

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

*In the matter of an Application for
mandates in the nature of Writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 384 / 2015

and

No. 385 / 2015

1. H P D Dhammika Sadun Kumara.

2. H P D Pasan Nethmina (minor),
No. 42/A, Sramadana Mawatha,
Weliweriya,
Matara.

(Petitioners in application No. 384/ 2015)

3. H P D Chandana Ranjan Kumara,

4. H P D Nithina (minor),

No. 42,

Sramadana Mawatha,

Weliweriya,

Matara.

(Petitioners in Application No. 385/ 2015)

PETITIONERS

-Vs-

1. Nimal Dissanayake,
Principal.

2. H W Rathnayake,
Secretary.

3. S T Gunawardana

4. Gemunu De Silva

5. Keerthi Abesiriwardana

All of,
Rahula College,
Matara.

(The 1st - 5th Respondents are members of the
Interview Board of Rahula College)

6. Munidasa Rathnasekara (President),
Surveysus College,
Matara.

7. J K Lalani Kumari

8. A Lankathilaka

9. D W Gunawardana

All of,
Rahula College,
Matara.

(The 2nd - 9th Respondents are members
of the Appeals Board of Rahula College)

10. P N Illepperuma,
Director,
National Schools,
Ministry of Education,

Isurupaya,
Battaramulla.

11. Chairman,
Human Rights Commission of Sri
Lanka,
No 165,
Kynsey Road,
Colombo 08.

12. W M Bandusena,
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

13. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Harishka Samaranayake for the Petitioner

Susantha Balapatabendi DSG for all the Respondents except the 9th Respondent.

P W Gunawardena for the 9th Respondent.

Argued on: 2016-08-02

Decided on: 2016-10-12

JUDGMENT

P Padman Surasena J

At the commencement of the argument of this case, learned counsel for both parties agreed that one judgment from this court would suffice for both the above applications as it is the same issue that is canvassed in both cases. Hence this judgment will apply to C A (writ) Application No. 384/ 2015 as well as to No. 385/ 2015.

1st and 2nd Petitioners are unsuccessful applicants who have sought admission of 2nd and 4th Petitioners as students to grade 1 of Rahula College, Matara.

Complaint made to this Court by the Petitioners is that the respondent school authorities unlawfully deducted 05 marks on the basis that S. Thomas` Boys School exists in between Matara Rahula College and the residence of the Petitioners.

Learned counsel for the Petitioners relied on, the map marked and produced as **P 6** while the Respondents relied on the map marked and produced by them as **R 1**.

It is the argument of the learned counsel for the Petitioners that this court should not act on the map (**R 1**) produced by the respondents because it is not admissible under section 83 of the Evidence Ordinance.

Section 83 of the Evidence Ordinance is as follows,

"the Court shall presume that maps, plans, surveys purporting to be signed by the Surveyer General or officer acting on his behalf were duly made by his authority and are accurate; but maps, plans, or surveys not so signed must be proved to be accurate."

It has to borne in mind that this court at this instance is dealing with an application for prerogative writs and is not engaged in a trial in which ascertaining accurate distances has become necessary. The task before this court in this case is only to verify whether respondent school authorities have acted within their powers. In the light of this background

it must be borne in mind, as revealed before this Court that it is the same method that the respondent school authorities have adopted to measure the distances in respect of all applicants to be enrolled as students.

Distance from the Petitioner's residence to the particular school according to the map **P 6** is 864.5 Metres which he argues is legally admissible, correct measurement.

However, it is the position of the Respondents that the distance from the Petitioner's residence to the particular school is 1100 Metres according to **R 1**. It is the position of the Petitioners that the measured distance referred to in the map **P 6** is a distance measured from the Petitioners' residence to the main gate of the school. However, it is the Respondent's position that the distance they measured is from the Petitioner's residence to the Principal's office of the school. It was the submission of the learned Deputy Solicitor General that the school authorities considered the Principal's office as the point from which the distance to the residences of all the applicants were measured.

Learned DSG drew the attention of this court to paragraph 19 of the counter objections filed by the Petitioners. The Petitioners have admitted in that paragraph that they measured the distance from the main gate of the school and not the Principal's office.

It is to be noted that new maps such as maps marked and produced as **P 6** and **P 9** by the Petitioners cannot be taken into consideration in the appeal proceedings as per rules that are applicable in respect of admission of children to the government schools.

In the case of Mohammed Uzman Nazif Vs Upali Gunasekara, Principal Royal College and 2 others (SC FR 30/2012) decided on 2012-08-30, cited by the learned Deputy Solicitor General, the Supreme Court has stated that additional documents filed, should not be considered since the selection of students were made on the basis of documents furnished at the interview, the correction of which were verified by sight inspections¹.

The Petitioners did not seek to challenge the fact that school authorities measured the distance to the residences of the applicants from the Principal's office. Learned counsel for the Petitioners conceded that the success of his case would solely depend on approximately 12 Kilometres which is the difference of figures 876.31 Metres and 864.51 Metres referred to in his map **P 6**.

In any case Petitioners have not been able to satisfy this court that there is a discrepancy in the figures relied upon by the Respondents, regarding the distance from the Petitioner's residence to the Principal's office of the school. In other words, Petitioners have not established that the distance from the main gate of the school to the Principal's office is less than 12 metres.

In these circumstances Petitioner's case should fail.

Learned Deputy Solicitor General who appeared for the Respondents also submitted that there are 17 other students above the Petitioners in the list prepared by the school for admission of students and hence even if the

¹ at page 7 of the judgment

Petitioner's argument succeed it will not be possible for the school authorities to admit the Petitioners, above those 17 students.

In these circumstances we hold that there is no merit in this application.

In these circumstances and for the foregoing reasons we see no basis as to why the writs applied for by the Petitioner should be issued. Hence we decide to dismiss both these applications namely C A (writ) Applications No. 384/ 2015 and No. 385/ 2015. No cost is ordered.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL