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

In the matter of an application in the nature of Writs of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/104/2019

1. Wijerathna Arachchige Nethuli Sanulya
   No.36, Paragahakumbura,
   Dadella.

2. Wijerathna Arachchige Ravindra,
   No. 36, Paragahakumbura,
   Dadella.

Petitioners

Vs.

1. Mrs. Sandya Irani Pathiranawasam,
   The Principal/ Chairman – Interview Board,
   Southlands College,
   Galle.

2. Mrs. D. D. N. R. Amarasena,
   The member,
   Interview Board,
   Southlands College,
   Galle.

3. Mrs. B. W. Shirani Manel,
   The member,
   Interview Board,
   Southlands College,
   Galle.

4. Mrs. Dulari Wellappili,
   The member,
   Interview Board,
   Southlands College,
   Galle.

5. Mr. Deshan Gayanka,
   The member,
   Interview Board,
   Southlands College,
   Galle.

6. Mr. Sampath Weragoda.
   The Chairman,
   Appeal and Objection Board,
   Southlands College,
   Galle.

7. Mr. G. H. G. Ruwan Prasanga,
   The Member,
   Appeal and Objection Board,
   Southlands College,
   Galle.

8. Mr. U. G. G. Kariyawasam,
   The Member,
   Appeal and Objection Board,
   Southlands College,
   Galle.

9. Mr. K. G. N. S. Subasinghe,
   The Member,
   Appeal and Objection Board,
   Southlands College,
   Galle.

10. Ms. Kalana Jayarathne,
The Member,
Appeal and Objection Board,
Southlands College, Galle.

11. Hon. Akila Viraj Kariyawasam,
Hon. Minister of Education,
Ministry of Education,
Isusrupaya, Battaramulla.

11A. Prof. G.L. Pieris,
Hon. Minister of Education,
Ministry of Education,
Isurupaya, Battaramulla

12. Mr. Padmasiri Jayamanne,
Secretary, Ministry of Education,
Isurupaya,
Battaramulla.

12A. Mr. Kapila C. K. Perera,
Secretary, Ministry of Education,
Isurupaya,
Battaramulla

13. Ranjith Chandrasekara,
Director National Schools,
Ministry of Education,
Isurupaya,
Battaramulla.

13A. K.L.G. Kithsiri,
Director National Schools,
Ministry of Education,
Isurupaya,
Battaramulla.

14. Mrs. S. P. Chandrawathie,
Provincial Director of Education of
Southern Province,
Provincial Department of Education,
No. 19, Lower Dickson Road, Galle.

14A. Colonel Nimal Dissanayake,
Provincial Director of Education of
Southern Province,
Provincial Department of Education,
No. 19, Lower Dickson Road,
Galle.

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

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Ravindranath Dabare with Savanthi Ponnapperuma and Dananjaya Deegayu for Petitioners

Sabrina Ahmed, SC for the 1st, 11A, 12A, 13A, 14th and 15th Respondents

Written submissions - tendered on behalf of Petitioners: 19.05.2021 and 25.10.2021

- tendered on behalf of Respondents: 10.11.2021

Decided on: 08.12.2021

Sobhitha Rajakaruna J.

The 2nd Petitioner has filed this application on behalf of his daughter who is the 1st Petitioner. The Petitioners seek, inter alia, for a mandate in the nature of a writ of Certiorari to quash the decision of the 1st to 14th Respondents not to admit the 1st Petitioner to Grade 1 of the Southlands College, Galle. The Petitioners also seek for a mandate in

the nature of a Mandamus compelling the Respondents to admit the said 1st Petitioner to the Southlands College, Galle.

When this matter was taken up for argument, the Petitioners and the Respondents agreed that this application be dealt with and determined solely on the basis of written submissions and accordingly, Court afforded time for both parties to file written submissions.

The 2nd Petitioner has submitted an application to the said Southlands College for the admission of his daughter, the 1st Petitioner, to Grade 1 for the year 2019 to learn in **Sinhala** medium. He has submitted the said application under the **'close proximity'** category in terms of the Notification marked P2 issued by the Ministry of Education on 31.05.2018. It is observed that the said P2 document which provides instructions related to the admission of children to Grade 1 in Government schools for the year 2019 is based on the circular No. 24/2018 issued by the Ministry of Education. The said circular No. 24/2018 is annexed to the amended statement of limited objections of the 1st & 11th to 13th Respondents marked R1. The Petitioners, in paragraph 5 of their Petition have admitted that the 2nd Petitioner had submitted the said application under the category of Residence-Christian bearing CRC12 and further averse that the 1st Petitioner being a non-Roman Catholic Christian, sought admission to the said school under the quota allocated to Christian students. In terms of the application for admission to Grade 1 marked P4 & R6, the Petitioners' only preference was Southlands College, Galle.

The Petitioners submit that the Southlands College Galle was the closest non-Roman Catholic Christian school to the 1st Petitioner according to the distance of location. The Petitioners allege that the 1st Petitioner's name was not included in the selected list of students for admission after the relevant interview. Subsequently an appeal has been made by the Petitioners to the Appeal and Objection Investigation Board by which a decision has been taken to reject the said Appeal.

The Petitioners complain that 40 marks had been deducted from 1st Petitioner's total mark on the basis that there were 10 schools located from their residence to the school and the said deduction of marks amounts to injustice on the basis that the Southlands College is supposed to be the only Christian school (Non-Roman Catholic) in Galle educational zone to teach Christianity subject. Furthermore, the Petitioners raise a claim in terms of clause

4.2 of the said circular marked R1 (clause 3.2 of the circular marked P1) and submit that the Respondents are under a legal duty to admit 6.9% non-Roman Catholic Christian children, including the 1st Petitioner to the Southlands College to Grade 1 for the year 2019.

The first question that has to be examined relates to the basis upon which the alleged deduction of marks has been made. The Petitioners' contention is that in terms of clause 7.2.4 of the said circular (R1), 04 marks could be deducted for other government schools within the radius only if such school admits 10% or more children of the religion to which the child belongs. Further the Petitioner submits that the Respondents have failed to establish that the 10 schools listed in amended statement of limited objections of the 1st & 11th to 13th Respondents, for which 40 marks have been deducted, admit 10% or more Non-Roman Catholic Christian students.

In terms of clause 7.2.4 of the said circular R1 (clause 6.1 (III) of P1) the 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 to the place of residence than the school applied for, marks shall be deducted at the rate of 04 marks from the maximum marks for each school.

The said clause further stipulates that 'other Government primary schools that the child could be admitted implies, whether the school concerned has learning medium the child has applied for / whether it is a girls or boys school or a mixed school appropriate for the child and **whether the school admits 10% or more** children of the religion to which the child belongs.' (Emphasis added)

For the purpose of clarity, I have also drawn my attention to the Sinhala version of the relevant portion in the circular which is as follows;

> ළමයාට ඇතුලත් වීමට හැකි ප්‍රාථමික අංශ සහිත වෙනත් රජයේ පාසල් යනුවෙන් අදහස් කරන්නේ එම ළමයාට ඇතුළත් වීමට අවශ්‍ය ඉගෙනුම් මාධ්‍යය සහිත පාසලක් ද, තමන්ට අදාළ ගැහැණු හෝ පිරිමි පාසලක් ද, මිශ්‍ර

පාසලක් ද යන්න සහ ළමයා අයිති ආගම වෙනුවෙන් **10% හෝ ඊට වැඩි ප්‍රතිශතයක් ඇතුළත් කර ගන්නා රජයේ පාසල් වේ.**

(Emphasis added)

The amended statement of limited objections of the 1st & 11th to 13th Respondents in its paragraph 14 divulges the names of 12 schools that fall within the feeder area of the circle drawn and shows that those schools have the capacity to admit 10% or more of Christian students. The Respondents however submit that a school within the radius cannot be considered for deduction of marks if such school, by a prerequisite in law or regulation, is not required to admit more than 10% of students belonging to the religion of the child seeking admission. Thus, it is pertinent here to examine the rationale behind the deduction of marks for the schools that admit 10% or more children of the religion to which the child belongs.

In this context, it is necessary to ascertain whether there is any provision in the said circular R1 which requires to admit children on a percentage basis upon the religion of the child seeking admission. It is noted that by virtue of clause 4.2 of the said circular R1, 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 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act, No. 08 of 1961. The religious percentage mentioned therein should be based on such percentage which existed at the time the school was vested under the above Acts.

Shirani Bandranayake, 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.

As mentioned above the Ministry of Education, as a policy, in terms of clause 4.2 of the said circular R1, has 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. The Ministry of Education as a policy may impose any other rule or regulation

also apart from the provisions of the said clause 4.2 in view of regulating admission of children. However, information to that effect has not been provided to this Court either by the Petitioners or by the Respondents of this application.

All Government schools in the country do not fall in to the category of vested schools under the above Acts[1]. Therefore, in my view, the schools that have not been vested under the provisions of the said Acts, are not required to restrict any child being admitted, provided that the learning medium and the gender of the child is compatible to the respective school and however, subject to the other provisions of the annual admission circular. If an Assisted school that vested under the said Acts is located within the close proximity to Petitioners' residence, then marks can be deducted provided the ratio that is required to be maintained as per the said clause 4.2 is higher than 10% of the children of the particular religion to which the child belongs. However, no marks could be deducted in respect of such vested school if the required ratio is lesser than 10%.

The Director National Schools (13A Respondent) has affirmed by a way of an affidavit that none of the schools upon which the marks have been deducted are bound by any restrictions based on religious criteria in respect of Christian students for admission to Grade 1. He has annexed a supporting document marked 'X1' to establish that those 10 schools (upon which the marks have been deducted) had no quota restriction upon admission of Christian students. According to the said Affidavit of the 13A Respondent, it is apparent that these 10 schools are not vested schools under the said Acts. The reasons adduced above emanates that those 10 schools admit or have the capacity to admit even children of non-Roman Catholic Christians (the religion of the 1st Petitioner) without any hindrance, restriction or limitation and without maintaining a minimum or maximum percentage.

However, the Petitioners' contention is that the Respondents have failed to establish that the aforesaid 12 schools upon which a maximum of 40 marks were deducted from the 1st Petitioner has in fact admitted 10% or more non-Roman Catholic Christian children <u>over the past few years</u>. The Petitioners further argue that the Southland College is supposed to

[1] 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

be the only Christian school (non-Roman Catholic) in Galle educational zone to teach Christianity.

A careful examination of clause 7.2.4 of the said circular indicates that there is no requirement of teaching the subject of Christianity or any other specific subject in the respective school in order to deduct marks under such provisions of the circular. The framers of the circular have concentrated only on the fact whether such school admits 10% or more of the religion to which the child belongs. In other words, the intention of the said clause is to ascertain whether a respective school has any restriction by law or a by way of a regulation to admit children. However, the fact as to whether the respective school, at the time of applying for admission, teaches a particular subject is not a specification *per se* under that clause to deduct marks. Whereas, there seems to be no necessity to have 10% or more children of the religion to which the child belongs, physically studying in a respective school, in order to deduct marks under said clause 7.2.4. Moreover, I am of the view that, if there are no restrictions by law or by any other regulation in respect of admission of children as explained above, the respective schools should provide facilities to whoever the applicants seeking admission irrespective of their religion.

The Respondents in their limited statement of objections have categorically stated that all schools are required to provide religious education to children of all religions/denominations based on requirements. Anyhow, such duty of the State to teach any religion at Government schools is eventually subject to limitations and requirements introduced in above clause 4.2 of the circular R1. The learning medium of the respective school and the fact whether it is a girls or boys school or a mixed school also material to the child who seeks admission.

In ***Shahul Majeed Mohomed Rizwan and another vs. Sampath Weragoda, The Principal of Richmond College (SC/FR Application No. 292/2018, SC minutes 09.10.2019),*** the issue raised before the Supreme Court was that Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya are not schools that "can admit 10% or more children of the Islamic faith" and therefore, deduction of marks for the said two schools under sub-clause 7.2.3 of the admission circular dated 30.05.2017 (similar to clause 7.2.4 of the circular R1 in the instant application) violates Petitioners' Fundamental Rights.

Her Ladyship Justice Murdu N.B. Fernando held in the said case as follows;

'The number of children or the percentage of the children of Islamic Faith actually admitted during the last few years is not material and is not the issue. What the Petitioner should establish before this Court, is that there is a regulation or a rule that the school, being a Government School "can" admit only less than 10% of children belonging to the Islamic faith or that there are restrictions placed on the said school with regard to admissions or the said school "can" admit only a particular number of children of a particular faith or a particular percentage of children belonging to a particular faith. For instance, like the situation referred to in Clause 4.2 of the Admission Circular (P1) pertaining to schools vested with 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 rationale adopted by the Supreme Court in the above case is very much relevant to the issue of the instant application. Accordingly, I see no reason to annul the decision of the Respondents to deduct marks in respect of the 10 schools mentioned in this case.

In view of my above findings, I cannot accept the proposition of the Petitioners;

i. that no marks could be deducted since those 10 schools do not teach Christianity as a subject; and
ii. that no non-Roman Catholic Christian students have been admitted to those schools during recent past.

Now I advert to the Petitioners' second main argument which enumerates that, the Respondents are under a legal duty to accept 6.9% non-Roman Catholic Christian children including the 1st Petitioner to the Southlands College, since it is a vested school under the Acts mentioned above. In the aforesaid case of ***M.K. Wijethunga and others vs. The Principal Southlands College, Galle (SC/FR Application 612/2004, decided on 07.11.2005)*** the Supreme Court observed, in terms of the extracts of the proceedings of the Methodist Church Synod held at Scotthold, Colpetty in January 1969 that there had been 53 Christian students out of the total of 760 students at Southlands College. Therefore, the percentage of Christians in Southlands as at 1969 was 6.9%.

The 12th Respondent, The Secretary to the Ministry of Education in paragraph 10 of his Affidavit has clearly given the following breakdown of the students who were to be

admitted to school in respect of various categories in terms of clause 4.2 of the said circular R1;

			No. of Christian Students
i.	*Residents Category (RC)*	*50%*	*222 x 50/100 x 6.9% = 7.76*
ii.	*Past Pupil (PP)*	*25%*	*222 x 25/100 x 6.9% = 3.825*
iii.	*Brother/ Sister of studying (SR)*	*15%*	*222 x 15/100 x 6.9% = 2.297*
iv.	*Children of Staff (S)*	*5%*	*222 x 5/100 x 6.9% = 0.7659*
v.	*Annual Transfers (TR)*	*4%*	*222 x 4/100 x 6.9% = 0.612*
vi.	*Abroad Category (FR)*	*1%*	*222 x 1/100 x 6.9% = 0.153*

The above breakdown and the relevant marksheets annexed to the pleadings of the Respondents show that the required quota of Christian students, under all above categories has been met by the 1st to 5th Respondents. Furthermore, the breakdown of the number of Christian students who were to be admitted to Southlands College in terms of law is as follows; (*vide* - paragraph 11 of the said Affidavit of the 12th Respondent)

		Mandatory intake of Christians in terms of law	***Christian intake for the year of 2019 in the Southlands Galle***
i.	*(R.C.)*	*07*	*11*
ii.	*(P.P)*	*03*	*02*
iii.	*(S.R.)*	*02*	*02*
iv.	*(Staff)*	*01*	*00*
v.	*(T.R)*	*01*	*00*
vi.	*(F.R.)*	*---*	*00*
vii.	*Forces*	*---*	*01*
	Total	*15*	*16*

Thus, the Respondents were to admit total of 222 of students to Grade 1 for the year 2019, out of which 6.9% were required to be Christian students. Accordingly, the required number for the admission for Christian students were 15. Hence, I am of the view that the

Respondents have properly considered the provisions of clause 4.2 of the circular R1 when admitting children to Grade 1 at Southlands College, Galle.

In the circumstances, I hold that the Petitioners are not entitled to seek for a mandate in the nature of a writ of Certiorari quashing the decisions of the Respondents not to admit the 1st Petitioner to Grade 1 of Southlands College, Galle. A writ of Mandamus can be issued only if a decision is reached on the basis of irrelevant consideration or improper purposes (*vide* - P.P Craig, Administrative Law-5th Edition page 768) and therefore, the relief sought by the Petitioners for a writ of Mandamus also cannot be granted.

I proceed to dismiss this application. 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