

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

CA /WRIT/183/2019

N. Anton Balasundaram
No.30A, Pussemulla Gedara
Gampola Road,
Gelioya

On behalf of
Devinyah Grace Jemima (Minor)

Petitioner

Vs.

1. M. Abeygunasekara
Principal
Kandy Girl's High School,
Kandy.
2. Mr. R.N. Ranasinghe
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla
3. W.M. Jayantha Wickramanayake
Director of National Schools,
Ministry of Education,
Isurupaya,
Battaramulla
4. Hon. Akila Viraj Kariyawasam,
Minister of Education
Ministry of Education,
Isurupaya,

Battaramulla

5. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Lakshan Dias with Mangala Kumarasinghe instructed by Dayani Panditharatne for the Petitioner
Nayomi Kahawita, SC for the Respondents

Argued on: 01.03.2021

Written submissions - tendered on behalf of Petitioners: 05.05.2021 and 07.09.2020
- tendered on behalf of Respondents: 10.05.2021

Decided on: 10.08.2021

Sobhitha Rajakaruna, J.

The Petitioner has filed this application on behalf of his daughter who is a minor. The Petitioner seeks, inter alia, for a mandate in the nature of a writ of Mandamus against the 1st and 2nd Respondents in order to get his daughter admitted to Kandy Girls' High School to Grade 1 and also for a mandate in the nature of a writ of Certiorari to quash the letter dated 10.12.2018, marked as P8, by which the admission of the said child to school has been refused.

The Petitioner has submitted an application to the Kandy Girls' High School for the admission of his daughter, Devinyah Grace Jemima, to Grade 1 for the year 2019 to learn in Tamil medium. He has submitted the said application under the 'close proximity' category in terms of the circular No. 24/2018 issued by the Ministry of Education on 31.05.2018¹. The Petitioner, in paragraph 5 of his Petition has admitted that he had

submitted the said application under the "close proximity" category and also on "Christianity" basis.

The Petitioner claims that his daughter was refused admission to Grade 1 of Kandy Girls' High School, and the 1st Respondent Principal has neglected her authority by violating the circular No. 24/2018² issued by the Ministry of Education. The Petitioner alleges that his daughter who got only 33.8 marks should be admitted to the said school on the basis of availability of instructions of Christianity, under clause 4.2 of the said circular, despite the marks received based on the category ('close proximity to school') under which the application for admission had been made. Further the Petitioner claims that the Kandy Girls' High School has filled only 13 vacancies whereas another 47 vacancies are available for the admission of children to Grade 1 for the year 2019, in terms of the said clause 4.2. The Petitioner alleges another grievance upon deducting certain marks by the interview board.

The Petitioner's complaint upon deducting marks

The Petitioner avers in his Petition that his minor child got 45.8 marks out of 100 at the admission interview and that the interview board has subsequently deducted 12 marks on the basis of the availability of other schools located between 40kms from the residence to Kandy Girl's High School.

In terms of clause 7.2.4 of the said circular No. 24/2018, maximum marks under the close proximity category shall be awarded only if the applicant's place of residence is proved and if there are no other Government schools with primary sections located closer to the place of residence than the school applied for. In the event of having other Government schools with primary section for the admission of the child which are closer

¹The Respondents have annexed a copy of the said circular marked as R1. However, the said copy that is annexed consists only the first 16 pages of the circular. Nevertheless, the full circular in Sinhala and Tamil languages was available on the website of Ministry of Education <https://moe.gov.lk/>. Further the English version of the instructions related to the admission of children to Grade 1 in government schools for the year 2019 was available on <http://www.wpedu.sch.lk>.

²The learned counsel for the Petitioner during the course of his submissions at the argument stage in this case has admitted the fact that the relevant circular in this case is the circular No. 24/2018 issued by the Ministry of Education on 31.05.2018 although the Petitioner has annexed a different circular marked as P3.

to the place of residence than the school applied for, marks shall be deducted at the rate 04 marks from the maximum marks, for each school.

The Respondents submit that although the Petitioner complains about deducting 12 marks on the basis of the other schools located between 40kms, no proper appeal had been submitted to the Principal by him on the said claim within the stipulated time period.

The argument maintained by the Petitioner for his alleged failure for not submitting an appeal is based on the provisions of the said clause 10.1. The Petitioner contends that as per the said clause 10.1 a necessity of lodging an appeal/objection arises only on two occasions namely; (a) if it is found that the name of a child who is not eligible has been included in a certain place in the list & (b) if the name of a child of an applicant is placed in an in-eligible place when he is eligible. Accordingly, the Petitioner argues that there was no necessity for him to lodge an appeal as his daughter's name was within the first 16 students (as per document marked P6) and her name appeared in the temporary list in an eligible place

It appears that the learned counsel for the Petitioner has referred to the English version of the instructions related to the admission of children to Grade 1 in government schools for the year 2019 which is available on <http://www.wpedu.sch.lk>. However, the clause 10.1 of the Sinhala version of the circular No.24/2018 uses the word “නුසුදුසු” (*nusudusu*) in place of the words “eligible” or “in-eligible”:

”;djl,sl ,eñsia;=j yd fmdfrd;a;= f,aLkh mdi,a oekaüi mqjrefö iy mdif,a fjí wvúfha m%o¾Ykh lr i;s 02la bl;=a ùug fmr tu f,aLkj, hī ia:dkhl kqiqyiq <uhl=f.a ku wvx.= ù we;akī tA ms<sno úfrdao;dj yd\$fyda iqyiqli ;sih§;a ;u orejdf.a ku **kqiqyiq** ;ekl we;akī tA ms<sno wNshdpkhla úyy,am;s fj; ,shdmÈxÑ ;emEf,ka bÈßm;a l< hq;=h”

I am inclined to adopt the above Sinhala wordings in the circular No.28/2018, which is supposed to be the original circular. The function of the court is to interpret an Act according to the intent of them that made it and the intention must be deduced from the language used – vide Lord Parker, C.J in **Capper v Baldwin 1965 (2) QB 61**.

Therefore, in my view, the Petitioner could have easily submitted an appeal on the basis that his child was not placed at the correct position in the list alleging that his child should have been placed at a higher rank by adding those 12 marks. Hence, it is observed that the Petitioner has opted not to challenge the deducting of marks and to accept the marks given i.e. 33.8 at the interview despite his expectation of getting his child admitted under Religion basis in view of clause 4.2 of the said circular.

Further the Petitioner raises another issue and argues that the 1st Respondent Principal was the Chairperson of the original Interview Board as well as of the Appeal Board; and therefore the maxim *nemo judex in causa sua* has been violated. The documents submitted by the Petitioner himself, marked as P16 which are the permanent lists of marks under various categories, emanate that the President of the Appeal Board was not the 1st Respondent Principal and also that the said Principal was never a member of the said Appeal Board. Therefore, I am of the view that the said argument of the Petitioner is baseless.

The scope of clause 4.2 of the Circular No. 24/2018

The primary claim of the Petitioner in this case is based on clause 4.2 of the said circular No. 24/2018.

It is observed that the Ministry of Education issues circulars annually relating to instructions and guidelines for admission of children to Grade 1 in Government schools for the ensuing year. On a perusal of such circulars, it is apparent that the Ministry of Education has taken steps to maintain the ratio of student population, based on their religious faith, that existed at the time of vesting such schools to the Government under Assisted Schools and Training Schools (Special Provisions) Act, No. 05 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act, No. 08 of 1961. Almost every such circular contain provisions to that effect and however the wordings in the relevant paragraphs which exhibit the above policy are slightly different during certain years in those respective circulars.

The aforesaid policy has been adopted even in the above mentioned circular No. 24/2018 in its clause 4.2. The same provisions are there in the clause 3.2 of the English version of the Instructions to the Admission of Children to Grade 1 in government schools for the year 2019 issued by the Ministry of Education on 31.05.2018, available at <http://www.wpedu.sch.lk>.

The said clause 3.2 reads;

"In filling vacancies in schools vested to the government under Assisted Schools and Training schools (special provisions) Act No. 05 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act No.08 of 1961, the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and the number of vacancies in the said school shall be accordingly divided among different religions and categories. When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. When there are no applicants from a religion, or when the number of applications from a religion is less than the number of vacancies set apart for that religion, such vacancies shall be proportionately divided among other religions"

The contention of the Petitioner has been mainly formulated on the said clause 4.2 of the said circular No.24/2018 which stipulates, inter alia, that the proportion of children belonging to different religions at the time of vesting the school to Government should be taken into consideration and the number of vacancies in the said school shall be accordingly divided among different **religions** and **categories**.

The **categories** mentioned above are clearly stipulated in clause 3 of the said circular No. 24/2018. Accordingly, out of the vacancies existing in Grade 1 in a school, the number of children to be selected by the interview will be made only from the children belonging to one of the six categories mentioned below.

- a) *Children of residents in close proximity to the school 50%*
- b) *Children of parents who are past pupils of the school 25%*
- c) *Brothers/sisters of students already studying in the school 15%*

- d) *Children of persons in the staff of institutions directly involved in school education 05%*
- e) *Children of officers in government/corporations/statutory boards/state banks receiving transfers on exigencies of service or on annual transfers 04%*
- f) *Children of persons arriving after living abroad with the child 01%*

The parents or guardians should submit the application forms under any one of such categories separately. Marks will be allocated for selection according to the marking schemes indicated under each such category.

The subheading of the clause 4 of the said circular, specifically mention that the attention should be drawn to the facts mentioned in the sub clauses therein are particularly in respect of all **categories** under which the admission of a child to Grade 1 is being sought. Further the said clause 4.2 clearly stipulates that (in its English version)-"*the proportion of children belonging to different religions at the time of vesting the school to the government **will be taken into consideration** and the number of vacancies in the said school shall be accordingly divided among different **religions and categories***" (emphasis added)

Therefore, it is obvious that the number of vacancies in the school should be divided among (i) different religions **and** (ii) categories. Therefore, it is clear that before conducting the interviews the number of vacancies should be determined and those vacancies should be divided among different "religions" and "categories" (categories mentioned in above mentioned clause 3 of the said circular) taking into consideration the proportion of children belonging to different religions at the time of vesting the school to the Government.

Accordingly, it is important to examine here whether a child could be admitted to school only upon the basis of religion in terms of the said clause 4.2 despite the strength of the marks received by him/her when assessing their applications under any of the categories such as 'close proximity'. The Petitioner's argument in the instant case is that even if a Methodist applicant fails to meet the criteria for admission under such a category she must be admitted solely based on their religion.

The Respondent's contention in this regard is that different minimum cut off marks are being allocated for Tamil and Sinhala medium students for each category specified in circular No. 24/2018. The minimum cut off marks for Tamil medium (the medium of learning opted by the Petitioner) for the categories of "close proximity" and "sibling", for the admission in year 2019 were 87 marks and 25.3 marks, respectively.

However the Respondents have not divulged the cut off mark for Tamil medium students who were selected on the religion basis among the applicants came under close proximity category. I observe that is a grave lacuna in the process of selection executed by the 1st Respondent and the other authorities of the Kandy Girls' High School.

The Petitioner has cited the judgment of the case No.SC/FR/335/2016 (*B.M. Asiri Tharanga, Thyagaraja Mahendra v. Principal Kingswood College, Kandy and others; decided on 30.10.2017*) in which Eva Wanasundara P.C.J has held that "*anyhow when a Christian child has applied to be admitted to Kingswood College Kandy, under any category, if the documents show that he is a Christian and if the number of Christian children already admitted are not above the allowed percentage of 20% intake under the religion category, then that child has a right to be admitted under clause 3.2 of the circular.*"

However, His Lordship Justice Buwaneka Aluwihare P.C.J in the case of **R.M. Dayawathie v. the Principal of Girls' High School Kandy and others, (SC application No. 459/2017 FR decided on 05.11.2018)**, distinguishing the above judgment in SC/FR 335/2016 has noted that the issue pertaining to proof of residence in that case had been resolved in favor of the relevant Petitioner and only one child had been admitted under the proximity category. Further, it was held in the said *R.M. Dayawathie* case that "*in view of the said factual matrix, it cannot be said that the said judgment confers on an applicant the right to gain admission to a school solely based on the religion, irrespective of their ineligibility. That would amount to a surreptitious by-passing of the procedure. At the very least there must be evidence on the record to show that the applicant fulfills the bare minimum qualifications for the admission.*"

The Supreme Court in the said *R.M. Dayawathie* case considering the provisions of Circular No. 22/2017 which contains similar provisions as in clause 4.2 of Circular No. 24/2018, has further held that *"A candidate must prefer his/her application under one of these categories to gain admission. If religion was to be the sole criteria for eligibility, this circular could have made it a separate category. The fact that it isn't, means that religion must be viewed within the framework of the overarching eligibility criteria. The religious quota is a special factor for consideration; and not a separate tier of admission. It does not make eligible an otherwise ineligible applicant. This is the reason for proportionately dividing remaining slots apportioned to a religion among other categories- to facilitate the intake of eligible candidates in other categories."*

Furthermore, the Petitioner relies upon the judgment in case No. SC/FR/614/2004 (judgment dated 07.11.2015; case filed against Richmond College) in which Shirani Bandaranayake, J. (C.J) considering the provisions of a similar circular namely No. 18/2004 has held that *"a careful examination of paragraph 5 of the circular therefore clearly indicates that it is mandatory that the total number of vacancies should be first allocated as contended by the learned counsel for the Petitioners to the different religions in the proportions that existed at the time of vesting of schools and as specified under different categories in terms of paragraph 5(b) of the circular."* I am of the view that the Supreme Court in this case has mainly determined that the total number of vacancies first should be **allocated** to the different religions proportionately and not that the court had determined to express that the **selection** on the basis of religion should be done first before assessing the application under a certain category.

Accordingly, I am inclined to adopt the reasoning given by the Supreme Court in the said *R.M. Dayawathie* case on this issue. Therefore, I am of the view that any applicant who applied for admission to Grade 1 under a certain category mentioned in clause 3 of the said circular No.24/2018, should first fulfill the bare minimum qualifications for admission under the respective category before claiming a seat under the religion basis that is described in the provisions of clause 4.2 of the said circular. However in my view it is mandatory that (i) the cut off mark for students who solely applied only on the respective category and (ii) the cut off mark for students who seek admission on religious basis as well under the same category, should be different and should be

assessed proportionately in a fair manner. In my view this is the best and reasonable interpretation that could be given with regard to the issue of minimum qualifications that required under clause 4.2 of the said circular. That is merely because the number of vacancies in the school should be divided among different religions and categories by taking in to consideration the proportion of children belonging to different religions at the time of vesting the school to the Government.

Therefore, I am of the view that the Petitioners' contention that his child should be admitted to Kandy Girls' High School based only on the religion in view of the provisions of clause 4.2 of the said circular, cannot be accepted.

The Respondents in paragraph 16 of their statement of objections averse that the Petitioner has submitted the details which necessitated the consideration of the application under the vicinity to the school category, and the Petitioner has not submitted any documents to substantiate his claim under clause 4.2 of the said circular. The said argument of the Respondents also cannot be accepted in view of the reasoning given above. On perusal of the copy of the application submitted by the Petitioner marked as P3A, it is observed that the Petitioner has mentioned the words "*Christianity (circular 2019, 3:2)*" in the first cage where the applicant should divulge the 'category' applied for.

The issue of not maintaining the ratio of student population based on their religious faith by the Respondents, in terms of clause 4.2 of the circular No. 24/2018

The prime issue raised by the Petitioner is that the Respondents have failed to maintain the entire Christian student population that existed at the time of vesting the school to Government and therefore a grave prejudice has been caused to his daughter. As mentioned above the Ministry of Education, as a policy, in terms of clause 4.2 of the said circular No. 24/2018, had taken necessary measures to maintain the ratio of student population based on their religious faith that existed at the time of vesting of such school in 1960/1961. In view of establishing the said Christian student population that existed at the time of vesting the school, the Petitioner has submitted the document marked P13 which is the 'Extract of the returns of schools under C.H.E. & S.G.B. in the

Kandy District as at 31st July 1960'(which is being called as Methodist Church synod in 1961). As per the said document, the student population maintained by the Kandy Girls' High School, as at 31st July 1960, is as follows.

(i) Methodist	- 81
(ii) Other denominations	- 292
(iii) Hindu	- 57
(iv) Buddhists	- 467
(v) Muslims	-71

The Respondents submit that, at the point of vesting, Kandy Girls' High School housed 81 Methodist students from a total of 968 student population. Accordingly, the school has maintained an approximate percentage of 8.36 in view of fulfilling the requirements under clause 4.2 of the said circular No. 24/2018, to admit students who are Methodists.

However, the Petitioner argues that the total Christian student percentage should be calculated taking into the consideration of the 81 Methodist students together with 292 students of other denominations (total 373) as such the percentage of total Christian students should be 38%. Therefore, the Petitioner argues that approximately 60 Non-Roman Catholic students should be enrolled to Grade 1 for the year 2019, whereas the school had given the opportunity only for 13 students under the said clause 4.2 of the said circular. Hence, the Petitioner submits that even though his daughter has obtained only 33.8 marks, that she should be admitted to school under the basis of availability of instructions of Christianity.

The Respondent's contention on this issue is as follows;

- a) "The total number of vacancies available in Grade 1 in the Kandy Girls' High School in the year 2019 was 160 students and the maximum number of students that can be kept in a single classroom is 32 students according to the guidelines. Out of the aforesaid 32 students 5 allocations should have to be reserved for admission of any children of the Tri Forces and the Police. (vide section 4.1 read together with sections 5:3 and 5:4 and 13.2 of Circular No 24-2018)

- b) therefore five class rooms should be made available for the said 160 students for the year 2019.
- c) the admission of children to Grade 1 for the year 2019 is based on the total number of students admitted to those five classes in proportionate with the religion ratio for Christianity in the Synod marked as P13, and accordingly 13 Christian Methodist students have become eligible for admission to those five classes of Grade 1.
- d) Hence, 8 Christian Methodist Students out of those 13 Students were admitted to the four Sinhala Medium Classes, whereas the other 5 Christian Methodist Students to one Tamil Medium Class. The apportionment of the 5 students for the single Tamil medium class was determined taking into consideration the percentage applicable for each category.
- e) When the aforesaid 13 Sinhala and Tamil Christian Methodist Students were selected for the respective five classes of Grade 1, apart from marks obtained by each of those students, special emphasis had to be placed on the category from which they have submitted their respective applications as the allocation of the 13 vacancies should distributed equally amongst students from all categories.
- f) The 8 Christian Students who were admitted to those four Sinhala Medium Classes, were all chosen from the residence in close proximity to the school category as there were no Sinhala Medium Christian Students who had applied from any other categories for admission.
- g) The 5 Christian Students for the single Tamil Medium Class for Grade 1 were selected from two categories, namely, from the 'close proximity' category and from the 'sibling/s who is/are studying in the same school' category in terms of the Circular marked as R1, since there were no Christian Tamil Students who applied from the Old Girls Category or other two categories”.

There seems to be three main limbs in the said clause 4.2 of the said circular. The first such limb provides to divide the number of vacancies in the school among different categories and the religion, based on the proportion of children belonging to different

religions at the time of vesting the school. The second limb of the said clause provides that when the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion. The third limb deals with a situation where there are no applicants from a religion or when the number of applications from a religion is less than the number of vacancies set apart for that religion.

Shirani Bandranayake, J (C.J) in **M.K. Wijetunga & others v. The Principal, Southlands College, Galle and others (SC/FR application 612/2004, decided on 07.11.2005)** has held that it is mandatory that the religious percentages that prevailed in 1961/62 to be continued and the applicants who claimed that they are Christians had to be considered in that background. Moreover, Shirani Bandranayake, J (C.J.) has further held that *"....it is clear that the 1st Respondent has taken into consideration the religious percentages for the Christians as 2% and not 9.2% according to the documents produced by the Petitioners. Therefore, it is apparent that by not considering the relevant provisions as laid down by the circular in terms with the relevant percentages, the 1st Respondent had acted arbitrarily and unreasonably infringing the Petitioner's fundamental rights."*

The Respondents in paragraph 17 of their Statement of Objections categorically state that the ratio of the students who belong to other denominations (other than Methodist sect) of Christianity has no applicability whatsoever to the Girls' High School, Kandy since the Girls' High School, Kandy does not admit students who belong to other Christian sects other than to the Christian Methodist sect. Moreover, the Respondents have failed to submit any evidence as to how the school authorities have deviated from the percentage of school population which was prevailing in the year 1960 described in the Synod marked as P13.

The Petitioner in furtherance to the said synod (marked as P13) has annexed another document along with P13 to establish further the student population of the schools under the C.H.E. & S.G.B. of the Methodist Church in Ceylon, during 1960/1961. The said document which has not been challenged by the Respondents, clearly shows that there had been total number of 373 Christian students out of which 81 Methodist

students and 292 students under other denominations. This shows that the 292 students who come under 'other denominations' belong to the classification of Christian students.

The said document P13 which is the Methodist Church Synod in 1961 clearly shows the percentage of total Christian students. As per the said document, the percentage of Methodist students and the students of other denominations is 8% and 30% respectively. Further it shows that the total percentage of Christian students in the year 1960 was 38%.

Therefore, I am of the view that the Respondents have not divided the vacancies proportionately among the religions and categories. The Respondents cannot possibly overlook the provisions of the said circular 24/2018 by simply making a statement to say that the Kandy Girls' High School does not admit students who belong to other Christian sects other than to the Christian Methodist sect.

Now it is important to examine as to whether any prejudice has been caused to the Petitioner with the conduct of the 1st Respondent who has not followed the provisions of the said clause 4.2 effectively.

The Respondent's contention is that the Petitioner cannot rely on other Christian sects when he belongs to the Christian Methodist sect. The attention of court was drawn by the Petitioner to the fact that he had mentioned the religion as "Christian" in the application for admission marked as P3A.

Further, the Petitioner in paragraph 18 declares that the minor Devinyah Grace Jemima and the both parents are baptized Christians and submits the documents P12 and P12 (b) in proof of the said baptismal. It has been submitted to this Court by the learned counsel of the Petitioner that the Petitioner and his family including the minor child do not belong to Christian Methodist sect. The Petitioner further says that his child belongs to a Non-Roman Catholic family and follows Christianity as their religion.

The 1st Respondent filling an affidavit dated 29.07.2019 in this court has stated in its paragraph 18 that the 8 Christian students who were admitted to the four Sinhala medium classes in Grade 1 were all chosen from the residence in close proximity to the

school category as there were no Sinhala medium Christian students who had applied from any other category. The Respondent's statement of objections also divulges the fact that there were no Christian Tamil Students who applied from the Old Girls Category or other two categories.

At this stage an appropriate consideration of the above mentioned second limb of the said clause 4.2 of the said circular is needed. It says;

“When the number of applications is less than the number of vacancies set apart for a given category of a religion, remaining vacancies shall be proportionately divided among other categories of the same religion”.

Thus, the above second important limb of the said clause 4.2 provides a mechanism in a situation where the number of applications are lesser than the number of vacancies set apart for a given category of a religion.

Therefore, had the 1st Respondent followed the provisions of the said clause 4.2 accurately, in my view, several more vacancies should have been accorded to more Christian students. It is very much clear, in view of the document P13 and its annexure, that the Methodist students and the students come under 'other denominations' belongs to one classification called 'Christians'.

The next question that has to be examined is whether the Petitioner's daughter, in these circumstances, would be eligible to be admitted to school. In other words we have to ascertain as to whether the Petitioner's daughter who applied under the category of 'close proximity' could be selected without fulfilling the minimum qualifications under the said category.

The Petitioner has secured only 33.8 marks (as per the document marked P6) at the school admission interview held on 07.09.2018. The document R8 is the permanent list of marks for Tamil medium students under the category of close proximity. There had been only 16 vacancies for the Tamil medium students and all 16 vacancies have been filled. As per the said document R8, the students Nos. 13 to 16 are Non-Roman Catholics and listed in the descending order of marks that obtained. The 16th student,

who is the last out of the lot, has secured only 41 marks whereas the Petitioner's daughter has received only 33.8 marks.

The contents of the 1st paragraph of the letter dated 31.01.2019 (marked as P11) addressed to the Petitioner by the Information Officer of the Kandy Girl's High School is very much apt here. The information officer gives therein the reason for not selecting the Petitioner's child. Accordingly, the Petitioner's child whose name was there in the temporary list as an eligible candidate has lost the opportunity of getting admitted to school as a consequence of a decision made by the Appeal Board. The said Board had considered an appeal of a candidate who applied under the 'siblings' category and also under the basis of the religion in terms of the said clause 4.2 and subsequently that appeal had been allowed by the said Board. Hence, the Respondents have taken out the name of the Petitioner's child from the permanent list, paving way for the other candidate who applied under sibling category and religion basis. Therefore, it is clear that if not for the appeal of the other candidate, definitely the place of the Petitioner's child in the temporary list would not be changed. As observed above there had been no Christian Tamil Students who applied from the Old Girls Category or other two categories. At the argument stage also it was divulged that there were no other candidates under any of the categories who sought admission on the basis of the religion.

Therefore, it is apparent that the Petitioner's child is the only candidate left out among the candidates who applied under religion basis and at the same time under the category of close proximity. If more vacancies are created, as explained above, by taking in to consideration the correct student population in terms of the said clause 4.2, the Petitioner's daughter will be eventually selected since there had been no other applicants under religious basis. Accordingly the school authorities should have assessed the correct cut off mark under the category of 'close proximity' enabling the Petitioner's daughter to be eligible for selection, based on her religion.

Therefore, I take the view that the 1st Respondent has acted in violation of the provisions in the clause 4.2 of the said circular No. 24/2018 in regard to allocating seats for other Christian sects other than to the Christian Methodist sect. In the circumstances, I issue

a writ of certiorari quashing the letter marked as P8 by which the admission of the Petitioner's child to Kandy Girls' High School was refused.

A Writ of Mandamus can also be used to correct a mistaken exercise of discretion. Thus, the remedy is available if a decision is reached on the basis of irrelevant considerations or improper purposes. (Vide- P.P. Craig, Administrative Law– 5th edition, page 768). In the circumstances I issue a writ of Mandamus also as prayed for in the paragraph (b) of the prayer of the Petition of the Petitioner.

No order is made with regard to costs.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree.

Judge of the Court of Appeal