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

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

CA (Writ) Application No: 495/2015.

Nandina Hewage Ranjith Mendis,
27A, Pushparama Place,
Weliweriya,
Matara.
On behalf of
Nandina Hewage Chiran Lakiyuru Mendis,

Petitioner.

Vs.

1.Mr. K.D.N. Thilakasiri
Principal/Chairman,
Selection Committee for Grade 1,
Rahula Vidyalaya, Matara.

1. (a) Mr. Francis Welage
Principal/Chairman,
Selection Committee for Grade 1,
Rahula Vidyalaya, Matara.

2. W.D.S Sapukotana,
Vice Principal/Secretary,
Selection Committee for
Grade 1, Rahula Vidyalaya,
Matara.

3. Hon. Chandima Rasapuithra,
Minister of Provincial Education,
Provincial Ministry Education,
Galle.

4. Mr. N.P. Illeperuma,
Director – National Schools, Ministry of Education, Isurupaya, Battaramulla.

5. Mr. Y.Wickramasiri,
Secretary to the Ministry of Education,
Southern Province,
Provincial Ministry of Education, Galle.

6. Mr.W.M. Bandusena,
Secretary to the Ministry of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

7. Hon.Akila Viraj Kariyawasam,
Minister of Education, Ministry of Education, Isurupaya,
Battaramulla.

8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents.

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

S. Thurairaja, PC J.

Counsel : **Lakshan Dias for the Petitioner.**

Chaya Sri Nammuni SC for the Respondents.

Argued on : 05.12.2016

Decided on : 20.01.2017.

ORDER

S. Thurairaja PC. J

The Petitioner on behalf of his son has prayed by petition, for this Court to invoke jurisdiction in the nature of *writs of Certiorari* and *Mandamus*, enabling enrolment of the son of the Petitioner to Rahula College, Matara based on several grounds one of which being that the 1st and 2nd Respondents have acted *ultra vires*.

The factual background related to this case is as follows; the Petitioner, a Dental Surgeon by profession and an old boy of Rahula College, had made an application for the admission of his son for the year 2016. The Petitioner claims that, he resides within 100 meters of the said school but his application for admission for Grade 1, for the year 2016 had been rejected based on want of points particularly in relation to the Electoral Voting List.

The Counsel for the Petitioner submitted that the application will be continued on further grounds of:

a.) That the Petitioner's application for admission to the school was very truthful, wherein it can be treated as an affidavit due to the fact that the Petitioner himself is a medical practitioner attached to the public sector. In the aforementioned affidavit the Petitioner had stated that, **he is residing at No. 27/A, Pushparama Place, Weliveriya, Matara since 2010 up until the date of application** for which the certificate of conforming the residence from the Elections office, Matara has been submitted.

b.) The 1st and the 2nd Respondents had misinterpreted the Circular provided for the admission for year 2016 by the Ministry of Education **(P5).** The aforementioned Circular, under the 6th category of awarding points- **"Selection Procedure,"** states that points will be allocated based on the residency at the time of application is made, by taking into consideration "if" the applicant/nominee/legal guardian had been registered in accordance with the Electoral Voting List, points will be awarded from the preceding

year (Eg:2014), up to five prior years from thereof(including the preceding year 2014) with a mark of 7 for each year and up to a **maximum of 35 marks** will be awarded.

In order, for this Court to determine whether in fact the Petitioner had resided in the area where the Petitioner had been registered in accordance with the Electoral Voting List is of question that must be carefully taken into consideration.

*The petitioner claims that he submitted an application to Rahula Vidyalaya at Matara for grade one class of 2016 and he had marked the copy of the said application as P3. The 1st respondent also filed the same marked 1R1. The respondents submits that the alleged application is incomplete, improper therefore unacceptable.

The respondents brings to the notice that the said application is unsigned and undated. Considering the afore said factor this court finds there is no application submitted to the respondents by the petitioner, further the paragraph number 8th of the application form is a declaration to be made by mother/father/legal guardian. Since the petitioner has not made the declaration that alone is sufficient for the respondents to reject the application in limine.

This court takes a sensitive and sympathetic approach towards the children education therefore without rejecting this application in limine I proceed to consider the merit of the application of the petitioner.

Suppression and misrepresentation of facts and tendering of false document

The petitioner had submitted an application to the school which is marked P3 has a column to declare the registration of electoral list at number 6.there he had declared 2012,2013,2014,2011 and 2010 (even though it is not in certain order I refer in the same way that the applicant has declared). The petitioner has declared as follows:

Common details given in all 5 columns are as follows:

Electoral division – E Matara

Grama Niladhari Division and number – Weliweriya North 417E

Electoral number – 22

Village/ street- Kumaradasa Mawatha (part)

Year	House number	Serial number	Names of the voters
2014	No. 27/A	914	Nandina Hewagv e Rabjith mendis
		915	Hewa puvak dandanwage Heshani Nirosha
2013	as above	901	as above
		902	
2012	as above	362	as above
		363	
2011	as above	901	as above
		902	

The 1st respondent in his statement of objection at para 7 submits that the respondent was not a resident in that said address in 2010 and 2011 in proof he submits the voters list of 2010 there in that said 27/A there are four people registered none of them are this petitioner or the respondent further the serial number given to the said voters of the resident are from 862 to 865. Further submitted that serial number 914 and 915 as claimed by the petitioner were belonged to house number 37/6 two different people certainly not the petitioner or his wife similarly in the year of 2011 27/A residence as 4 voters as registered in the year 2010 and their serial numbers were 855 to 858 at the same year serial number 914 and 915 was allocated to the voters who are residing at the residence number 37/9.

The counsel for the petitioner heavily relied on the certificate of the residence issued by the assistant election commissioner of Matara district marked P1 and claimed that the virtual petitioner was unreasonably denied the admission to Rahula Vidyalaya, Matara. Perusing P1 it states that the petitioner was residing at 124/24, Rahula road since 01/06/2009 this letter was issued on the 29th of July 2010. This directly contradicts with the detail given in column six of the school application which is marked P3, 1R1 declaration made by the petitioner in P3.

The court also observes second document of 1R8 submitted by the respondent. It appears to be a health card issued by the department of health. In the said health card the name of the child stated as Chiran Lakiyuru and the date of birth was 18/06/2010, mothers name H.P.Heshani Nirosha and the address given is 38/15 Parammudali mawatha hiththyameda, Matara. The birth certificate of the child which is marked as P4 the petitioner had given a address as Colombo No.9 as 104/24b Rahula road, Matara. This confirms that the petitioner was not residing at the address given in the alleged school application.

The above false declaration of the petitioner who claims that he is well educated, a medical practitioner by profession and a public servant is unacceptable and unthinkable.

The Petitioner does not fulfill the requirement of residence based on the electoral voting list for awarding of points as per 6th category of the Circular- **"Selection Procedures."** Thus, due to the aforementioned discrepancies, the Petitioner fails to fulfill the 6th category of the Circular in obtaining the maximum mark of 35, as in both 2010 and 2011, the registered electoral voters list does not contain the registration of the Petitioner or his wife. In such circumstances, the points awarded will be limited to 2014, 2013 and 2012 and accordingly, 21 points will be allocated and **not** the maximum point of 35; **provided** the Petitioner or his wife is ***in fact*** registered under the electoral voters list for the years mentioned.

Therefore, it is clearly evident that the Petitioner's application to this Court lacks *uberrima fide* and further, attempted to mislead the Court by producing documents which were false from the very inception and failed to disclose material facts necessary in determining the case based on its merits. Hence, in such situation the confidence of this Court has been lost due to the misleading facts presented by the Petitioner.

In the case of **Medagodage Thusitha Wijayasena V. Walker Sons & Co., Ltd. (CA Rev, Appl. No. 570/96) (DC Colombo Case No. 17455/L)** Ismail J referred to the case of **Hotel Galaxy (Pvt) Ltd. & Others V. Mercantile Hotel Management Ltd. (1987) 1 SLR 5 at 36** where Atukorale J stated that, ".... A misstatement of the true facts by the plaintiff which put an entirely different complexion on the case as presented by him when the injunction was applied ex parte would amount to a misrepresentation or suppression of material facts warranting its dissolution without going into the merits." Ismail J continued to provide that, ".....A party cannot thereafter plead that the misrepresentation was due through inadvertence or disinformation or that the applicant was not aware of the importance of certain facts, which he omitted to place before Court."

Moreover, in the case of **Sumith Kalugala V. Y.P.De Silva (1998) 3 SLR 141** Hector Yapa J, stated that, a Petitioner has a contractual obligation with the Court to disclose all material facts correctly and frankly. This matter was also considered in the case of **Blanca Diamonds (Pvt) Ltd. V. Wilfred Van Els and Two Others (1997) 1 SLR 360** Jayasuriya J held that, ".. when a party is seeking discretionary relief from Court upon an application for a Writ of Certiorari, he enters into contractual obligation with the Court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose *uberrima fides* and disclose all material facts fully and frankly to Court." Therefore, the Petitioner cannot simply plead that the discrepancies laid down above is a misstatement or misrepresentation or was not aware as to the gravity followed when not disclosing certain material facts. In conclusion it can be stated that there is suppression and misrepresentation of facts which does not correspond with the truth. As held in the above case of **Sumith Kalugala V. Y.P.De Silva (1998) 3 SLR 141** "...any person who misleads Court, misrepresent facts to Court or utter falsehood of Court will not be

entitled to redress from Court..... Since Courts expect a party seeking relief to be frank and open with the Court and therefore Courts will say "we ***will not listen to your application because of what you have done."***

In the case of **Jayasinghe vs The National Institute of Fisheries and Nautical Engineering (NIFNE) and others - 2002 1 Sri L.R. 27** referred to by both the counsel for respondents, it was held that:

"The conduct of the petitioner in withholding these material facts from court shows a lack of Uberrima fides on the part of the petitioner. When a litigant makes an application to this court seeking relief, he enters into a contractual obligation with the court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from court. In the case of **Blanca Diamond (Pvt) LTD v. Wilfred Van Els & Two others - 17 ch D 115** *the court highlighted this contractual obligation which a party enters into with the court, requiring the need to disclose Uberrima fides and disclose all material facts fully and frankly to court. Any party who misleads court, misrepresents facts to court or utters falsehood in court will not be entitled to obtain redress from court. It is a well-established proposition of law, since the courts expect a party seeking relief to be frank and open with the court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, court will not go into merits of the case in such situations. The failure to make a full and frank disclosure of all material facts renders this application liable to be dismissed."* (Emphasis added)

It is also noteworthy to refer to the case of **Alphonso Appuhamy vs. Hettiarachchi - 73 NLR 131** wherein Pathirana J was of the view that *"when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the court, before it issues notice in the first instance a full and truthful disclosure of all the material facts, the petitioner must act with Uberrima Fides."* (Emphasis added)

I will refer to the Supreme Court case of **Gas Conversions (Pvt) Ltd., and 3 others vs Ceylon Petroleum Corporation and others - SCFR91/2002 at 4** Dr. Bandaranayake J (as she then was) dealt with a similar situation wherein several preliminary objections were raised on misrepresentations and suppression of material facts and failure to observe Uberrima Fides. (Emphasis added)

"A series of judgments of our courts have enunciated the requirement of 'complete disclosure' and uberrima fides with regard to the applications before Court. It is now a well-established principle that when an applicant has suppressed or misrepresented the facts material to an application and when there is no complete and truthful disclosure of all material facts the court will not go into merits of the relevant application, but will dismiss it in limine....".

The Petitioner in his petition and in some other letters submits that the circular issued by the ministry of education was misinterpreted by the respondents. He claims that his residence should be calculated from the year of application namely 2015. When perused the said circular which is marked as P5 and 1R5 I do not see any ambiguity in that said paragraph under the paragraph number 6:1:I residence.

The Sinhala text states as follows ජන්දහිමි නාම ලේඛනයේ ලියාපදිංචි වී ඇති බව සටහන් කිරීමට අයදුම්පතෙහි ලබා දී ඇති කොටස (අංක 06) සම්පූර්ණ කර ලියාපදිංචිය සනාථ කළ යුතු ය (ජන්ද ලේඛනයේ නම් සඳහන් වසර ගණන අනුව ලකුණු ලබා දිය යුතුය)

ජන්ද හිමි නාම ලේඛනයේ ඉල්ලුම්කරු හා ඉල්ලුම්කරුගේ කලත්‍රයාගේ නම් හෝ නීත්‍යානුකූල භාරකරුගේ නම ලියාපදිංචි ව ඇත්නම් අයදුම් කරන වර්ෂයට පෙර වර්ෂයට පෙර වර්ෂයේ සිට ආසන්න වර්ෂ 05 ක් සඳහා වර්ෂයකට ලකුණු 70 ක් බැගින් ලකුණු 35

The petitioner submits that for the year and the year of application are same therefore the first respondent must calculate the points from 2015.

It is of public knowledge that the parents make their application for the school in the mid of the year for the next year. Some of the documents especially voters list may not be available for the said year, therefore to not to make the parents inconvenient the ministry wanted the parents to submit documents from the previous year that is the previous year from the year of application. The court is of the view that there is no ambiguity in paragraph 6:1:i, of the circular issued by the ministry of education regarding the admission to the grade 1. In the present application the year for application is 2016 and the year of application is 2015.

The petitioner claims that the 1st and 2nd respondents acted in ultra vires, as such he seeks Writ of Certiorari to quash the decision of the rejection of enrollment of his son to the school.

Craig on administrative law (3rd edition pg 652) states as follows:
".....there are reasons which have been given as to why a representation which is ultra vires, in the sense that it is outside the power of the public body or the officer who made it, should not be binding on that body. There is the fear that if estoppels were allowed to apply it would threaten the whole ultra vires doctrine, by enabling the public bodies to extend their powers by making a representation outside their lawful authority, which would then be binding through the medium of estoppel."

Moreover, the application of admission was made by the Petitioner in the year 2015 ***for*** admission in 2016, and at the time of making the application (in 2015) the electoral voting list of the preceding year concerns year 2014 (*not 2015*) and five years prior thereof. (Eg: 2014,2013,2012,2011 and 2010)

Concept of *ultra vires* and principles of natural justice

In order for the 1st and 2nd Respondents to act *ultra vires,* it should have been either in a narrow sense or a broad sense. In a narrow sense *ultra vires* concerns where an administrator lacked substantive power to make a decision or it was wrought with procedural defects. Whereas, *ultra vires* in a broad sense is where there is an abuse of power (Eg: **Wednesbury** unreasonableness or bad faith) or a failure to exercise an administrative discretion or application of discretionary powers in irrational and wrong way.

In the given circumstance the 1st and 2nd Respondents are the Principal and Vice Principal of the school in issue and therefore, are in fact the personnel who are responsible in determining the admission to the school as the school in respect is represented through these Respondents who are familiar with the administration and the wellbeing of the school. Thus, such authority of admission cannot be delegated unlike the Petitioner states.

Therefore, the 1st and 2nd Respondents act of considering the application for admission to the school is within their administrative authority and is not *ultra vires.* Furthermore, the refusal of admission to the Petitioner is not against the principles of natural justice given the fact that the Petitioner had submitted documents of falsehood. Thus, the 1st and 2nd Respondents had exercised their duties within the duly granted authority as personnel representing the school, and upholding the beliefs of the school by refusal to admit on false grounds.

In conclusion, by considering all available material, this Court is of the view that there exists no substantial grounds to grant the Petitioner enrolment to the said school nor sufficient material facts for the issuance of *writs* in the nature of *Certiorari* and *Mandamus* as the Petitioner had made this application lack of *uberrima fides* from its inception. Therefore the application is dismissed.

Considering the conduct of the petitioner namely the father of the applicant child, it will be appropriate to reprimand and impose cost but considering the fact this is concerned with a school admission issue and this court always acted with kind and sympathy therefore I am not ordering cost.

Application dismissed

JUDGE OF THE COURT OF APPEAL

VIJITH K. MALALGODA PC.J (P C/A)

I agree

PRESIDENT OF THE COURT OF APPEAL