

**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. 235 / 2012

1. Dayani Thanuja Herath Randeni,  
No. 9/3,  
Gomes Path,  
Colombo 05.
2. Thisumi Malinima Jayalath,  
No. 9/ 3,  
Gomes Path,  
Colombo 05

**PETITIONERS**

-Vs-

1. H M Gunasekera,  
Former Secretary to the Ministry of  
Education,  
C/o Secretary to the Ministry of  
Education,  
'Isurupaya',  
Sri Jayawardenapura Kotte,  
Battaramulla.
  
2. Gotabhaya Jayaratne,  
Secretary,  
Ministry of Education,  
'Isurupaya'  
Sri Jayawardenapura Kotte,  
Battaramulla.
  
3. S K Aviruppola,  
Principal,  
Visakaha Vidyalaya,  
Colombo 05.
  
4. P Samaranayake,  
Member,

Panel of Interview, (Grade One  
Admissions-Year 2012),  
Visakha Vidyalaya,  
C / o Principal,  
Visakha Vidyalaya,  
Colombo 05.

5. N R Jinasena,  
Member, Panel of Interview, (Grade One  
Admissions-Year 2012),  
Visakha Vidyalaya,  
C / o Principal,  
Visakha Vidyalaya,  
Colombo 05.

6. D N Ranasinghe,  
Member, Panel of Interview, (Grade One  
Admissions-Year 2012),  
Visakha Vidyalaya,  
C/ o Principal,  
Visakha Vidyalaya,  
Colombo 05.

7. N C Kanangara,

Member, Panel of Interview, (Grade One  
Admissions-Year 2012),  
Visakha Vidyalaya,  
C / o Principal,  
Visakha Vidyalaya,  
Colombo 05.

8. A R M P N Sooriyabandara,  
Deputy Director of Education,  
National Schools Branch,  
Member, Ministerial Appeals  
Investigation Committee,  
C / o Secretary,  
Ministry of Education,  
"Isurupaya",  
Sri Jayawardenapura Kotte,  
Battaramulla.

9. P Nanayakkara,  
Director of Education,  
Bilingual Education Branch,  
Member, Ministerial Appeals  
Investigation Committee,  
C/o, Secretary, Ministry of Education,  
"Isurupaya",

Sri Jayawardenapura Kotte,  
Battaramulla.

10. A P Guruge,  
Senior Assistant Secretary  
(Administration),  
Parliament Affairs & Transport,  
Member, Ministerial Appeals  
Investigation Committee,  
C / o Secretary, Ministry of Education,  
"Isurupaya",  
Sri Jayawardenapura Kotte,  
Battaramulla.

11. Varuna Alahakone,  
Assistant Director of Education,  
Aesthetic Education Branch,  
Member, Ministerial Appeals  
Investigation Committee,  
C / o Secretary,  
Ministry of Education, "Isurupaya",  
Sri Jayawardenapura Kotte,  
Battaramulla.

12. A D S Sadeeka,  
Senior Assistant Secretary,  
Educational Services Establishment  
Branch,  
Member,  
Ministerial Appeals Investigation  
Committee,  
C / o Secretary, Ministry of Education,  
"Isurupaya",  
Sri Jayawardenapura Kotte,  
Battaramulla.

**RESPONDENTS**

**Before: A H M D Nawaz J**

**P. Padman Surasena J**

Counsel: Shayamal A Collure for the Petitioners.

Janak De Silva Senior Deputy Solicitor General for the Respondents.

Argued on: 2016-11-15

Decided on: 2017-01-30

**JUDGMENT**

**P Padman Surasena J**

1<sup>st</sup> Petitioner is the mother of the 2<sup>nd</sup> Petitioner who is a minor and whose admission to Grade 1 of Visakha Vidyalaya Colombo, was sought by an application made by the 1<sup>st</sup> Petitioner. Upon this application being rejected by the School, the 1<sup>st</sup> Petitioner appealed to the Secretary of the Ministry of Education. The 1<sup>st</sup> Respondent being the then Secretary of the Ministry of Education had rejected the said appeal by the letter dated 2012-03-14

produced marked **P 12**. That is the document the Petitioner seeks to challenge in this proceedings.

In challenging the said letter **P 12** it is the argument of the Petitioners that the reason contained therein to the effect that the Petitioners had not fulfilled the required qualifications for admission of children as per the circular No. 2011/18 is not justifiable.

It is in this backdrop that the Petitioners in their petition have prayed inter alia for,

- I. a Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent not to admit the 2<sup>nd</sup> Petitioner to Grade One of Visakha Vidyalaya, Colombo for the year 2012, contained in the letter marked **P 12** ;
- II. a Writ of Certiorari to quash the decision and / or finding of the 8<sup>th</sup> to 12<sup>th</sup> Respondents made in respect of the appeal preferred by the 2<sup>nd</sup> Petitioner, referred to in the letter **P 12** ;
- III. a Writ of Mandamus to compel the 2<sup>nd</sup> to 12<sup>th</sup> Respondents or any one or more of them to admit the 2<sup>nd</sup> Petitioner to Grade One of Visakha Vidyalaya, Colombo for the year 2012 on merit and / or in terms of the marking scheme contained in the Circular marked **P 2**



IV. a Writ of Mandamus in the alternative to direct and / or compel the 2<sup>nd</sup> to 12<sup>th</sup> Respondents to admit the 2<sup>nd</sup> Petitioner to the corresponding Grade at Visakha Vidyalaya, Colombo as at the final determination of this application.

Learned counsel for the Petitioners relied on, the indenture of lease produced marked **P 12** in an attempt to show that the Petitioners were residing in that premises at the relevant time.

Learned Senior Deputy Solicitor General drew the attention of this court to section 6 of the application marked **R 1** submitted by the Petitioners to gain admission for the 2<sup>nd</sup> Petitioner to the particular school. In section 6 thereof the Petitioners have stated that they are residing in No. 9/3, Gomes Path, Colombo 05 in the year 2010 as well.

The 1<sup>st</sup> Petitioner in the said application has solemnly undertaken to state the truth. She has been made aware that any false information found inserted therein would result in the rejection of her application.

Learned Senior Deputy Solicitor General next drew the attention of this court to the indenture of lease produced marked **R 3** by which the lessor Sinha Arachchige Kalyani Silva had leased out the whole of this house to a

third party namely, Manel Thilak Gunasinghe, for a period of one year to be reckoned from 2010-05-01. The details given in the indenture of lease bearing No. 4703 produced marked **P 17** by which the 1<sup>st</sup> Petitioner claims to have come to reside at the Gomes Path, Colombo 05 address, contains her then address described as follows:

"....holder of National Identity Card No. 72 519 1685 V of No. 352/4, Millagahawatte, Ganemulla..."

This shows that the Petitioners had not resided at the relevant address (No. 9/3, Gomes Path, Colombo 05) before 2010-05-01 also. This in turn establishes that the averment by the 1<sup>st</sup> Petitioner in her Counter Affidavit that the Petitioners were residing in the ground floor when said Manel Thilak Gunasinghe was occupying the upper floor lacks credibility.

It must also be borne in mind that the Petitioners complaint is that the rejection of her application by the school authorities is wrong because she had submitted the relevant indenture of lease bearing No. 4703 marked **P 17**. It is not part of their case before the school authorities that they had shared this house with another family. Further it is for the first time that the 1<sup>st</sup> Petitioner has taken up such a position in her counter affidavit after

the Respondents bringing the contents of document marked **R 3** to the attention of court.

In the light of the above facts the necessary conclusion that can be arrived at by this court is that the Petitioners could not have been residing at the impugned address during the whole of the year 2010. This means that the 1<sup>st</sup> Petitioner has inserted false information in her application (**R 1**).

Therefore her application becomes liable for rejection on that ground alone.

Since this court at this instance is dealing with an application for mandates in the nature of Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution, the task before this court is only to ascertain whether there is any ground for the issuance of such writs against the respondent school authorities.

In the case of Jahangir Sherifdeen and two others Vs. Sandamali Aviruppola, Principal Visaka Vidyalaya Colombo<sup>1</sup>, relied upon by the learned Senior Deputy Solicitor General, the Supreme Court has held as follows.

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<sup>1</sup> . S.C. (F/R) Application No. 01/2015, decided on 2016-10-03

" ..... The above facts are disproved by his own declaration in the birth certificate of the child.

When I consider the above matters, I hold that the Petitioners, declaration that they, in 2009 and 2010, were living at No.50A, Edward Lane, Colombo 03, is false. The 1<sup>st</sup> Petitioner, at the end of the application marked P2, has admitted that if the particulars in the said application (P2) are found to be false, his application would be rejected. On this ground alone, the application of the 1<sup>st</sup> Petitioner for school admission (P2) had to be rejected by the school authorities. If the particulars furnished in the application marked P2 are false, the petitioners are not entitled to the reliefs claimed in their petition filed in this court. For the above reasons, I hold that the application marked P2 is not a genuine one. ...."

The petitioner by stating in her application that she resided in this address in the year 2010 has attempted to deceive the Respondent school authorities. What had prompted the Petitioner to file this application in this Court is the rejection of her application by the Respondent school authorities. As has been decided by the Supreme Court in the case cited above, in this case too the Respondent school authorities are entitled to reject the application submitted by the 1<sup>st</sup> Petitioner on this ground alone.

In these circumstances it is clear that the action of the Respondent school authorities in rejecting the said application submitted by the petitioner, cannot be faulted.

In these circumstances and for the foregoing reasons we see no basis as to why the aforesaid writs applied for by the Petitioner should be issued.

Hence we decide to dismiss this application. However, we make no order for costs.

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**A H M D Nawaz J**

I agree,

**JUDGE OF THE COURT OF APPEAL**