

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

**In the matter of an Appeal from the judgment of
the Court of Appeal under Article 128(2) of the
Constitution**

1. Thenudaya Nithil Demash Kodithuwakku

2. Ranjan Pushpakumara Kodithuwakku
Both of 4/1A 3/1 Wekunagoda Road, Galle.

SC Appeal 48/ 2022

PETITIONERS

SC (SPL) LA Application No.39/2022

-Vs-

CA Writ Application No: 276/2021

1. Mr. Sampath Weeragoda, former Principal
Richmond College & Chairman of the
Interview Board-
Presently at the
Ministry of Education
3rd Floor, Isurupaya, Battaramulla.

2. Lanka Senanayake,
Secretary, of the
Interview Board, Richmond College, Galle.

3. Prasadi Anupama Kulathunga

4. Samith Gallage, Attorney-at-Law

5. Dunstan Lokumalage

3rd to the 5th Respondents are Members of
the Interview Board, Richmond College,
Galle.

6. Mr. Thilak Wathuthuhewa, Principal,
Richmond College, Galle.

ADDED

6A. Mr. W.P.N.D. Weerasinghe

Principal, Richmond College, Galle.

7. Mr. Francis Wellage, Principal Rahula
College, Matara,
Chairman of the Appeal & Objection
Investigation Board

8. Priyal De Silva, Deputy Principal &
Secretary, Appeal & Objection
Investigation Board

9. D.N. Ruwanpathirana,

10. Nilantha Halpandiya, Attorney-at-Law,

11. Ravi Kalansooriya.

9th to 11th Respondents are members of the
Appeal & Objection Investigation Board,
Richmond College, Galle.

12. Professor Kapila C.K. Perera,
Secretary, Ministry of Education
3rd Floor, Isurupaya, Battaramulla.

13. Mr. Kithsiri Liyanagamage,
Director National Schools,
Ministry of Education
3rd Floor, Isurupaya, Battaramulla.

RESPONDENTS

AND NOW BETWEEN

1. Thenudaya Nithil Demash Kodithuwakku

2. Ranjan Pushpakumara Kodithuwakku

Both of 4/1A 3/1 Wekunagoda Road, Galle.

PETITIONERS- APPELLANTS

Vs-

1. Mr. Sampath Weeragoda, former Principal
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Presently at the
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Richmond College, Galle.
- 6A. Mr. W.P.N.D. Weerasinghe
Principal,
Richmond College, Galle.

ADDED

- 6B. Mr. P. Saman Pushpakumara,**
Principal,
Richmond College, Galle.
7. Mr. Francis Wellage, Principal Rahula
College, Matara,
Chairman of the Appeal & Objection
Investigation Board
8. Priyal De Silva, Deputy Principal &
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Director National Schools,
Ministry of Education
3rd Floor, Isurupaya, Battaramulla.

RESPONDENTS-RESPONDENTS

**BEFORE: S. THURAIRAJA, PC, J.
KUMUDINI WICKREMASINGHE, J.
MAHINDA SAMAYAWARDHENA, J.**

COUNSEL: Thushani Machado for the Petitioners – Appellants.

S. Balapatabendi, PC, ASG with Ms. N. de Zoysa, SC for the 1st – 3rd, 6th – 8th and
12th – 13th Respondents – Respondents.

WRITTEN SUBMISSIONS: Tendered on behalf of the Petitioners-Appellants on 3rd of August
2022.

ARGUED ON: 27th October 2022

DECIDED ON: 18th September 2025

K. KUMUDINI WICKREMASINGHE, J.

The Petitioners – Appellants filed a Writ Application before the Court of Appeal, bearing No. 276/2021, which was with regard to a school application, dated 17th May 2021. On the 10th day of December 2021, the Court of Appeal, having duly considered the submissions of the parties, delivered its judgment dismissing the application of the Petitioners–Appellants.

Aggrieved by which the Petitioners - Appellants came before this Court where Special Leave to Appeal was granted on the following questions of law raised in paragraph 66 (b), (c) and (h) of the Petition.

1. Did the Court of Appeal fail to take cognisance of the fact that the annotation made by the 6th Respondent - Respondent is not the collective decision of the Interview Board?
2. Did the Court of Appeal err in law by failing to appreciate that the conduct of the 6th Respondent - Respondent was in breach of the Rules of Natural Justice?
3. Did the Court of Appeal fall into substantial error by failing to appreciate the Respondent - Respondents' interpretation of the Circular was perfunctory?

As stated in the petition, the 1st Petitioner - Appellant, a minor born on the 22nd of August 2015, was 5 years and 9 months old at the time of filing the application. The 2nd Petitioner - Appellant, his father, is a police inspector attached to the Galle Police Headquarters and serves as the Officer in Charge of Logistics. The 2nd Petitioner - Appellant sought appointment as the 1st Petitioner - Appellant's next friend, asserting his eligibility and lack of conflicting interests in representing the minor.

The 1st Respondent - Respondent was the former Principal of Richmond College and chaired the Interview Board responsible for admissions. The 2nd Respondent - Respondent served as the Secretary of the Board, while the 3rd to 5th Respondents - Respondents were its members. The 6th Respondent - Respondent was the current Principal at the time of filing, with the successors subsequently added as the 6A Respondent - Respondent and thereafter as 6B Respondent - Respondent. Additionally, the Appeals and Objections Investigations Board included the 7th Respondent - Respondent as Chairman, the 8th Respondent - Respondents as Secretary, and the 9th to 11th Respondents - Respondents as members. The 12th Respondent - Respondent was the Secretary to the Ministry of Education, and the 13th Respondent - Respondent was the Director of National Schools of the said Ministry.

The Petitioners - Appellants highlighted the Directive Principles of State Policy under Article 27(2) (h) of the Constitution, which ensures universal and equal access to education. The statutory framework for general education is governed by the Education Ordinance No. 31 of 1939, as

amended, which empowers the Minister of Education to regulate school admissions. Furthermore, the National Education Commission Act No. 19 of 1991 allows the President, based on recommendations from the National Education Commission, to establish policies, including criteria for student admissions.

The Petitioner - Appellants seeks to uphold these principles and statutory provisions, asserting that the 1st Petitioner - Appellant's right to education was unjustly denied due to improper decisions made during the admission process.

The Ministry of Education, through Circular No. 29/2019 dated 24th May 2019, established guidelines for admissions to Grade 1 from 2020 onward. Amendments to this circular were introduced via Circulars No. 29/2019 (1) dated 11th July 2019 and No. 16/2020 dated 26th May 2020. These amendments addressed aspects such as measuring the distance between the residence and the school by straight-line distance. The circulars also defined the allocation of admissions among six categories.

According to Clause 7.0 of **P1**, the total number of students admitted to National Schools is distributed among the various categories in the following proportions:

Category of students	Percentage allocated
(i) Children of residents in close proximity to the school	50%
(ii) Children of parents who are past pupils	25%
(iii) Brothers/sisters of student already in the school	15%
(iv) Children of those on the staff of the institutions directly involved in public school education under the Ministry of Education	05%
(v) Children of officers in Government/Corporation/ Statutory Board/ State Bank services on transfer on exigencies/ annual transfer schemes	04%

- (vi) Children of persons arriving after living abroad with the children 01%

As mentioned in the petition, the 2nd Petitioner–Appellant, an Inspector of Police, was transferred from Tangalle Division to Galle Division on 10th of February 2020 due to service exigencies, was eligible to apply for his son (the 1st Petitioner - Appellant) under Category 5 of the admission guidelines. Due to his transfer, the 2nd Petitioner - Appellant leased an apartment near Richmond College. Although this apartment initially lacked separate utilities and an assessment number, arrangements were made to provide temporary connections, enabling the Petitioners - Appellants to prove residence near the school.

Clause 7.6 of **P1** clearly outlines the eligibility criteria for applicants classified under the category of “Children of officers in Government/Corporation/ Statutory Board/ State Bank services on transfer on exigencies/ annual transfer schemes.” The admission criteria for applicants in this category include multiple factors such as:

- I. Distance between the officer’s previous place of work and the new location of transfer (measured along the shortest route with available public transport):
 - 150 km or more – 35 marks
 - 100 km to less than 150 km – 28 marks
 - 50 km to less than 100 km – 21 marks
 - 25 km to less than 50 km – 14 marks

(Maximum allocation: 35 marks)
- II. Proximity to school: Maximum marks were awarded if no closer government school with a primary section existed. For each closer school, three marks were deducted.
- III. Service duration: Marks were awarded based on years of government service, capped at 10 marks.
- IV. Previous service tenure: Service duration at the last station contributed up to 10 marks.
- V. Time since transfer: A maximum of 5 marks were awarded for transfers within one year.
- VI. Unused leave: Marks were granted for unutilized leave, with two marks for every 20 unused days in the five years preceding the application, up to 10 marks.

The 2nd Petitioner–Appellant, being eligible under Clause 7.6, submitted an application on or about the 25th of June 2020 to Richmond College, Galle, seeking admission for the 1st Petitioner–Appellant, along with the required supporting documents:

- a) The 1st Petitioner - Appellant's birth certificate (marked as **P5A** and appears at pages 301 to 302).
- b) Google map showing the distance from the residence to the school (550 meters by road and 305 meters aerially. The said map has been marked as **P5B** and appears at page 303).
- c) Grama Niladhari's certificate dated 02/07/2020 confirming residence of the Petitioners - Appellants (marked as **P5C** and appears at pages 304 to 305).
- d) Letter issued by the Grama Niladhari and counter signed by the Divisional Secretary of Kataragama confirming that the 2nd Petitioner - Appellant and his family were permanent residents of the said grama sevaka division and that 2nd Petitioner - Appellant is no longer serving in the said area (marked as **P5D** and appears at page 306).
- e) Electoral registration details for 2018 and 2019 (marked as **P5E** and appears at pages 308 to 311).
- f) Letters from police officials verifying the 2nd Petitioner - Appellant's service history and the nature of his transfer (marked as **P5F** and appears at page 312).
- g) Copy of the Transfer Order dated 9.2.2020 issued by the Senior DIG Southern Province (marked as **P5G** and appears at page 313).
- h) Letter issued by the Senior Superintendent of Police, Galle confirming that the 2nd Petitioner - Appellant was transferred on exigencies of service (marked as **P5H** and appears at page 314).
- i) Documentation from the Southern Provincial Transport Authority confirming the transfer distance as 158 km (marked as **P-5I** and appears at page 315 to 316).
- j) Letter of Appointment of the 2nd Petitioner - Appellant to the post of Sub-Inspector (marked as **P5J** and appears at pages 317 to 318).
- k) Letter issued by the Chief Inspector of the Kirinda Police Station confirming that the 2nd Petitioner - Appellant was attached to the said station (marked as **P5K** and appears at page 319).

- l) Verification from the Viharadhipathi of a pre-school attended by the 1st Petitioner - Appellant in Kataragama (marked as **P5L** and appears at page 320).
- m) A statement of unutilized leave certified by the Inspector of Police in Galle (marked as **P5M** and appears at page 321).

As outlined in the petition, the 2nd Petitioner - Appellant complied with all requirements under the guidelines and marking scheme for Category 5 admissions. The submitted documents collectively substantiated his eligibility and justified the application for the 1st Petitioner - Appellant's admission to Richmond College. The 2nd Petitioner - Appellant received a letter from the 1st Respondent - Respondent notifying him of his eligibility for his child's admission to Grade 1 at Richmond College, Galle, for the year 2021. The letter instructed the 2nd Petitioner - Appellant to attend an interview on 22nd October 2020 and informed him of a parents' meeting scheduled for 22nd September 2020. The 2nd Petitioner - Appellant was assigned candidate number TR-038. The letter also required the submission of specific documents, including proof of residency and official documents for those applying under service transfer grounds.

In paragraph 22 of the Petition it is stated that the 2nd Petitioner - Appellant received the aforesaid letter dated 8th August 2020 from the 1st Respondent - Respondent informing him of the consideration of the application. It is further stated that a true copy of the said letter has been annexed marked **P6** and appears at pages 322 to 323 of the brief. However, upon examination of the document marked **P6**, it is observed that the date appearing therein is 8th September 2020. Accordingly, there exists a clear inconsistency between the date set out in the Petition and the date appearing on the annexed document.

Referring to the petition, at the meeting held on 22nd September 2020, the 1st Respondent - Respondent assured parents that Clause 7.4.2, which required a continuously registered lease valid for at least one year beyond the application deadline, would not be strictly enforced. Subsequently, the Petitioners - Appellants attended the interview on 22nd October 2020. The Interview Board awarded the 1st Petitioner - Appellant 95 marks based on criteria including service transfer distance, proximity of residence to the school, period of service, and unutilized leave. However, the board retained the marks sheet for verification of unutilized leave, which was later confirmed by the Inspector of Police, Galle, through a letter dated 5th November 2020.

As outlined in the petition, by January 2021, the 1st Respondent - Respondents had been transferred, and the 6th Respondent - Respondent assumed duties as Principal of Richmond College. The 2nd Petitioner - Appellant renewed his lease for another year, effective from 1st March 2021, and the lessor confirmed their agreement to lease the property for four years. Despite these arrangements, no site visit was conducted to confirm the 1st Petitioner - Appellants' residence. On 17th January 2021, the school displayed the interim list of selected candidates, but the 2nd Petitioner - Appellants' child's name was not included, despite eight vacancies under the relevant category, with only six applicants selected. Attempts by the 2nd Petitioner - Appellant to meet the 6th Respondent - Respondent and obtain a copy of the marks sheet were unsuccessful. He was orally informed that the application was rejected because the lease bond did not meet the one-year validity requirement.

As per the petition, the 2nd Petitioner - Appellant addressed a letter under the Right to Information Act, dated 24th January 2021, to obtain the marks sheet. Upon receiving it, the 2nd Petitioner - Appellant discovered that the 6th Respondent- Respondent, who was not part of the Interview Board, had arbitrarily nullified all previously awarded marks, citing non-compliance with Clause 7.4.2 regarding the lease bond validity. The 2nd Petitioner - Appellant filed an appeal on 26th January 2021, submitting additional documentation to validate his residency, including the lease agreement, lessor's affidavit, utility connections, and the certificate of conformity. The Appeal and Objection Investigation Board summoned the 2nd Petitioner - Appellant on 21st February 2021. However, the board reportedly declined to review the submitted documents and relied solely on the 6th Respondent - Respondent's annotations.

For full disclosure, the 2nd Petitioner - Appellant stated that he had applied to three other schools: Mahinda College, Vidyaloka College, and St. Aloysius Vidyalaya in Galle. At Mahinda College, the 1st Petitioner - Appellant scored 89 marks but was placed fourth on the interim list and not selected. At Vidyaloka College, he received 68 marks due to the number of nearby schools. At St. Aloysius Vidyalaya, his application was not considered due to excessive demand.

Moreover, the Petitioner - Appellant highlighted that his youngest child, currently nine months old, would also be eligible for admission to Richmond College if his elder sibling was admitted.

Based on the petition, the final list of students admitted to Grade 1 was published on 3rd of March 2021. Despite an appeal, the 1st Petitioner - Appellant was not selected, even though the Appeal and Objection Investigation Board deemed the decision of the Interview Board acceptable. Only seven students were admitted under the relevant category, leaving one vacancy. On 15th of March 2021, the 2nd Petitioner - Appellant received a rejection letter (**P20**), claiming the application contravened the Ministry of Education Circular.

As outlined in the petition, The Petitioners–Appellants states that Clause 7.4 pertains to the category of "Brothers/Sisters of a student already in the school" and, therefore, is not applicable to the Petitioners–Appellants who have applied under a different category. In any case, applicants under Clause 7.6 are not awarded any marks for proof of residency under Clause 7.4.2.

According to the petition, without conceding but merely assuming the position taken by the 6th to the 11th Respondents - Respondents that the 2nd Petitioner - Appellant did not possess a lease valid for a period of one year from the closing date of applications as required under Clause 7.4.2, it is noted that the maximum number of marks allocated under that clause is only four. Accordingly, even if four marks are deducted from the Petitioners' total, they would still receive 91 marks. In the final selection list, the last two students admitted had received 89 and 87 marks respectively. Thus, the 1st Petitioner - Appellant would still qualify for admission.

The 2nd Petitioner–Appellant appealed the rejection to the Human Rights Commission (HRC) and later sought to add respondents to the complaint. However, no inquiry was conducted. It is respectfully submitted that the Petition, at paragraph 51, states that the 2nd Petitioner–Appellant appealed to the Human Rights Commission on the 19th of March 2021, and that a true copy of the said appeal has been annexed marked as **P21**. Upon perusal of the document marked **P21**, however, it is observed that the date appearing therein is the 17th of May 2021. Thus, there exists a clear inconsistency between the date set out in the Petition and the date appearing on the annexed document.

Additionally, the 2nd Petitioner - Appellant had also submitted an appeal to the Honourable Minister of Education. The then Minister of Education acknowledged that the relevant circular was unjust and impracticable.

The petition cited media statements by the then Minister of Education acknowledging flaws in the points system of the Circular used for admissions. These statements suggested the Circular was impractical and unjust, necessitating revisions.

According to the petition, Clause 6.2.6 of the Circular (**P1**) empowers the Interview Board to consider all relevant facts and make appropriate decisions. The Board is also required to maintain records of its decisions, which must be communicated to the Director of National Schools. The Petitioner – Appellants argued that the rejection violated these provisions.

The Petitioners - Appellants contended that the rejection of their application was:

- Arbitrary and beyond the 6th Respondent - Respondent's jurisdiction.
- Contrary to natural justice, as the 6th Respondent - Respondent was not part of the Interview Board, and the Appeal Board failed to provide a proper hearing.
- In violation of legitimate expectations and based on misinterpretation of the Circular.
- Unreasonable, unsupported by evidence, and influenced by extraneous considerations.
- Mala fide and prejudicial to the Petitioners - Appellants' rights.

The Petitioners - Appellants sought a Writ of Mandamus from the Court of Appeal to compel the 6th Respondent - Respondent to admit the 1st Petitioner - Appellant to Grade 1, citing the existence of a vacancy and the alleged illegality of the rejection decision. The Court of Appeal issued notice on the respondents and allowed the 2nd Petitioner - Appellant to act as the 1st Petitioner - Appellant's next friend in the application. The respondents submitted their objections, and both parties filed written submissions. On 10th December 2021, the Court of Appeal dismissed the Petitioner - Appellants' application.

First question of law

I will now proceed to address the first question of law namely, did the Court of Appeal fail to take cognizance of the fact that the annotation made by the 6th Respondent - Respondent is not the collective decision of the Interview Board?

The interview for Grade 1 admissions was conducted on 22.10.2020, and the marks sheet (**P11**) was signed on the same day by the 1st Respondent - Respondent, who was the Principal at the time

and served as the Chairman of the Interview Board, along with the other members of the board. The marks sheet (**P11**) indicates that the 1st Petitioner - Appellant was awarded 95 marks by the Interview Board. Since all members of the Interview Board signed the marks sheet (**P11**) on the same day, it can be regarded as a collective decision of the Interview Board.

In order to determine whether the annotation made by the 6th Respondent - Respondent is a collective decision of the Interview Board, we must examine whether the Circular provides any procedure for reviewing or amending the marks awarded by the Interview Board as a collective decision after the interview.

In *Sesadi Subasinghe (Appearing Through Her Next Friend) v. Principal, Vishaka Vidyalaya and 12 Others* [2011] 1 Sri L.R. 75, the court held that;

“The appellate panel and the selection board including the principal of the school is expected to perform a public duty based on Circulars issued by the Education Department. Adopting a very adhoc method is unsatisfactory to decide ones future in education which should be decided very carefully.”

This judicial observation underscores that all actions taken by the Interview Board must strictly adhere to the procedures set out in the Circular.

Clause 9.2 of Circular **P1** is outlined as follows:

“..... මෙහි දී 8.4 උප වගන්තියෙහි සඳහන් පරිදි සකස් කර ගත් ලකුණු ලබා දීමේ පත්‍රිකාවෙහි මවිසියන්/ නිත්‍යනුකූල භාරකරු අභිමුඛයේ දී ලකුණු ලබා දී එම පත්‍රිකාවෙහි ම එම ලකුණුට එකඟවන බවටත්, වැරදි තොරතුරු කුට ලේඛන ලබා දී ඇති බව තහවුරු වුවහොත් ලකුණු සංශෝධනය වීමට/ අහෝසි වීමට ඉඩ ඇති බව තමන් දැන සිටින බවටත් ඔවුන්ගේ අත්සන් ලබා ගත යුතු ය. ”

The relevant section of the marks sheet format, as specified in the 2nd Schedule of Circular **P1**, is as follows:

“පරීක්ෂණ මණ්ඩල මගින් ලබා දුන් ඉහත ලකුණු වලට එකඟ වන බවත්, වැරදි / කුට ලේඛන ලබා දී ඇති බව තහවුරු වුවහොත් ලකුණු සංශෝධනය වීමට/ අහෝසි වීමට ඉඩ ඇති බවත් මම දනිමි.

(ප්‍රථම සම්මුඛ (අභියාචනා හා
පරීක්ෂණය) විරෝධතා
පරීක්ෂණය)

අයදුම්කරුගේ අත්සන :

පරීක්ෂණ මණ්ඩලයේ සභාපතිගේ අත්සන :

.....

දිනය :

Additionally, the statement provided by the Petitioners - Appellants, as the applicant, in the Marks Sheet **P11** further supports the view that the Interview Board has the authority to review the marks awarded during the interview. The relevant extract from the 2nd Petitioner–Appellant’s statement in **P11** is as follows:

" අයදුම්කරුගේ ප්‍රකාශය :-

ඉහතින් ලබා දුන් ලකුණු වලට එකඟ වන බවත්, වැරදි හෝ කුට ලේඛන ලබා දී ඇති බව තහවුරු වුවහොත් ලකුණු සංශෝධනය වීමට හෝ අහෝසි වීමට ඉඩ ඇති බවත් මා දනිමි.

සම්මුඛ පරීක්ෂණ මණ්ඩලය ඉදිරිපත් කරන ලද සිතියමට අනුව පාසලට ඇති ආසන්නතාවයට ලකුණු ලබාදුන් ආකාරයට එකඟ වෙමි.

තවද ස්ථානීය පරීක්ෂණය, ඡන්ද හිමි නාමලේඛන වල පරීක්ෂණ, හිමිකම් ඔප්පු පිළිබඳ පරීක්ෂණ ආදිය මගින්ද මෙහි ලකුණු සංශෝධනය වීමට හෝ අහෝසි වීමට ඉඩ ඇති බව දනිමි. එවැනි සංශෝධන වේ නම් මාගේ පිටපතේද එම සංශෝධන

කිරීමට අවස්ථාව ලබා දෙමි. සම්මුඛ පරීක්ෂණයේදී මා විසින් ඉදිරිපත් කරන මුල් පිටපත් ලැයිස්තුව පසු පිටේ සඳහන් කර ඇත.”

Accordingly, under Clause 7.4.2 of Circular P1, the Chairman or the Interview Board retains the authority to verify the validity of Lease Agreement P4 post-interview, permitting reassessment of the marks awarded.

The 2nd Petitioner - Appellant contends that the 6th Respondent - Respondent was not a member of the Interview Board at the time of the interview and, therefore, lacked the authority to reduce or nullify the marks awarded by the Interview Board when he received the marks sheet (**P11**) on 25.01.2021.

While the 6th Respondent - Respondent was not part of the Interview Board during the interview, it is noted that under Clauses 6.2.1 and 6.2.4 of Circular **P1**, the Principal automatically assumes the position of Chairman of the Interview Board ex officio. The Clause 6.2.4 of Circular **P1** is as follows;

“අදාළ පාසලේ විදුහල්පති සම්මුඛ පරීක්ෂණ මණ්ඩලයේ සභාපති වන අතර, වසරකට වැඩි සේවා කාලයක් ඇති නියෝජ්‍ය/ සහකාර විදුහල්පතිවරයෙකු හෝ ජ්‍යෙෂ්ඨ ගුරුවරයෙකු ප්‍රථම සම්මුඛ පරීක්ෂණ මණ්ඩලයේ ලේකම් වශයෙන් කටයුතු කළ යුතුය. එසේම සම්මුඛ පරීක්ෂණ මණ්ඩලයේ ලේකම්, අභියාචනා හා විරෝධය පරීක්ෂණ මණ්ඩලයේ අවශ්‍යතාව අනුව සහයෝගය ලබා දිය යුතුය.”

According to the above provisions, the 6th Respondent - Respondent, upon assuming the position of Principal of Richmond College, automatically becomes the Chairman of the Interview Board. This is consistent with the requirements outlined in the Circular.

Clause 6.2.6 of Circular **P1** grants the Interview Board the authority to make decisions on all matters related to the admission of students to Grade 1. Since the 6th Respondent - Respondent, by virtue of his position, serves as the ex officio Chairman of the Interview Board, he is empowered to make annotations such as the one reflected in the marks sheet (**P11**).

As outlined in Clause 9.3.7 of Circular **P1**, the interim list of admissions must bear the signatures of all members of the Interview Board before it can be published. This requirement ensures collective approval of the list.

The specific text of Clause 9.3.7 of Circular P1 is provided below:

"දැන්වීම් පුවරුවේ සහ පාසලේ වෙබ් අඩවියේ පළ කරනු ලබන නාවකාලික ලැයිස්තුව හා පොරොන්තු ලේඛනය සහිත දෙකක්වත් අඛණ්ඩ ව ප්‍රදර්ශනය කළ යුතු ය. නාවකාලික ලැයිස්තුව අදාළ සම්මුඛ පරීක්ෂණ මණ්ඩලයේ අත්සන් (9.3.5 හි දෙන ලද උපදෙස්වලට අනුකූල ව) නොමැති ව ප්‍රසිද්ධ කිරීම නොකළ යුතු ය."

It is noted that all members of the Interview Board, including the 6th Respondent - Respondent, have signed the interim list **P9**. This demonstrates that the decision reflected in the annotation on **P11** was also an approved collective decision of the Interview Board.

Based on the foregoing, I am of the view that the Chairman of the Interview Board, or the Board itself, holds the authority to examine the validity of the Lease Agreement **P4**, as stipulated in Clause 7.4.2 of Circular **P1**, even after the conclusion of the interview. Consequently, it is evident that the marks awarded during the interview may be subject to reassessment.

Accordingly, the 2nd Petitioner – Appellants' argument that the annotation made by the 6th Respondent - Respondent does not represent a collective decision of the Interview Board lacks merit. Therefore there is no valid basis to challenge the collective nature of the decision depicted in **P11**.

Second question of law

I will now proceed to address the second question of law namely, did the Court of Appeal err in law by failing to appreciate that the conduct of the 6th Respondent - Respondent was in breach of the Rules of Natural Justice?

The 2nd Petitioner - Appellant asserts that he was not given an opportunity to explain or address the issue before the Respondents - Respondents decided to deduct marks and make the aforementioned annotation. The annotation in question reflects the decision of the Interview

Board. If so, it may constitute a breach of a fundamental principle of Natural Justice, namely the right to be heard (*Audi alteram partem*).

In the case of *Piyasena De Silva and Others v. Ven. Wimalawansa Thero and Another*, [2006] 1 Sri LR 219, it is mentioned that according to the case of *R v University of Cambridge* [1723] 1 STR 557, the first hearing in human history took place in the Garden of Eden. As expressed by a learned individual on such an occasion,

"I remember to have heard it observed by a very learned man upon such an occasion, that even God Himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam,' says God, 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou should not eat?' And the same question was put to Eve also."

The statement emphasises that even in the earliest and most fundamental moral framework, the right to be heard and the opportunity for defense were upheld, which has influenced the development of legal principles across human history.

Clause 10.0 of Circular P1 explicitly guarantees the right to appeal against such decisions, a right which the 2nd Petitioner - Appellant exercised by lodging an appeal with the Appeal/Objection Investigation Board.

The Clause 10.0 of Circular P1 provides the procedure for appeals and objections.

During the appeal process, the 2nd Petitioner - Appellant appeared before the Board and submitted an extended Lease Agreement (P8), covering an additional year from 01.03.2021, along with an affidavit from the lessor of Lease Agreements P4 and P8 (P8A). The affidavit confirmed that the lessor typically executes lease agreements on an annual basis. The other documents submitted were marked as P13, P13A, and P13B.

Despite these submissions, the Petitioners - Appellants contend that the Appeal and/or Objection Investigation Board, while affirming the decision of the Interview Board, failed to give due consideration to the new documents submitted by the 2nd Petitioner - Appellant. However, it is evident that all such documents presented to the Appeal and/or Objection Investigation Board were new and had not been produced at the time of the interview.

Clause 9.2.6 of Circular **P1** places a clear obligation on parents or legal guardians to provide all necessary documents to the Interview Board at the time of the interview. Furthermore, Clause 11.8 of Circular **P1** stipulates that the Appeal and/or Objection Investigation Board is restricted to reinvestigating or reviewing only the documents submitted to the Interview Board during the interview.

In light of these provisions, it is evident that the Appeal and/or Objection Investigation Board is not legally authorised to consider any new documents. Accordingly, the 2nd Petitioner– Appellants' claim that the 2nd Petitioner - Appellant was denied a fair hearing prior to the final decision lacks merit.

According to Satish Chandra in his article "Doctrine of Legitimate Expectation" published in the *Journal of the Indian Law Institute* (62, no. 1), 2020, pp. 90–101,

“THERE ARE several principles of administrative law, which have been evolved by the courts for the purpose of controlling the exercise of power so that it does not lead to arbitrariness or abuse of power. These principles are intended to provide safeguard to the citizens against abuse or misuse of power by the instrumentalities or agencies of the state. One of the latest and important of these principles is the 'doctrine of legitimate expectation', which is an outcome of synthesis between the principle of administrative fairness (a component of the principles of natural justice) and the rule of estoppel.”

In the case of ***R. v. Secretary of State for Transport Ex Parte Greater London Council* [1985] 3 All ER 300**, a legitimate or reasonable expectation may arise either from an express promise made on behalf of a public authority or from the existence of a regular practice that the claimant can reasonably expect to continue.

David Foulkes (Administrative Law, 7th Edition, Butterworths, 1990, pg. 272) had expressed the view that a promise or an undertaking could give rise to a legitimate expectation. Discussing his position with regard to the concept, Foulkes had stated that;

“The right to a hearing, or to be consulted, or generally to put one’s case, may also arise out of the action of the authority itself. This action may take one of two, or both forms; a promise (or a statement or undertaking) or a regular procedure. Both the promise and the procedure are

capable of giving rise to what is called a legitimate expectation, that is, an expectation of the kind which the Courts will enforce” (emphasis added).

According to ***Vavuniya Solar Power (Private) Limited v Ceylon Electricity Board and Others SC FR Application 172/2017 decided on 20th September, 2023;***

“Court cannot order public authorities to fulfil promises which are beyond their powers or unlawful. In the event a court recognizes that a public body has made certain representations which are ultra vires its powers, which have given rise to an expectation, it will not recognize the existence of an enforceable substantive legitimate expectation and therefore will not require the public authority to act contrary to law.

Such approach is founded on the following three reasons:

(i) a public body cannot enlarge its powers by making ultra vires representations. Thereby, the principle of legality is respected and thereby, the rule of law;

(ii) requiring a public body not to be bound by its own unlawful representations would facilitate the public body not acting contrary to law. Also, the public body will thereby not be forced to act contrary to law;

(iii) by not requiring a public body to act contrary to law, wider public interests are protected.”

The 2nd Petitioner - Appellant asserts that on 22.10.2020, the Interview Board informed him that his son had scored 95 marks and was eligible for admission to Richmond College. As a result, the petitioner argues that the subsequent refusal of admission constitutes a breach of his legitimate expectation. However, it appears that the 95 marks awarded during the interview were based on an oversight by the Interview Board, which failed to apply the correct eligibility criteria. Nevertheless, the Interview Board took appropriate measures to rectify this mistake, and such a correction does not equate to a failure to follow due process. Therefore, this erroneous decision does not create a legitimate expectation.

In ***Rowland v. Environment Agency [2005] Ch 1*** it was held that the fundamental principle is that a legitimate expectation can only arise on the basis of a lawful promise.

Clauses 9.2 and 9.3 of Circular P1 authorize the Interview Board to conduct further investigations and seek clarifications regarding the qualifications of applicants, as well as to amend the marks awarded to an applicant during the interview, provided that such revisions occur prior to the publication of the interim list. The 2nd Petitioner - Appellant is not entitled to rely on his expectation unless the prescribed procedure is duly followed. The submission of a document that does not meet the criteria for admissibility under Clause 7.4.2 of Circular P1 does not establish a legitimate expectation for the Petitioners - Appellants. The protection of their expectations is contingent upon adherence to the procedure outlined.

In ***R v. Secretary of State for Home Department, ex parte Behluli*** [1998] Imm. AR 407, at 415 Beldam LJ, observed that

“although legitimate expectation may in the past have been categorized as a catchphrase not be elevated into a principle, or as an easy cover for a general complaint about unfairness, it has nevertheless achieved an important place in developing the law of administrative fairness. It is an expectation which, although not amounting to an enforceable legal right, is founded on a reasonable assumption which is capable of being protected in public law. It enables a citizen to challenge a decision which deprives him of an expectation founded on a reasonable basis that his claim would be dealt with in a particular way”.

Therefore the mere fact that the 2nd Petitioner - Appellant was informed by the Interview Board at the interview that he had obtained 95 marks does not confer upon the petitioners the benefit of a legitimate expectation.

Accordingly, the Court concludes that the second question of law is devoid of merit and affirms that the Court of Appeal did not err in law in this regard.

Third question of law

I will now proceed to address the third question of law namely, did the Court of Appeal fall into substantial error by failing to appreciate the Respondent - Respondents’ interpretation of the Circular way perfunctory?

Lord Diplock in the ***Duport Steels Ltd and Others v Sirs and Others*** [1980] UKHL J0201-1 defined the rule:

“Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to it’s plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral.”

The 2nd Petitioner - Appellant sought to establish their residence by submitting Lease Agreement P4 before the Interview Board. According to the requirements outlined in Clause 7.4.2 of Circular P1, such a lease agreement can be deemed valid evidence only if it is valid for a period of one year from the closing date for applications for admission to Grade 1.

The following is an extract from the relevant section of Clause 7.4.2 of Circular **P1**;

“අයදුම්කරුගේ/ කලත්‍රයාගේ නමින් පමණක් ඇති අඛණ්ඩව ලියාපදිංචි කළ බදු ඔප්පුව (අවශ්‍ය වන්නේ නම් බදු දීමනාකරුගේ අයිතිය සම්බන්ධ ව පත් ඉරු මගින් සනාථ කළ යුතු ය.) බදු ඔප්පුව අවම වශයෙන් අයදුම්පත් භාරගන්නා අවසන් දින සිට ඉදිරි වර්ෂයක කාලයක් සඳහා වලංගු විය යුතු ය./ අයදුම්කරුගේ / කලත්‍රයාගේ නමින් පමණක් ඇති රජයේ නිල නිවාස ලේඛනය (දෙපාර්තමේන්තු ප්‍රධානියාගේ තහවුරු කිරීමේ ලිපිය) තනිකඩ නිල නිවාස වල පදිංචිකරුවන් අදාළ කර නොගත යුතු ය. / ගෙවල් කුළී පනත යටතේ ලියාපදිංචි වී කුළී නිවැසියන් බව සනාථ කරනු ලබන ලේඛන - ලකුණු 04”

In this instance, the closing date for admission to Grade 1 at Richmond College, Galle, was 30.06.2020. The Lease Agreement P4, presented by the 2nd Petitioner - Appellant during the interview, covered the period from 01.03.2020 to 28.02.2021. It is evident that the validity of Lease Agreement P4 did not extend for one year from the closing date for applications.

In the case of ***Stassen Exports Limited. v. Brooke Bond (Ceylon) Limited and Another [1990] 2 Sri LR.*** Justice Amarasinghe states that;

"I do not wish to suggest that the technical meaning must always be given to words in an Act of Parliament. What I do say is that where an enactment uses a term which has both an ordinary and technical meaning the question of which meaning the term is intended to have is determined by the context. If the content is technical, the presumption is that the technical meaning of the term is the appropriate one unless the content warrants the wider meaning given to the word loquitur ut

vulgus, that is according to the common understanding and acceptance of the term in common practice."

As a result, Lease Agreement P4 does not meet the requirements to be considered an admissible document under Clause 7.6.2 in conjunction with Clause 7.4.2 of Circular P1 to support the residency claim of the 2nd Petitioner - Appellant.

In **CA (Writ) Application No: 30/2018 in (Ratnayake and Others vs C.D.Perera and others [1982] 2 Sri LR 451.)** states that;

"In order to succeed with the Writ of Certiorari, the Petitioners must establish that the Respondents have acted illegally, unreasonably or that there has been a procedural impropriety in the decision making process. Similarly, for the Petitioners to succeed with the prayer for the Writ of Mandamus, they must establish that they have a legal right to the performance of a public duty by the Respondents."

Accordingly, the Court concludes that the 2nd Petitioner–Appellant’s argument in respect of the third question of law is answered in the negative.

Therefore, for reasons more fully adumbrated in this judgement, the appeal of the 2nd Petitioner - Appellant is dismissed without cost. The Order of the Court of Appeal dated 10th December 2021 is affirmed.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

JUDGE OF THE SUPREME COURT