A.S.K. Jayalath

Provincial Director of Education - North
Western Province,
Provincial Department of Education,
Kandy Road,
Kurunegala.

4. Sirimewan Podinilame

Zonal Director of Education - Kurunegala,
Zonal Education Office,
Kandy Road,
Kurunegala.

5. B.C.S. Wijesinghe

The Principal,
Sri Sumangala National School,
Wariyapola.

6. T.W.A.K. Pathirana

Zonal Education Office,
Kandy Road,
Kurunegala.

7. B.H.K. Priyantha

Zonal Education Office,
Kandy Road,
Kurunegala.

8. Soma Rathnayake

Principal,
Maliyadeva Girls' College,
Kurunegala.

9. Hon. Attorney General

Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J (P/CA) & Sobhitha Rajakaruna, J.
COUNSEL	:	Randika Mudannayake for the Petitioners Anusha Fernando SDSG for the Respondents
Argued on	:	22.07.2020
Decided on	:	25.11.2020

A.H.M.D. Nawaz, J. (P/CA)

The instant application deals with a decision relating to the admission of a 5 year old child (the 2nd Petitioner) to Grade I of Maliyadeva Girls' College, Kurunegala for the academic year 2019.

The 1st Petitioner, who is the mother of the 2nd Petitioner, submitted an application under and in terms of the circular marked "P3" dated 31.05.2018 issued by the Ministry of Education, seeking admission of the 2nd Petitioner to Maliyadeva Girls' College, Kurunegala. The Petitioner contends that her application was made under the category "*Children of residents in close proximity to the school.*" Subsequent to an interview the Petitioners were notified that the 2nd Petitioner was ineligible to be

admitted to the aforementioned school due to the failure of the Petitioners to obtain marks above the relevant cut off mark.

This decision of the Interview Board was upheld upon appeal to an Appeals and Objections Board. Aggrieved by the said decisions, the Petitioners have appeared before this court seeking the issuance of mandates in the nature of writs of *certiorari* and *mandamus* respectively, to quash the said impugned decisions of the Respondents and to direct them to admit the 2nd Petitioner to Maliyadeva Girls' College, Kurunegala.

The crux of the argument relied on by the Petitioners is the fact that the Interview Board, when awarding marks under the category "*Main and Additional documentation in proof of residency*" (clause 7.2.1 in the circular marked "P3") failed to consider and award marks in respect of the title deeds of the 1st Petitioner's mother which proved ownership of the place of residence of the Petitioners prior to it being transferred to the 1st Petitioner, thereby depriving the Petitioners of the opportunity to obtain an aggregate mark that surpassed the cut off mark.

The Petitioners contended that the Interview Board awarded 6 marks in respect of the transfer deed marked "P6", which transferred ownership of the place of residence of the Petitioners from the 1st Petitioner's mother to the 1st Petitioner.

However the Petitioners alleged that they are entitled to another 18.4 marks under the category of "*Main and Additional documentation in proof of residency*" in respect of the deeds marked "P5 (a)" and "P5 (b)" executed in the name of the 1st Petitioner's mother. It is the failure of the Interview Board to take these deeds into consideration when awarding marks that is being impugned by the Petitioners.

The Petitioners alleged that the Respondents refused to so award marks on the basis that the circular marked "P3" did not dictate that marks could be assigned for both, documents establishing title of the applicant's parents prior to it being transferred to the applicant and documents establishing the title of the applicant thereafter.

The Respondents vehemently objected to the contention set forth by the Petitioners on the basis that the deeds marked “P5 (a)” and “P5 (b)” were never in fact submitted by the Petitioners at any stage of the interview process or appeal process.

In light of these facts I take the view that this court must in the present application answer two issues, namely, whether the Petitioners are entitled to be awarded an additional 18.4 marks for the deeds marked “P5 (a)” and “P5 (b)” and whether the Petitioners in fact submitted the said deeds during the interview process.

In order to answer the first question, reference must be made to the circular marked “P3” under which the 1st Petitioner tendered her application seeking admission of the 2nd Petitioner to Maliyadeva Girls’ College, Kurunegala. Clause 7.2.1 recognizes that two categories of documents, namely, “*main documents*” and “*additional documents*” can be submitted as proof of residence. When awarding marks under the category of “*main documents*” which includes title deeds, consideration must be given to two factors;

- (1) The person in whose benefit the documents have been executed.
(clause 7.2.1.1)
- (2) The period for which the relevant person was in possession of the property.

Clause 7.2.1.1 is further divided into two categories and is as follows:

- (i) Where documents are in the name of the applicant/ spouse of the applicant a maximum of 30 marks may be awarded.
- (ii) Where the documents are in the name of the parents of either the applicant/ spouse of the applicant a maximum of 23 marks maybe awarded.

The actual mark awarded will thus be calculated as a percentage of the aforementioned total marks depending on the time at which the relevant person

under whose name the documents exist had been executed. The percentages as against the time period are specifically set out in clause 7.2.1 of the circular marked “P3.”

Therefore, the Petitioners, having produced the deed marked “P6” as proof of residence under the category of “*main documents*” were awarded 6 marks based on the fact that;

1. the deed was in the name of the 1st Petitioner who was the applicant and;
2. the deed was executed on 14.07.2016 , entitling her to be awarded 20% of the total marks awarded for documents under the name of the applicant executed *less than two years and up to one year* prior to the closing date for applications.

This has not been disputed.

However the Petitioners claim entitlement to 18.4 marks in respect of the deeds ““P5 (a)” and “P5 (b)” executed in the name of the 1st Petitioner’s mother. This is on the basis that as per clause 7.2.1.1. the said deeds satisfy the following requirements:

1. the deeds were in the name of the applicant’s mother;
2. prior to the transfer of ownership to the applicant, the applicant’s mother held title for a period of *up to four years before to the closing date for applications* entitling the Petitioners to 80% of the total marks awarded to documents under the name of the parents of the applicant/applicant’s spouse.

At this juncture I refer to the illuminating decision of His Lordship the Chief Justice Jayantha Jayasuriya, PC J. in the case of *Jayasekara Arachchige Senudhi Methanga v. A.R.M.R. Herath and Others* (SC/FR/ 21/2019) (SC Minutes of 13.02.2020) where

in respect of the same circular as that marked “P3”, his Lordship enumerated the following:

“In my view assigning marks under the sub category “Ownership of the place of residence” coming under the heading “Documents establishing residence” must be considered in the backdrop of the chain of events that had taken place relating to the title of the property during the relevant period – the immediate past five year period from the closing date for applications. By the execution of the deed of gift in favour of the second petitioner in 2017 his right to occupy the premises at the given address was not diminished but on the contrary enhanced.”

Therefore answering the issue on whether marks should have been awarded to the deeds “P5 (a)” and “P5 (b)” I answer in the affirmative. There is no doubt that the Petitioners would have been entitled to the said marks.

However my attention now drifts to the compelling objection of the Respondents that the Petitioners failed to produce the said deeds at the Interview and Appeal Boards despite the claims made in this court. The failure to do so would undoubtedly have a detrimental impact on the case of the Petitioners. Keeping this in mind I now proceed to evaluate whether the Petitioners had in fact submitted the deeds marked “P5 (a)” and “P5 (b)” for consideration at any stage of the application process.

The document marked “8R1” contains the application of the 1st Petitioner together with the supporting documents dispatched by post to the school. Upon a perusal of these documents it is evident that the deeds marked “P5 (a)” and “P5 (b)” have not been submitted. The document marked “8R2” comprises the documents submitted by the 1st Petitioner before the Interview Board and while “P6” has been submitted none of the other deeds referred to in the Petition have been submitted. An affidavit by the grandmother of the 2nd Petitioner has been submitted and the said affidavit makes reference to a deed dated 12.12.2012 executed by H.G.L. Dayawansa based on which “P6” was executed however I see no correlation between the said reference

and the deeds marked “P5 (a)” and “P5 (b)” so as to entitle the Petitioners to be awarded marks for title deeds held under the name of the applicant’s parents.

It is also pertinent to note that in the letter marked “8R3” which is an appeal by the 1st Petitioner to the 8th Respondent (the Principal of Maliyadeva Girls’ College, Kurunegala) to reconsider her application, no reference is made whatsoever in respect of the failure of the Interview Board to award marks for the deeds marked “P5 (a)” and “P5 (b).”

Bearing in mind the sensitive nature of this application, this court proceeded to issue notice to the Respondents. However it was vigilant as to whether the deeds marked “P5 (a)” and “P5 (b)” had in fact been tendered by the Petitioners during the interview process. Upon requesting a clarification as to the matter at the support stage, a limited Affidavit was filed by the 8th Respondent confirming that the said deeds had not been submitted to the interview panel. The log entries maintained by the school Interview Board which were filed by the Petitioner subsequently also do not indicate that the aforementioned deeds had been submitted for consideration with the application.

In these circumstances this court recognizes a gross lack of diligence on the part of the Petitioners. I see no justifiable reasons to quash the decisions reached by the Interview Board and subsequently the Appeals and Objections Board in respect of admitting the 2nd Petitioner to Maliyadeva Girls’ College, Kurunegala. I therefore dismiss the present application for judicial review.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE COURT OF APPEAL