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.

CA Writ Application No.

305/2021

1. Illeperuma Kodithuwakku Arachchilage Dilki Madushani Kodithuwakku

2. Hallaba Gamage Dinuli Jihansa (Minor)

   Both of;
   No.80/35,
   D.D. Dahanayaka Mawatha,
   Hiththatiya Meda,
   Matara.

Petitioners

Vs.

1. M.H. Wanigasinghe
   Principal,
   Sujatha Vidyalaya,

   And
   Chairman,
   Interview Panel,

2. T.Hewawalgama
   The Secretary,
   Interview Panel,

3. J. Mathagadeera
   Member,
   Interview Panel,

4. C. P. Wijesekara
   Member,
   Interview Panel,

5. G. A. Jagathi Gemmali
   Member,
   Interview Panel,

   All of;
   Sujatha Vidyalaya,
   Matara.

6. H. K. Wettamuni
   Chairman,
   Appeals and Objections Review Board,

7. D. T. Jayawardhana
   Secretary,
   Appeals and Objections Review Board,

8. P. Weerasinghage
   Member,
   Appeals and Objections Review Board,

9. H. W. Nandaka
   Member,
   Appeals and Objections Review Board,

10. Dulani Samarasinghe
    Member,
    Appeals and Objections Review Board,

All of;
Sujatha Vidyalaya,
Matara.

11. Director- National Schools,
Ministry of Education,

12. Prof. G. L. Peiris
Hon. Minister of Education,

13. Prof. K. Kapila K. C. Perera
The Secretary,
Ministry of Education,

All of;
Ministry of Education,
“Isurupaya” Battaramulla.

<u>Respondents</u>

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

Counsel : Saliya Pieris PC with Thanuka Nandasiri and
Sarinda Jayawardena for the Petitioners.
Chaya Sri Nammuni, SSC for the Respondents.

Argued On : 11.03.2022

Written Submissions
Tendered On : Petitioners : 21.04.2022
Respondents : 07.04.2022

Decided on : 22. 07.2022

Dhammika Ganepola, J.

The Petitioners in the instant Application seek the intervention of this Court in respect of alleged arbitrary and unreasonable conduct of the Respondents during the process of consideration of the application of the 1st Petitioner to admit the 2nd Petitioner to Sujatha Vidyalaya, Matara by refusing to award the Petitioners the total marks they are entitled for. The 1st Petitioner is a Medical Officer while the 2nd Petitioner is the daughter of the 1st Petitioner. The 1st Petitioner had been transferred to the District General Hospital-Matara, as a Medical Officer-Haematology by way of the Annual Transfers – 2019. Accordingly, she had reported to work on 28.11.2019. The 1st Petitioner had commenced residing at the address given above in the caption since 01.11.2019. Once the 1st Petitioner came to know of the regulations in respect of the admission of children to Grade 1, the 1st Petitioner has taken steps to execute the Lease Agreement bearing No. 71 dated 18.05.2020 (P8a) for a period of one year commencing from 01.11.2019.

The Petitioners state that having thoroughly studied the Guidelines /Instructions and Regulations Regarding Admission of Children to Grade 1 marked as P9 and the applicable Circulars in respect of the school admissions, the 1st Petitioner submitted her duly filled application under the category of ''**Children of Officers in Government/ Corporations/ Statutory Board/ State Banks Receiving Transfers on Exigencies of Service or on Annual Transfers**'' (hereinafter sometimes referred to as "transfer category") along with the requisite documents specified intending to admit the 2nd Petitioner to Sujatha Vidyalaya - Matara. Subsequently, the interview had been held and a total of 66 marks had been awarded to the 2nd Petitioner by the interview panel comprising of 1st to 5th Respondents. The Petitioners state that they had not been awarded any marks whatsoever for fulfilling the requirements of "proximity to the school from their residence", under the Clause 6.5.II of the said Guidelines P9. The Petitioners claim that they are entitled to receive the maximum of 30 marks for satisfying the said requirement of "proximity to the school from their residence". The 1st to 5th Respondents have reasoned out the said decision to not award any marks under "proximity to the school from applicant's residence" requirement stating that the aforementioned Lease Agreement P8(a) submitted by

the Petitioners was not valid for a period of one-year beyond the closing date for applications as required under Clause 6.3.II of the said Guidelines (P9).

Aggrieved by the said decision of the interview panel, the Petitioners have appealed to the Appeals and Objection Board comprised of 6th to 10th Respondents. At the Appeals and Objections Board, the 1st Petitioner had produced another Lease Agreement (P16) by which the lease period of 1st Petitioner's residence has been renewed until 31.10.2022 covering 2 years from the closing date for applications. However, subsequent to the inquiry, the Appeals and Objection Board has affirmed the marks given by the interview panel.

The Petitioners state that the decision to refuse awarding 30 marks to the Petitioners for the requirement of "proximity to the school from their residence" based on insufficient proof is illegal, arbitrary, ultra vires and is in violation of the legitimate expectation of the Petitioners. Accordingly, the Petitioners invoke the jurisdiction of this Court by way of *Writ of Certiorari* to quash the decision of the 1st -5th Respondents contained in the P12 not to award 30 marks to the application of the Petitioners, *Writ of Certiorari* to quash the decision of the 6th – 10th Respondents as contained in P12 and also a *Writ of Mandamus* directing the Respondents to award the Petitioners 30 Marks for the requirement of "proximity to the school from their residence" and admit the 2nd Petitioner to the Grade 1 of the Sujatha Vidyalaya -Matara.

When this matter was taken up for argument, the Petitioners as well as the Respondents agreed to dispose the matter by way of written submissions. The argument of the Petitioners is that the requirement regarding the validity period of the documents mention in the Clause 6.3.II has no applicability under the requirements set out in Clause 6.5.II. Petitioners claim that the applications for admission could be submitted under various categories and that the requirements specified under each category differ from one another in order to ensure that persons from each category shall be accommodated considering their surrounding circumstances. Therefore, the Petitioners argue that the requirements specified under the "Brother-Sister Category" (Clause 6.3.II) in its entirety cannot be applied in considering applications under the "Transfer Category" (Clause 6.5.II). The Petitioners claim that the documents specified under Clause 6.3.II are required only to ascertain the proximity to the school from the place of residence and the school. Therefore, the "validity period" of the documents to be furnished as proof of

residence under Clause 6.3.II should not be taken into consideration in awarding marks for the "proximity to the school from their residence" requirement under transfer category. Respondents take up the position that the Petitioners have been awarded the due marks in compliance with the provisions under the Guidelines marked P9.

The Petitioners have submitted their application for admission of the 2nd Petitioner to the Sujatha Vidyalaya, Matara for the year 2021 under the above-mentioned transfer category as specified in the Clause 6.5 of the P9. The proximity to the school from the place of residence after the mother/father/legal guardian had reported to work on transfer is one of the key requirements under Clause 6.5.II that has to be proved in order to secure 30 marks under the scheme of marking provided under the said category. Clause 6.5.II expressly provides that said "proximity to the school from their residence" requirement must be proved by the applicants by submitting documents specified under Clause 6.3.II. Hence, the applicability of Clause 6.3.II in allocating marks under Clause 6.5.II cannot be excluded. However, the question to be determined is whether the Respondents have correctly interpreted the provisions under Clause 6.3.II read with Clause 6.5.II of P9 in allocating marks to the Petitioners for said "proximity to the school from their residence" requirement.

Said Clause 6.3.II lists down 11 documents out of which either one may be produced by an Applicant subject to the provisions therein to satisfy the said "proximity to the school from their residence" requirement. If either of the said documents is submitted by an applicant, such an applicant shall be awarded the maximum of 30 marks under Clause 6.5.II, for satisfying the said requirement of "proximity to the school from their residence" provided there are no other Government Schools with primary sections located closer to the applicant's place of residence. In the instant case, the key document submitted by the Petitioners before the interview panel to prove the "proximity to the school from their residence" requirement is the Lease Agreement marked P8(a). Lease Agreements are listed under Clause 6.3.II of P9 as an acceptable document which may be produced by an applicant in satisfaction of the said requirement. For easy reference, the relevant portion under Clause 6.3.II is reproduced below.

> *"Continuously registered lease bond only in the name of applicant / spouse. (if required the ownership of the permanent owner need to be proved by the*

extracts and the lease bond should be in valid for at least **one (1) year beyond** *the closing date of application….)"*

The plain meaning of the Clause 6.5.II read with Clause 6.3.II is reflected upon, it appears that the entirety of the Clause 6.3.II, including the validity period of the respective documents submitted in proof of residency should be taken into consideration. In my view the plain meaning or the literal meaning of the Clause 6.5.II read with Clause 6.3.II is very clear, unambiguous and leaves no room for different interpretation. In fact, the plain reading of the Clause in my view is to prevent an applicant from submitting a forged documents before the interview panel in order to obtain admission to a Government School. The words of a statute should be given their ordinary meaning, unless when so applied, they would create an inconsistency or an absurdity or inconvenience so great as to convince the court that such meaning would deprive a litigant from accessing justice and would fail to give life to the intention of the legislature.

In discussing the rules of interpretation Lord Simon in the case of **Stock vs. Frank Jones (Tipton) Ltd [1978] ICR 347; 1 All ER 948** advocated as follows;

"A court would only be justified in departing from the plain words of the statute were it satisfied that:

1. *there is clear and gross balance of anomaly;*

2. *Parliament, the legislative promoters and the draftsman could not have envisaged such an anomaly, could not have been prepared to accept it in the interests of a supervening legislative objective;*

3. *the anomaly can be obviated without detriment to the legislative objective;*

4. *the language of the statute is susceptible of the modification required to obviate the anomaly."*

Since the literal meaning or the plain reading of the Clause 6.5.II read with Clause 6.3.II is clear and does not create any anomaly, I am of the view that this is a fit case to adopt the literal rule of interpretation rather than the purposive rule of interpretation. The purposive rule is where the Court must endeavour to ascertain the intention of the draftsman by examining the general purpose of such provision. On the other hand, in terms of the literal rule the plain or literal meaning of the words used must be given effect since such is the meaning the draftsman chose to employ. The rule demands that one looks at what is said and not at what it might mean. As mention in the **Duport Steels Ltd *v*. Sirs [1980] 1 WLR 142; [1980] 1 ALLER 529,541** to do otherwise, might mean that the court is not interpreting the Act but really making Law. There Lord Diplock said:

> "*Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider the consequences of doing so would be inexpedient, or even unjust or immoral*.

In light of the above reasoning I am of view that the literal rule of interpretation should be adopted in interpreting the Clause 6.5.II read with Clause 6.3.II of the Guidelines P9.

In view of the plain reading of the above provisions under Clause 6.5.II read with Clause 6.3.II, a Lease Agreement so produced should be valid for a period of at least one year beyond the closing date for applications in order for such agreement to be accepted under the Clause 6.5.II. Accordingly, the validity period of Lease Agreement is inextricably linked with the validity of the Lease Agreement in deciding whether it is sufficient proof of "proximity to the school from their residence". A Lease Agreement which fails to satisfy the requirements set out under Clause 6.5.II of P9 does not qualify as valid proof of "proximity to the school from their residence" requirement under Clause 6.3.II.

In the given instance, the Lease Agreement P8(a) submitted to the interview panel, on the face of it, was valid for period from 01.11.2019 to 31.10.2020. The closing date of applications for admission to Grade 1 had been 30.06.2020. Thus, it is clear that the said Lease Agreement was not valid for a period of one year from the closing date for applications and thereby does not satisfy the requirement of "proximity to the school from their residence" as specified under Clause 6.5.II.

In the instant application Petitioners were awarded only 66 marks. None of the marks out of 30 marks under said Clause 6.5.II were awarded whatsoever for satisfying the requirement of "proximity to the school from their residence". Since the Petitioners have not obtained sufficient marks to secure an admission to Sujatha Vidyalaya - Matara, the Respondents are entitled to reject the application of the Petitioners. I do not find any error or defect in the decision-making process followed by the 1st to 10th Respondents. Therefore, I see no reason to deviate from the decision arrived at by the Respondents in compliance with the provisions under said Guidelines P9. This Court is mindful of the fact that this Court is only conferred with the jurisdiction to examine the decision-making process of the Respondents and not the decision arrived by them.

The Petitioners have submitted another Lease Agreement bearing No. 6309 (P16) renewing the validity period of the Lease Agreement until the 31.10.2022, a Grama Niladari Certificate and a letter before the Appeals and Objections Board in addition to the document submitted before the interview panel. As per the Clause 10.3 of the said Guidelines P9, only the documents submitted by an Applicant before the interview panel should be considered by the Appeals and Objections Board and no fresh material should be taken into consideration. Hence, subsequent submission of a new Lease Agreement or any other documents cannot be considered as material in proof of any requirement under P9. In the case of J.M.H. Chandani Jayasundara & Others Vs. Ms. S.S.K. Aviruppola & Others (SC/FR/Application No 58/2018 decided on 25.03.2019) in similar circumstances the Supreme Court upheld a decision of the Appeal Board to refused to entertain fresh document submitted in appeal since the circular prohibits to do so.

Accordingly, in the line of the above reasoning given and the circumstances involved, I proceed to dismiss the Application without cost.

Judge of the Court of Appeal

Sobhitha Rajakaruna, J.

I agree.

Judge of the Court of Appeal