

**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 Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA (Writ) Application No.122/2016

1. Adnan Abdul Rahaman
(by the next friend the 2nd Petitioner)
2. Mrs. Ameena Rahaman

Both of No. 485/8, Peradeniya Road, Kandy.

Petitioners

Vs.

1. Akila Viraj Kariyawasam,
Minister of Education,
“Isurupaya”, Pelawatta, Battaramulla.
2. W.M. Bandusena,
Secretary, Ministry of Education,
“Isurupaya”, Pelawatta, Battaramulla.
3. P.G.S. Bandara
Former Principal,
Kingswood College,
Peradeniya Road,
Kandy.

4. Mrs. Navaratne,
Former Vice Principal,
Kingswood College,
Peradeniya Road,
Kandy.
5. R.D.M.P. Weerathunga,
Principal,
Kingswood College,
Peradeniya Road, Kandy.

Respondents

Before: Deepali Wijesundera, J
Arjuna Obeyesekere, J

Counsel: Ms. Faisza Mustapha Markar for the Petitioner

Vikum De Abrew, Senior Deputy Solicitor General for the 4th and 5th Respondents

Argued on: 11th February 2019

Written Submissions: Tendered on behalf of the Petitioner on 3rd September 2018 and 5th December 2018

Tendered on behalf of the 4th and 5th Respondents on 4th October 2018

Decided on: 5th April 2019

Arjuna Obeyesekere, J

The Petitioner has filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision of the 3rd Respondent to reject the application submitted by the 2nd Petitioner, seeking admission of her son, the 1st Petitioner to Grade 1 of Kingswood College, Kandy;¹
- b) A Writ of Mandamus directing the 5th Respondent to admit the 1st Petitioner to Grade 1 of Kingswood College, Kandy;
- c) As an alternative to the aforementioned Writ of Mandamus, a Writ of Mandamus directing the 5th Respondent to determine the application submitted by the 2nd Petitioner in terms of the Circular annexed to the petition marked 'P2'.

The facts of this matter very briefly are as follows.

The 1st Petitioner, upon completing 5 years of age in April 2015, became eligible for admission to Grade 1 of a Government School in 2016. Admission of students to Grade 1 of Government Schools for the year 2016 was governed by Circular No: 23/2013 issued by the Ministry of Education. According to the said Circular, which

¹ A copy of the letter dated 19th August 2015, containing the said decision has been annexed to the petition marked 'P6'.

has been annexed to the petition marked 'P2',² the maximum number of students that could be admitted to a single class for the year 2016 was limited to 35.³ Of this 35, a maximum of 5 places were reserved for the children of those serving in the Armed Forces and the Police Force. After making provision for the said reservation, 50% of the vacancies were to be allocated to those coming under the category of 'Children of residents in close proximity to the school' (the said category).⁴ To be eligible to apply under the said category, the basic requirement was that the parents must be resident within the administrative district where the school is situated.⁵

The 2nd Petitioner states that premises bearing assessment No. 485/8, Peradeniya Road, Kandy belongs to her mother and that she has been resident at the said address since 2010. There is no dispute between the parties that the 2nd Petitioner is resident at the said address and that she was thus eligible to apply under the said category.

The 2nd Petitioner had accordingly submitted an application seeking admission of the 1st Petitioner to Grade 1 of Kingswood College, Kandy for the year 2016, under the said category. A copy of the said application has been annexed to the petition marked 'P4'.

² 'P2' has been amended by Circular No. 23/2013(II) dated 30th June 2015, marked 'R1' and Circular No. 34/2015 dated 29th December 2015, marked 'R3'.

³ This was subsequently increased to 40 by the amendments to the Circular 'P2'.

⁴ පාකලට ආකන්න පදිංචිරුවන්ගේ දරුවන්. The balance vacancies are distributed among five other categories specified in 'P2'.

⁵ Section 3.5 of Circular 'P2'.

The Circular 'P2' required an interview to be held where the number of applications exceeds the number of vacancies.⁶ The Respondents state that the total number of applications that were received seeking admission to Grade 1 of Kingswood College was 1150 of which 747 applications had been filed under the said category. The Respondents state further that the total number of vacancies available at Kingswood College, Kandy under the said category was 70 and therefore four times of that number, i.e. 280 applicants had to be selected to be called for the interview.⁷ For this purpose, Kingswood College had appointed a panel of teachers to process the applications that were received including the application submitted by the 2nd Petitioner.

The Circular 'P2' sets out the marks that are to be allotted to each applicant, with the maximum marks that could be allotted being 100. The said panel had allotted 75 marks to the 2nd Petitioner and, as the minimum mark required to be eligible to be called for the interview was 78, the 2nd Petitioner was not eligible to be called for the interview. Accordingly, the application submitted by the 2nd Petitioner had been rejected. This has been conveyed to the 2nd Petitioner by the 3rd Respondent, who was the then Principal of Kingswood College, Kandy, by letter dated 19th August 2015, annexed to the petition marked 'P6'. This is the letter that the Petitioner is seeking to quash in these proceedings, on the basis that the decision to reject the application 'P4' is both illegal and irrational.

⁶ Section 5.2 of 'P2'.

⁷ Clause 8.1(b) of 'P2' reads as follows— "(අ) අයදුම්පත් ලැබූ ලේඛනගත කිරීමෙන් පසු ව සම්මුඛ පරික්ෂණ මණ්ඩල වහින් අයදුම්පත්වල සඳහන් තොරතුරු පරික්ෂා කර අයදුම්පත්වල ලකුණු සටහන් කළ යුතුය. වයේ ලබා දෙන ලකුණු අනුව ප්‍රමුඛතා ලේඛන සකස් කර එම ලේඛනයේ ඉහළ කිවිත සම්මුඛ පරික්ෂණය මගින් ඇතුළත් කළ හැකි සංඛ්‍යාව මෙහේ කිවි ගුණයක් වන ශේ සම්මුඛ පරික්ෂණය සඳහා භාජු අයගේ නාම ලේඛනයක් පළියෙල කර ගත යුතු ය."

It is admitted between the parties that the Petitioner was allotted 75 marks under the said category in the following manner:

Sub-Category No. in the Circular	Description of the Sub-Category	Maximum marks	Marks allotted to the 2nd Petitioner
6.1(I)	Number of years that the applicants name has been included in the Electoral Register ⁸	35	35
6.1(II)	Documents in proof of the ownership of residence ⁹	10	06
6.1(III)	Additional documents to prove residence ¹⁰	05	04
6.1(IV)	Number of schools located closer to the place of residence than the school applied ¹¹	50	30
	Total	100	75

There is no dispute among the parties with regard to the marks allotted under sub-categories 6.1(I), 6.1(II) and 6.1(III) . The dispute in this case relates to the marks allotted to the 2nd Petitioner under Sub-category 6.1(IV), which reads as follows:

⁸ පදිංචිය සහාව කිරීම සඳහා පන්දුකිම නාමලේඛනයේ මියාපදිංචිය

⁹ පදිංචිය තහවුරු කරන ලේඛන

¹⁰ පදිංචිය තහවුරු කරන අධිරෝක ලේඛන

¹¹ පදිංචි ස්ථානයේ සිට පාකුවට ඇති ආක්ෂණනය

"IV. පදිංචි ස්වාධීය සිට පාසලට ඇති ආකන්තතාව

පදිංචිය සහාරි වන්නේ නම් පමණක් දැනට පදිංචි ස්වාධීය සිට ඉල්ලම් කරනු ලබන පාසලට වඩා ආකන්තයේ අදාළ දරුවට ඇතුළත් විමට හැකි ප්‍රවීති අංශ සහිත වෙනත් රුපයේ පාසල් තොමොන්නේ නම් උපරිම ලකුණු වඩා දිය යුතුය. ඉල්ලම් කරන පාසලට වඩා පදිංචි ස්වාධීයට ආකන්තයේ දරුවට ඇතුළත් විමට හැකි ප්‍රවීති අංශ සමග වෙනත් රුපයේ පාසල් පිහිටා ඇත්තම් උපරිම ලකුණු ප්‍රමාණයෙන් ආකන්ත වික පාසලක් වෙනුවෙන් ලකුණු 05 බැංකින් අඩු කළ යුතු ය."

Thus, in terms of the above Section, five marks are deducted for each school that is closer to the applicants residence than the school applied for. The fact that the 2nd Petitioner has been allotted thirty marks means that there are four schools that are situated closer to the Petitioner's residence than Kingswood College. However, according to the Petitioners, there are only two schools that are situated closer to their residence than Kingswood College, namely Rasindev Vidyalaya and Siddhi Lebbe Vidyalaya. While the distance from the 2nd Petitioner's residence to Kingswood College is 1.12km, it is not in dispute that the distance to Siddhi Lebbe Vidyalaya is 0.17km and the distance to Rasindev Vidyalaya is 0.82km. If the above position of the Petitioners is correct, only 10 marks could have been deducted under Sub-category 6.1(IV). The 2nd Petitioner would then have been entitled to receive an aggregate of 85 marks and therefore, would have been eligible to have been called for the interview.

This Court will now consider the position of the Respondents on this matter. Paragraph 5 of the application 'P4', required the applicant to declare the schools that are situated closer to the residence of the applicant than the school applied for. This Court observes that the 2nd Petitioner had failed to provide the said

details in the application submitted by her and that this failure led to the confusion that this Court is required to address. The Respondents have submitted an affidavit of Mr. J.S. Mangala Wellangiriya, a teacher at Kingswood College who was involved in the initial examination and selection of applications, marked 'R5'. In the said affidavit, he had explained the procedure followed to determine the schools that are situated closer to the residence of the applicant than the school applied for, when applicants fail to provide the relevant details, in the following manner:

"02 අයදුමකරු හෝ අයදුමකාරිය විසින් ඉල්ලුම්පතුවේ අංක 05 කොටස සම්පූර්ණ කර නොමැති අවස්ථාවල පහත සඳහන් ග්‍රාමසේවක වසන්වලට අයත් අයදුමකරුවන්ගේ පාඨල් අඩුකිරීම සිදුකරන ලදී.

කටුකැලේ ග්‍රාමසේවක වසම - ලුම්බිනි ව්‍යුහල, රාජකීය ව්‍යුහල, රාජිංදේව ව්‍යුහල,
සිල්වස්ටර් ව්‍යුහල, සුමංගල ව්‍යුහල, සිද්ධිලෙඛිබේ
ව්‍යුහල

03. තවද මෙම අයදුමකාරිය පදිංචි කටුකැලේ වසමට අයත් පහත සඳහන් ව්‍යුහල්වලට ලක්නු අඩුකිරීම සිදු කරන ලදී. - රාජිංදේව ව්‍යුහල, සිල්වස්ටර් ව්‍යුහල, සුමංගල
ව්‍යුහල, සිද්ධිලෙඛිබේ ව්‍යුහල

04. එකි ව්‍යුහල් කිංස්ට්‍රුච් වද්‍යාලයට වඩා ආසන්නව ඇති බව සඳහන් කරමි."

Thus, even though the 2nd Petitioner has failed to provide the necessary details in paragraph 5 of 'P4', there is no automatic deduction of marks for all schools situated within a particular Grama Niladhari area. Instead, a conscious decision has been taken by the Respondents that of the six schools that are situated within the relevant Grama Niladhari division, four of the said schools are closer to the

Petitioners' residence than Kingswood College, namely Siddhi Lebbe Vidyalaya, Rasindev Vidyalaya, St Sylvesters College and Sumangala College and that, five marks should be deducted for each of the said schools. This is the basis on which the Respondents state that the 2nd Petitioner was allotted 30 marks under Sub-category 6.1(IV). Accordingly, the aggregate marks secured by the 2nd Petitioner (75) was below the 78 marks required to be called for the interview. The Respondents state that the letter marked 'P6' was accordingly sent to the 2nd Petitioner informing her that, "බබ ඉදිරිපත් කර ඇති මිලේ ලේඛන මත උපයාගත් ලකුණු ප්‍රමාණය සම්මුඛ පරිස්ථිතියට කැඳවීමට තිරණය වූ අවම ලකුණු ප්‍රමාණයට වඩා අඩුවීම."

The position of the Respondents that St Sylvester's College and Sumangala College are situated closer to the Petitioners' residence than Kingswood College has been disputed by the Petitioners who have produced a certificate from the Grama Niladhari of 'Katukelle – 256' confirming that Kingswood College is in fact situated closer to the residence of the Petitioner than St Sylvester's College and Sumangala College.¹² Under normal circumstances, this would have been a disputed question of fact, which this Court could not have gone into. However, this Court being of the view that determining the distance between the residence of an applicant and a particular school would not be a difficult task, especially since such information should be available to the authorities in order to assess each application carefully and in view of the unequivocal statement of Mr. Mangala Wellangiriya in item 4 of 'R5', requested the learned Counsel for both parties to inform this Court the exact distance from the Petitioners' residence to Kingswood College Kandy, St Sylvester's College and Sumangala College.

¹² Document marked 'X1' annexed to the Counter Affidavit.

According to the motion dated 29th March 2019, the Petitioners had submitted that the distance to the said schools is 1.12km, 2.2km and 2.2km from their residence, respectively. By a motion dated 2nd April 2019, the Respondents have submitted a letter dated 26th March 2019 sent by the Acting Principal of Kingswood College, Kandy, which reads as follows:

“පෙන්සම්කරුගේ (පෙන්සම්කාරීය වය යුතුය) තිවසේ සිට කිංස්ට්‍රූච් වද්‍යාලය සාහ්ත සිල්වේස්තර හා සුමංගල වද්‍යාලයට ඇති නිය්විත දුර වමසා ඇත . මට පෙරද මෙම දුර ප්‍රමාණයන් නිශ්චය කර ගැනීම සඳහා දිස්ත්‍රික් මධින්දෝරු අධිකාරී වෙතින් වමසන ලද අතර අධිකරණයෙන් ඉල්ලීමක් කරන්නේ හම පමණක් එම දුර ප්‍රමාණ නිවැරදිව ලබා දිය හැකි බවද වෙනත් පාර්ශවයකට එම තොරතුරු ලබා දිය නොහැකි බවද දන්වා ඇත.”

If the Respondents are not in a position even as at today to provide the relevant distances, there does not appear to be a basis for the panel of teachers who examined the applications to have determined that the Petitioners' residence is situated closer to St Sylvester's College and Sumangala College than Kingswood College. As the deduction of five marks each for St Sylvester's College and Sumangala College cannot be justified by the Respondents, the 2nd Petitioner was entitled to receive 40 marks under category 6.1(IV). This Court therefore is in agreement with the learned Counsel for the Petitioners that the 2nd Petitioner was entitled to be allotted 85 marks by the panel of teachers who examined the application of the 2nd Petitioner and that the 2nd Petitioner would have been eligible to have been called for the interview.

This Court must observe that acting on a letter written by the 2nd Petitioner, the Director of National Schools, Ministry of Education had written the following

letter to the then Principal of Kingswood College on 16th September 2015, just a day after the interviews commenced:¹³

“වමගින් අයදුම්කරුගේ අයදුම්පත සම්මුඛ පරික්ෂණයට කැදුවමට තිරණය වූ අවම ලකුණු ප්‍රමාණයට වඩා අඩු වීම නිසා ඔබ විසින් ප්‍රතික්ෂේප කර ඇති නමුත් ලකුණු 100 ක් ලබා ගැනීමට ප්‍රමාණවත් ලිපි ලේඛන ඔබ වෙත ඉදිරිපත් කර ඇති බවත් දැන්වා ඇත. එබැවෙන් නැවත වීම අයදුම්පත පිළිබඳ සලකා බලා අදාළ අයදුම්කරුට හිමි වය යුතු ලකුණු පිළිබඳව මට ද පිටපත් සහිතව අයදුම්කරු දැනුවත් කරන මෙන් කාරුණිකව දැන්වා සිටම.”

Although the Respondents admit the receipt of this letter, no explanation has been offered as to what steps were taken on this letter. This Court observes that if the 3rd Respondent had at least inquired into this matter upon receipt of 'P8', the present dispute may not have arisen.

In the above circumstances, this Court holds that the decision by the Respondents to reject the application of the 2nd Petitioner has been arrived at on a basis which is not supported by the material that was available to the Respondents. The said decision which was communicated by 'P6' deprived the 2nd Petitioner of facing the interview. The said decision is therefore unreasonable and irrational and is liable to be quashed by a Writ of Certiorari. In view of this finding, the consequential step would be for this Court to issue a Writ of Mandamus directing the Respondents to determine the application submitted by the 2nd Petitioner in terms of the Circular annexed to the petition marked 'P2'.

¹³ The said letter has been annexed to the petition marked 'P8'. The Respondents have admitted the receipt of this letter and have confirmed that the interviews which commenced on 15th September 2015 had been concluded only on 22nd September 2015.

However, the learned Senior Deputy Solicitor General informed this Court that even by the time this application was filed, the interviews of those who were short listed had been concluded and the successful candidates had been admitted to Grade 1. He submitted further that the minimum cut off mark for admission after the interviews was 89 and, assuming the Petitioners' argument regarding St Sylvester's College and Sumangala College is accepted, the Petitioner was only eligible to have received 85 marks and the 1st Petitioner would not have secured admission to Grade 1 of Kingswood College, even if the 2nd Petitioner was called for the interview. In other words, the submission of the learned Senior Deputy Solicitor General was that it would have been futile for this Court to have quashed 'P6' under these circumstances and to have issued the Writ of Mandamus directing the Respondents to determine the application submitted by the 2nd Petitioner in terms of the Circular annexed to the petition marked 'P2'.

The learned Counsel for the Petitioner however submitted that the 2nd Petitioner was eligible to receive a minimum of 90 marks for the reason that even though Siddhi Lebbe Vidyalaya and Rasindev Vidyalaya are situated closer than Kingswood College, marks cannot be deducted for Rasindev Vidyalaya as the subject of Islam is not being taught at the said school. In support of this argument, the learned Counsel for the Petitioner relied on paragraph 2 of Section 6.1(IV), which reads as follows:

"අදාළ දුරුවාට ඇතුළත්වමට හැකි ප්‍රාථමික අංශ සහිත වෙනත් රුපයේ පාසල් යනුවෙන් අදහස් කරන්නේ වම දුරුවාට ඇතුළත් වමට අවශ්‍ය මාධ්‍ය සහිත පාසලක් ද, තමන්ට

අදාළ ගැනැනු හෝ පිරීම පාසලක් ද, මෙය පාසලක් ද, යන්න සහ අදාළ පමණ අයිති ආගම වෙනුවෙන් 10% හෝ රේට වැඩි ප්‍රතිශතයක් ඇතුළත් කර ගන්නා රුපයේ පාසල් වේ.”

The Petitioners have filed with their written submissions a letter dated 30th July 2018, issued by the Principal of Rasindev Vidyalaya confirming that Islam is not being taught at the said school. With regard to the teaching of Islam at Rasindev Vidyalaya, the Respondents position is as follows:

“අයම පාසල් ව්‍යය මාලාවේ 1-11 ලේඛිවල හර ව්‍යයක් වශයෙන් ඉගැන්වය යුතුයි. වහෙන් මෙය පාසල් වල පවතින සම්පත් වල ස්වභාවය අනුව ගිහෙළයා අදාළත ආගමම නොවය හැකි අවස්ථාවන්ද ඇත . උදාහරණ ලෙස මෙම වැද්‍යාලයේ ඉස්ලම් ආගම ඉගැන්වම සඳහා ස්වීර ගුරුපූත්‍රෙකු නොමැති අතර පාසල් සාම්බන්ධ සම්බන්ධයෙන් ගෙවීමක් කර සේවයේ යොදවනු ලැබූ ඉස්ලම් මහතෝක් ඉස්ලම් ආගම ඉගැන්වමේ යෙදී සිට. ඔහු සේවයෙන් ඉවත් වුවහොත් හෝ ඉවත් කිරීමට සිදුවුවහොත් ඉස්ලම් ආගම ඉගැන්වම සඳහා අයෙකු වැද්‍යාලයේ නොමැති වේ. තවද මේ වන වටත් වැද්‍යාලයේ ඉගැනුම ලබන කින්ද ආගමික ගිහෙළයන් වෙනුවෙන් හින්දු ආගම ඉගැන්වම සඳහා කිසිදු අයෙකු නොමැති. ඔවුන් අ.පො.ස. සා.පොල සඳහා පෙනී සිටිනුයේ ද තමා අදාළත ආගම නොව වැද්‍යාලයේ ද හදුරුණ ආගම ව්‍යයටයි.”

It is thus clear to this Court that there is no satisfactory arrangement in place at Rasindev Vidyalaya with regard to the teaching of Islam, thereby raising the issue whether it is fair to deduct five marks for Rasindev Vidyalaya when the religion of the applicant is not being taught in a satisfactory manner.

Upon a plain reading of paragraph 2 of Section 6.1(IV), it is clear to this Court that if five marks are to be deducted for Rasindev Vidyalaya, the number of Muslim students belonging to the Islamic faith, that are admitted to Rasindev Vidyalaya must be in excess of 10% of the total number of students that are admitted. The

Respondents, by their motion dated 2nd April 2019 have submitted that the student population at Rasindev Vidyalaya comprises of 89 Sinhala students, 65 Tamil students and 10 Muslim students. The Respondents have submitted further that only 1 Muslim student has been admitted to Year 1 in 2015 as well as in 2016.

The learned Senior Deputy Solicitor General submitted that paragraph 2 of Section 6.1(IV) applies only with regard to Assisted Schools where there might be restrictions on admission on the basis of religion in order to maintain the ratios that existed at the time the said schools were vested in the State. The said paragraph however does not contain any reference to Assisted Schools nor does it specify that it is inapplicable when an application is being made to an Assisted School¹⁴ or that for marks to be deducted, the school which is situated closer than the school applied for should be an Assisted School. This Court is therefore of the view that the above paragraph applied to the Petitioners. Accordingly, this Court holds that in terms of Section 6.1(IV) of 'P2', five marks could not have been deducted for Rasindev Vidyalaya.

The result is that had the 2nd Petitioner been called for the interview, the 2nd Petitioner would have been eligible to receive 90 marks. The Respondents have produced the marks sheet of those who have been selected¹⁵ and this Court observes that 8 students who obtained 89 marks had been admitted to

¹⁴ The Respondents have submitted in paragraph 9(b) of the Statement of Objections that Kingswood College is 'not a school where the student admission/enrolment to Year one is determined on any religion/ethnicity quota basis'.

¹⁵ The list containing the names of the students who have been admitted under this category has been produced by the Respondents marked 'R8'.

Kingswood College in 2016. This means that the 1st Petitioner, by virtue of having been eligible to receive 90 marks, would have secured admission to Grade 1 of Kingswood College, Kandy for the year 2016.

The learned Senior Deputy Solicitor General has submitted that the Petitioners have been guilty of laches in that this application has been filed in April 2016 whereas the impugned decision had been made in August 2015. It has been consistently held by our Courts that the discretion vested in this Court when considering whether to issue a Writ will not be exercised where the petitioners have been guilty of delay and where that delay has not been explained. In this instance, there is a delay but the Petitioners have sought to explain the delay on the basis that they were waiting to find out the 'cut off' mark before proceeding to file action. The Respondents have not denied this position of the Petitioners and have stated that they are unaware of the said averment. However, the date on which the 'cut off' mark at the interview was made public was within the knowledge of the Respondents and thus, if the position of the Petitioners was incorrect, the Respondents could have contradicted same. In any event, as the maximum marks that the Petitioners claim they were entitled to was 91, it would not be unjustifiable to ascertain the cut off mark before resorting to litigation. To have done otherwise would have been an exercise in vain. Thus, this Court accepts the explanation given by the Petitioners for the delay. In any event, delay does not matter in view of the finding of this Court that the decision of the Respondents to have deprived the 2nd Petitioner the opportunity of facing an interview was irrational and unreasonable.

The Petitioners have also submitted in the counter affidavit that S.S.M. Sabrath who lives further away from the Petitioner had been selected to Kingswood College, in the year 2017 without any deductions of marks. The Respondents have contradicted this position and stated that 10 marks had in fact been deducted from the maximum 50 and that Sabrath was only placed in the reserve list. On this basis, it has been submitted by the Respondents that the Petitioners have misrepresented material facts and is therefore not entitled to a discretionary remedy such as a Writ of Certiorari or Mandamus. This Court observes that the said assertion was made by the Petitioners in the counter affidavit and that too, only to demonstrate the unfairness in the selection process. It was not the basis on which the Petitioners sought relief in this application. Hence, even if the claim of the Respondents is correct, that would not warrant a dismissal of this application. This Court observes further that the Respondents have by their motion of 2nd April 2019 disclosed that marks have been deducted in respect of Sabrath on account of Rasindev Vidyalaya and Siddi Lebbe Vidyalaya only. What is significant in this statement is that marks have not been deducted from Sabrath for four schools, as was done for the Petitioners, thereby confirming that the decision of the Respondents to deduct marks for St Sylvester's College and Sumangala College and the consequential decision not to call the 2nd Petitioner for the interview was irrational and unreasonable.

Having taken into consideration all of the above circumstances, this Court issues the Writ of Certiorari prayed for in paragraph (c) of the petition quashing the decision contained in 'P6' and the Writ of Mandamus prayed for in paragraph (d) of the petition on the 5th Respondent to admit the 1st Petitioner to Grade 4 of

Kingswood College, Kandy provided the 1st Petitioner is already in that grade in the school that the 1st Petitioner is presently studying at. This Court makes no order with regard to costs.

Judge of the Court of Appeal

Deepali Wijesundera, J

I agree

Judge of the Court of Appeal