

**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 and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 8/2020**

Paramathasan Petson Mathews,  
81, Annai Illam Road,  
Uppukulam North, Mannar.

**PETITIONER**

Vs.

1. University Grants Commission,  
No. 20, Ward Place, Colombo 7.
2. Additional Secretary,  
University Admissions,  
University Grants Commission,  
No. 20, Ward Place, Colombo 7.
3. Jawahir Fathima Rizafa,  
Karampai,  
Ulukkapallam, Kalpitiya.
4. Hansima Balasuriya,  
Boderagama, Dankotuwa,  
Wennappuwa.
5. H.A. Muhuththar,  
Principal,  
Ulukkapallam Muslim Maha Vidyalayam,  
Karampai, Kalpitiya, Puttalam.
6. Thanapalasingham Thaneswaran,  
Principal,  
Sithy Vinayakar Hindu College,  
Pallimunai Road, Mannar.

7. Professor K.M. De Silva,  
Chancellor, University of Peradeniya,  
Peradeniya.
8. Secretary,  
Ministry of Education,  
'Isurupaya', Battaramulla.
9. Commissioner General of Examinations,  
'Isurupaya', Battaramulla.

### **RESPONDENTS**

**Before:** Arjuna Obeyesekere, J / President of the Court of Appeal  
Mayadunne Corea, J

**Counsel:** Rienzie Arseculeratne, P.C., with Ms. Chamindri Arseculeratne,  
Thejitha Korlage, Namal Karunaratne, Udaara Muhandiramge,  
Ganesham Premkumar, Thilina Punchihewa, Dilintha Rodrigo and  
Angeline Moraes for the Petitioner

Ms. Nayomi Kahawita, Senior State Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>  
and 9<sup>th</sup> Respondents

Dr. U.L. Ali Zacky with A.L. Aazath, M.I.M. Riyaz and M.R.A.Haleem  
for the 3<sup>rd</sup> Respondent

**Argued on:** 23<sup>rd</sup> February 2021

**Written** Tendered on behalf of the Petitioner on 30<sup>th</sup> March 2021

**Submissions:**

Tendered on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Respondents on 3<sup>rd</sup>  
May 2021

Tendered on behalf of the 3<sup>rd</sup> Respondent on 16<sup>th</sup> April 2021

**Decided on:** 21<sup>st</sup> May 2021

**Arjuna Obeyesekere, J., P/CA**

The Petitioner is currently following the course of study leading to the degree of Bachelor of Dental Surgery at the Faculty of Dental Sciences, University of Peradeniya.

The Petitioner had his entire primary and secondary education at St Xavier's Boys School, Mannar. The Petitioner states that he obtained 'A' grades in all nine subjects that he offered at the General Certificate of Education [Ordinary Level] Examination ('O' levels) held in December 2013. He had thereafter offered Physics, Chemistry and Biology for the General Certificate of Education [Advanced Level] examination ('A' levels) with a view of pursuing the study of medicine.

The Petitioner had sat for the 'A' levels for the first time in August 2016 and had repeated the exam in August 2017, while being a student at St Xavier's Boys School, Mannar. The Petitioner admits that he did not have sufficient marks to enter the Medical Faculty of a University on both occasions and that he declined the offer made by the 1<sup>st</sup> Respondent, the University Grants Commission to pursue a degree course in Agriculture.

The Petitioner states that having left St Xavier's Boys School, Mannar, he sat for the 'A' levels for the third time in August 2018 as a private candidate from the Mannar District, and secured 'A' grades for Chemistry and Biology and a 'C' grade for Physics. The Petitioner had obtained a 'Z' score of 1.5781 and had been ranked 5<sup>th</sup> in the Mannar District in the Biological Science Stream – vide '**P5**'. The 'Z' score of the Petitioner had subsequently been reduced to 1.5779 as a result of re-scrutiny in the marks of other candidates, but this had not affected the Petitioner's ranking within the Mannar District. The Petitioner states that he accordingly applied for admission to University, having selected medicine as his first preference and dentistry as his second preference.

The Petitioner states that on or around 19<sup>th</sup> March 2019, he found out that the 3<sup>rd</sup> Respondent, Jawahir Fathima Rizafa, who had sat for the 'A' level examination in August 2018 for the third time as a private student from the Puttalam district had secured entry to the Medical Faculty from the Mannar district, and that as a result,

the Petitioner would not gain entry into the Medical Faculty from the Mannar District. By his letter dated 19<sup>th</sup> March 2019 marked 'P8a', the Petitioner had queried from the 1<sup>st</sup> Respondent the basis on which the 3<sup>rd</sup> Respondent, who had sat for the examination in August 2018 from the Puttalam District, was being considered for University admission as a student of the Mannar district.

This would perhaps be a convenient point to set out briefly the relationship that the 3<sup>rd</sup> Respondent has with Puttalam and Mannar, prior to considering the response of the 1<sup>st</sup> Respondent.

The parents of the 3<sup>rd</sup> Respondent, as well as her grandparents were born in Mannar and had been residents of Mannar.<sup>1</sup> The parents of the 3<sup>rd</sup> Respondent had been displaced from Mannar by the LTTE in 1990. They had taken up refuge in a Government managed centre in Puttalam soon thereafter and had continued to live in different centres managed by the Government for a period of over ten years. The 3<sup>rd</sup> Respondent was born during this period in 1997 in Puttalam. It is admitted that the 3<sup>rd</sup> Respondent had her schooling in Puttalam at the Ulukkapalam Muslim Maha Vidyalayam until the 'O' level examination in December 2013, which she successfully completed, having secured 7 'A' grade passes.

In her Statement of Objections, the 3<sup>rd</sup> Respondent has explained that after the LTTE was defeated, her parents had decided to move back to their home town Mannar step by step. Her father had initially made an application to the Divisional Secretary, Manthai West on 13<sup>th</sup> August 2011 seeking that a land be made available. This application had been acknowledged by the Divisional Secretary. By letter dated 7<sup>th</sup> May 2013 marked '3R5', her father had been summoned to attend a Land Kachcheri that was being held for the purpose of selecting displaced persons for allocation of land in Mannar.

The learned Senior State Counsel has submitted in her written submissions that Ulukkapalam Muslim Maha Vidyalayam in Puttalam did not have an 'A' level Biological Science stream, thus creating a necessity for the 3<sup>rd</sup> Respondent to look for a Government School offering the Science stream.

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<sup>1</sup> Vide Birth Certificate of the father of the 3<sup>rd</sup> Respondent, marked '3R2', and the Birth Certificate of the mother of the 3<sup>rd</sup> Respondent, marked '3R3'

The 3<sup>rd</sup> Respondent states that it was her father's brother who had sought admission for the 3<sup>rd</sup> Respondent at the Sithy Vinayakar Hindu College by his letter dated 20<sup>th</sup> April 2014 marked '3R6', which reads as follows:

*"My family left Mannar on 25<sup>th</sup> October 1990 when all the Muslims in the North were forcibly evicted from their residencies by the LTTE. After that we settled in Puttalam. As this situation has changed and now the resettlement situation has arisen we have come to Mannar to resettle on our own village Vidathalthivu. Therefore I request that my niece Fathima Rizafa who is studying in Puttalam, be given the opportunity and permission on humanitarian grounds to study at Sithy Vinayakar School."*

In May 2014, the family of the 3<sup>rd</sup> Respondent had moved to Mannar. The 3<sup>rd</sup> Respondent claims that her parents still cultivate their family paddy fields and that as evidenced by the following documents, her family is permanently resident in Mannar:

- a) Food ration card - '3R9'
- b) Family registration Card issued in 2010 - '3R10'
- c) Family registration Card issued in 2019 - '3R11'
- d) Family details and Resettlement card '3R12'
- e) Samurdhi card issued in 2013- '3R13'
- f) Sipdora Educational Scholarship awarded to the 3<sup>rd</sup> Respondent for 2014 – 2016 - '3R14'.

The 3<sup>rd</sup> Respondent had joined the 'A' level Biological Science stream of the Sithy Vinayakar Hindu College, Mannar in May 2014, where she continued with her studies, offering the subjects of Physics, Chemistry and Biology. By letter dated 25<sup>th</sup> November 2019 marked 'P20b', the 6<sup>th</sup> Respondent, the Principal of Sithy Vinayakar Hindu College, Mannar has confirmed that the 3<sup>rd</sup> Respondent was educated at the

said School and had forwarded copies of the Student Admission Record, Attendance Record for 2014 – 2016 and the Marks / Reports of the 3<sup>rd</sup> Respondent.

The 3<sup>rd</sup> Respondent had sat for the 'A' level examination held in August 2016 and August 2017 from the Mannar district, and had obtained a 'Z' score of 1.2981 and 1.2889, respectively. Having left school in Mannar, the 3<sup>rd</sup> Respondent had sat for the 'A' level examination held in August 2018 as a private candidate from the Puttalam district. The 3<sup>rd</sup> Respondent had obtained a 'Z' score of 1.7899 – vide '3R17'.

Let me now refer to the response of the 1<sup>st</sup> Respondent to the query of the Petitioner of the basis on which the 3<sup>rd</sup> Respondent was being considered as a student who had qualified for University admission from the Mannar district.

The 1<sup>st</sup> Respondent, by letter dated 30<sup>th</sup> May 2019 marked 'P8b' had informed the Petitioner as follows:

*"It should be noted that the admission district of a candidate **may not be the same** as the exam district of that particular candidate, as the admission district is determined based on the admission rules stated in the University Admissions Handbook published by the UGC valid for the relevant Academic Year.*

*The admission district of candidates is determined based on the evidence provided in the application on the schooling period of the candidate during the past three years (The three year period considered for the Academic Year 2018/2019 is from 01<sup>st</sup> August 2015 to 31<sup>st</sup> July 2018). **The district of the school in which the candidate has studied for more than one year during the three year period considered, is taken as the admission district** of the candidate. If the candidate has studied in more than one school during the three year period considered, the district of the school in which the candidate has studied most number of dates is considered as the admission district. (However, that period should compulsorily be more than one year).*

*In cases where the schooling period of the candidate from any district is lesser than one year or the candidate has not enrolled in any school during the three year period considered, the candidate's district of permanent place of residence*

*is considered as the admission district. In order to confirm the district in such cases, the candidate should submit the original of the School Leaving Certificate and the original of the Grama Niladhari Certificate (counter signed by the Divisional Secretary with the official)”*

I must observe at this stage that the above position has been clearly laid down in paragraph 1.5 of the University Admission Handbook marked '**1R1**' issued by the 1<sup>st</sup> Respondent for the year 2018-2019,<sup>2</sup> and has been admitted by the Petitioner.<sup>3</sup> Paragraph 1.5, as is relevant to this application, is re-produced below:

*“In order to decide the district of a candidate for university admission, the candidate must provide evidence of enrolment in schools for a period of last three years in his/her application form for university admission.*

*The three year period is calculated backwards from the last date of the month, which is the month, immediately preceding the month in which the candidate sat the Advanced level examination to qualify for university admission. For example, if the advanced level examination is held in August, the three year is calculated backwards from 31<sup>st</sup> July of that year...”*

***Accordingly, the district of the school of which the candidate has studied more than one year during the three year period considered, will be considered as the district of the candidate for university admission.***

*If the candidate has enrolled in more than one school during the said three year period, then, the district of the school of which the candidate has studied most number of dates is considered as the district of that candidate for the purposes of university admission. However, that duration should be compulsorily more than one year. For example, a candidate has studied in a school located in a district for one year and three months and the remaining one year and nine months in a school located in another district, then the district of the school in which the candidate has studied for one year and nine months will be the district for the purpose of university admission...”*

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<sup>2</sup> Page 10 of '1R1' containing paragraph 1.5 has been marked 'P9'.

<sup>3</sup> Vide paragraph 14 of the petition.

What was important therefore from the view point of the 1<sup>st</sup> Respondent was to determine if the 3<sup>rd</sup> Respondent had studied in a school in Mannar during the three year period preceding 1<sup>st</sup> August 2018, and if so, whether such period exceeded one year. According to the School leaving certificate issued to the 3<sup>rd</sup> Respondent marked '3R20', the Petitioner has been admitted to the Sithy Vinayakar Hindu College, Mannar on 5<sup>th</sup> May 2014, and attended the said school until she left on 2<sup>nd</sup> September 2017. The School Attendance records marked '6R1' confirms that the 3<sup>rd</sup> Respondent has in fact attended the Sithy Vinayakar Hindu College, Mannar during the period referred to in '3R20'.

Therefore, out of the three year period that is relevant for purposes of determining the admission district – i.e. 1<sup>st</sup> August 2015 to 31<sup>st</sup> July 2018 – the 3<sup>rd</sup> Respondent had attended a school in Mannar for a period of Two years and One month – i.e. the period from 1<sup>st</sup> August 2015 to 2<sup>nd</sup> September 2017. The 3<sup>rd</sup> Respondent is therefore eligible to be selected for University admission from the Mannar district in terms of paragraph 1.5 of the University Admissions Handbook.

While the Petitioner had filed an appeal with the 1<sup>st</sup> Respondent seeking a re-consideration of the above decision as well as admission to a Medical Faculty – vide 'P10'- the Petitioner admits that he was informed by the 1<sup>st</sup> Respondent's letter dated 16<sup>th</sup> August 2019 marked 'P11' that he has been selected for the degree programme in Dental Surgery at the University of Peradeniya. The Petitioner states that he accepted the said offer, subject to challenging the said decision in a Court of Law.

The present grievance of the Petitioner arises this way. The Petitioner states that the Ministry of Education has issued Circular No. 2008/17 dated 30<sup>th</sup> April 2008, marked 'P15' relating to the admission of students to the 'A' level class of a school for the purpose of following classes leading to the 'A' level examination. Circular 'P15' has been amended on four occasions,<sup>4</sup> with the amendment which the Petitioner claims is material to this application being found in Circular No. 2013/4 dated 29<sup>th</sup> April 2013, marked 'P14'. The Petitioner's argument, which I shall refer to in detail having examined the relevant provisions of the Circulars, is that in terms of the amendment

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<sup>4</sup> Vide Amendment Circular Nos. 2008/17(i) marked 'P15a'; 2008/17(ii) marked 'P15b'; 2012/14 marked 'P15c'; and 2013/4 dated 29<sup>th</sup> April 2013 marked 'P14'.



introduced to paragraph 4.1 of 'P15' by paragraph 3 of 'P14', the 3<sup>rd</sup> Respondent was not eligible to be admitted to the Sithy Vinayakar Hindu College, Mannar in 2014, and therefore Mannar cannot be considered as the admission district of the 3<sup>rd</sup> Respondent for purposes of University admission. In other words, the Petitioner is claiming that the admission of the 3<sup>rd</sup> Respondent to Sithy Vinayakar Hindu College, Mannar is illegal and thereby her admission to a Medical Faculty as a student of Mannar is illegal.

It is in these circumstances that the Petitioner filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision made by the 6<sup>th</sup> Respondent on or about 05<sup>th</sup> May 2014 contained in 'P20(d)' admitting the 3<sup>rd</sup> Respondent as a student of Sithy Vinayakar Hindu College, Mannar;
- b) A Writ of Certiorari to quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents admitting the 3<sup>rd</sup> Respondent to a Medical Faculty of a University for the academic year 2018/2019 on the basis that the 3<sup>rd</sup> Respondent is a student from Mannar District;
- c) A Writ of Mandamus directing the 1<sup>st</sup> Respondent to admit the Petitioner to a Medical Faculty of a University for the academic year 2018/2019 as a student from Mannar District.

The Petitioner states that by virtue of having obtained a 'Z' score of 1.7899, the 3<sup>rd</sup> Respondent would still be entitled for admission to the Medical Faculty from the Puttalam District, as her 'Z' score is higher than the minimum 'Z' score required to enter the Medical Faculty from the Puttalam District. This would however not be the case, for the reason that the 3<sup>rd</sup> Respondent would not qualify for admission from the Puttalam District in view of paragraph 1.5 of '1R1'. Even if the Petitioner's position is accepted, the Petitioner himself concedes that this would mean that the 4<sup>th</sup> Respondent, who has been selected from the Puttalam District to the Medical Faculty, will lose his place.

In considering whether the admission of the 3<sup>rd</sup> Respondent to Sithy Vinayakar Hindu College, Mannar was contrary to 'P15' and 'P14', I shall adopt a two tiered approach. I shall first consider if the admission of the 3<sup>rd</sup> Respondent is in terms of 'P15', and thereafter I shall consider if the position has changed as a result of the amendment effected thereto by 'P14'.

It is admitted that Circular 'P15', which is titled, 'අධ්‍යාපන පොදු සහතික (උසස් පෙල) පන්ති වලට සිසුන් ඇතුලත් කිරීම' has been issued by the Ministry of Education and reflects the policy of the Government in respect of admission of students to the 'A' level class of a school for the purpose of following classes leading to the 'A' level examination. While the learned President's Counsel for the Petitioner is relying solely on the amendment effected to Paragraph 4.1 of 'P15' by 'P14' to support his argument, I am of the view that it is important that the provisions of 'P15' must be considered in its entirety, thereby avoiding any inconsistencies within the scheme set out in the said Circular.

There are four paragraphs in 'P15' which are relevant to this application, which are re-produced below:

Paragraph 4.1

**" 12 ශ්‍රේණියට සිසුන් ඇතුලත් කිරීමේ ප්‍රමුඛතාව**

අධ්‍යාපන පොදු සහතික (උසස් පෙල) (12 ශ්‍රේණි) පන්ති වලට සිසුන් ඇතුලත් කිරීම සඳහා තෝරා ගැනීමේ ප්‍රමුඛතාව පහත දැක්වෙන පරිදි විය යුතුය.

- අ) එම පාසලේ අපේක්ෂකයන් ලෙස [සාමාන්‍ය පෙල] විභාගයට පෙනී සිටි සිසුන් (වනුලේඛයේ 2.0 වගන්තිය යටතේ සඳහන් එක් එක් විෂය ධාරාවට තිබිය යුතු අවම සුදුසුකම් සපුරා ගෙන ඔවුන් එම විෂයධාරාව ඉල්ලුම් කළහොත් එය අනිවාර්යයෙන් ම ලබාදිය යුතු ය).
- ආ) අධ්‍යාපන පොදු සහතික (උසස් පෙල) පන්ති නොමැති රජයේ පාසල්වල සිසුන් (පාතික පාසලකට සිසුන් ඇතුලත් කිරීමේ දී එම පාසල අයත් කලාපය තුළ උසස් පෙළ පන්ති නොමැති පාතික පාසල් නොවන පාසල්වලින් අයදුම් කරන සිසුන්ට ප්‍රමුඛතාව ලබා දිය යුතු ය).
- ඇ) පිළිගත හැකි සාධාරණ හේතු ඉදිරිපත් කරන විෂය ධාරා තිබෙන වෙනත් රජයේ පාසල්වල සිසුන්.

ඇ) අධ්‍යාපන පොදු සහතික (සාමාන්‍ය පෙල) විභාගයට සමාන්තර සුදුසුකම් සහිත ප්‍රතිඵල ලබා ඇති (අපගේ විෂය සංයෝජනවලට අනුකූල වන පරිදි) විදේශගත ව සිට පැමිණෙන සිසුන් (සහතිකවල සමාන්තර භාවය පැහැදිලි නොවන විට අමාත්‍යාංශ ලේකම්ගේ උපදෙස් අනුව කටයුතු කළ යුතු යි).

ඉ) අධ්‍යාපන පොදු සහතික (උසස් පෙල) පන්ති නොමැති හෝ අදාළ විෂයධාර නොමැති පාඨක විෂය මාලාව උගන්වන පෞද්ගලික පාසල්වල සිසුන්ගේ (අදාළ කලාප අධ්‍යාපන අධ්‍යක්ෂ මගින් ඉල්ලුම් කළ යුතු ය.)”

Paragraph 4.2

“ඉහත සඳහන් ප්‍රමුඛතා ලේඛනයේ ඉහලින් ඇති කරුණුවලට අදාළව ඉල්ලුම් කරන ලද සිසුන් නොමැති වූ විට පමණක් ඊළඟ කරුණු ගැන සලකා බැලිය යුතු ය. (උදා : ඉහත 4.1 (අ) හි සඳහන් සිසුන් ඇතුළත් කිරීමෙන් පසුව පුරප්පාඩු පවති නම් පමණක් (අ) සලකා බැලිය යුතු ය.”

Paragraph 6

**“6.0 අධ්‍යාපන පොදු සහතික (උසස් පෙල) හැදෑරීම සඳහා පහසුකම් සහිත දිස්ත්‍රික්කවලින් දුෂ්කර දිස්ත්‍රික්කවල පාසල්වලට පැමිණීම**

6.1 විශ්ව විද්‍යාල ප්‍රවේශයේ දී නම් කර ඇති දුෂ්කර දිස්ත්‍රික්ක සඳහා<sup>5</sup> ලබා දී ඇති සහනය වංක ලෙස ලබා ගැනීමේ අරමුණින් පහසුකම් සහිත දිස්ත්‍රික්කවලින් අධ්‍යාපන පොදු සහතික (සාමාන්‍ය පෙළ) සමත් වී දුෂ්කර දිස්ත්‍රික්කය තුළ උසස් පෙළ පන්ති සහිත පාසල්වලට ඇතුළත් වීමට උත්සාහ කරන සිසුන්ට ඉඩ ලබා නොදිය යුතු ය.

6.2 එහෙත් පහත සඳහන් විශේෂිත හේතු මත එවැනි ඉල්ලුමක් ඉදිරිපත් වුවහොත් ඒ පිළිබඳ සලකා බැලිය යුත්තේ ලිපිලේඛන ඉදිරිපත් කර අදාළ කරුණු තහවුරු කරන්නේනම් පමණි. මේ පිළිබඳව සත්‍ය වශයෙන්ම අදාළ ප්‍රදේශයේ තම පවුලේ සාමාජිකයන් සමග පදිංචි වී සිටින බව විදුහල්පති විසින් පදිංචි ස්ථානයට ගොස් පරීක්ෂා කර සනාථ කර ගත යුතු යට

අ). රජයේ අවශ්‍යතා මත දෙමාපියන්ගේ ස්ථාන මාරු හේතු කොට

ආ) ආරක්ෂක හේතූන් මත”

<sup>5</sup> See page 9 of ‘1R1’ for the Districts that have been identified by the 1<sup>st</sup> Respondent as educationally disadvantaged districts for purposes of admission to a University.

Paragraph 9

9.1 අධ්‍යාපන පොදු සහතික (උසස් පෙළ) පන්තියකට ඇතුළත්වූ ශිෂ්‍යයෙක්/ ශිෂ්‍යාවක් පිළිගත හැකි සාධාරණ හේතු ඉදිරිපත් කරන්නේ නම් පමණක් එක් පාසලකින් තවත් පාසලකට ඇතුළත් වීමට අනුමැතිය ලබා දිය හැකි ය. එහෙත් දිස්ත්‍රික්කයෙන් වෙනත් දිස්ත්‍රික්කයක පාසලකට ඇතුළත්වීමට බලාපොරොත්තු වන්නේ නම් සත්‍ය වශයෙන්ම පදිංචිය වෙනස් කළ හා 6.0 වගන්තියේ සඳහන් කරුණුවලට පටහැනි නොවන්නේ ද යන්න පරීක්ෂා කර බලා අනුමැතිය ලබා දිය යුතු ය. මෙහි දී ඇතුළත්වීමට බලාපොරොත්තු වන පාසලේ විදුහල්පතිගේ නිර්දේශය මත පාතික පාසලක් නම් පාතික පාසල් අධ්‍යාපන අධ්‍යක්ෂගේ ද පළාත් පාසලක් නම් පළාත් අධ්‍යාපන අධ්‍යක්ෂගේ ද අනුමැතිය දෙමව්පියන් විසින් ලබා ගත යුතු ය.”

For purposes of University admission, the 1<sup>st</sup> Respondent has categorized sixteen Districts as being educationally disadvantaged – vide page 9 of the University Admissions Handbook marked ‘**1R1**’. 5% of the available places in each course of study are reserved to be allocated to the students of these districts, with the allocation being done on the ratio of the population of each such district to the total population of the sixteen districts. It is admitted between the parties that in terms of ‘**1R1**’, both Mannar and Puttalam have been classified as educationally disadvantaged districts for purposes of University admission.

The cumulative effect of the provisions of paragraphs 4.1, 4.2, 6.0 and 9, as are relevant to this application, can be summarised as follows:

- a) Paragraph 4.1 only deals with the priority that must be attached when admitting students to an ‘A’ level class of a school;
- b) In admitting students to the ‘A’ level class of a particular school, priority must be given to students who have sat for the ‘O’ level examination from that School – vide paragraph 4.1(a);
- c) Thereafter, priority must be given to students from Government schools which do not offer the ‘A’ level stream – vide paragraph 4.1(b);
- d) The next in order of priority are students in Government schools where satisfactory reasons for admission have been adduced, even though the existing school offers the ‘A’ level stream – vide paragraph 4.1(c);

- e) Having followed paragraph 4.1, if there are any vacancies remaining, such vacancies may be filled from the next category – vide paragraph 4.2;
- f) It is therefore clear that Paragraph 4.1 of '**P15**' only determines the priority that must be attached when admitting students to an 'A' level class.
- g) A student studying in a school situated in a district classified as a privileged district for purposes of University admission (පහසුකම් සහිත දිස්ත්‍රික්ක) will not be permitted to seek admission to a school situated in a district classified as an educationally disadvantaged district, unless one of the two exceptions in Paragraph 6.2 applies;
- h) A student who has the required results to be admitted to an 'A' level class in a school situated in one district can be admitted to a school situated in another district, provided acceptable reasons for such admission is provided,<sup>6</sup> the change of residence is genuine,<sup>7</sup> and it does not contravene the provisions of paragraph 6 – vide paragraph 9 of '**P15**'. This is the rule that applies in respect of admission of a student from a school in one district to a school in another district;
- i) The Circular does not contain any restriction on a student studying in a school situated in a district classified as privileged from being admitted to another school so classified, subject to the provisions of paragraph 9 and the availability of vacancies;
- j) Similarly, a student studying in a school situated in a district classified as an educationally disadvantaged district for purposes of University admission can be admitted to the 'A' level class of another district classified as an educationally disadvantaged district, subject to the provisions of paragraph 9 and the availability of vacancies.

The 3<sup>rd</sup> Respondent is not seeking to be admitted into a school in Mannar under any of the exceptions provided in paragraph 6.2. It is clear that the conditions in

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<sup>6</sup> පිළිගත හැකි සාධාරණ හේතු ඉදිරිපත් කරන්නේ නම්

<sup>7</sup> සත්‍ය වශයෙන්ම පදිංචිය වෙනස් කළ

paragraph 6.0 do not apply to the 3<sup>rd</sup> Respondent at all because those restrictions are only applicable to students who are seeking admission to a school in an educationally disadvantaged district whilst studying in a school situated in a district classified as educationally advantaged.

I have already referred to in detail the relationship the 3<sup>rd</sup> Respondent had to Mannar and the circumstances that prompted her to seek a school in Mannar. Taking into consideration the said factual scenario in the light of the provisions of paragraphs 4, 6 and 9 of 'P15', I am of the view that the admission of the 3<sup>rd</sup> Respondent from Ulukkapalam Muslim Maha Vidyalayam, Puttalam to Sithy Vinayakar Hindu College, Mannar:

- a) Is permissible in terms of Paragraph 9;
- b) Is not subject to the restriction in paragraph 6.0, as it is admitted between the parties that both Mannar and Puttalam have been classified as educationally disadvantaged districts for purposes of University admission.

I am therefore of the view that the admission of the 3<sup>rd</sup> Respondent from Ulukkapalam Muslim Maha Vidyalayam to Sithy Vinayakar Hindu College, Mannar does not contravene the provisions of 'P15'.

I have already referred to the fact that paragraph 4.1 in 'P15' has been repealed and replaced by paragraph 3 of 'P14'. I shall now proceed to the second tier, and consider if the admission of the 3<sup>rd</sup> Respondent to the Sithy Vinayakar Hindu College, Mannar is contrary to the provisions of paragraph 4.1 introduced by 'P14'.

The amendment introduced by 'P14' reads as follows:

“2012/14 චක්‍රලේඛයේ 4.0 වගන්තියට අනුව 12 ශ්‍රේණියට සිසුන් ඇතුළත් කිරීම සඳහා තෝරා ගැනීමේ ප්‍රමුඛතාවය පහත පරිදි විය යුතුය.

- (අ) එම පාසලේ අපේක්ෂකයන් ලෙස විභාගයට පෙනී සිටි සිසුන් (චක්‍රලේඛයේ 2.0 වගන්තිය යටතේ සඳහන් එක් එක් විෂය ධාරාවට තිබිය යුතු අවම සුදුසුකම් සපුරා ගෙන ඔවුන් එම විෂය ධාරාව හැදෑරීම සඳහා ඉල්ලුම් කළහොත් එය අනිවාර්යයෙන්ම ලබාදිය යුතුය.)

(අ) එකම 1AB (උසස් පෙළ විද්‍යා, කලා, වාණිජය) පාසලක් හෝ නොමැති ප්‍රාදේශීය ලේකම් කොට්ඨාශ වල පිහිටි පාසල් වලින් අතිවිශිෂ්ට ලෙස සාමාන්‍ය පෙළ ප්‍රතිඵල ලබා ඇති ග්‍රාමීය පාසල්වල සිසුන්.

(ඇ) (අ) හා (ආ) යන වගන්ති වලට අනුව සිසුන් ඇතුළත් කිරීමෙන් පසු තවදුරටත් පුරප්පාඩු පවති නම් පාසල පිහිටි දිස්ත්‍රික්කයේ 1 AB නොවන පාසල් වලින් විශිෂ්ට ලෙස සමත් වූ සිසුන්.”

By the amendment to paragraph 4.1 by ‘**P14**’, a category of schools classified as *1AB schools* has been introduced. A *1AB School* is a school which has ‘A’ level classes in all three streams, namely Science, Commerce and Arts – vide paragraph (අ). Thus, with the introduction of ‘**P14**’, the position relating to priority in admitting students to a school offering the ‘A’ level stream can be summarised as follows:

- a) When admitting students to the ‘A’ level class, priority must be given to those students who have sat for the ‘O’ level examination from that school;
- b) Thereafter, students who are studying in a school situated in a Divisional Secretary’s division which does not have a *1AB school* and who have done exceptionally well in the ‘O’ level examination will be admitted;
- c) If there are further vacancies, students from schools situated within the district but which are not *1AB schools* can be admitted.

It is important to note that:

- a) The amendment effected by ‘**P14**’ only deals with, and determines the priority that must be attached when admitting students to the ‘A’ level class;
- b) Paragraphs 4.2, 6.0 and 9 of ‘**P15**’ have not been amended by ‘**P14**’.

This is clearly stated in paragraph 4 of ‘**P14**’ which reads as follows:

“ඒ අනුව උසස් පෙළ පන්ති වලට සිසුන් ඇතුළත් කිරීමට අදාළව නිකුත් කර ඇති 2008/17, 2008/17(I) හා 2008/17(II) හා 2012/14 යන චක්‍රලේඛයන්හි අන් උපදෙස් නොවෙනස්ව පවතින බව වැඩිදුරටත් දන්වමි. මෙම චක්‍රලේඛ විධිවිධාන උල්ලංගනය කරනු ලබන විදුහල්පතිවරුන්ට වරදේධව විනයානුකූලව කියාමාර්ග ගනු ලබන බව ද වැඩිදුරටත් දන්වා සිටිමි”

Let me now advert to the specific argument of the learned President's Counsel for the Petitioner. He submitted that there exists 1AB Schools in Kalpitiya where Ulukkapalam Muslim Maha Vidyalayam is situated and for that reason the 3<sup>rd</sup> Respondent was not eligible to gain admission to Sithy Vinayakar Hindu College, Mannar. In my view, it is irrelevant whether Ulukkapalam Muslim Maha Vidyalayam is a 1AB School (*according to the written submissions of the learned Senior State Counsel, Ulukkapalam Muslim Maha Vidyalayam is not a 1AB school as it does not offer the Biological Science Stream*) or whether there are other 1AB Schools within the Kalpitiya Divisional Secretary area.

Both Mannar and Puttalam Districts are educationally disadvantaged, and there was no undue benefit or advantage that the 3<sup>rd</sup> Respondent would have gained from such transfer. Having returned to Mannar with her parents, which I must emphasise is the village of her parents and grandparents, the 3<sup>rd</sup> Respondent was eligible to seek admission to a School in Mannar in terms of paragraph 9 of '**P15**', subject to the availability of vacancies.

In my view, paragraph 6.0 of '**P15**' was not an impediment to the 3<sup>rd</sup> Respondent being admitted to Sithy Vinayakar Hindu College, Mannar, as both districts are educationally disadvantaged districts for purposes of University admission. Nor is the admission of the 3<sup>rd</sup> Respondent to Sithy Vinayakar Hindu College, Mannar contrary to paragraph 3 of '**P14**'. Therefore, as provided by paragraph 9.1 of '**P15**', the 3<sup>rd</sup> Respondent was entitled to be admitted to Sithy Vinayakar Hindu College, Mannar, subject to the availability of vacancies. It must be noted that the Petitioner has not complained that the 3<sup>rd</sup> Respondent was admitted to Sithy Vinayakar Hindu College, Mannar despite there being no vacancies or that the priority set out in '**P14**' was disregarded.

I must say that Clause 9.1 has been inserted to cater to the admission of students such as the 3<sup>rd</sup> Respondent. I therefore cannot agree with the submission of the learned President's Counsel for the Petitioner that the admission of the 3<sup>rd</sup> Respondent to Sithy Vinayakar Hindu College, Mannar is in contravention of the provisions of Circulars '**P14**' and '**P15**'.



In the above circumstances, I am of the view that the admission of the 3<sup>rd</sup> Respondent to Sithy Vinayakar Hindu College, Mannar and the subsequent admission of the 3<sup>rd</sup> Respondent to the Medical Faculty of Jaffna as a candidate from the Mannar district are within the provisions of the law that regulates and governs the admission of students to 'A' level classes, and University admissions, respectively. The Petitioner has accordingly failed to satisfy this Court that he is entitled to the relief prayed for.

This application is dismissed, without costs.

**President of the Court of Appeal**

**Mayadunne Corea, J**

I agree

**Judge of the Court of Appeal**