

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

**In the matter of an Application for a
mandate in the nature of *Writ of Certiorari*
and *Mandamus* under article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka**

1. Al Haj Mohamed Saheed Mohamed Faleel,
No. 60, Perera Road, China fort,
Beruwala.
2. Al Haj Mohamed Saheed Mohamed
Dukkain,
No 12, Kappithangoda, China fort,
Beruwala.
3. Deshakeerthi Al Haj M. Jabir Mohamed,
No 25, Perera Road, China fort,
Beruwala

PETITIONERS

CA/WRIT/494/2007

Vs,

1. Reginold Cooray,
Chief Minister and Minister of Education
of the Western Province,
“Srawasthi Mandiraya”
No 32, Sir Marcus Fernando Mw,
Colombo 07.
2. Secretary,
Ministry of Education,
“Isurupaya”
Battaramulla.
3. Provincial Director of Education,
Western Province,
Green path, Colombo 07.

4. Zonal Director of Education,
Zonal Education Office,
Kalutara.
5. Principal, Al Fasiyathul Nasriya Balika
Vidyalaya,
Maradana, Beruwala.

RESPONDENTS

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

Counsel: Faiz Musthapa PC with K.S. Thilakaratne for the Petitioners
Suranga Wimalasena SSC, for the Respondents

Argued on: 2017.02.03

Decided on: 2017.05.05

Order

Vijith K. Malalgoda PC J

Three Petitioners to the present application have come before this court seeking inter alia,

- b) For a declaration that the change of name of the school referred to in paragraph 4 above, Packir Mohamed Muslim Balika Vidyalaya to Al Fasiyathul Nasriya Balika Vidyalaya is not valid.

- c) For an order in the nature of a writ of Certiorari to quash the said change of name from Packir Mohamed Muslim Balika Vidyalaya to Fasiyathul Nasriya Balika Vidyalaya
- d) For an order in the nature of writ of Mandamus to compel the Respondents to use the name Packir Mohamed Balika Vidyalaya as the only lawful and valid name of the said school referred to in paragraph 4 above

The Petitioners are children of one Ahamed Lebbe Marikar Packir Mohamed also known as "Packir Master" who was the 1st Muslim Inspector of schools appointed in the year 1935. As submitted by the Petitioner their father was heavily involved in developing Muslim Education and was the founder of the 1st Muslim Girls School in the country in the year 1924. The said school which was situated at Maradana, Beruwala was then called the "Maradana Girls Tamil School" but later came to be known as "Maradana Muslim Girls School."

As further submitted by the Petitioners' their father Ahamed Lebbe Marikar Packir Mohamed died on 10.03.1976 and subsequent to his death on 26.03.1976 Mr. I.A. Carder member of Parliament for Beruwala and Deputy Speaker of Parliament had made a request to the Director of Education Kalutara to re-name the Maradana Muslim Girls School as Packir Mohamed Balika Vidyalaya in memory of late Mr. Packir Mohamed. (G)

Even though the Petitioners could not submit any documentary proof of the steps taken by the Director of Education Kalutara to implement the said recommendation, the Petitioners have produced marked (H), a copy of Government Gazette No 270/2 dated 20. 06.1977 relating to the General Election 1977 where the said school had been named as Packir Mohamed Muslim Balika Vidyalaya as a polling station at the said General Election.

Since the above name change, the school referred to as Maradana Muslim Balika Vidyalaya was called Packir Mohamed Muslim Balika Vidyalaya and the said name change was effected following

the criteria published in “guide lines for naming schools issued by the Director of Education” a copy of which is produced marked (L).

However as submitted by the Petitioners, the said Petitioners started a research into the service rendered by their late father somewhere in 2004 and during the said research they came across information that the name of the said school “Packir Mohamed Muslim Balika Vidyalaya is not being used in respect of the said school but a new Name “Al Fasiyathul Nasriya”is being used. In this regard the Petitioners submitted that the above name change had been effected in violation of the guide line circular referred to above and therefore submit that any decision to change the name from “Packir Mohamed Muslim Balika Vidyalaya” to Al Fasiyathul Nasriya Balika Vidyalaya” was reached illegally and in violation of the law.

As observed by this court both parties to the present application admits the fact, that the school referred to this application was originally known as Maradana Muslim Balika Vidyalaya. As submitted by the Petitioners immediately after the death of late Mr. Packir Mohamed, a request was made to change the name of the school. When going through the papers before us, we observe, that the Respondents too do not deny this position. As documented by the Petitioners the application for the above name change would have submitted somewhere in 1976. However the Petitioners were not successful in submitting the entire documentation required for a name change and in this regard our attention was drawn to clause 3 of the guide lines by Respondents.

Clause 3 of the said guide lines reads thus;

3. The procedure for making request the change of name will be as follows,

- a) All applications for change of name should be forwarded to the Ministry on the prescribed form well in time.

- b) Proposals for change of name should receive the prior consent of the Member of Parliament of the area and also the School Development Society of the school concerned
- c) The School Development Society should resolve at a general meeting attended by not less than 75% of the total membership, to change the name of the school according to the guidelines specified above

whilst referring to the above provisions, the Respondents submitted that the School Development Society was never consulted on the said name change and when a decision was taken to change the name of the school concerned, there were protests by the interested parties which led to a situation where the peace of the area was breached and the said situation was settled by assigning the name, which is currently being used by the school.

In this regard the Respondents have heavily relied on an affidavit submitted by one Mrs. Hamza M. Ariff who had been the Principal of Maradana Muslim Balika Vidyalaya for the period, 1st January 1959- 31st March 1961 and again from 1964 to November 1989.

According to her affidavit which was produced marked 5R7 before this court, the name of Maradana Muslim Balika Vidyalaya was changed to Packir Mohamed Muslim Balika Vidyalaya with effect from 10.03.1977 but there was opposition to the said change since it was done without the approval of the Parent- Teachers Association of the school.

At a subsequent stage the Parent -Teachers Association of Packir Mohamed Balika Vidyalaya unanimously accepted and agreed to name the school as “Al Fasiyathul Nasriya Muslim Balika Vidyalaya” and this was conveyed to the Ministry of Education and the Zonal Director of Education by circular bearing No 1/672 dated 11.10.1978 had informed the Principal, that the Secretary of the Ministry of Education had acceded to the request made to have the name of Packir Mohamed Balika Vidyalaya changed as Al Fasiyathul Nasriya Muslim Balika Vidyalaya.

The said Principal had attached to her affidavit marked R1 and R2 the said circular dated 11.10.1978 and the log entry made by her in the school log book on 16.10.1978 with regard to the said name change.

Even though the Petitioners' deny any knowledge of the said name change, the Petitioners have challenged the new name given to Packir Mohamed Muslim Balika Vidyalaya since the said name was given contrary to clause 2 of the guide lines for naming of schools.

In this regard this court is mindful of the fact that, the document produced marked (L) which was accepted by both parties, was only a guide line but, if there was a significant diversion by the authorities to the said guide line, the aggrieved party should have complained against the said deviation promptly without allowing the violation to continue for several years.

As observed by this court, the Petitioners have taken up the position that they were involved in social activities in the same area having contacts with the authorities. If the said positions taken by the Petitioners are correct, we see no reason for the Petitioners to remain silent for nearly 30 years to come before us. As submitted by the Petitioners, they came across the information that the name of Packir Mohamed Muslim Balika Vidyalaya is not being used for the 1st time in the year 2004 but when considering the material placed before this court by the Respondents, including a copy of the Government Gazette 1148/10 dated 06.09.2000 relating to the General Elections 2000 where the said school named as Al Fasiathul Nasriya Balika Vidyalaya was declared as a polling station at the said General Elections.

As further observed by this court for all the administrative matters including appointment of teachers, school administration, grant of funds and development work carried at the school, the school in question was referred only as Al Fasiathul Nasriya Balika Vidyalaya since the date of the said circular.

In the said circumstances the explanation given by the Petitioners for coming before this court i.e. that they were unaware of such name change until 2004 for nearly 26 years is difficult to accept.

However the position taken up by the Petitioners before this court was that the change of the name to "Al Fasiyathul Nasriya" is *ab initio* void as the said change was done *ultra vires* the guide lines and therefore there is an error of law on the face of the record. Even though the Petitioners have taken up the position that the name change effected in 1976 was carried out following the guide lines referred to above, the Petitioners were not able to establish that all three requirements referred to in clause 2 had been fulfilled when the said name change was effected. As submitted by the Respondents before us, the parent - teachers association was not agreeable for the said name change, and in the said circumstances it is difficult to conclude that the said name change was effected by adhering to all the guidelines (specially clause 3 b and c) referred to in the document produced marked L.

In the said circumstances the argument raised by the Petitioners that there can't be violations to the guidelines referred to as "L" and for the reason that clause 2 of the guide lines are violated by the Respondents when effecting the name change (specially clause 2 b and c) to from Packir Mohamed Muslim Balika Vidyalaya is void *ab initio*, cannot be accepted by this court.

As further observed by this court the explanation given by the Petitioners for the delay of nearly 26 years to come before this court is unsatisfactory and therefore difficult to accept by this court.

Even though the Petitioners heavily relied on the decision in *Biso Menika V. Cyril de Alwis [1982] 1 Sri LR 368* to the effect;

"Unlike in English law or in our law there is no statutory time limit within a petition for the issue of a writ must be filed. But a rule of practice has grown which insists upon such petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays, where denial of writ to the Petitioner is likely to cause great injustice. The court may therefore in its discretion entertain the application in spite of the fact that a Petitioner

comes to court late, especially where the order challenged is a nullity for absolute want of jurisdiction in the authority making the order.”

And argued that the name change referred to in this application was a nullity since it was made absolute want of jurisdiction but for the reasons set out above in this judgment I see no reason to uphold the said argument.

In these circumstances I find that the Petitioners have failed to give an acceptable explanation for the delay of nearly 26 years to come before this court.

In the case of *Senevitathne V. Tissa Dias Bandaranayake and another (1992) 2 Sri LR 341* Amarasinghe J adverting to the question of long delay, commented that;

“If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his right; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus, subveniunt*, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”

In the case of *Jayaweera V. Assistant Commissioner of Agrarian Service (1996) 2 Sri LR 70* the Court of Appeal held,

“Petitioner seeking prerogative writ is not entitled to relief as a matter of cause or as a matter of right or as a routine. Even if he is entitled to relief still court has discretion to delay him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief.”

The above decision clearly explains what is a delay and when the Petitioner be punished of laches. In the case in hand the Petitioners have taken 26 years to complain the alleged illegality before this court and failed to explain their delay in coming before this court. In the said circumstances I hold that the petitioner is guilty of laches.

For the reasons adduced above this court is reluctant to grant any relief to the Petitioners and therefore dismiss this application with cost.

Application dismissed with cost.

President of the Court of Appeal

S. Thuraija PC J

I agree,

Judge of the Court of Appeal