

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

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

**Weerakoon Mudiyansele Padmajith
Samantha Bandara Weerakoon,
“Senehasa”,
Bulumulla,
Kiribathkumbura.**

PETITIONER

CA (Writ) Application No: 289/2016 Vs.

1. **Rajapaksha Dassanayake Mudiyansele
Prasad Weeratunga,
Principal,
Kingswood College,
Kandy.**
2. **Sunil Hettiarachchi,
Secretary,
Ministry of Education,
“Isurupaya”
Battaramulla.**
3. **Prabath Nalaka Illapperuma,
Director of National Schools,
Ministry of Education,
“Isurupaya”
Battaramulla.**

4. **Hon. Attorney-General,**
Attorney-General's Department,
Colombo 12.

RESPONDENTS

Before : A.L. Shiran Gooneratne J.

Counsel : Priyantha Gamage for the Petitioner.

Vikum de Abrew, D.S.G. for the Respondents.

Argument on : 01/11/2017

Written Submissions filed on: 23/02/2018

Judgement on : 22/03/2018

A.L. Shiran Gooneratne J.

The Petitioner by this application, inter alia, has sought for an order of a writ of Mandamus to compel the 1st, 2nd and 3rd Respondents to execute the decisions in impugned documents marked P5, and P9, on the basis that, failure or neglect to act on the said decisions by the Respondents amounts to malice, illegality and would undermine the legitimate expectations of the Petitioner.

The Petitioner submits that, in reference to document marked P5, dated 25/01/2016, by the 3rd Respondent, a report by the Committee On Structural Affairs of schools has specifically ordered the 1st Respondent to begin an additional class to Grade 1 and Grade 6, to enable the Petitioner's child to be

admitted to Grade 1 of Kingswood College Kandy (hereinafter sometimes referred to as the “said College”) under the “old boys’ category”. In paragraph 16, the Petitioner refers to document marked P6, where the 1st Respondent in reply has stated that due to the lack of human resources and physical infrastructure, a parallel class for Grade 1 and Grade 6 could not be commenced.

The old boys’ union of the “said college” by letter dated 6/4/2016, marked P7, and by letter dated 5/4/2016, marked P8, has informed the 3rd Respondent that to their best of ability the college union would facilitate the requirements to commence the said parallel class. Accordingly by the impugned Document marked P9, dated 12/4/2016, the 3rd Respondent has brought to the notice of the principal of the said college that the old boys’ union has consented to provide the required infrastructure facilities.

The Committee on Structural Affairs of Schools, which met on 04/11/2016, in its report dated 16/11/2016, marked R6, at item No. 12, has revisited this issue, primarily on the basis that on the request of the former principal of the said college the committee on 21/12/2015, has permitted to commence a parallel class each to Grade 1 and Grade 6. However, the committee which convened on 04/11/2016, has observed the following;

- The college was not possessed with the required physical resources to practically commence the proposed parallel classes as recommended by the former principal

- The principal to be informed to discuss this issue with the college development committee and to arrive at a decision.
- The Committee on Structural Affairs of Schools has decided to suspend its earlier decision on 21/12/2015, to commence parallel classrooms for Grade 1 and Grade 6 due to lack of human and physical resources.

It is also observed that by letter dated 04/10/2016, marked R4, the principal of the said college has informed the National Director of Schools that the issue relating to the commencement of the proposed parallel classes and the inadequacy of physical resources as at present, has been discussed with the college development committee.

As contended in document marked P5, the approval granted to commence a parallel class to Grade 1 and Grade 6 was subject to the availability of human and physical resources. The Respondents have adequately addressed this issue and the decision arrived at has been communicated to the Petitioner, ie, of the non-availability of resources at present. According to R6, the earlier decision taken by the Committee on Structural Affairs of Schools to commence parallel classrooms was suspended due to the lack of infrastructure and resources. Therefore, the Petitioner has to satisfy Court that the relevant authorities have acted unreasonably or irrationally in the exercise of their statutory/ regulatory powers, in arriving at the said decision.

In the case of *Council of Civil Service Unions vs. Minister for the Civil Service, (1984) 3 All E.R. 935*, Lord Diplock used the word “irrational” to mean a decision that is,

“so, outrages in its defiance of logic or accepted moral standards, that no sensible person who had applied his mind to the question to be decided could have arrived at it”

According to the 3rd paragraph of document marked R3, the decision to commence an additional class each for Grade 1 and Grade 6 has been put on hold until the conclusion of construction of the proposed 4 storied building.

Therefore, for the reasons stated in P6, I do not see any illegality or unreasonableness in arriving at the subsequent decision to with hold the previous approval granted by the 3rd Respondent since implementation of the previous decision is not practicable. It is also observed that the subsequent decision which is within the scope of this action is not challenged by the Petitioner, in this application.

In the circumstances, the question to be asked is can the Petitioner claim relief on legitimate expectation based on the impugned orders in documents marked P5 and P9, when the said decision has been clearly suspended and a new decision has been made (R6) for stated reasons. In arriving at the decision, in document marked R6, the authorities have considered the recommendations of the school development committee. Subsequent to the decision taken by document

marked P9, dated 12/4/2016, the 3rd Respondent having considered the said decision of the Committee on Structural Affairs dated 15/07/2016, has instructed the 1st Respondent by document marked R1, dated 12/08/2016, to re-consider the previous decision arrived by the said committee. The subsequent decision of the committee was based on the non-availability of human and physical resources which prevented implementation of the previous recommendation.

The doctrinal base and limits of legitimate expectation can be summarized as follows;

The representation underlying the expectation must be clear, unambiguous and devoid of any relevant qualification,

- I. The expectation must be reasonable,
- II. The expectation must have been induced by the decision maker,
- III. The representation must be one which it was competent and lawful for the decision maker to make without which reliance cannot be legitimate.

(De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* 425 (5th Ed. 2001)

Document marked R3, clearly state that, the non- availability of resources and inadequate classroom facilities at present, has compelled the authorities to re-consider the issue and recommends that the matter be discussed with the school development committee and to arrive at a consensus. In the aforesaid

circumstances I am of the view that the Petitioners claim for relief on legitimate expectation on the impugned orders in documents marked P5 and P9 are unreasonable and unfounded in law.

The Petitioner by motion dated 4th January 2018, has brought to the attention of court that two new students have been admitted to Grade 2 of the said college and further state that the said action is indicative of the availability of adequate space to admit new students. As submitted by the Respondents the two students who were admitted to Grade 2 are not governed by the same rules and regulations, ie. Circler No. 23/2013 (P-3), which are presently applicable to admissions to Grade 1. Accordingly, the said new admissions to Grade 2 does not fall within the scope of this action.

In all the above circumstances, the reliefs sought by the Petitioner is refused.

The Petition is dismissed without costs.

Parties in C.A. Writ 283/2016, C.A. Writ 284/2016, C.A. Writ 285/2016, C.A. Writ 286/2016, C.A. Writ 287/2016, C.A. Writ 288/2016, have agreed to abide by the Judgement delivered in this case.

JUDGE OF THE COURT OF APPEAL