

**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, Mandamus and Prohibition under Article 140 of the Constitution of the Republic of Sri Lanka.*

CA Writ Application No.559/2024

1. Rev. Baddewela Sumanasiri,  
The Principal and Viharadhipathi,  
Sri Devarakkhitha Pirivena,  
Sri Sudharshanarama Temple,  
Punahela,  
Bulathkohupitiya,  
Kegalle.
2. Ven. Hapuwita Gnanarathana Chief Thero,  
The Manager,  
Sri Devarakkhitha Pirivena,  
Sri Sudharshanarama Temple,  
Punahela,  
Bulathkohupitiya,  
Kegalle.
3. Ven. Watagala Sumanarathana Chief Thero,  
Former Temporary Manager,  
Sri Devarakkhitha Pirivena,  
Sri Sudharshanarama Temple,  
Punahela,  
Bulathkohupitiya  
Kegalle.

**PETITIONERS**

Vs.

1. Ven. Dr. Kumbalgoda Dhammaloka Thero,  
Director in charge of Piriven Education,  
4<sup>th</sup> Floor, Isurupaya,  
Battaramulla.

2. Rev. Kanthale Wijithawansa Thero,  
Director (Development),  
Division of Piriven Education,  
4<sup>th</sup> Floor, Isurupaya, Battaramulla.
3. P. Laxman Pathmakumara,  
Additional Secretary (Piriven Administration),  
State Ministry of Dhamma Schools,  
Parivenas and Bhikku Education,  
4<sup>th</sup> Floor, Isurupaya, Battaramulla.
4. Dr. Nishadh Handunpathirana,  
Additional Secretary (Piriven Development),  
State Ministry of Dhamma Schools,  
Parivenas and Bhikku Education,  
4<sup>th</sup> Floor, Isurupaya, Battaramulla.
5. Ven. Dodampahala Rahula Thero,  
Advisor to the Piriven Education,  
Division of Piriven Education,  
4<sup>th</sup> Floor, Isurupaya, Battaramulla.
6. The Chairman,  
Pirivena Education Board,  
Division of Piriven Education,  
4<sup>th</sup> Floor, Isurupaya, Battaramulla.
7. Ms. J.M. Thilaka Jayasundara,  
(Ceased to hold office)  
The Secretary,  
Ministry of Education,  
Pelawatta, Isurupaya, Battaramulla.
- 7A. Mr. Nalaka Kaluwewa,  
The Secretary,  
Ministry of Education,  
Higher Education and Vocational Education  
(Higher Education Division)  
18, Ward Place, Colombo 07.
8. Hon. Vijitha Berugoda,  
The State Minister of Piriven Education,  
State Ministry of Dhamma Schools,  
Parivenas and Bhikku Education,  
Pelawatta, Isurupaya, Battaramulla.

9. Hon. Susil Premajayantha,  
(Ceased to hold office)  
The Minister of Education,  
Ministry of Education,  
Pelawatta, Isurupaya, Battaramulla.
- 9A. Hon. Dr. Harini Amarasuriya,  
The Minister of Education,  
Ministry of Education,  
Higher Education and Vocational Education  
(Higher Education Division)  
18, Ward Place,  
Colombo 07.
10. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

### **RESPONDENTS**

**Before:** Mayadunne Corea, J.  
Mahen Gopallawa, J.

**Counsel:** Sandamal Rajapaksha with Sudantha Alagiyawanna for the Petitioner.  
Shemanthi Dunuwille, State Counsel for the Respondents.

**Supported on:** 28.08.2025

**Decided on:** 03.10.2025

**Mahen Gopallawa, J.**

### **Introduction**

The Petitioners have instituted the instant application impugning the decision of the 1<sup>st</sup> Respondent and/or the Pirivena Education Board to revoke the registration of the Sri Devarakshitha Pirivena

(hereinafter referred to as “the Pirivena”) contained in the letter dated 27.02.2024 marked ‘X9’. Accordingly, the Petitioners have sought writs of Certiorari to quash the said decision marked ‘X9’ as well as the “show cause” letters issued by the 1<sup>st</sup> Respondent marked ‘X3’, ‘X6a’ and ‘X6b’. The Petitioners have also sought a writ of Mandamus directing the 1<sup>st</sup> Respondent and/or the Pirivena Education Board to take steps to re-register or grant registration to the said Pirivena. Additionally, a writ of Mandamus has been sought to direct the 1<sup>st</sup> Respondent to take steps to allow the 1<sup>st</sup> Petitioner to work as a pirivena teacher and to pay his salary, to provide books and uniforms to students and other allowances to the Pirivena.

When the application was taken up for support, the learned State Counsel on behalf of the Respondents objected to the issuance of formal notice. Although parties moved to file a synopsis of their submissions within 01 week thereafter, no such synopses were received.

### Factual Background

According to the petition, the Sri Devarakshitha Pirivena is located in the Sri Sudharshanarama Temple and the 1<sup>st</sup> Petitioner is the Viharadhipathi of the Temple and the Principal of the Pirivena. The Pirivena had been established in the year 2005 and had been registered as a “Mulika Pirivena” under Regulation 3(6) of the Pirivena Education Regulations No. 01 of 1980 with effect from 01.01.2006 (‘P2f’). As a “Mulika Pirivena,” the Pirivena conducted classes from Pirivena Grade I to Grade V. The petition also discloses that there were 08 teachers, 08 residential bhikkhus and 47 registered pupils, although only 12 were “actively” engaged in studies.<sup>1</sup>

Central to the events that unfolded and culminated in the cancellation of the registration of the Pirivena was an inspection conducted by a team of officers from the Pirivena Education Division of the Ministry of Education, including the 2<sup>nd</sup> Respondent. Although the “show cause” notice (‘X4’) and the 1<sup>st</sup> Respondent’s letter dated 11.08.2023 (‘X6a’) refer to the date of such inspection as 07.07.2020, the log entry lodged by the 2<sup>nd</sup> Respondent regarding the inspection (‘P6d’) in the Log Book maintained by the Pirivena marked ‘P6’, which can be considered as the most contemporaneous account available to this Court, clearly establishes that such inspection was in fact conducted on 04.09.2020. Such date is also confirmed in the 1<sup>st</sup> Respondent’s letter dated 03.05.2021 whereby the initial cancellation of the registration was communicated (‘P12’).

The log entry made by the 2<sup>nd</sup> Respondent relating to such inspection (‘P6d’), *inter alia*, indicates that the special inspection had been conducted on the directions of the 1<sup>st</sup> Respondent and contains detailed observations on various shortcomings in the Pirivena. It further records that a report thereon will be submitted to the 1<sup>st</sup> Respondent. Although the 1<sup>st</sup> Petitioner’s had complained that he was

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<sup>1</sup> Vide paragraph 3(d) of the petition.

“not satisfied” with the said inspection by letter dated 07.09.2020 (‘P7’), he had not provided any grounds or reasons for such complaint.

Thereafter, the Petitioners had received the letter dated 08.12.2020 (‘P11’)<sup>2</sup> informing that, upon consideration of the report on the inspection conducted on 04.09.2020, the Pirivena Education Board at its 187<sup>th</sup> meeting held on 22.10.2020 had decided to revoke the registration of the Pirivena (ප්‍රිවිනාදිෂ්ට කිරීමට). Consequent to the issuance of ‘P11’, another inspection had been conducted on 02.02.2021 and the log entry thereon (‘P6f’) reveals that a discussion on the current status of the Pirivena and future action had taken place with the 1<sup>st</sup> Petitioner and that certain documents mentioned therein had been inspected.

Subsequently, the Petitioners had been informed by letter dated 03.05.2021 under the signature of the 1<sup>st</sup> Respondent (‘P12’) that the registration of the said Pirivena has been cancelled in terms Regulation 10(2)(d) of the Pirivena Education Regulations No. 01 of 1980 enacted under the Pirivena Education Act, No 64 of 1979 with effect from 06.05.2021. The letter refers to the fact that the Pirivena Education Board at the 187<sup>th</sup> meeting had decided to grant a probationary period of 03 months for the Pirivena to rectify shortcomings, after the cancellation of registration on 22.10.2020. However, since the report of the inspection conducted on 02.02.2021 had indicated that the Pirivena was in the same condition, the Pirivena Education Board at its 188<sup>th</sup> meeting held on 09.02.2021 had taken the decision to cancel its registration with effect from 06.05.2021. The said letter also states that steps should be taken to either retire the 1<sup>st</sup> Petitioner from service as a teacher or transfer him to another pirivena. The payment of the 1<sup>st</sup> Petitioner’s salary was also subsequently stopped (‘P14c’).

The decisions to cancel the registration of the Pirivena, to retire or transfer the 1<sup>st</sup> Petitioner and withhold his salary contained in documents marked ‘P11’, ‘P12’ and ‘P14c’ were challenged by the Petitioners before this Court in CA (Writ) Application No. 293/2022 (‘X1’). While the said application was pending, the decision to cancel the registration of the Pirivena dated 03.05.2021 (‘P12’) itself was revoked by the 1<sup>st</sup> Respondent by letter dated 22.03.2023 (‘X2’). Thereafter, upon the Respondent’s agreeing to pay the 1<sup>st</sup> Petitioner’s salary during the period 22.03.2023 to 08.02.2024, the Petitioners withdrew the application and it was pro forma dismissed on 28.08.2025.<sup>3</sup>

After the aforementioned revocation of the registration, a “show cause” notice dated 21.04.2023 had been issued to the 2<sup>nd</sup> Petitioner in terms of Regulation 10(1) of the Pirivena Education Regulations in respect of the following matters (‘X3’);

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<sup>2</sup> The Petitioners state that the said letter had been received by them on 17.02.2021.

<sup>3</sup> CA (Writ) Application No. 293/2022, CA Minutes dated 28.08.2025.

## නිදහසට කරුණු විමසීම

ඔබවහන්සේ කැගල්ල, බුලත්කොහුපිටිය, පුනහැල, ශ්‍රී දේවරක්ඛිත පිරිවෙනෙහි කෘත්‍යාධිකාරී ස්වාමීන්වහන්සේ ලෙස සේවය කරමින් සිටියදී 2020.07.07 දින අධ්‍යාපන අමාත්‍යාංශයේ පිරිවෙන් අධ්‍යාපන අංශයේ නිලධාරීන් විසින් සිදුකරන ලද විමර්ශනයේදී උක්ත පිරිවෙනෙහි පැවැත්ම අසතුටුදායක බව පහත සඳහන් කරුණු අනුව අනාවරණය වී ඇත. ඒ අනුව ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අතිවිශේෂ ගැසට්පත්‍ර අංක 108/06 හා 1980.10.01 දිනැති පිරිවෙන් අධ්‍යාපන පනතෙහි නියෝග මාලාවේ 10(i) අනුව චෝදනා පත්‍රය ලැබී සති 02 ක් ඇතුළත මා වෙත නිදහසට කරුණු ඉදිරිපත් කරන ලෙස මෙයින් ඔබවහන්සේට නියෝග කරමි.

1. විමර්ශනයට වන අවස්ථාව වන විට කාර්-යාලය විවෘතව නොපැවතීම.
2. පැමිණීමේ ලේඛනයේ ගුරුවරුන් දෙදෙනෙකු පමණක් අත්සන් තබා තිබූ අතර, පැමිණීම හා පිටවීම සේවයට වාර්තා නොකළ අයටද අත්සන් තැබීමට හැකි ආකාරයට හිස්තැන් සහිතව ලේඛනය පැවතීම.
3. පිරිවෙන තුළ ඇති කාර්-යාලය, පුස්තකාලය වැනි ස්ථාන ගුරුවරුන්ට, සිසුන්ට පරිහරණය කිරීමට නොහැකි ආකාරයට පවත්වාගෙන යාම.
4. 2006 වර්ෂයේ සිට පිරිවෙන පවත්වාගෙන ගොස් ඇති අතර, ගුරුවරුන් 31 දෙනෙක් බඳවාගෙන ඇතත් විවිධ හේතු මත ගුරුවරුන් 28 දෙනෙකු ඉවත්ව ගොස් ඇත.
5. ඉගැන්වීම් කාර් යයේදී පූජ්‍ය බැද්දේවෙල සුමනසිරි හිමියන් සිසුන්ට දඩුවම් ලද සිසුන්ගේ ඡායාරූප කිහිපයක් සම්බන්ධයෙන් සත්‍ය අසත්‍යතාව සොයා බලන ලදී. එහිදී එම දරුවන්ට අසාමාන්‍ය ලෙස හිරිහැර සිදුවන ආකාරයෙන් දඩුවම් ලබාදී ඇති බව නිරීක්ෂණය විය.
6. 2020 වර්ෂයේ නාම ලේඛනයට අනුව ශිෂ්‍ය සංඛ්‍යාව 47 ක් වුවද විමර්ශනය සිදුකරන අවස්ථාවේදී අධ්‍යාපනය ලබමින් සිටියේ සිසුන් 10 දෙනෙකු පමණි. පන්ති 6 ක නාමලේඛන සකසා ඇතත් ක්‍රියාත්මකව පවතින්නේ මූලික ශ්‍රේණිය, 10 ශ්‍රේණිය හා 3 ශ්‍රේණිය පමණි. 2,4 හා 5 ශ්‍රේණි පවත්වන බවට සාධක නොමැති වුවද ඒවාට අදාළව ලිපි ලේඛන සකසා ඇත.
7. පන්ති කළමනාකරණ ලිපිගොනු සකසා ඇතත් ශිෂ්‍ය වාර්තා/සටහන්/ලකුණු වාර්තා ආදිය සමග නොගැලපීම.
8. විභාග ප්‍රතිඵල ඉතාමත් දුර්-වල මට්ටමක පැවතීම.
9. වසර 14 ක ඉතිහාසයක් තුළ සිසුන් 05 කගේ හැර සෙසු විභාග ප්‍රතිඵල ලේඛන අස්ථානගතව පැවතීම.
10. පරිච්ඡාදිපති හිමි ලෙස ක්‍රියා කරන පූජ්‍ය බද්දේවෙල සුමනසිරි හිමිට අදාළ සුදුසුකම් සපුරා නොමැති බැවින් පත්වීම් ලිපියක් නොතිබීම.
11. ශිෂ්‍යයන් සමඟ කළ සාකච්ඡාවේදී සිසුන් දැඩි මානසික පීඩනයකින් පසුවන බවට නිරීක්ෂණය වීම.
12. මුදලින් රුපියල් 20,000 ක දීමනාවක් ලබාදෙමින් ශිෂ්‍ය භාරකාර මාතලේ වන්දිම හිමියන් තේවාසිකව කටයුතු කිරීම.
13. පිරිවෙන තුළ විෂමාවාර ක්‍රියා සිදුවන බවට අනාවරණය කර ගැනීම.

ඔබවහන්සේගේ පිළිතුරු නියමිත කාලසීමාව තුළදී මා වෙත ඉදිරිපත් කිරීමට අපොහොසත් වුවහොත් ඔබවහන්සේට නිදහසට ඉදිරිපත් කිරීමට තරම් කරුණු නොමැති සේ සලකා පිරිවෙන් අධ්‍යාපන මණ්ඩලය වෙත උක්ත චෝදනා සම්බන්ධයෙන් දැනුවත් කර පිරිවෙන් පනතෙහි පවතින නෛතික ප්‍රතිපාදන අනුව කටයුතු සිදුකරන බව දන්වා සිටිමි.

The Petitioners had replied to the said show cause by letter dated 01.05.2023 under the signatures of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents ('X4'). The 1<sup>st</sup> Respondent had reverted to the 2<sup>nd</sup> Respondent by letter dated 11.08.2023 ('X6a'), pointing out that the show cause notice had been addressed to the 2<sup>nd</sup> Respondent, and, as such, he alone should respond to it, as the Manager of the Pirivena. The 1<sup>st</sup> Respondent had also stated that 'X4' appeared to have been submitted by the 1<sup>st</sup> Petitioner against whom accusations had been made in the notice, and that the signature of the 2<sup>nd</sup> Respondent therein appeared to be a forgery.

After a further reminder ('X6b') and by letter dated 13.09.2023 ('X7'), the 2<sup>nd</sup> Petitioner had submitted his reply to the "show cause" notice. It is observed that the 'X7', which contains detailed responses to the 13 matters referred to in the said notice, appears to be a virtual reproduction of 'X4' under the signature of the 2<sup>nd</sup> Petitioner. The log entry ('X5') also shows that another inspection by officers of the Pirivena Education Division had been conducted on 04.07.2023. The log entry discloses that certain instructions had been issued and contains the notation "matters were satisfactory" (කටයුතු සතුටුදායකයි).

However, the Pirivena Education Board, at its 200<sup>th</sup> meeting held on 08.02.2024, had determined that the responses submitted by the 2<sup>nd</sup> Petitioner to the show cause notice were not acceptable and had therefore decided to once again cancel the registration of the Pirivena. Such decision had been communicated by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Petitioner by letter dated 22.02.2024 ('X9'). The Petitioners have filed the instant application, being aggrieved by the said decision to cancel the registration of the Pirivena.

#### Legal Framework on Registration and Cancellation of Registration of Pirivenas

The Pirivena Education Act, No. 64 of 1979 (hereinafter referred to as "the Act") ('P15a'), *inter alia*, contains provisions relating to the registration, maintenance and administration of pirivenas. In this context, it is observed that extensive powers relating to the administration of the Act has been conferred on the Director-General of Pirivena Education in section 18 of the Act as follows;

**18. (1) Subject to the general direction and control of the Minister, the Director-General shall be responsible for the administration of this Act.**

*(2) There shall be appointed other officers of the Department of Education to assist the Director-General in the exercise, performance and discharge of his powers, duties and functions under this Act.*

**(3) The Director-General may, on application made in that behalf, in consultation with the Board register a Pirivena that conforms to the requirements of this Act or regulations made thereunder.**

**(4) Any Pirivena registered under this Act or deemed to be registered under this Act shall be eligible for a grant from State funds in accordance with this Act or any regulations made thereunder.** (emphasis added).

The power of the Minister to frame regulations is set out in section 33 of the Act, and, *inter alia*, including the power to make regulations in respect of registration and cancellation of registration, in the following manner;

33. (2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister may with the concurrence of the Board make regulations in respect of all or any of the following matters: -

**(a) the registration, classification and grading of Pirivenas, cancellation of such registration, payment of grants from State funds and the terms and conditions subject to which such grants shall be paid; ....** (emphasis added)

Accordingly, the Pirivena Education Regulations No. 01 of 1980 (hereinafter referred to as “the Regulations”) (‘P15b’)<sup>4</sup> have been enacted and, *inter alia*, provide for the cancellations of registration of pirivenas in Regulation 10 as follows;

**10. (1) පරීක්ෂාකර බැලීමෙන් පසුව යම් පිරිවෙනක පැවැත්ම අසතුටුදායක බවත් පනතේ හෝ මෙම නියෝගවල විධිවිධානවලට අනුකූල නොවන බවත් අධ්‍යක්ෂ ජනරාල්වරයා අදහස් කරන්නේ නම්, ඔහු විසින් පිරිවෙන් කෘත්‍යාධිකාරීන් වහන්සේගෙන් නිදහසට කරුණු විමසිය යුතුය.**

**(2) අධ්‍යක්ෂ ජනරාල්වරයාගේ මතය අනුව නිදහසට ඉදිරිපත් කරන ලද කරුණු අසතුටුදායක නම්, ඔහු විසින් මණ්ඩලය විමසා**

**(අ) පිරිවෙනට ගෙවනු ලබන ආධාර මුදල් අත්හිටුවීම කළ හැකිය;**

**(ආ) පිරිවෙනට ගෙවනු ලබන ආධාර මුදල් අඩුකළ හැකිය;**

**(ඇ) පිරිවෙනෙහි වර්ගය පහත් කිරීම හෝ;**

**(ඈ) පිරිවෙනෙහි ලියාපදිංචිය අවලංගු කිරීම කළ හැකිය.**

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<sup>4</sup> The said Regulations have been published in the Gazette Extraordinary No. 108/6 dated 01.10.1980.



*(3) ඉහත සඳහන් ඡේදය යටතේ යම් පිරිවෙනක් සම්බන්ධයෙන් ක්‍රියාකළ පසු ඒ පිරිවෙන් කෘත්‍යාධිකාරීන් වහන්සේ වෙත එම තීරණය ලියවිල්ලකින් දැන්විය යුතු අතර, අධ්‍යක්ෂ ජනරාල්වරයාගේ තීරණයෙන් ඒ කෘත්‍යාධිකාරීන් වහන්සේ අතෘප්තියට පත් වන්නේ නම් ඒ තීරණයේ දිනයේ සිට මාසයක් ඇතුළත අමාත්‍යවරයාගේ අමාත්‍යාංශයේ ලේකම්වරයා වෙත අභියාචනා කළ හැකිය. ලේකම්වරයාගේ තීරණය අවසානාත්මක විය යුතුය.*

Regulation 10 prescribes the procedure to be followed in considering the cancellation of registration of a pirivena and also stipulates several important substantive and procedural safeguards in exercising the powers conferred thereunder.

In this context, I also wish to state that the principal benefit conferred by registration under the Pirivena Education Act to a pirivena is the entitlement to receive financial assistance from the State. Consequently, such a pirivena becomes subject to the regulatory regime established under the Act, and, in fact, section 31 thereof expressly provides as follows;

*31. Every Pirivena registered or deemed to be registered under this Act shall comply with the provisions of this Act and the regulations made thereunder.*

Thus, there is also a statutory duty cast upon the Respondents to ensure that registration is conferred and maintained only in respect of pirivenas that comply with the provisions of the Pirivena Education Act and the regulations made thereunder, particularly since public funds are expended for the maintenance of such pirivenas.

### Grounds of Review and Analysis

When the application was taken up for support, the grounds relied upon by the learned Counsel for the Petitioner were that the decision to cancel the registration of the Pirivena ('X9') was tainted with mala fides and that the Petitioners had not been afforded a fair hearing.

In support of his contentions, the learned Counsel for the Petitioner adverted to several matters. He drew the attention of the Court to 'X9', which refers to an "inspection" (විමර්ශනය), where the date of such inspection had not been indicated therein. He further submitted that, although the "show cause" notice ('X3') and 1<sup>st</sup> Respondent's letter 'X6a' refer to an inspection conducted on 07.07.2020, no inspection was in fact carried out on the said date. The response of the learned State Counsel was that the Petitioners had not specifically taken up the position that an inspection had not been conducted on 07.07.2020 in their responses to the "show cause" notice ('X4' and 'X7').

In this context, as set out in the factual narrative above, the inspection by officers of the Pirivena Education Division referred to in the "show cause" notice appeared to have been conducted on

04.09.2020 and not on 07.07.2020. This is clearly borne out by the contemporaneous log entry 'P6d' made on the said date regarding such inspection. Furthermore, the said log entry sets out in detail the observations made at the inspection and they correspond to the matters referred to in the "show cause" notice ('X3').

Hence, it is incumbent upon this Court to consider whether any material prejudice has been caused to the Petitioners by such error. Considering the detailed responses submitted by the Petitioners in respect of each charge in the "show cause" notice by 'X4' and 'X7', it appears that the Petitioners were fully aware of the inspection referred to in the said notice. Moreover, since the Petitioners were in possession of the Log Book ('P6') and had access to the log entry ('P6d'), they could have ascertained without much difficulty the inspection referred to in the show cause notice. In such circumstances, I am inclined to the view that no prejudice was caused to the Petitioners by the error in the "show cause" notice with regard to the date of the inspection.

The learned Counsel for the Petitioner submitted that no fresh inspection was conducted after the revocation of the initial cancellation of the registration and prior to the issuance of the "show cause" notice ('X3'). The response of the learned State Counsel on this issue was that the initial cancellation of the registration was revoked by the Respondents for the reason that the Petitioners had not been permitted to show cause, as required by Regulation 10, and that, by later providing the Petitioners an opportunity to do so by the "show cause" notice in 'X3', the requirements of Regulation 10 were satisfied. She further submitted that there was no statutory impediment for the Respondents to rely on the inspection conducted on 04.09.2020, and, that, the said inspection disclosed acts of misconduct and weaknesses in administration that remained unanswered by the Petitioners.

The learned Counsel for the Petitioner also submitted that the Respondents had failed to take account of the inspection conducted by officers of the Pirivena Education Board on 04.07.2023 and in particular the notation made in the log entry ('X5') that "matters were satisfactory" (කටයුතු සතුටුදායකයි). However, it was submitted by learned State Counsel although the said log entry discloses that official records had been inspected and certain instructions on relocation of classes and maintenance of official records had been issued, it does not offer any justification for the notation that "matters were satisfactory." Hence, I am not convinced that the log entry ('X5') can be considered as conclusive evidence that the shortcomings referred to in the "show cause" notice ('X3') had been rectified or that satisfactory progress had been made in the administration of affairs of the Pirivena. The fact that no steps were taken by the Respondents to withdraw the "show cause" notice after the aforementioned inspection too support my conclusion.

In addition, the learned Counsel for the Petitioner contended that the allegations of assault against the 1<sup>st</sup> Petitioner in the "show cause" notice were devoid of any merit and were maliciously made, and that no criminal charges had been instituted against him. In this context, I wish to observe that

it would not be possible in an application for judicial review to inquire into and determine the merits of such allegation. However, I am inclined to agree with the position taken up by the learned State Counsel that the charge against the 1<sup>st</sup> Petitioner was of a serious nature considering his status as Principal of the Pirivena, and that the Respondents were entitled to raise such a matter, in view of the observations made in the log entry ('P6d').

Consequent to the aforementioned positions taken up by the parties, the legal issue that arises for determination by this Court is whether the Petitioners have been accorded a fair hearing by the Respondents, considering the facts and circumstances. The requirement to have a fair hearing before such a decision is made to a party whose rights or interests may be adversely affected by a quasi-judicial or administrative decision is well entrenched in our law. The requirement of a fair hearing and the scope of such a hearing have been discussed extensively in **Ranjith Flavian Wijeratne v. Asoka Sarath Amarasinghe**,<sup>5</sup> and the Supreme Court opined as follows (per Priyantha Jayewardena, J.);

*Principles of natural justice are applicable to every tribunal or body of persons vested with authority to adjudicate upon matters involving rights of individuals. It is likewise applicable to the exercise of judicial powers too. Every judicial and quasi – judicial act is subject to the procedure required by natural justice. The breach of any one of the said rules would violate the principles of natural justice. In the case of **Ridge v. Baldwin** (1964) A.C. 40 Lord Denning held that a breach of the principles of natural justice renders the decision voidable and not null and void ab initio.*

*An administrative official or tribunal exercising a quasi - judicial power is bound to comply with the principles of natural justice. i.e. to comply with the rules of audi altera partem and nemo judex in causa sua. A quasi-judicial decision may involve finding of facts and it affects the rights of a person. Sometimes such decisions involve matters of law and facts or even purely matters of law.*

*In **Russell v. Duke of Norfolk and Others** (1949) 1 All E.R. 109 Tucker LJ. observed that one essential requirement in regard to the exercise of judicial and quasi - judicial powers is that the person concerned should have a reasonable opportunity of presenting his case.*

*I am of the opinion that where the power is conferred in an administrative body or tribunal which exercises power in making decisions which affect the rights of persons, such body or*

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<sup>5</sup> SC Appeal No. 40/2013, SC Minutes 12.11.2015.

*tribunal should act according to the principles of natural justice except in cases where such right is excluded, either by express words or by necessary implication, by the legislature.*

*Lord Diplock in the case of **O'Reilly v. and Others v. Mackman and Others** (1983) 2 AC 237 at 276 held that the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement.*

*A tribunal exercising quasi-judicial functions is not bound to adopt a particular procedure in the absence of statutory provision. In some situations, the tribunals have to act within certain limits. However, it needs to observe certain minimum standards of natural justice and fairness when discharging its functions.*

*The need to follow the principles of natural justice is an accepted norm in Sri Lankan courts and tribunals as well as in the world over for several decades. I am of the opinion that the need to follow principles of natural justice has now become part of the Sri Lankan law. Hence, in the absence of special provisions as to how the court or tribunal is to proceed, the law requires that the principles of natural justice to be followed.*

*A tribunal must do its best to act justly and to reach just ends by just means. It must give the parties notice of what was charged against them and allow them to make representations in answer. A fair opportunity should be given to a party to correct or contradict any relevant statement made to his prejudice. The party against whom the charge is made, after he has notice of the charges, is entitled to be heard.*

*Whether an oral hearing is necessary or desirable depends on the relevant laws and rules or procedures which the inquiry is held, the circumstances, the nature of the right infringed, the occasion for the exercise of authority by the tribunal and the effect of the decision on a person.*

*The question whether the requirements of natural justice have been met by the procedure adopted in any given case depends to a greater extent on the facts and circumstances of the case in point.* Tucker L.J. held in the case of **Russell v. Duke of Norfolk and Others** (1949) 1 All E.R. 109 “There are no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.”<sup>6</sup> (emphasis added)

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<sup>6</sup> Ibid, pp 17-19.

In ***Splendour Media (Pvt.) Limited v. Commissioner General of Labour and others***,<sup>7</sup> after discussing several authorities on the issue, this Court expressed a similar view on the nature and scope of the hearing to be accorded (per Obeyesekere, J.);

*This Court reiterates its view that while the nature of the hearing can be left to the discretion of the administrative body, it is fundamental that an Inquiry Officer follow the principles of natural justice and affords both parties a proper hearing, including an opportunity to the employer to present his side of the story. It must however be emphasised that in ensuring procedural fairness and the adherence with the principles of natural justice, Courts will not impose requirements that make it impossible for administrative bodies to arrive at decisions in an expeditious manner or impose unnecessary shackles on their ability to take decisions. That being said, this Court is of the view that a conclusion reached in violation of the fundamental principles of natural justice should not be allowed to stand...*<sup>8</sup>

In relation to the instant case, the procedure to be followed in cancelling the registration of a pirivena (or imposing any other measures referred to in Regulation 10(2)) has been prescribed in Regulation 10 of the Pirivena Education Regulations.

Regulation 10 stipulates several important substantive and procedural safeguards in exercising the powers conferred thereunder and I will now examine whether they have been complied with in the instant case. In the first instance, it appears that the 1<sup>st</sup> Respondent has satisfied himself that the conduct of affairs of the Pirivena was unsatisfactory by means of the inspection conducted on 04.09.2020. Thereafter, he had proceeded to issue the “show cause” notice (‘X3’) on the 2<sup>nd</sup> Petitioner. As evidenced by the responses ‘X4’ and ‘X7’, the Petitioners appear to have availed themselves of responding to such “show cause” notice. The 1<sup>st</sup> Respondent had also sought to make observations on the Petitioners’ response ‘X4’ by the document ‘X6a’. Thereafter, the 1<sup>st</sup> Respondent has informed the 2<sup>nd</sup> Petitioner that the responses submitted to the “show cause” notice were not satisfactory and therefore a decision had been made to cancel the registration of the Pirivena by letter dated 22.02.2024 (‘X9’). It is observed that cancellation of registration is one of the four courses of action available under Regulation 10(2) where the conduct of affairs of a pirivena has been found to be unsatisfactory. The said letter (‘X9’) also indicates that the decision to cancel the registration of the Pirivena has been made at the 200<sup>th</sup> meeting of the Pirivena Education Board held on 08.02.2024 after considering the responses to the “show cause” notice and not being satisfied thereof. It is observed that the Pirivena Education Board consists of the 1<sup>st</sup> Respondent and the members specified in section 4(1) of the Pirivena Education Act. I am therefore of the view that the Respondents have acted in accordance with the procedure set out in Regulation 10 of the Pirivena Education Regulations

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<sup>7</sup> CA Writ Application No. 102/2017, Court of Appeal Minutes dated 01.11.2019.

<sup>8</sup> Ibid, pp 23-24.

in arriving at the decision to cancel the registration of the Pirivena. As such, I hold that the Petitioners have been afforded a fair hearing as contemplated by the said Regulation 10 of the Pirivena Education Regulations.

When the application was taken up for support, the learned Counsel for the Petitioners did not contest the fact that the Petitioners had been granted and had availed themselves of the opportunity of responding to the “show cause” notice, although it has been stated otherwise in the petition.<sup>9</sup>

I now wish to consider the Petitioners’ contention that the decision to cancel the registration of the Pirivena was tainted with malice. Although learned Counsel repeatedly referred to malice in his submissions, he did not provide particulars to substantiate such allegation against any Respondent. Although reference has been made to an animosity of a teacher named Nuwan Danushka towards the 1<sup>st</sup> Petitioner in the petition,<sup>10</sup> the Petitioners have not provided any evidence to demonstrate that the said person had any link to or influence in the decision-making process that culminated in the cancellation of registration. Hence, I am compelled to conclude that the allegations of malice made by the Petitioners remain unfounded and should be rejected.

The necessity to expressly plead and properly enumerate in detail allegations of *mala fides* in judicial review applications is well established and has been articulated in by this Court in **Bandaranayake v. Judicial Service Commission**,<sup>11</sup> in the following terms (per Sripavan, J. as he then was);

*Learned Counsel also urged bad faith on the part of the first respondent Commission. "The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit." Principles of Administrative Law (Jain & Jain, 4th Edition 1988 Page 564). Accordingly, the court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail. [Vide **Gunasinghe v Hon Gamini Dissanayake**].<sup>12</sup> The petition however did not set out in detail the allegations of mala fide against the first respondent Commission. (emphasis added).*

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<sup>9</sup> vide paragraph 34(d) of the petition

<sup>10</sup> vide paragraphs 5-7 of the petition

<sup>11</sup> [2003] 3 Sri L.R 101.

<sup>12</sup> [1994] 2 Sri L.R 132.

Apart from the aforementioned grounds of review urged by learned Counsel when the application was taken up for support, there are several other grounds referred to in paragraph 42 of the petition, including that the decision to cancel the registration of the Pirivena was *ultra vires*, illegal, unreasonable, irrational and an abuse of power. For the sake of completeness, I will endeavour to address such grounds, albeit briefly, due to the paucity of material to substantiate such grounds in the petition.

Since the decision to cancel the registration ('X9') has been made in accordance with the powers conferred by Regulation 10 of the Pirivena Education Regulations and adhering to the procedure prescribed therein, the said decision cannot be considered as being illegal or *ultra vires* or arbitrary or an abuse of power. Since cancellation of registration was one of the four courses of action prescribed in Regulation 10(2) where the conduct of affairs of a pirivena was found to be unsatisfactory, the adoption of such a course of action cannot be considered as being unreasonable or irrational. In any event, the Petitioners have not adduced any evidence to even indicate otherwise.

In the said paragraph, the Petitioners have also stated that the Respondents owe "a public and a statutory duty." Whilst it has been demonstrated that the Respondents have acted in accordance with the provisions of Regulation 10 in cancelling the registration, the Petitioners have been unable to indicate any other public or statutory duty owed to them by the Respondents that has remained unfulfilled.

Although the Petitioners have also contended therein that their legitimate expectation had been adversely affected, they have not established any basis to sustain such a contention, and, in any event, the findings made by me do not support the view that any rights or expectations of the Petitioners have been unlawfully interfered with.

In addition, the Petitioners have taken up the position that there was no alternative remedy that they could resort to except invoking the writ jurisdiction of this Court. I do not agree; Regulation 10(3) provides a statutory right of appeal to the Secretary, and the petition does not disclose that the Petitioners have availed of the same.

In view of the aforementioned findings on the merits of this application, I do not think it is necessary to consider the preliminary legal objections raised by the learned State Counsel relating to lack of *uberrima fides*, futility and other matters.

Conclusion and Orders of Court

For the reasons set out above, I hold that the Petitioners have failed to establish a *prima facie* case for the issuance of notice. Therefore, I decline to issue formal notice and the application is accordingly dismissed. No costs.

*Application is dismissed.*

**Judge of the Court of Appeal**

**Mayadunne Corea J.**

**I agree.**

**Judge of the Court of Appeal**