

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

In the matter of an Application for Orders
in the nature Writs of *Mandamus* under
and in terms of the provisions of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

CA (Writ) Application
No.133/2021

1. Sadew Wirajitha Akmeemana, (Minor)
No. 197, Samupakara Mawatha,
Piliyandala.

Appearing through his next friend
Akmeemana Madduma Acharige
Hemantha Saman Kumara (Father)
No. 197, Samupakara Mawatha,
Piliyandala.

2. Gamacharige Senuthi Sehansa (Minor)
No. 112/C, Vevalduwa Road, Yashodara
Mawatha, Dalugama, Kelaniya.

Appearing through her next friend
Gamacharige Sunil Shantha (Father)
No. 112/C, Vevalduwa Road, Yasodara
Mawatha, Dalugama, Kelaniya.

3. Tikkillage Methuki Bimandee
Chenulima (Minor) No. 141, Himbutana,
Mulleriyawa

Appearing though her next friend
Chaminda Subash Gunaratna (Father)
No. 141, Himbutana, Mulleriyawa

4. Leeniya Kumarage Ranumi Yehansa
Perera (Minor)
No. 77/1/IA, Indigolla, Gampaha.

Appearing through her next friend
Leeniya Kumarage Ravindra Kularatna
(Father)
No. 77/1/A, Indigolla, Gampaha.

5. Athugalage Kasuntha Kevin
Rathnaweera (Minor) No. 10/1/A, Y1,
Arawwala Road, Pannipitiya

Appearing through his next friend
Athugalage Sampath Janaka
Rathaweera, (Father)
No. 10/1/A, Y1, Arawwala Road,
Pannipitiya

6. Vihan Lithmira Ekanayake, (Minor)
No. 37, 1 Lane,
Thanayamgodella, Piliyandala
Appearing through his next friend
Rohana Amara Ekanayake (Father)
No. 37, 1 Lane, Thanayamgodella,
Piliyandala

7. Kekirideniyage Anavi Shamindika
(Minor)
No. 520, Jaya Mawatha, Dadigamuwa,

Appearing through her next friend
Kakirideniyage Asanka Nayanajith
Wijeratne (Father) No. 520, Jaya
Mawatha, Dadigamuwa,

8. Panagodage Dona Esanya
Minthuli, (Minor) No. 1046/G,
Pottuarawa Road, Malabe

Appearing through her next friend
Panagodage Don Siriwansha (Father)
No. 1046/G,
Pottuarawa Road, Malabe

9. Rathnayaka Mudiyansele Senula
Tisas Rathnayaka, (Minor)
No. 64/1, Wanatha Road,
Pamunuwa, Maharagama

Appearing through his next friend
Rathnayaka Mudiyansele Sujith
Rathnayaka (Father),
No. 64/1, Wanatha Road, Pamunuwa,
Maharagama.

10. Ilukpitiya Mudiyansele Senuja
Dewsara Ilukpitiya (Minor)
No. 42/27/87, Gamunupura, Yakkala.

Appearing through his next friend

Ilukpitiya Mudiyanseleage Chaminda
Priyanjana (Father)
No. 42/27/87, Gamunupura, Yakkala.

Petitioners

Vs.

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

1A. M.C. L. Fernando,
The Secretary,
Ministry of Education,
Isurupaya, Battaramulla.

Substituted 1A Respondent

2. B. Sanath Pujitha,
Commissioner General of Examinations,
Department of Examinations,
Pelawatta, Battaramulla.

2A. L. M. D. Dharmasena,
Commissioner General of Examinations,
Department of Examination,
Pelawatta, Battaramulla.

Substituted 2A Respondent

3. K. L. G. Kithsiri,
Director - National Schools,
Ministry of Education,
Isurupaya, Battaramulla.

4. Prof. G. L. Pieris
Minister of Education
Ministry of Education,
Isurupaya, Battaramulla.

4A. Susil Premajayantha,
Minister of Education,
Ministry of Education,
Isurupaya, Battaramulla.

Substituted 4A Respondent

5. P. Srilal Nonis
Western Provincial Director of
Education,
Western Provincial Department of
Education,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
6. The Provincial Director of Education of
the Central Province
Central Provincial Department of
Education,
No. AB42, Kandy
7. The Provincial Director of Education of
the Eastern Province,
Eastern Provincial Department of
Education,
Orr's Hill, Trincomalee.
8. The Provincial Director of Education of
the Northern Province
Northern Provincial Department of
Education,
Maruthanamadam, Chunnagam.
9. The Provincial Director of Education of
the Southern Province
Southern Provincial Department of
Education,
Upper Dickson Road, Galle.
10. The Provincial Director of Education of
the North Western Province,
North Western Provincial Department of
Education,
Kandy Road, Kurunegala.
11. The Provincial Director of Education of
North Central Province
North Central Provincial
Department of Education,
Anuradhapura.
12. Provincial Director of Education of the
Uva Province,

Uva Provincial Department of
Education,
Welagedara Road, Badulla.

13. The Provincial Director of Education of
the Sabaragamuwa Province,
Sabaragamuwa Provincial Department
of Education,
Getangama, Ratnapura.

14. The Secretary
Western Provincial Ministry of
Education,
Western Provincial Council,
No. 204, Denzil Kobbekaduwa Mawatha,
Battaramulla.

15. The Secretary, Provincial Ministry of
Education,
Central Provincial Council,
Pallekele, Kundasale.

16. The Secretary, Provincial Ministry of
Education,
Eastern Provincial Council,
Orr's Hill, Trincomalee

17. The Secretary,
Provincial Ministry of Education,
Northern Provincial Council,
Chemmany Road, Nallur, Jaffna.

18. The Secretary,
Southern Provincial Ministry of
Education,
Southern Provincial Council,
Lower Dickson Road, Galle.

19. The Secretary,
North Western Provincial Ministry of
Education,
North Western Provincial Council,
Provincial Office Complex, Kurunegala.

20. The Secretary,
North Central Provincial Ministry of
Education,
North Central Provincial Council,
Dharmapala Mawatha, Anuradhapura.

21. The Secretary,
Uva Provincial Ministry of Education,
Uva Provincial Council,
Kind's Street, Badulla

22. The Secretary,
Sabaragamuwa Provincial Ministry of
Education,
Sabaragamuwa Provincial Council,
New Town, Ratnapura.

Respondents

Before: M. T. MOHAMMED LAFFAR, J.
S. U. B. KARALLIYADDE, J.

Counsel: Shantha Jayawardena with Ms. Hiranya Damunupola and Ms.
Azra Basheer for the Petitioners.

Ms. Nayomi Kahawita S. C. for the Respondents.

Argued on: 18.05.2023

Written Submissions on: 28.08.2023 (by the Petitioners)

Decided on: 29.11.2023

MOHAMMED LAFFAR, J.

The Petitioners in this Application are seeking Orders in the nature of Writs of Mandamus pursuing several directions for *inter alia*, increasing vacancies for admission of students to government schools for Grade 6 for the year 2021, determination of cut-off marks of the 2020 Grade 5 scholarship examination for admission to Grade 6 of government schools for 2021 based on calculation of vacancies, additional intakes for Grade 6 and also Orders seeking publication and adoption of certain criteria.

This Application concerns the admission of students including the Petitioners, to Grade 6 classes based on their performance at the Grade 5 scholarship examination. It is submitted that the scholarship exam was introduced in 1948 with the objectives of providing an equal opportunity for every child to pursue their education and goals based on his or her performance and merit, and to admit talented students to better schools of higher grade with improved systems and infrastructure and also to provide bursaries to bright, but economically disadvantaged, students. The exam measures the ability and learning potential across 14 specified areas, and tests knowledge on the first language, mathematics, and environment. The exam is taken by students in all types of schools across different socioeconomic groups.

It is submitted by the Petitioners that in terms of Advanced Level subject streams and grades, government schools are classified as 1AB Super (Schools which have all A/L streams including Technology), 1AB (Schools which have all A/L streams except Technology), 1C (Schools which have no Science/Maths Streams), Type 2 (Schools which have Grades 1 - 11 only) and Type 3 (Schools which have Grades 1 - 5 only).

The 1st to 10th Petitioners were admitted to grade 1 in the year 2016 and sat for the Grade 5 Scholarship Examination conducted by the Department of Examinations on 12.10.2020 with the intention of entering/being admitted to better schools, whereas 9 of them were already in Type 1AB schools and other was in a Type 3 school. Based on their results (marked 'P1'), they submitted applications to their preferred schools through the Ministry of Education (marked 'P2') and were selected to other schools (marked 'P2') despite their primary/prime preferences due to higher cut-off marks for admission in those schools (marked 'P3').

The Petitioners submit that the determination of cut-off marks for a particular school depends on the number of slots available at a particular school for admission students to Grade 6 and overall performance of the students at the scholarship examination. The primary contention of the Petitioners is that

students have been admitted in excess of the permitted figures for each grade/class and that has led to reducing the number of slots for admission for Grade 6 which in turn reduces the number of students that are able to be admitted in a particular school through the Grade 5 scholarship examination, leading to an increase in the cut-off marks.

It is submitted by the Respondents that scholarship holders are admitted at Grade 6 based on vacancies in classrooms and all students that have applied to a particular school and scored marks equal or higher than the cut-off mark would be admitted to the school even if it exceeds the number of vacancies in specific classrooms.

The Petitioners submit that on 14.10.2015 the Cabinet of Ministers decided that from the year 2016 onwards, the number of students admitted to Grade 1 should be reduced by 01 student per year, with the limit for the 2016 admissions being 40 students until the number reaches 35, by the year 2020. The said cabinet decision was incorporated into the circulars governing admission to Grade 1 of government schools and has been communicated to principals and relevant officers. (marked 'P7'). According to Circular No.2008/37 (marked 'P9') dated 19.09.2009 issued by the Secretary to the Ministry of Education, the upper limit for the number of students in a class from Grade 6 to 11 is 45. They also submit that by a subsequent circular dated 19.02.2015 (marked 'P10'), issued by the Secretary of the Ministry of Education addressed to all principals of schools, admissions to government schools were only permitted at Grades 1,6 and 12. The Circular further states that the Secretary's discretion under Circular No. 2008/37 can only be exercised in extremely exceptional circumstances. Therefore, the Petitioners' position is that the maximum number of students per class of the year of Grade 1 admission for the academic year 2016 was 40 and thereafter there should not be any admission until grade 6. In some schools there are one or more additional classrooms from Grade 6 and upwards to accommodate students who qualify to be admitted to school on grade 5 scholarship results. In this context, the Petitioners submit that they had a legitimate expectation

that by 2021 there would be 5 vacancies in each class that existed from Grade 1, in addition to the 45 slots of each additional classroom of Grade 6 dedicated for taking in students who succeed in the Grade 5 scholarship examination.

However, the Petitioners have failed to sufficiently establish that there has been *ultra vires* or illegal, improper conduct with regard to admissions impacting the year 2021, particularly admissions of Grade 6. And also, whether the Petitioner would have been able to be admitted to such schools, if so. While it is established by the Annual Audit Report of the National Audit Office (marked 'P11') that an excessive number of students than the permitted number, have been admitted to certain schools in 2019, such finding regarding 2019 cannot be directly imputed or considered for the year 2021.

It is also contended by the Petitioners that while they have obtained high marks, the cut-off marks for the year 2020 is higher than previous years. This Court is of the view that the cut-off marks of a particular year cannot be compared with cut-off marks of the previous years to form any conclusive opinion, as the difficulty of the examination and capability of students vary from year to year amongst various other factors. Therefore, the position that cut-off marks of a particular year is higher or lower than another holds no material ground for reasoning unless all and several other relevant factors in that regard can be taken into consideration in addition to details on available slots.

For the above reasons, I dismiss the Application of the Petitioners and make no order as to the costs of this Application.

Application dismissed, No Costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL