

**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, Mandamus and  
Prohibition under and in terms of Article 140 of  
the Constitution of Sri Lanka.*

**CA/WRIT/464/2022**

Senudi Metsuvi Hettiarachchi  
No. 69, Gajaba Place,  
Kirullapone,  
Colombo 6.

Appearing by  
Amila Kasun Hettiarachchi  
No. 69, Gajaba Place,  
Kirullapone,  
Colombo 6.

**Petitioners**

Vs.

1. Ashani Kodithuwakku  
The Principal,  
Anula Vidyalaya,  
Nugegoda.
2. Jayamini Amaratunge  
Deputy Principal,  
Anula Vidyalaya, Nugegoda.
3. Kithsiri Liyanagamage  
Director Education-National Schools,  
Ministry of Education,  
Isurupaya, Pelawatte, Battaramulla.
4. Nihal Ranasingha  
Secretary,  
Ministry of Education,  
Isurupaya, Pelawatte,  
Battaramulla.

**Respondents**

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

**Counsel** : Rajeev Amarasooriya with Ruvindu Bandara, Sumudu Nanayakkara and  
Subani Hewapathirana for the Petitioner.  
Yuresha Fernando DSG for the Respondents.

**Argued on** : 13.02.2023

**Written Submissions:** Petitioner - 21.03.2023  
Respondents - 31.03.2023

**Decided on** : 04.04.2023

**Sobhitha Rajakaruna J.**

The Petitioner submitted an application to Anula Vidyalaya, Nugegoda for admission to Grade 1, under the category 'children of residence in close proximity to the school'. The Notice dated 16.06.2022, marked 'P2' (the relevant Circular No. 28/2022, marked 'R1'), sets out the instructions relating to the admission of children to Grade 1 in government schools for the year 2023. The Petitioner's application was rejected by the letter of rejection dated 13.10.2022, marked 'P15'. The Petitioner is primarily seeking for a mandate in the nature of a writ of Certiorari quashing the said letter of rejection.

The Petitioner's contention is that she resides with her parents at the address given above and the said property is in the name of the Petitioner's grandmother. The Petitioner claims that the Title Deed for the said premises, the birth certificate of the Petitioner, Grama

Niladari certificate, extracts of the Electoral Register and other relevant documents have been submitted along with the said application.

The reasons given in the letter of rejection 'P15' in Sinhala language;

- 1) 'වක්‍රලේඛයට අනුව පදිංචි ස්ථානයේ හිමිකම තහවුරු නොවේ.'
- 2) 'ඔප්පු හිමිකරු සහ අයදුම්කරු අතර සබඳතාව අනාවරණය නොවේ.'

The immediate and appropriate English translation that can be assigned for the above first reason (6<sup>th</sup> reason listed in 'P15') is that the 'title of the residence appears to be not confirmed according to the Circular'. The second reason can be translated to give the effect that 'the relationship between the Deed owner and the applicant appears to be not revealed'. I have assumed such translations upon perusal of the list of reasons reflected in 'P15'. The interview board is required to insert a tick against the decided reason among several others in the list. On a careful perusal of the terminology used in 'P15', it implies that there are two sets of draft reasons therein; firstly, to declare a fault of the Petitioner for not tendering/establishing a fact or document and secondly to declare a speculation which needs to be established probably with further evidence etc. To my mind, both the above reasons selected by the interview board in 'P15' are speculations.

The typed words in the 6<sup>th</sup> reason in 'P15' implies that the documents relating to the title to the premises have not been tendered. The interview board has deleted certain words in the said 6<sup>th</sup> reason and converted it to a speculation by which it is stated that the title to the residence appears to be not confirmed. No inference has been made by both the aforesaid reasons that the Petitioner has failed to provide/tender the relevant documents or establish the relevant relationship. This situation would have been different if the interview board expressly declared that there is no relationship between the deed owner and the applicant. Had the interview board not deleted those words in the 6<sup>th</sup> reason, it would have been a decision in final nature.

I am aware that there would be adverse repercussions when the school authorities or the interview board deviate from the relevant Circular 'R1' or 'P2' by giving an assumption other than the literal meaning of a sentence or a word therein. The strict compliance of the Circular is meant to uphold equality and transparency.

However, when the interview board rejects an application on a reason which leaves room for further clarifications on a certain point of view, it cannot be considered as a final

verdict. The Clause 9.1.5 of Circular 'R1' provides applicants an opportunity to submit a reapplication to the Principal when his/her application has been rejected while there are necessary qualifications. Anyhow, such applicants are not permitted to annex to the reapplication anything other than the documents forwarded with previous application. It seems that the said provisions do not restrain any discretion of the Principal or the interview board to summon or inspect voluntarily any material to clarify a particular issue upon which the interview board has not arrived at a final conclusion.

The main grievance of the Petitioner is that the document which discloses the relationship between the Petitioner and her grandmother has not been considered when evaluating the reapplication.

At this stage, I must examine the role and the duty of the Principal and the interview board and also of an appeal board which evaluate reapplications/appeals of the parents whose applications have been rejected. It is no doubt that in terms of 'R1', a party can appeal, as of right, subject to the conditions of its Clause 10. Anyhow, the present issue is only in reference to the reapplication submitted by the Petitioner. As per the circumstances of this case, I take the view that the decisions contained in the letter of rejection 'P15' can be submitted for reconsideration under the said Clause 9.1.5, as of right.

A decision is 'final' if it would determine the entire proceedings whichever way the court decided the issues before it. Further, a decision is treated as final where it is made at the conclusion of part of a hearing or trial which has been split into parts and would, if made at the conclusion of that hearing or trial, be a final decision because it determines the entirety of that part of the claim. (vide- Access to Justice Act 1999 (Destination of Appeals) Order 2000, art.1(2)(c) & art.1(3) in England). Hence, a reasonable question arises whether the two reasons adduced by the interview board in 'P15' can be considered as final. In such a backdrop, it appears that both such reasons are not in the nature of a final order but mere decisions which need additional material to arrive at a final conclusion.

The criteria adopted in Section 773 of the Civil Procedure Code of Sri Lanka is very much useful to understand the role of an appellate body. The Section 773;

'Upon hearing the appeal, it shall be competent to the Court of Appeal to affirm, reverse, correct or modify any judgment, decree, or order, according to law, or to pass such judgment, decree or order therein between and as regards the parties, or

to give such direction to the Court below, or to order a new trial or a further hearing upon such terms as the Court of Appeal shall think fit, or, if need be, to receive and admit new evidence additional to, or supplementary of, the evidence already taken in the Court of first instance, touching the matters at issue in any original cause, suit or action, as justice may require or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial'.

If the role of an appellate body is only to uphold the original decision, then providing a mechanism for reapplication or appeal is futile. The appellate body needs to evaluate the original decision, according to law. Similarly, the interview board of the instant Application or the Appeal Board (Appeal and Objection Investigation Board) should adopt a reasonable and lawful criteria to evaluate the decisions of rejecting the applications for admissions. Calling for further evidence or documents in order to reach a final decision can be done within such criteria and in line with several provisions of the Circular 'R1' (or 'P2').

It has been held in *Beatrice Dep vs. Lalani Meemaduwa (1997) 3 Sri. L.R. 379*;

*"In Lada v. Marshall<sup>1</sup> at 748, Denning, L.J. said, "In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive: third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible". These conditions were taken into account and applied in Ratwatte v. Bandara<sup>2</sup>."*

Based on such circumstances, I must concentrate only on the reliefs prayed for in paragraph (f), among several other paragraphs, of the prayer of the Petition. This is because the Petitioner's main concern as submitted at the hearing stage is that the Principal and the members of the interview board have not duly evaluated the reapplication of the Petitioner. It is important to note the Petitioner's argument that the restriction of submitting new documents with the reapplication as imposed in the said Clause 9.1.5 is

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<sup>1</sup> 1954, 3 All ER 745 at 748.

<sup>2</sup> 70 NLR 231.

clearly to prevent additional marks being claimed with the introduction of new documents. I am inclined to accept this argument of the Petitioner based on the expected role of an appellate body and also due to the non-conclusive nature of the decision of the interview board reflected in 'P15'.

Hence, I see no probable ground to adopt, in the instant Application, the submissions made by the Respondents that the documents to establish the nexus between the Petitioner and the grandmother is a mandatory prerequisite and such material comes within the mandatory documents described in Clause 7.2.1.1 of 'R1'. Anyhow, I agree with the argument of the learned Deputy Solicitor General who appears for the Respondents that the failure to prove the title to ownership constitutes an absolute bar to consider the applications for admission.

In my opinion, the interview board should have evaluated the reapplication of the Petitioner by inquiring whether documents to establish the nexus between the Petitioner and the grandmother could not have been submitted with reasonable diligence. The reasons given in 'P15' for rejection are in the form of suppositions and thereby the reapplication of the Petitioner needs to be processed by summoning additional material in order to arrive at a final conclusion. Considering a document to clarify a certain position at the reapplication stage, without reckoning extra marks for the same, cannot imply any violation of the conditions in Clause 7.2.1.1 of 'R1'. Such process should be necessary to assess the proof of residence.

Additionally, the Petitioner points out an instance where the interview board has accommodated certain applicants to tender the Grama Niladari Certificate and Title Deeds at a later stage. The Petitioner referring to the document marked 'R4' contends that certain applicants who have not submitted the Grama Niladari Certificate or other such necessary documents for the proof of residence have been given an opportunity to clarify their position particularly at the interview. The Grama Niladari Certificate is one of the primary documents required for proof of residence as provided for under Clause 3.6 of 'P2' (Clause 4.7 of 'R1'). Due to this, the Petitioner asserts that the interview board has accorded flexibility in favour of the other applicants.

For the reasons given above, I proceed to issue a writ of Mandamus directing and compelling the interview board, which considered the reapplication dated 19.10.2022

(marked 'P17'), to give proper and due consideration to the reapplication of the Petitioner and to allocate appropriate marks, if satisfied with the proof of residence, after perusing additional material to establish the nexus between the applicant and her grandmother. Based on the above approach taken by me in this judgement, I take the view that this Court should not consider the other reliefs prayed for by the Petitioner at this stage. I need to emphasize that I have arrived at the above conclusions based on the special circumstances of the nature of the reapplication submitted by the Petitioner and on the specific reasons given by the interview board as reflected in 'P15' and 'P20' which are, to my mind, exclusive to the Petitioner of the instant Application. Thus, the Respondents' assertions on the requirement of necessary parties need not be examined at this stage.

The Respondents relying on the judgment of *Credit Information Bureau of Sri Lanka vs. Messrs. Jafferjee & Jafferjee (Pvt) Ltd (2005) 1 Sri. L.R. 89*, submits that the Court should not grant a mandamus to enforce a right not of a legal but purely equitable nature. I take the view that I have arrived at the above conclusion not on Petitioner's rights of equitable nature but clearly on the basis that the Petitioner's legal rights have been violated as the interview board has failed to duly exercise their appellate jurisdiction. Similarly, there is no requirement for me to assay the Respondents' arguments on the legitimate expectation of the Petitioner as I have not focused my above findings on that aspect.

*Application is partly allowed.*

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**