

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

In the matter of an application for writs  
in the nature of Certiorari and  
mandamus under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

1. Jayampathi Pathirana,  
No. 8, Medawewa Road,  
Dambulla Road,  
Kurunegala.
  
2. Pevinya Methuli Pathirana (Minor),  
No. 8. Medawewa Road,  
Dambulla Road,  
Kurunegala.

**C.A. Writ Appln.  
No. 186/2011.**

**Petitioners.**

Vs.

1. K.A. Vajira Kumarihamy,  
Principal,  
Maliyadeva Balika vidyalaya,  
Kurunegala.
  
2. D.M.M. Jayampthay,  
Primary Division Head  
Maliyadeva Balika Vidyalaya,  
Kurunegala.

3. L.M. Punchimanike (Secretary)
4. S.M.H.M. Samarakone
5. S.P. Amarasinghe

All Members of the Interview Board (on admissions to Year 1, 2011), Maliyadeva Balika Vidyalaya, Kurunegala.

6. R.M.M. Ratnayake  
President of Appeal Board on  
Admissions to Year 1, 2011,  
C/O Principal,  
Maliyadeva Balika vidyalaya,  
Kurunegala.
7. Director- National Schools,  
Isurupaya, Battaramulla.
8. H.M. Gunasekera,  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

**Respondents.**

**Before : Sri Skandarajah, J (P/CA) &  
H.N.J. Perera, J.**

**Counsel : J.C. Weliamuna for the Petitioners.  
Deepthi Tilakawardena, S.C., for the Respondents.**

**Argued on : 03.08.2011.**

**Decided on : 13.10.2011.**

**H.N.J. Perera, J.**

Petitioners filed this application seeking a Writ of Certiorari quashing the decision made by the 1<sup>st</sup> Respondent, the principal, Maliyadeva Balika Viddhalaya, Kurunegala on 01<sup>st</sup> December 2010 refusing to admit the 2<sup>nd</sup> petitioner to Year 1 of Maliyadevi Balika Viddhalaya Kurunegala and the decision of the Respondents not to admit the 2<sup>nd</sup> Petitioner to Maliyadeva Balika Viddhalaya, Kurunegala and not to have included the name of the 2<sup>nd</sup> Petitioner in the final list and for a Writ of Mandamus directing any one or more of the Respondents to admit the 2<sup>nd</sup> Petitioner to Grade 1 of Maliyadeva Balika Viddhalaya Kurunegala. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents are members of the Interview Board, 6<sup>th</sup> Respondent is the principal of the Appeal Board and the 7<sup>th</sup> respondent the Director National Schools to the Ministry of Education and the 8<sup>th</sup> respondent is the Secretary to the Ministry of Education. In paragraph (vii) of the petition, the petitioners state that on or about June 2010, the 1<sup>st</sup> Petitioner forwarded two applications on behalf of the 2<sup>nd</sup> petitioner for admission to Year 1 of in school for 2011 one under “brother/sister in school” category and the other under “residents in

the feeder area” category. In paragraph (iv) of the petition the petitioner states that the admission of students to the Year 1 of the government school is governed by Circular No. 21 of 2010 dated 31.05.2010 and further states that according to the Circular and guide lines the maximum number of students that could be selected by interview to a class is 35 and in addition 7 more applicants per class are selected on the recommendation of the Ministry of Defence and the said school has five, year 1 classes, allowing for 175 students to be selected via interview and 35 via recommendation of the Ministry. The petitioners further state that the 1st petitioner received a letter in August requiring the 1<sup>st</sup> petitioner to attend an interview on 19.8.2010 on the basis of ‘brother/sister in school’ and another letter requiring the 1<sup>st</sup> petitioner to attend an interview on 03.09.2010 on the basis of “residents in feeder” area. In paragraph 16 of the petition the petitioners state that after the interview the 1<sup>st</sup> petitioner was informed that the application under the “brother and sister in school” category has received 45 marks and further the 1<sup>st</sup> petitioner was informed that the application under the category of “resident in the feeder” area has received 80 marks and thereafter in October 2010 the temporarily list of the students who had been selected for the admission was

published on the Notice Board of the school. The cut off marks of the “brother/ sister in school” category was 46 marks and the cut off marks for the “residents in feeder” area category was 81 marks and the 2<sup>nd</sup> petitioner’s name was placed second in waiting list under the “brother/sister in school” category and 10<sup>th</sup> in the waiting list under the “residents in feeder” area category. It is the position of the petitioners that the 1<sup>st</sup> petitioner sent 2 letters of Appeals. The petitioners state that thereafter on 12.11.2010 the 1<sup>st</sup> petitioner and his wife attended the Appeal Board hearing and the final list of admission to the Year 1 of the school for the Year 2011 was published in the Notice Board on or about 08.12.2011. And according to the list the 2<sup>nd</sup> petitioner’s name was placed first in the waiting list under the “brother/sister in school” category. In paragraph 26 of the petition, the Petitioners state that on or about the 16.12.2010 the petitioners received a letter refusing admission of the 2<sup>nd</sup> petitioner under “brother/sister school” category stating that the cut off marks is 45.5 whereas 2<sup>nd</sup> petition has secured, only 44 marks and also refusing to admit the 2<sup>nd</sup> petitioner under “residents in the feeder” area category stating inter alia that the cut off marks under that category is 81 whereas the 2<sup>nd</sup> petitioner has only 80 marks. The

petitioners further state that they appealed to the 7<sup>th</sup> respondent and on his instructions handed over a copy of the appeal to the 8<sup>th</sup> respondent. It is the position of the petitioners that the decision contained in the documents P13 and P14 letters sent by the 1<sup>st</sup> respondent and his decision not to include the 2<sup>nd</sup> petitioner's name in the final list is arbitrary, capricious, unreasonable and ultra vires the rules contained in P2 and therefore the petitioners are entitled to the relief sought for in the prayer to the petition. The learned State Counsel for the respondents submitted that the 2<sup>nd</sup> petitioner were refused admission to the year 1 of Maliyadeva Balika Viddhalaya on the ground that the 2<sup>nd</sup> petitioner did not qualify under the criteria stipulated in the Circular No. 21/2010 marked P2 dated 31.5.2010. Both Counsel agreed that the selection of students for the admission for the year 2011 were made in terms of the Ministry of Educations Circular No. 21/2010 dated 31.5.2010. It is admitted by the respondents that the 1<sup>st</sup> petitioner in response to the Circular bearing No. 20/2010 submitted two applications one under the "residents in the feeder" area category and the other under the "brother/sister in school" category. It is the position of the respondents that an interim board was empowered in terms of clause 5 after notifying the

Director National school and the panel comprised of 1 to 5 respondents and having followed the stipulated provisions in clause 6, 7 and 8 of the said circular the temporarily list and a awaiting list was prepared by the interim board. The respondents further state that the cut off marks for the “residents in the feeder” area category was 83 and the cut off marks for “brother/sister in school” was 46. The 2<sup>nd</sup> petitioner has obtained only 80 marks in the 1<sup>st</sup> category and 44 marks under the 2<sup>nd</sup> category and therefore did not qualify to be included in the temporarily list under the said categories. The respondents further state that the temporarily list in the waiting list was displayed on the school notice board on 30.09.2010 in terms of clause 8.3(e) and (f) of the said circular and although the opportunity was given to the petitioners to object to the temporarily list in terms of clause 9(1) of the said circular the petitioners did not tender any objections but only tendered appeals marked P9(a) and P9(b). The petitioners do not deny the fact that they failed to tender objections in term of clause of 9(1) of the said circular. It is the respondent’s position that the petitioners are estopped from the objecting at the same at this stage. It is the contention of the petitioners that the petitioners were allocated ‘0’ marks under clause 6.3(b)(1) of the

guidelines and clause 6.3(1) of the circular by reason of the 2<sup>nd</sup> petitioners elder sister being in the year 1 of the said school. It is the position of the petitioners that at the time of interview the eldest child of the 1<sup>st</sup> petitioner was studying in year 1 at the school and therefore at least three marks should have been given under clause 6.3(b)(1) of the guidelines and clause 6.31 of the Circular. The respondents in their objections has stated that the elder sister of the 2<sup>nd</sup> petitioner was admitted to the said school on 5.2.2010. and thus at the time the applications were made the elder sister of the 2<sup>nd</sup> petitioner has not completed one grade. Therefore the 2<sup>nd</sup> petitioner was not entitled to the 3 marks in terms of clause 6.3(1) of the said circular. There is no dispute between the parties that the elder sister of the 2<sup>nd</sup> petitioner has not completed one grade at the time the application was made by the petitioners. Clause 6.3 (1) of the Circular P2 is as follows.

1. පාසලේ සිටින සහෝදර- සහෝදරියන් මේ සඳහා ලකුණු දීමේදී පාසලේ ඉගෙනුම ලබන සහෝදර-සහෝදරියන් සංඛ්‍යාව කොපමණ වුවද ලකුණු ලබා දියයුත්තේ ඉන් එක් අයකු සඳහා පමණි. එසේ ලකුණු ලබාදීමේදී ඔහු- ඇය එම පාසලේ ගතකල එක් ශ්‍රේණියක් වෙනුවෙන් ලකුණු තුන බැගින් උපරිම ලකුණු 30යි.



Although in paragraph 2 of their affidavit the petitioners have stated that there is no rationale in not allocating the marks as all other students in all other classes have been allocated marks on the basis of the class they were, the petitioners have failed to substantiate this position with any other evidence. This Court is of the view that the Respondents have adhered to the procedure and guide lines set out in circular 21 of 2010 in this regard and the Petitioners have failed to adduce any evidence to show that the Respondents have acted otherwise or deviated from this procedure as stated by the petitioners in their counter affidavits. In paragraph 16 of the petition it is alleged that under clause 6(3)(B)III of the guide lines and clause 6(3)III of the circular the 2<sup>nd</sup> petitioner was allocated 15 marks as there seem to be 4 schools near to the Petitioners' residence than Maliyadeva Balika Viddhalaya, Kurunegala. Since the petitioners did not apply to the school namely Getuwana Viddhalaya five marks have been deducted under clause 6(3)(B)(III). It is the petitioner's position that since this particular school was situated on the border of the radius determining the area within which the petitioner should apply that 5 marks should not have been deducted for not applying to that school. It is an admitted fact that the petitioners have not apply to

this school and petitioners have failed to satisfy the Court that this particular school does not come within the radius specified in clause 6.3(B) III of the guide lines and Clause 6.3 III of the circular.

A further 5 marks have been deducted under clause 6.3(B) III of the guide lines and clause 6.3 III of the circular for not applying to the school namely Holy Family Convent. The petitioner's position is that they have applied to this Court but had received a letter refusing to admit the 2<sup>nd</sup> petitioner to the school. The petitioners state that the said letter did not state any reasons for such refusal. This letter sent by the school Holy Family convent is marked and annexed to the petition as 'P10'. A letter marked P10 had been sent to the petitioners by the Principal of that particular school and on perusal of P10 it is seen that in fact reasons have been given for the refusal to admit the 2<sup>nd</sup> petitioner to this particular school. One of the reasons given in that letter is that the petitioners have failed to tender sufficient documents to support the 2<sup>nd</sup> petitioner's application. It cannot be said that the petitioners have been very serious about this application they have made to this school. Therefore this Court cannot agree with the submissions made by the

petitioners that no reasons have been given in that letter for the refusal to admit the 2<sup>nd</sup> petitioner to that school.

The petitioners have further stated that after the final list have been published they came to know that one student namely H.D.C.M. Hapuarachchi had been selected under the “brother/sister in school” category. But it later transpired that the said student had been selected under two categories “old boys/girls’ and “brother/sister in schools” categories and in terms of clause 8.3 of the Circular where a child is selected in more than one category the selection must be made under the category which has the highest presentage of admission and the said student should have been selected under “ old boys/girls” category and that would have enable to the 2<sup>nd</sup> petitioner to be selected for admission. The petitioners have further submitted that student named J.A.A.F. Amara, who had secured enough marks to be selected under both the “residents in feeder area” category and “brother/sister in school” category had been selected under “brother/sister in school” category, In contravention of clause 8.3(d) of the Circular P2 and this too have prevented the 2<sup>nd</sup> petitioner’s chances of been selected for admission. The respondents in their objections have

explained, in detail the reasons for the admissions of these two students to school and have stated that the two students under the said categories were selected by a collective decision taken by the Board as the two students have obtained equal and highest marks. The respondents whilst denying the averments in paragraph 28 of the petition have stated that the petitioners have failed to exercise the opportunity made available to them in terms of clause 9.1 of the said circular and did not tender their objections setting out these matters are now estopped from raising these issues at this stage before this Court. Section 9.1 of the said Circular states as follows:

“ ප්‍රදර්ශනය කරන ලද තාවකාලික ලැයිස්තුව හා පොරොත්තු ලේඛණ පාසැල් දැන්වීම් පුවරුවේ ප්‍රදර්ශනය කර සති දෙකක් ඉකුත්වීමට පෙර ලේඛණවල යම් ස්ථානයක නුසුදුසු ළමයෙකුගේ නම අඩංගු වී ඇත්නම් ඒ පිළිබඳ විරෝධතා හා හෝ සුදුසුකම් තිබියදී තම දරුවාගේ නම නුසුදුසු තැනක ඇත්නම් ඒ පිළිබඳව අභියාචනයක් විදුහල්පති වෙත ලියාපදිංචි තැපෑලෙන් ඉදිරිපත් කළයුතුය ඒ සමග තම නම සහ ලිපිනය සඳහන් ලියා පදිංචි තාපෑල සඳහා අවශ්‍ය මුද්දර සහිත ලියුම් කවරයක්ද එවිය යුතුය මෙම කාලසීමායෙන් පසුව ඉදිරිපත් කරනු ලබන කිසිදු අභියාචනයක් හෝ විරෝධතාවයක් සලකා බලනු නොලැබේ.”

It is admitted that the petitioners have failed to tender objections about the said students under clause 9.1 of the said Circular. The petitioners have only tendered two appeals marked 'P9(a)' and 'P9(b)' and those appeals have been considered by the respondents. The petitioners have been heard and the matters put forward by them had been considered by the Principal, the Interview Board and also by the Appellate Board. No mala fides have been averred by the petitioners in their petition filed in this Court against any of the respondents. A court will not lightly interfere with the administration of the Principal of the school and with the determination of the Interview Board and Appellate Board unless for very compelling reasons, as to do so will disorganise the scheme of admissions and will be detrimental to the proper administration of the school. In P.S. Bus Company Limited Vs Members and Secretary of Ceylon Transport Board 61 NLR 49, it was held " that prerogative Writs are not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant of refusal...."

For the above reasons this Court finds no merit in the application filed by the petitioners accordingly dismisses the same without costs. Application is dismissed.

JUDGE ~~OF THE~~ COURT OF APPEAL

**S. Sriskandarajah, J. (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL

AKN