

**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 Writ of Certiorari and Writ of
Mandamus under and in terms of Article 140 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

CA/WRIT/295/2021

1. Chinthake Kaushalya Gunathilake
No. 36 B/2/1, Vajira Road,
Bambalapitiya,
Colombo 04.
2. Desandu Dheesara Gunathilake
(Minor)
No. 36 B/2/1, Vajira Road,
Bambalapitiya,
Colombo 4.

Petitioners

Vs.

1. B. A. Abeyrathna
Principal,
Royal College,
Rajakeeya Mawatha,
Colombo 07.
2. M.V.S. Gunathilake
Senior Deputy Principal,
Royal College,
Rajakeeya Mawatha,
Colombo 07.
3. Mr. Happeruma
Chairman,
Appeals and Objections Panel,
Royal College,
Rajakeeya Mawatha,
Colombo 07.

4. Director – National Schools
Isurupaya,
Battaramulla.
5. Prof. K. Kapila C.K. Perera
Secretary to the Ministry of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

Respondents

Before :Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Shantha Jayawardena with Hirannya Damunupola for the Petitioner.
Amsara Gajadeera, SC for the Respondents.

Argued on : 10.03.2022 and 05.04.2022

Written submissions: Petitioners - 17.05.2022

Respondents - 27.04.2022

Decided on :15.06.2022

Sobhitha Rajakaruna J.

The 1st Petitioner has filed this application on behalf of his son who is the 2nd 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 3rd Respondents to not admit the 2nd Petitioner to Grade 1 of the Royal College, Colombo 7, for the year 2021.

The admission of students to Grade 1 of Government Schools including the said Royal College for the year 2021 is governed by the Circular No. 29/2019 dated 24.05.2019 which has been amended by Circular No. 29/2019 (i) (dated 11.07.2019) and Circular No. 16/2020 (dated 26.05.2020), issued by the Ministry of Education. Those three Circulars

are annexed to the Petition, marked as, 'P2', 'P3', and 'P4' respectively. The instructions related to such admission of children for the year 2021 issued by the Ministry of Education are marked as 'P5'.

The Petitioners' initial claim is that the 2nd Petitioner was not granted 2 marks at the interview in respect of the Deed of Lease No. 726 which had been submitted to establish their residence. The Petitioners allege that although they have been residing at the address mentioned in the above caption since January 2015, the formal Deed of Lease No. 726 was entered into on 09.09.2015. The Petitioners urge that the members of the interview panel disregarded the validity of the said Deed of Lease No. 726 from 01.01.2015 to 31.12.2015. A reasonable question arises as to whether an applicant who applies for admission to Grade 1 is privileged to submit a Lease agreement with retrospective effect to justify the residence in view of the said Circulars. The scheme of the provisions in relation to the close residence category under the said Circulars, in my view, is that it is mandatory for such applicant to actually live at the premises at the address provided in the application during the required period of time. However, the Petitioners have not made submissions on the above question at the hearing stage although several averments to that effect contained in the Petition of the Petitioners.

The primary argument raised by the Petitioners at the hearing is based on clauses 6.0(e), 6.1 (III) of the aforesaid Instructions related to admission of children to Grade 1 for the year 2021 marked 'P5' and those provisions are similar to clause 7.1.5 of the Circular marked 'P2'. It is noted that the said 'P5' is based on the above Circulars 'P2' and 'P4'. The said clause 7.1.5 of the Circular marked 'P2' has been amended by the Circular No. 29/2019 (i) marked 'P3'.

The Petitioners applied for admission under the close proximity category of the said Circular 'P2'. The Clause 6.1 (III) of 'P5' (7.2.4 of 'P2') deals with the proximity to the school from the residence. In terms of the said Clause, maximum marks shall be awarded only if the applicants 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. Further, it stipulates that in the event of having other Government Schools with Primary Sections for the admission of the child which are closer to the place of residence than the School applied for, marks will be deducted at the rate of 5 marks from the maximum marks for each such closer School.

As per the said Clause, other Government Primary Schools that the child could be admitted means; 'whether the Government School concerned has the learning medium the child has applied for, whether it is a girls' or a boys' School or mixed School appropriate for the child and whether it is a Government School which can admit 10% or more children of the religion to which the child belongs'.

The Petitioners assert that the 2nd Petitioner was awarded only 55.8 marks at the interview under the marking scheme provided in Clause 7.2 of the Circular marked 'P2'. The Petitioners submit that there are three Government Schools located closer to the Petitioner's residence than Royal College, namely, Isipathana College - Colombo 5, Thurstan College - Colombo 7 & Vidyathilaka Vidyalaya - Colombo 5 and as such the Interview Board ('Board') could only deduct 15 marks (5 marks each for a school) whereas the Board has deducted marks for all the following 5 Government Schools;

- i. Isipathana College - Colombo 5
- ii. Thurstan College - Colombo 7
- iii. Vidyathilaka Vidyalaya - Colombo 5
- iv. St. Mary's Sinhala Mix School - Colombo 4
- v. Dudley Senanayake College - Colombo 7

The maximum marks that could be awarded under the said Clause 7.2.4 of 'P2' (Clause 6.1 (III) of 'P5') is 50 marks. The Petitioners do not dispute for deducting marks for three schools namely, Isipathana College, Thurstan College & Vidyathilaka Vidyalaya which are located closer to the place of residence than the school applied for. However, the Petitioners' purported grievance is that the Board has deducted 5 marks each (10 marks in total) for the above other two schools namely, St. Mary's Sinhala Mix School and Dudley Senanayake College. The Board has decided marks for those two schools (namely St. Mary's Sinhala Mix School and Dudley Senanayake College) on the basis that those two schools are also located closer to the Petitioners' house than the Royal College.

The crucial question in this application is whether marks could be deducted for the said Dudley Senanayake College as its location is strongly disputed by the Petitioners. Now, I advert to the question whether the said Dudley Senanayake College is located closer to the place of residence than the school applied for by the Petitioner. The Board has taken the decision to deduct 5 marks each for the above schools based on a 1:15000 scale map and accordingly, the Board has arrived at a conclusion that the Dudley Senanayake College is closer to the place of residence of the Petitioners than the Royal College. The Petitioners

complain that the members of the Board did not refer to a 1:50000 scale map which is stipulated in Clause 7.1.5 of 'P2' (which has been amended by Circular No. 29/2019 (i) ('P3')). The said Clause 7.1.5 reads;

“When considering the proximity from the place of residence, the straight distance shall be taken and the map on the scale 1:50000 prepared by the Department of the Surveyor General shall be used for this purpose. The Circle with the radius from the main door of the applicant’s house and the main office of the school shall be drawn and if there are primary schools, where child could be enrolled, within the said circle marks shall be deducted. When the primary section is located on separate premises the distance shall be measured from there and not from the secondary section. However, even if any such school is located within the said circle, in case of finding it difficult to access the said school from applicant’s house due to natural barriers (E.g. rivers, lagoons, marshlands, forests, high ways) marks shall not be deducted for those schools. (If any doubt arises in deciding this Google can be used).”

The learned State Counsel made submissions justifying the decision of the Board to rely upon a 1:15000 scale map. The contention of the learned State Counsel is that using the 1:15000 scale map by the Board was not unlawful. In substantiating her argument, the learned State Counsel further submitted that the Circular 'P2' does not impose a mandatory requirement of a 1:50000 scale map as the said Circular permits the use of Google Maps in the event of a doubt and also that the Board, in terms of Clause 6.2.6 of 'P2', has the full authority to consider all factors and to take appropriate decisions. The said Clause 6.2.6 further stipulates that the duty of clarifying such provisions and the responsibility to take decisions in respect of selection issues is vested on the Board.

The Respondents state that there is no necessity to obtain special permission to use a 1:15000 scale map and the necessity in terms of the above Clause is only to keep the Director of Education informed about the same. By virtue of letter dated 09.08.2019, marked 'R3', the Principal of Royal College has sought permission from the Ministry of Education to use the 1:15000 scale map based on the grounds mentioned therein. In the said letter the Principal explains the difficulty in counting the schools since the Royal College is situated in a highly populated area in Colombo. The three paragraphs of the said letter are as below;

“ඔබ විසින් එවන ලද සිතියම පාසලේ සිට පදිංචි ස්ථානය සඳහා වූ දුර ගණනය කිරීම සඳහා 1:50000 සිතියම භාවිතා කරන ලෙස දන්වා ඇත.

නමුත් රාජකීය විද්‍යාලය පිහිටා ඇත්තේ කොළඹ ඉතා තදාසන්නම අධික ජනගහණයක් සිටින ප්‍රදේශයක බැවින් පාසලේ ගණනය කිරීමේදී ඉතා අසීරු තත්වයකට මුහුණදීමට සිදු වේ. එබැවින් 1:15000 සිතියම භාවිතා කිරීමේදී පාසලේ ඉතා පහසුවෙන් හඳුනා ගැනීමට හැකි බැවින් එය භාවිතා කිරීමට අවසර ලබාදෙන ලෙස කාරුණිකව ඉල්ලා සිටිමි.

මීට පෙර වර්ෂවලද මෙම සිතියම භාවිතා කළ බවද වැඩිදුරටත් දන්වා සිටිමි.”

The duty covering Principal of the Royal College in his affidavit (which was submitted to this Court) has affirmed that the Ministry of Education subsequently has authorized the 1:15000 scale map for the purposes of interviews. In any event, the Respondents assert that the Dudley Senanayake College is close to the place of residence of the Petitioner than Royal College in view of the extracts of the Surveyor General’s map marked ‘R2’ and also according to 1:15000 scale map.

As opposed to the above arguments of the Respondents, the learned Counsel for the Petitioners contends that in view of 7.1.5 of the Circular ‘P2’, it is necessary to consider the straight distance and the 1:50000 scale map when considering the proximity from the place of residence. Further, the Petitioners urge that the Board is not authorized to use 1:15000 scale map and no proper approval to use an enlarged map has been tendered to Court. Therefore, the Petitioners’ contention is that using an enlarged 1:15000 scale map at the interview is illegal, ultra vires and contrary to Circulars ‘P2’ and ‘P3’.

The Petitioners further assert that in terms of the Clause 7.1.5 of Circular ‘P2’ as amended by Circular ‘P3’, the Respondents must draw a circle with a radius from the main door of the Petitioner’s house and the main office of the school, and only if there are primary schools where the child could be enrolled, within the said circle, marks shall be deducted for the said other schools.

When assaying the arguments raised by the learned State Counsel justifying the adoption of 1:15000 scale map, it is important to examine carefully the provisions of Clause 7.1.5 of the Circular ‘P2’ (Clause 6.0(e) of ‘P5’). It is no doubt the prescribed map as per in the said Clause 7.1.5 is the map on the scale 1:50000 prepared by the Department of Surveyor General. A circle with a radius from the main door of the applicant’s house and the main office of the school should be drawn in order to ascertain the number of Government Schools with primary sections located closer to the place of residence than the school

applied for. Accordingly, in terms of Clause 7.2.4 of 'P2', if there are any Government Schools with primary sections for the admission of the child which are closer to the place of residence than the school applied for, exist within the said circle, marks shall be deducted at the rate of 5 marks from the maximum marks for each such school.

It is pertinent here to consider whether adopting the 1:15000 scale map at the interview is illegal, unreasonable or irrational as claimed by the Petitioners. By literal reading of the provisions of the said Clause 7.1.5, it is observed that the provisions of the said Clause itself provides a clear instance where the Board could deviate from the requirement of adopting the map on the scale 1:50000. One such instance which permits deviation is that if any doubt arises in deciding the distance under the said Clause, it is permitted to use the Google map and a decision should be taken by comparing the same with the Surveyor General's map. The relevant sentence in the said Clause is as follows;

“යම් ගැටලුවක් මතු වූ අවස්ථාවක දී ගූගල් සිතියම (Google Map) හා රජයේ මිනින්දෝරු දේපාර්තමේන්තුව මගින් නිකුත් කර ඇති සිතියම යන දෙක ම සසඳා තීරණයක් ගත යුතුය.”

As pointed out by the learned State Counsel in terms of Clause 6.2.6 of 'P2', it appears that a considerable discretion has been bestowed on the Board in view of clarifying the provisions of the Circular and also in taking decisions for admission of children.

In such a backdrop it is important to draw attention to paragraph 33 of the Petition of the Petitioners in which the Petitioners have categorically averred that when an enlarged Google map is used for the purpose of assessing the distance, only a part of the Dudley Senanayake College is within the circle and the other part of the said College is outside the circle. The Petitioners have annexed a copy of the 1:50000 scale map marked as 'P15' and an image captured from the official website of Google Maps <https://maps.google.lk> marked as 'P15a'. It is in this factual matrix, admitted by the Petitioners, this Court has to decide what course of action could be taken when a part of the school is situated within the particular circle and the other part of the school is situated outside the said circle since the said Clause 7.1.5 does not provide for such a situation.

Anyhow, the said Clause 7.1.5 provides that when the primary section is located in a separate premises the distance shall be measured from there and not from the secondary section. Similarly, in case of finding it difficult to access the said school (school which is within the circle) from applicant's house due to natural barriers (e.g. rivers, lagoons, marshlands, forests, high ways), marks should not be deduced for those schools.

In light of the above, I am of the view that the scheme of the said Clause 7.1.5 is to assess accurately the fact whether a school upon which marks have been deducted (under Clause 7.2.4) is actually located within the said circle drawn. Thus, the Board should take such decision without limiting its discretion on a narrow interpretation of any wordings of any sentence of the said Clause. It is a clear admission by the Petitioners that as per the Google map, a part of the Dudley Senanayake College is within the respective circle and the other portion is outside the said circle. Therefore, I take the view that in such a situation, it is very much appropriate for the Board to ascertain the exact location of such school by utilizing a lawful additional method.

The learned State Counsel argues that the rationale for using the said enlarged scale map is to identify the localized area better with more clarity as a 1:15000 scale map would offer an enlarged picture compared to 1:50000 scale map. A scale map of 1:15000 is a larger scale map which means that an inch only depicts 15,000 miles on the ground and that is because the geographic extent shown on a relatively larger scale map is small.

In light of the foregoing, I am inclined to accept the above proposition of the learned State Counsel subject to certain limitations focused below. It is no doubt that the Board is compelled to use the 1:50000 scale map for the purpose of considering proximity from the place of residence. I accept on principle the proposition of the learned Counsel of the Petitioners that it is imperative that admission of children to grade one of Government Schools be necessarily decided upon strictly in terms of the Circular marked 'P2' (which is the applicable law), and not determined according to any other ground whatsoever. However, as I have pointed out earlier, I am of the view that the provisions of the Clause 7.1.5 itself provides a deviation and has allowed the comparison of the Google map with the Surveyor General's map when a question arises. Accordingly, I observe that there was an obligation for the Board to resolve the question as to how the proximity from the place of residence could be assessed in an event the Petitioners claim that only a portion of Dudley Senanayake College is within the boundary line.

Therefore, I hold that using a 1:15000 scale map in a situation where a portion of the disputed school is located within the said circle and when the other portion is outside the circle cannot be considered as unlawful, irrational and unreasonable, provided that the relevant authorities seek permission from the Ministry of Education in that regard or keep the said Ministry informed about such action. I am of the view that I should exercise my discretion to accept the version of the duty covering Principal of the Royal College which

is mentioned in paragraph 19.III of his affidavit, in arriving at my above conclusion. In the said affidavit the said Principal affirms that the said 1:15000 scale map has been authorized by the Ministry of Education for purposes of interviews, although the Respondents have not tendered such letter of authorization to Court. Hence, I take the view that the deduction of 5 marks for Dudley Senanayake College is not illegal.

Although the Petitioners assert that the finding of the Respondents that the Dudley Senanayake College is closer than the Royal College to the Petitioner's residence is unsupported by any evidence, the Petitioners have also failed to submit any acceptable evidence in addition to the documents marked 'P15', 'P15(a)' and 'R2' in support of the contention of the Petitioners. Moreover, the learned State Counsel referring to the cases of *Shahul Majeed Mohamed Rizwan and Another vs. Sampath Weragoda and Others*, SC/FR/Application: 292/2018 (decided on 09.10.2019) and *Sarath Hulangamuwa vs. Siriwardene and others (1981) 1 Sri. L.R. 275* submits that the Petitioner's application ought to be dismissed for want of *uberima fides*, suppression and misrepresentation based on the fact that the Petitioners have mentioned only 2 schools in the application form marked 'P6' whereas, the paragraph 24 of the Petition divulges 3 Government Schools located closer to the Petitioner's residence than Royal College.

In addition to the above arguments, the Petitioners have averred in their Petition that St. Mary's Sinhala Mixed School (upon which 5 marks have been deducted by the Board) cannot be treated on equal terms with the Royal College in terms of the applicable Circulars. The Petitioners submit that St. Mary's Sinhala Mixed School is an Assisted School vested in the Government under the Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960 at the time of the vesting of the said School in the Government and it did not have more than 10% Buddhists students. The relevant Clause in this regard in the Circular 'P2' is Clause 7.2.4. I have dealt with the provisions of the said Clause in *Wijerathna Arachchige Nethuli Sanulya and other vs. Mrs. Sandya Irani Pathiranawasam, the Principal Southlands College Galle, CA/Writ/104/2019 (decided on 08.12.2021)*. The following paragraph of the said case is reiterated here:

"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.”

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 to not admit the 2nd Petitioner to Grade 1 of Royal College, Colombo. Based on my above conclusion, I see no reason to consider issuance of a writ of Mandamus as prayed for in the prayer of the Petition of the Petitioner.

I proceed to dismiss this application. I order no costs.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal