

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

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

CA-WRT-436-22

Nushad Mohamed Ibnu Mashood
20/3, Suduhampala
Kandy

Petitioner

Vs.

1. Minister of Education
Isurupaya
Battaramulla
2. Director
Zonal Education Office
Kandy
3. Attorney General
Attorney General's Department
Colombo 12
4. The Principal,
Kingswood College,
Kandy

Respondents

Before: N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: M.N. M. Najeeb for the Petitioners
Maithri Amarasinghe, SC for the State.

Argued On: 12.09.2024

Written

Submissions: 21.10.2024(by the Petitioner)

On 06.11.2024(by the Respondents)

Judgment On: 25.11.2024

JUDGMENT

B. Sasi Mahendran, J.

This is an application for Writ of Certiorari on the Respondents to quash the decision of the 4th Respondent who is the Principal of the Kingswood College Kandy, refusing to admit the Petitioner's son namely Mohamed Rushdi for 2022 Grade One admission to the Kingswood College, Kandy.

The Petitioner states that the Petitioner has submitted the application dated 12.07.2021 marked as P1 to the said school and his son faced the interview on 09.12.2021 where his son has obtained 85 marks. The Petitioner further avers that 10 marks were deducted for the two schools namely Rasindev School and Siddi Lebbe Maha Vidyalaya which are situated between the said school and the Petitioner's residence in term of Clause 07 of Circular No. 29/2019, and 05 marks for the title of deed. The Petitioner moreover states that another 05 marks were cut off for Madduma Bandara School based on the further search of the distance between the applied school and the Petitioner's residence.

The Petitioner states that, although the school selected the students who obtained up to the cut-off marks of 83, the Petitioner's son was not selected for the said school. Thereafter, the Petitioner appealed to the said school on 03.03.2022 on the basis of the

said rejection of the application. Although at the said appeal the Petitioner claimed that the rejection of the application of his son was unfair, the said appeal was rejected by the school by letter dated 20.05.2022 based on clauses 7.2.4, 7.1.5, and 9.3.3 of the said Circular.

The main contention of the Petitioner is that the non-selection of the Petitioner's son to the applied school is unfair and illegal.

On the other hand, the Respondents raise the objections that no marks have been arbitrarily deducted and that they have acted in accordance with Circular No. 29/2019. The Circular issued for the admission and the marking scheme provided in the said Circular are to facilitate proper school admission. It is true that, all parents want their children to be admitted to popular schools. However, we are mindful that, if this Court intervenes with the school admission where the rules are applicable to all the candidates, the proper administration of the school will be hindered, unless the Petitioner establishes the compelling reasons such as bias, or that the Interview Board has not followed the proper procedure laid down in the said Circular.

Further, the Petitioner states that, some other children who live further than the Petitioner have gained admission. It is true that, it is discrimination, however discrimination and denial of equal rights cannot be agitated in an application for writ of Certiorari. The matter comes under the action for fundamental rights which should be canvassed in the Supreme Court.

We are also mindful that when the Petitioner appealed to the Appeal Board, according to their decision which is marked as P3, they have given reasons for deducting the marks. For easy perusal, an excerpt of the said document is reproduced below:

“එහිදී චක්‍රලේඛයේ 7.2.4 වේදය අනුව පදිංචි ස්ථානයේ සිට පාසලට ආසන්නතාව සඳහා ලකුණු ප්‍රදානය කිරීමේදී අයදුම්කරුගේ අවබෝධය මත ප්‍රකාශ කළ තොරතුරු අනුව සහ සිතියම පෙන්වා අයදුම්කරුගේ අවබෝධය මත තහවුරු කළ ස්ථානයට අනුව සම්මුඛ පරීක්ෂණයේදී පාසල් දෙකක් සඳහා (රාසිංදෙව් හා සිද්ධි ලෙඛිබේ) ලකුණු 10ක් අඩු වී ඇත. (චක්‍රලේඛයේ 7.1.5 වේදය) සම්මුඛ පරීක්ෂණයෙන් පසුව චක්‍රලේඛයේ 9.3.3 වේදය අනුව ස්ථානීය පරීක්ෂණයෙන් පදිංචි ස්ථානයට අදාළ නිවැරදිම දුර ප්‍රමාණයන් ගණනය කිරීමේදී මද්දුම බණ්ඩාර විද්‍යාල සඳහා ද ලකුණු අඩුවන බව තහවුරු විය. මේ අනුව සම්මුඛ පරීක්ෂණයේදී ලබාදෙන ලද දළ තොරතුරු මත හිමි වූ

ලකුණු 85 න් ලකුණු පහක් අඩුවන බව පැහැදිලි කිරීම සඳහා දුරකථනයෙන් දැනුම් දී 2022.02.15 වන දින පෙ.ව. 9.00 ට පාසලට කැඳවන ලදී.

අයදුම්කරු අභියාචනා ලිපියේ සඳහන් කර ඇති පරිදි මද්දුම බණ්ඩාර සහ රංසිදේවි විදුහල් සඳහා දරුවන් ඇතුළත් කිරීමේදී ආගමික පදනම පිළිබඳ ගැටළුවක් මේ දක්වා ඇති වී නැත.”

I am of the view that the 4th Respondent has followed the instruction given by the said Circular which is applicable throughout the country. The writ which is a discretionary remedy is governed by the well-accepted principles. However, the Petitioner has failed to establish bias or failure to follow the procedure with regard to the admission to issue writs.

Thus, I see no merit in this application for writs of Certiorari for the reasons set out and dismiss the application.

No order for costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL