

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 under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

1. **Shavanthi Lakshika
Samarakoon**
2. **Edirimuni Eanuka Amiru
Perera Karunaratne**

Both of
No. 928/2, Maradana Road,
Colombo 8.

Petitioners

Vs.

CA (Writ): 67/2019

1. **The Secretary,
Ministry of Education**
"Isurupaya", Pelawatte,
Battaramulla.
2. **Director of National Schools**
"Isurupaya", Pelawatte,
Ministry of Education,
Battaramulla.
3. **B.A. Abeyrathna**
Principal,
Royal College,
Colombo 7.

Respondents

Before :

Hon. Justice Yasantha Kodagoda, PC,
President of the Court of Appeal

Hon. Justice Arjuna Obeyesekere
Judge of the Court of Appeal

Counsel : R. Chula Bandara with Kanchana Madhubashini Jayalath and Lakmini Edirisinghe for the Petitioners.

Yuresha Fernando, Senior State Counsel for the Respondents.

Supported on 3rd July, 2019.

Written Submissions of the Petitioners submitted on 25th July, 2019.

Written Submissions of the Respondents submitted on 29th July, 2019.

Order delivered on 21st November 2019.

Order

Hon. Justice Yasantha Kodagoda, PC, President of the Court of Appeal

This Order relates to whether or not formal Notices should be issued by this Court on the Respondents pertaining to this Application seeking mandates in the nature of Writs of Certiorari and Mandamus against the Respondents.

Position of the Petitioners and submissions made on their behalf

According to the Petition, other material placed before this Court by the Petitioners and the submissions made on their behalf by the learned counsel for the Petitioners, the 1st Petitioner is the mother of the 2nd Petitioner. In response to a notification dated 31st May 2018 published by the 1st Respondent – Secretary, Ministry of Education, the 1st Petitioner had submitted to the 3rd Respondent – Principal of Royal College, Colombo, an application in respect of the 2nd Petitioner, seeking admission to Grade I of Royal College for the year 2019. The application had been presented under the sole category '*children of residents in close proximity to the school*', notwithstanding the 1st Petitioner's husband (2nd Petitioner's father) being an old boy of Royal College, and thus being entitled to apply under the 'past pupils' category. [According to the '*Guidelines / Instructions and Regulations regarding admission of children to Grade I*' which is a component of the afore-stated 'Notification' entitled '*Instructions related to admission of children to Grade One in Government Schools for the Year 2019*' issued by the 1st Respondent, 50% of children of the maximum number of students who may be selected for Grade

I, should be selected from the '*Children of residents in close proximity to the school*' category.]

In the said application presented to the 3rd Respondent – Principal of Royal College, Colombo, the 1st Petitioner had taken up the position that, she (together with her family, including her husband and the 2nd Petitioner) are resident at No. 928/2, Maradana Road (also known as P. De S. Kularatne Mawatha), Colombo 8. In addition to this application, the 1st Petitioner had on behalf of the 2nd Petitioner preferred three other applications seeking admission to three other schools in Colombo. In response to the afore-stated application for admission to Royal College, the Petitioners had been called for an interview, which was subsequently held on 19th August 2018. At the interview, in support of their application, the 1st Petitioner had tendered for examination among other documents the following documents to the interview panel (which had been chaired by the 3rd Respondent). These documents had been produced in proof of residency at No. 928/2, Maradana Road, Colombo 8.

Documents in proof of residency:

- (i) A Deed of Transfer (dated 25th August 1981 bearing No. 4701) executed by the Commissioner of National Housing vesting the afore-stated premises on Micheal Bois (the father of the 1st Petitioner).
- (ii) A Deed of Gift (dated 1st March 1990 bearing No. 98) pertaining to the afore-stated premises executed by Micheal Bois in favour of Shamali Prasangani Bois (the mother of the 1st Petitioner).
- (iii) A Deed of Declaration (dated 22nd December 2000 bearing No. 842) executed by Shamali Prasangani Bois pertaining to the afore-stated premises and a block of land said to be situated adjacent to the said premises.

Additional documents in proof of residency:

- (i) National Identity Card of the 1st Petitioner, wherein the address referred to above is evident.
- (ii) School leaving certificate of the 1st Petitioner that reflects the same residential address during the period of her primary and secondary education at two schools.

- (iii) Certificate of Birth of the 2nd Petitioner, which reflects that as at the date of birth of the 2nd Petitioner (22nd February 2013), the party who notified the Registrar of the child's birth, namely the 2nd Petitioner's father (Edirimuni Diluka Thushan Perera Karunaratne), had declared his address to be No. 928/2, Maradana Road, Colombo 8.

Registration in the electoral register in proof of residency:

An extract of the electoral register wherein the name of the 1st Petitioner is seen having been registered as being resident at the above address for 5 years (2013 to 2017), and the name of the husband of the 1st Petitioner (Edirimuni Diluka Thushan Perera Karunaratne) is seen having been registered for 4 years (2014 to 2017).

According to the 1st Petitioner, following the interview held on 19th August 2018, at which the afore-stated documents had been examined, the application for admission to Royal College, Colombo, presented by the 1st Petitioner had received the following marks.

- Documents to be forwarded in proof of residency (Clause 7.2.1.1):
23 out of a maximum of 30
- Additional documents in proof of place of living (Clause 7.2.1.2):
3 out of a maximum of 5
- Registration of Electoral (Clause 7.2.2):
22.5 out of a maximum of 25
- Proximity to school from the residency (Clause 7.2.4):
No marks out of a maximum of 40

[The numbers appearing at the end of the headings above, reflect the number given to each category of marks contained in the *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'*.]

Based on the marks received for each category, the application of the 1st Petitioner had received a total of 48.5 marks out of a maximum of 100.

In mid December 2018, a temporary list of those selected for Grade I of Royal College, Colombo had been published by the 3rd Respondent, and under the category *'Proximity'* the 1st Petitioner had noted that the name of the 2nd

Petitioner had not been included. It is to be noted that, clause 9 of the *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'* provides for the publication of such an 'interim list'. In the circumstances, the 1st Petitioner had presented an Appeal to the 'Appeal Panel' appointed by Royal College, Colombo. It is to be noted that clause 10 of the afore-stated guidelines/instructions provides for the submission of such an 'appeal'.

The appeal hearing had taken place on 18th December 2018. At the said hearing, the 1st Petitioner had advanced several matters, amongst which the principal point being, though the conveyances referred to above submitted to the interview panel by the 1st Petitioner were all in the name of the Petitioner's mother, the 1st Petitioner had submitted to the interview panel a letter dated 26th June 2018 issued by the 1st Petitioner's mother, declaring that the premises and house bearing No. 928/2, Maradana Road, Colombo 8, will be devolved after her to the 1st Petitioner who is her only child. The 1st Petitioner had also submitted to the Appeal Panel that since her birth and even following her marriage, she had lived in the demised premises, up to the time the application was submitted. She had submitted that, even though she actually lived at the said address, she could not submit *utility bills* pertaining to the house in issue depicting her name as the consumer, since the 1st Petitioner's parents lived in the said address. Following a consideration of the said appeal, a revision of the marks previously allocated had taken place in the following manner.

- Documents to be forwarded in proof of residency (Clause 7.2.1.1):
23 out of a maximum of 30 (no revision)
- Additional documents in proof of place of living (Clause 7.2.1.2)
3.4 out of a maximum of 5 (increase of 0.4 marks)
- Registration of Electoral (Clause 7.2.2):
25 out of a maximum of 25 (increase of 2.5 marks)
- Proximity to school from the residency (Clause 7.2.4):
No marks out of a maximum of 40 (no revision)

Thus, the total number of marks had been revised to 51.5 marks (an increase of 3 marks).

For the year 2019, the '*cut off*' mark for selection of children for Grade I of Royal College, Colombo had been 58 marks. Thus, the 2nd Petitioner had not

been selected for admission to Royal College, Colombo. This is the core grievance of the Petitioners.

The 1st Petitioner submitted the following arguments in support of his contention that the non-selection of the 2nd Petitioner is 'unlawful'.

- (i) The 'residence' referred to in the *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'* would imply a permanent abode, which has been used for a continuous period. Continuity of residence should be at least for a period of 5 years. Such 'residence' does not necessarily connote ownership of the relevant premises / house. Therefore, the allocation of 30 marks for 'documents forwarded in proof of residency' is irrational, arbitrary, unreasonable and capricious.
- (ii) The 1st and 2nd Petitioners actually and permanently lived in the demised premises from the time of their birth and in the circumstances mentioned above (1st Petitioner's mother owning the property and both her parents living in the said premises), one cannot expect her to submit 'utilities bills' such as water and electricity bills in the name of the 1st Petitioner.
- (iii) An inspection team had not come to the premises in issue to ascertain whether in fact the 1st Petitioner and her husband actually lived there.
- (iv) As the mother of the 1st Petitioner being the owner of the premises in issue had made a declaration that the premises would devolve to the 1st Petitioner upon her death, the Petitioners should have been allocated the full compliment of marks (30) for the category *'documents in proof of residency'* criteria. The Petitioners claim that they had a 'legitimate expectation' in that regard, and hence, the decision not to award full marks was arbitrary, capricious, illegal and irrational.
- (v) If the Petitioners were awarded full marks for the afore-stated category, the Petitioners would have received a total of 58.5 marks, and thus would have gained sufficient marks for the 2nd Petitioner to gain admission to Royal College, Colombo.

In view of the foregoing, the Petitioners submitted that, they were entitled to a Writ in the nature of Certiorari to quash Clause 6.1.1(a) entitled *'Main documents to be forwarded in proof of residency'* of the *'Guidelines / Instructions and*

Regulations regarding admission of children to Grade I and / or to a Writ of Mandamus compelling the 3rd Respondent to admit the 2nd Petitioner to Grade I of Royal College, Colombo.

Learned counsel for the Petitioners submitted quite rightly that, the main issue to be determined by this Court is whether, in the circumstances referred to in the Petition and during the support phase of this Application, the Petitioners ought to have been awarded the full complement of 30 marks under the category '*documents to be forwarded in proof of residency*'. It is to be noted that, according to the scheme, while the maximum number of marks that may be given if the ownership of the place of residence lies in the applicant (1st Petitioner) or her spouse is 30, the total number of marks that may be awarded if the ownership of the place of residence lies with either of the parents of the applicant (1st Petitioner's mother) is 23. Learned counsel for the Petitioner submitted that, there is no explanation provided in the afore-stated document as to how the 1st Respondent arrived at a decision to provide for a variance of 7 marks between the said two criteria. It was the submission of the learned Counsel for the Petitioners that, both the stipulation of 30 and 23 marks respectively as the maximum number of marks for the two categories referred to above, and the corresponding variance in the number of maximum marks is irrational, and hence makes that decision 'illegal' and therefore should be subject to judicial review. He submitted that, this variance caused prejudice to the Petitioners and resulted in the 2nd Petitioner not being selected to Royal College, Colombo.

Submissions made on behalf of the Respondents

In response to the core issue before this Court, learned Senior State Counsel for the Respondents, submitted the following:

- (i) The document entitled '*Guidelines / Instructions and Regulations regarding admission of children to Grade I*' sets out an organized, exhaustive and elaborate scheme for selection of children for enrollment to Grade 1 of all government schools. This document contains *inter-alia* the method of selection that includes several categories and a marking scheme as applicable to each such category.
- (ii) This scheme recognizes several separate and distinct types of 'residence' that may be established to gain admission to schools under the '*Children of residents in close proximity to the school*' category.

The classification and the allocation of marks per category are as follows:

- (1) Ownership in the name of the applicant / spouse. (maximum number of marks – 30)
 - (2) Ownership in the name of the mother / father of the applicant / spouse. (maximum number of marks – 23)
 - (3) Registered lease bonds / Government quarters / Property awarded under the Housing Rentals Act. (maximum number of marks – 12)
- (iii) This scheme provides for the allocation of marks also in the following manner.
- (1) Where the applicant is unable to produce the primary documents required to establish '(i)' or '(ii)' above, confirmation of place of residence via other documents is permitted. (1.5 marks would be given per document subject to a maximum of 6 marks.)
 - (2) For additional documents submitted in proof of the place of living, 1 mark would be given per document, subject to a maximum of 5 marks.
- (iv) The allocation of marks is based on the submission of authentic documents.
- (v) When allocating marks, the number of years lived in the residence is taken into account. Five years of residency attracts the full complement of marks.
- (vi) A consideration of the primary and additional documents submitted by the 1st Petitioner in proof of residency admittedly establishes that, ownership of the premises in issue, was with the mother of the 1st Petitioner and not with the 1st Petitioner. Thus, she was entitled only to a maximum of 23 marks. Thus, the Petitioners were not entitled for a maximum of 30 marks.
- (vii) The Petitioners have been awarded the maximum number of marks they were entitled to receive, and had been awarded a further 3.4 marks (out of a maximum of 5 marks) for the additional documents they have produced.
- (viii) Further, the maximum marks (25) had been assigned for the inclusion of the name in the 'electoral register'.

- (ix) The Guidelines / Instructions issued by the 1st Respondent referred to above, is based on rational criteria and is well-founded, and not arbitrary, capricious or illegal.
- (x) The 3rd Respondent and his officers have correctly applied the guidelines / instructions referred to above, and hence the non-selection of the 2nd Petitioner is 'lawful', and thus should not be subject to judicial review.

Consideration of the evidence, application of legal principles, and determination by Court

This Court wishes to take judicial notice of the fact that, admission of children to good, reputed and convenient government owned schools (public / state / government schools), government assisted schools (semi-private schools) and private schools, has been a major issue confronted by both the State and the public at large. Young parents understandably consider gaining admission of their children to preferred public or private schools to be of fundamental importance in ensuring a sound education to be provided to their children and to lay a good foundation for their future career and overall development. Preference of schools is largely determined based on perceptions regarding the availability of educational resources and standards of education, existence of core and extra-curricular activities, discipline, reputation, nature and the strength of the alumni and convenience. Parents obviously consider gaining admission of their children to preferred and reputed schools to be a serious challenge, given the demand for reputed public and private schools far exceeding the availability of such schools. Inequality of resources available in public schools has compounded the prevailing situation. As at this moment in time, the nearest school is not always the best school. To a government of a developing country such as the Government of Sri Lanka, where free primary, secondary and tertiary education is provided to children, ensuring that all public schools are equally resourced and is of equal standard, is obviously a major challenge. If the standards of peripheral schools are enhanced, naturally the demand for more popular national schools situated in urban areas will decline.

It is a well-known fact that, some young married couples commence preparation to get their children admitted to schools of their choice, well before children are even born. Some such preparatory measures are most unfortunately contrary to law and hence cannot be condoned even though such measures are resorted to with the 'noble' objective of ensuring an

education of high standard being provided to their children. Contents of applications and associated documents submitted by some parents to gain admission of their children to reputed schools have on numerous occasions been found to contain falsehoods and suppression of the truth and misrepresentations. Citing an address that is in-fact not the address of the actual residence, is a common phenomena. In fact, there are numerous instances in the public domain, where unscrupulous persons have acted in contravention of the law in the preparation and tendering of forged documents to facilitate children to be admitted to popular schools. *Abeyasinghe vs. Attorney General* is one such instance where a parent paid and obtained a set of forged documents in order to establish a false address in proximity to Royal College, Colombo, to enable him to apply to Royal College to gain admission of his son to Grade I, and following the rejection of the application, proceeded to present the same forged documents to the Supreme Court complaining of infringement of Fundamental Rights arising out of such rejection to admit his child to Royal College. The parent was subsequently prosecuted by the Attorney General for having tendered as genuine forged documents to the Supreme Court, and he was after trial found 'guilty' and sentenced to serve a term of imprisonment.

Political influence in the selection / admission process has been no secret. There are also plenty of occasions that have come to light, of instances of bribery and corruption associated with the admission of children to schools. Some such instances have evoked criminal justice responses.

Thus, the issue of admission of children to popular government schools has been and remains to be a matter of serious concern.

While semi and fully private schools manage the admission of students to their schools through their own internal selection and decision making processes and schemes founded upon their own internal interests, values and policies, admission of students to government owned schools (both national and provincial schools) is regulated by State policy. Thus, the government has from time to time issued directives containing schemes that reflect State policy, stipulating the methodology and the criteria based upon which children should be admitted to government owned schools. These schemes are contained in 'circulars' issued from time to time by the Ministry of Education. It is one such scheme and the application of that scheme which is

at the centre of this Application to this Court. As observed by Chief Justice Sarath Silva in *Ranjith Haputhantrige and another Vs. B.L. Karunaratne and others*ⁱⁱ a circular containing the admission scheme is to be deemed the 'law' governing admission of children to State schools, as it's a 'binding process of regulation pertaining to the admission of children to government schools'. Thus, it is imperative that admission of children to Grade I of government schools be necessarily decided upon strictly in terms of this circular (the applicable 'law') and not determined according to any other ground, whatsoever. Further, in view of the position taken up by the learned counsel for the Petitioners, this Court is required to examine the lawfulness of this 'law' and the accuracy of the application of the provisions of this 'law' to the merits of the application presented by the Petitioners to gain admission to Grade I of Royal College, Colombo.

Virtually all such schemes relating to the admission of children to government schools have met with varying degrees of approval and criticism by the public as well as by various interest groups. No scheme promulgated by the government can equally and optimally satisfy interests of divergent groups, such as past pupils, parents, residents living in close proximity, teachers, recently transferred public servants, and administrators of the education sector. In fact, on several occasions, the legality of such schemes promulgated by the government have been impugned and challenged in the Supreme Court and the Court of Appeal. On one occasion that has come to the attention of this Courtⁱⁱⁱ, the scheme for admission of children to Grade I of government schools had been struck down by the Supreme Court on the premise that Circular No. 20/2006 which contained the scheme was inconsistent with Article 12 of the Constitution which guarantees the right to equality and equal protection of the law. On several other occasions, schemes have been revised following outcomes of litigation.

The document entitled *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'* referred to in this Application, is the latest such scheme, which had been issued on 31st May 2018, by the 1st Respondent. It governed the admission of children to Grade I of all government schools for the year 2019.

Some of the key principles that in the view of this Court should govern policy based upon which a scheme for the admission of students to public schools is developed, would be the following:

- Legality
- Equality
- Rationality
- Non-discrimination
- Equitable access to free education
- Transparency
- Fairness
- Facilitation for the selection of the most suitable students to the relevant school
- Facilitation for parents / students to select the school of their choice
- Optimal satisfaction of the interests of divergent groups such as past pupils, present students, teachers, and parents

There is also the need to ensure that the scheme developed is feasible from an implementation / enforcement and adherence perspective. The scheme should also contain a mechanism for objective assessment of merit. The scheme should also ensure prevention of abuse, and should not pave the way for arbitrary and capricious decision-making, bribery or corruption.

The ***'Guidelines / Instructions and Regulations regarding admission of children to Grade I'*** which ostensibly reflects the policy of the government with regard to admission of children to Grade I of government schools as at the time it was issued, provides for six categories under which children may be selected for admission. One such category is *'Children of residents in close proximity to the school'*. Both the stipulation of this category and the assignment of 50% of vacancies to be filled from this category have not been challenged by the Petitioners.

For completeness of this order, the remaining categories and the assignment of vacancies for such categories are listed below.

- Children of parents who are past pupils of the school 25%
- Brothers / sisters of students already studying in the school 15%

- Children of persons in the staff of institutions directly involved in school education
5%
- Children of officers in government / corporations / statutory boards / State banks receiving transfers on exigencies of service or on annual transfers
4%
- Children of persons arriving after living abroad with children
1%

The present consideration of this scheme by Court is limited to the category '*Children of residents in close proximity to the school*'.

This Court wishes to consider the matters placed before this Court and arrive at judicial findings, by searching for and determining answers to the following two questions:

(1) Have the Petitioners established a prima-facie case against the Respondents that clause 6.1.1(a) of the document entitled '*Guidelines / Instructions and Regulations regarding admission of children to Grade I*' is 'illegal' on the premise of irrationality contained in the classification of residencies and in the specification of corresponding marks, and hence should a Writ of Certiorari be issued to quash it? If so, should this Court issue formal Notices of this Application on the Respondents?

According to the scheme contained in the '*Guidelines / Instructions and Regulations regarding admission of children to Grade I*' (hereinafter sometimes referred to as the 'scheme'), if a person wishes to be considered for selection under the category '*Children of residents in close proximity to the school*' he should be **resident** within the *feeder area*, which term has been defined in clause 3.6 of the scheme. Actual physical residency and proof thereof by submission of relevant documents is compulsory. Selection under this scheme for this category is based on the assignment of marks according to a *marking scheme*. The maximum marks that may be obtained in 100. The scheme recognizes two categories of documents that may be produced in proof of residency. They have been identified as *main documents* and *additional documents*. Clause 6.1.1.a. of the scheme stipulates the types of *main documents* that may

be submitted in proof of residency and the assignment of marks for the submission of such documents. These *main documents* are (i) Title Deeds, (ii) Deeds of Gift, (iii) Certificates of ownership, (iv) Government awards, (v) Documents issued under the Temples and Dewala Act by the Commissioner General of Buddhist Affairs or Certificates issued by chief incumbents of temples certified by the Commissioner General of Buddhist Affairs, (vi) Declaration Deeds, (vii) Documents (lease agreements and payment receipts) relating to houses purchased on housing loans / hire purchase schemes, (viii) Continuously registered lease bonds, and (ix) other documents confirming residency. It would be seen that, the several categories of documents stipulated above, postulates non-insistence on actual ownership. Residency arising out of other forms of actual possession is also recognized. However, categories (i) to (vii) recognizes forms of actual ownership and ownership which may be reasonably expected in due course upon fulfillment of certain contractual obligations.

The scheme provides that, should documents that reflect actual ownership of the property to be in favour of the applicant or the spouse (a reference to either of the parents of the child to be admitted), the maximum number of marks to be assigned would be 30, and if the documents reflect ownership of the property in favour of the mother or father of the applicant (grand parent of the child), the maximum marks shall be 23. The scheme also provides for a percentage of such maximum marks being assigned based on the number of years in respect of which either the applicants or their parents having had ownership of the property as reflected in such documents. For ownership of 5 years or more, 100% of the maximum marks may be awarded. For ownership periods less than 5 years, the percentage of maximum marks is gradually decreased. Furthermore, the scheme draws a distinction between the different forms of ownership, verses forms of possession, and assigns varying maximum marks for different legal foundations that permit residency. For example, while the maximum number of marks for residency based on actual ownership by the applicant or spouse (child's parent) for 5 years or more is 30 marks, and the maximum marks for residency based on a registered lease bond is 12 marks.

The Petitioners seek a mandate in the nature of a Writ of Certiorari from this Court to quash the afore-stated clause 6.1.1.a of the scheme. The position of the learned counsel for the Petitioner is that, the afore-stated distinction of

23 marks as opposed to 30 marks is sans any valid and explicit reasons for such distinction, and is irrational, arbitrary and therefore should be subjected to judicial review and quashed. Learned Counsel for the Petitioners also submitted that, notwithstanding the documents which the 1st Petitioner produced before the interview panel and the appeal panel having come within the ambit of the second category referred to above (ownership of the property being in favour of a parent of the applicant or spouse), the application should have been awarded the full complement of 30 marks.

The distinction found in the scheme between the two categories of documents referred to above relating to ownership of the premises in which the residence of the applicant is said to be located, in the view of this Court tantamount to legally valid, intelligent, specific and distinct categorization. While the first category of documents reflect **actual and existing ownership** of the property in which the residence is situated, the second category reflects only **possible or potential / future ownership** of the premises. There is thus a legally recognizable and intelligible distinction. Thus, this Court observes that, assigning different maximum marks is rational. As pointed out by the learned Senior State Counsel, assigning equal maximum marks for the two categories would amount to equating the two categories, which would thereby result in unfairness towards those who belong to the first category. In any event, it is the view of this Court that, equating 'present owners of property' with 'future possible owners' would be irrational. When such a rational distinction exists and therefore a valid and reasonable basis exists for the stipulation of different maximum marks to be assigned to the two categories, this Court should not usurp the authority of the Executive in the exercise in policy-making, exercise of discretion and the stipulation of such marks. Further, when the justification for the scheme is ex-facie evident, it is the view of this Court that the scheme need not stipulate on the face of the document the underlying rationale and reasons. Thus, this Court is unable to agree with the submission of the learned Counsel for the Petitioners that the scheme is flawed due to irrationality / unreasonableness.

It is important to note that, this Court would in an unhesitant manner quash an otherwise intra-vires decision, only if the decision is wholly unreasonable. Indeed the 1st Respondent has the discretion to determine policy criteria based upon which children are to be admitted to government schools. However, such policy should be reasonable. And further, he is required to

design the admission scheme based upon such policy, in a reasonable manner. A judge considering such scheme may not necessarily agree with the scheme developed by the 1st Respondent. However, such disagreement per-se would not empower or justify this Court exercising the jurisdiction of the Court to judicially review such decisions, and quash it, unless the decision is so apparently and wholly unreasonable. (It is to be noted that the term 'unreasonable' is used synonymously with the term 'irrational'.) In other words, this Court should interfere with a decision taken by a statutory or public authority in the intra-vires and procedurally correct exercise of its statutory power or a public function, only if the Court forms a considered view that the impugned decision is so unreasonable that no reasonable authority could have ever come to such decision. Court disagreeing with the impugned decision of the statutory or public functionary in issue, *per-se* does not render such decision to be classified as 'unlawful / illegal' on the premise of 'unreasonableness' or 'irrationality'. This principle of law is deductible from the opinion of Lord Green MR in *Associated Provincial Picture Houses Ltd Vs. Wednesbury Corporation*¹⁰.

Furthermore, quashing the impugned part of the scheme would render the entire scheme unworkable and as quite rightly pointed out by the learned Senior State Counsel, doing so at this point of time would cause irremediable and serious consequences. Literally, thousands of children have been admitted to government schools for the year 2019 under the '*children of residents in close proximity to the school*' category, and quashing the impugned part of the 'circular' with retrospective effect would cause mayhem and therefore considerable harm. This Court must necessarily be mindful of possible consequences that may arise out of the exercise of the Court's prerogative jurisdiction to issue Writs.

Particularly in the light of the Petitioners themselves having sought admission to Royal College, Colombo based on the same impugned scheme, and there having been unexplained delay on the part of the Petitioners in impugning the legality of the scheme, this Court cannot not issue the Writ of Certiorari as prayed for by the Petitioners. This is because, the Petitioners are guilty of laches. Furthermore, as it would be seen below, the Petitioners while seeking the quashing of the relevant part of the scheme, also rely on a particular revised marking scheme (with which this Court as stated above is not in agreement) pertaining to that segment of the scheme, to obtain a direction

from this Court to cause the admission of the 2nd Petitioner to Royal College, Colombo. Regrettably though, it has to be stated that the learned Counsel for the Petitioner's underlying rationale for this approach is fundamentally and logically flawed.

Therefore, this Court answers the afore-stated question in the negative.

(2) Have the Petitioners established a prima-facie case against the Respondents on the premise that the allocation of marks for the application presented by the Petitioners is incorrect, and hence should a Writ of Mandamus be used directing the 3rd Respondent to admit the 2nd Petitioner to Grade I of Royal College? Therefore, should this Court issue formal Notices of this Application on the Respondents?

The Petitioners' claim for a mandate in the nature of a Writ of Mandamus is founded upon the allegation that the interview board / appeal board had erred in allocating only 23 marks (which is the maximum marks for the sub-category where ownership is in the name of the mother / father of the applicant) for, *'documents to be forwarded in proof of residency'*, whereas the Petitioners should have been allocated the full complement of 30 marks, because (a) the 1st Petitioner was the sole heir of the 1st Petitioner's mother's estate which includes ownership of the relevant premises, and (b) the 1st Petitioner's mother who was the owner of the relevant premises and the house therein had issued a letter stating that she would after her devolve the property to the 1st Petitioner.

It would be seen that both the interview and appeal boards had correctly assigned the maximum number of marks (23 marks) to the three primary documents produced by the Petitioners which belong to the classification *'documents to be forwarded in proof of residency'*, since all those documents reflected the fact that the ownership of premises bearing assessment No. 928/2, Maradana Road, Colombo 8, was initially with the father and thereafter the mother of the 1st Petitioner. Based on the marking scheme contained in the *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'*, it would have been incorrect for those officials to have assigned any number of marks in excess of 23. The Petitioners have not *ex-facie* established that the remaining assignment of revised marks, namely 3.4 for *additional documents in proof of the residency*, 25 for *electoral register*, and nil marks for *proximity to school from the residency*, is incorrect. Thus, the total number of

revised marks received by the Petitioners being 51.5 is correct and in accordance with the marking scheme contained in the ***‘Guidelines / Instructions and Regulations regarding admission of children to Grade I’***. Therefore, the marks scored by the Petitioners are less than the *cut off* mark (being 58) for the *Children of residents in close proximity to the school* category.

Citing the judgment of Justice Suresh Chandra in ***Dasanayakage Gayani Geethika and two others Vs. D.M.D. Dissanayake and five others (SC/FR 35/2011, SC Minutes of 2nd July 2011)***, learned Counsel for the Petitioners urged this Court to consider the approach taken by the Supreme Court in that case when determining the marks to be allocated for proof of residence. A consideration of the said judgment reveals that, His Lordship’s view pertaining to marks that should be given in respect of proof of residency, has been founded upon the scheme for the admission of students to government schools, as contained in circular No. 2010/21 dated 31st May 2010. A study of the cited judgment also reveals that the circular in issue (2010 circular) had in certain respects been different to the scheme contained in ***‘Guidelines / Instructions and Regulations regarding admission of children to Grade I’***, which had been issued on 31st May 2018. Therefore, His Lordship’s view that, “... *if the electoral register extracts have been accepted and the entitlement of full marks (35) have been given, there is no reasons as to why such an applicant cannot get marks under sub-clause 6.1-IV, which is 50 marks less five marks for each school from the residence to the school applied.*” cannot be applied to this case. Thus, it would be illogical to import His Lordship’s views to this case and determine the marks that should have been assigned to the Petitioners, based on the documents they had presented to the interview / appeal boards.

Learned Counsel for the Petitioners also drew the attention of this Court to the judgment of Justice Vijith Malalgoda in ***Anjali Thivaak Pushparajah Rohan and another Vs. Akila Viraj Kariyawasam, Minister of Education and 15 others***. An examination of that judgment also reveals that, His Lordship’s judicial consideration of the dispute pertaining to the admission of a child to Royal College, Colombo had been based on the application of the scheme pertaining to the admission of children to Grade 1 of government schools contained in Circular No. 17/2016, which circular according to the judgment seems to have contained a marking scheme different to the scheme contained in ***‘Guidelines / Instructions and Regulations regarding admission of children to Grade I’***. For example, the scheme contained in Circular No.

17/2016 had provided for allocation of a maximum of 10 marks for ownership of the property in which the residence is situated. Therefore, this Court must distinguish that case from this, and therefore is not in a position to adopt the principle contained in the Judgment of His Lordship, to this case.

The Petitioners have also not established *ex-facie* before this Court that, past practice pertaining to the application of this scheme points to the direction that, the two categories of residents referred to above were treated equally and were awarded the same maximum marks of 30. Nor is there any evidence of their having been lawfully promised by the authorities that they would be treated in such a manner. In the absence of such evidence, it is the view of this Court that the Petitioners have not established that they possess a *legitimate expectation* of being entitled to be awarded 30 marks for the relevant category, and thereby gain admission to Royal College, Colombo. The sole legitimate expectation the Petitioners were entitled to, is that the scheme referred to above would be objectively, uniformly and correctly applied to them based on their merits, and the evidence suggests that in fact that expectation had been duly fulfilled by the 3rd Respondent and his agents. Therefore, it cannot be held that the 3rd Petitioner has acted contrary to *'Guidelines / Instructions and Regulations regarding admission of children to Grade I'*, or unlawfully or in contravention of a statutory or public duty cast on him, by declining / refusing to admit the 2nd Petitioner to Grade I of Royal College, Colombo. In the circumstances, it is the view of this Court that, the Petitioners have not *ex-facie* established before this Court that, they are entitled to a mandate in the nature of a Writ of Certiorari against the 3rd Respondent.

Therefore, this Court answers the afore-stated second question also in the negative.

It is noted that, the Petitioners have not presented to this Court a copy of the application tendered by the Petitioners to the 3rd Respondent to gain admission to Grade I of Royal College, Colombo. That document is a relevant document, and the information contained in the said document would have been of assistance to this Court in the administration of justice with regard to this Application. The Petitioners have not submitted any reason that prevented them from submitting a copy of the said application to this Court. To that extend, the Petitioner's are guilty of suppression of material.

The Petitioners have claimed that the agents of the 3rd Respondents did not cause an inspection of the premises in issue (site inspection) to ascertain whether or not the Petitioners actually reside at the said premises. Learned Senior State Counsel for the Respondents did not provide any explanation regarding this apparent non-compliance with that provision of the scheme. That is a feature of this case which reflects negatively on the 3rd Respondent. In this regard, this Court has drawn its attention to the views expressed by Chief Justice J.A.N. de Silva in *Liyana Mudiyanselage Don Suchithra Alexander and another Vs. P. Srilal Nonis, Director National Schools and others*ⁱⁱ, to the importance of conducting a 'site inspection' to determine the veracity of the position taken up by the applicant as regards the location of the residence. However, by no stretch of argumentation can it be reasonably concluded that, compliance with that provision of the scheme (conduct of a 'site inspection') would in any way have resulted in the selection of the 2nd Petitioner to Grade I of Royal College, Colombo. That is because, the Respondents have not taken up the position that they doubt the correctness of the position taken up by the Petitioners, that the Petitioners reside at premises bearing assessment No. 928/2, Maradana Road, Colombo 8.

For all the reasons set out above, this Court is of the view that, the Petitioners have failed to establish before this Court a *prima-facie* case in their favour, warranting the issue of formal Notices of this Application to the Respondents. In the circumstances, this Application is hereby dismissed.

No order is made for costs.

**Justice Yasantha Kodagoda, PC,
President of the Court of Appeal**

Justice Arjuna Obeyesekere

I agree.

Judge of the Court of Appeal

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- i 1998 Sri Lanka Law Reports (Volume I) page 407
ii 2007 Sri Lanka Law Reports (Volume I) page 101
iii Ibid 'ii' above.
iv (1948) I KB 223 (Court of Appeal)
v SC/FR/06/2017, SC Minutes 30th November 2017.
vi SC/FR/64/2010, SC Minutes of 21st May 2010.

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