

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

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

W. K. Chandrika Sarojani De Silva
No. 52/B, Temple Road,
Kengalla

CA/WRIT/190/2021

On behalf of
Raveesha Damsara Hettiarachchi
(Minor)

PETITIONER

Vs.

1. Principal,
Kingswood College,
Kandy.
2. President of the Appeal Board,
Kingswood College,
Kandy.
3. Director of National Schools
Ministry of Education,
“Isurupaya”
Battaramulla.
4. Secretary,
Ministry of Education,
“Isurupaya”
Battaramulla.

5. Minister of Education,
Ministry of Education,
“Isurupaya”,
Battaramulla.
6. Hon. Attorney General
Attorney General’s Department,
Hulftsdrop,
Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.
S. U. B. Karalliyadde, J.

Counsel: Mr. Anees M. Saheel for the Petitioner
Ms. Nayomi Kahawita S.S.C. for the Respondents.

Concluded by way of written submissions.

Written submissions tendered on: 07.08.2023 by the Petitioner.

Decided on: 28.08.2023

S.U.B. Karalliyadde, J.

This Writ Application emanates from the rejection of the Petitioner’s Application to admit her child to Grade 1 in Kingswood College, Kandy for the year 2021. The position of the Petitioner is that even though her son was eligible to be admitted to

Kingswood College in terms of Circular No. 29/2019 (marked as P-4 (a)) issued by the Ministry of Education regarding the school admissions for Grade 1 of the Government schools for the year 2021 and the instructions thereto issued by the Ministry of Education on 26.05.2020 (marked as P-4(c)), her Application for admission was rejected. The decision to reject the Application has been conveyed by the Principal of Kingswood College, the 1st Respondent to the Petitioner by letter dated 08.09.2020 (marked as P-15). Even though the Petitioner preferred an Appeal to the Appeal Board headed by the 2nd Respondent against the decision to reject the Application that Appeal has also been rejected. The decision of the Appeal Board has been conveyed to the Petitioner by the undated letter marked as P-17. The substantive reliefs sought by the Petitioner in this Writ Application are, *inter alia*,

- b) Grant/issue an Order in the nature of Writ of Certiorari to the 1st Respondent and 2nd Respondent to quash the letter of rejection dated 08.09.2020 and the letter of rejection to the Appeal Board, marked respectively as P-15 and P-17
- c) Grant/issue an Order in the nature of a Writ of Mandamus to the 1st Respondent to admit the Petitioner's child, Raveesha Damsara Hettiarachchi to Grade 01 of the Kingswood College, Kandy for the year 2021.

When this Writ Application was taken up for argument on 18.05.2023, it was informed to the Court that the facts and circumstances in this Writ Application as well as in the Writ Application No. Writ 0189-21 are similar; therefore, the parties to both actions consented to abide by a single judgment. Furthermore, all parties agreed to dispose of the actions on written submissions. The Petitioner to his Writ Application has filed written submissions on 12.12.2022.

In Clause 7.1 of P-4 (a) it has been mentioned six categories under which students could be admitted to Grade 1 in Government schools and the percentages that should be observed under each category when selecting children to be admitted as follows;

- | | | |
|------|--|-----|
| i. | Children of residents in close proximity to the school | 50% |
| ii. | Children of parents who are past pupils of the school | 25% |
| iii. | Brothers/sisters of students already studying in the school | 15% |
| iv. | Children of persons in the staff of Institutions directly involved in school education | 05% |
| v. | Children of Officers in Government/Corporations/Statutory Boards/State Banks receiving transfers on exigencies of service or on annual transfers | 04% |
| vi. | Children of persons arriving after living abroad with the child | 01% |

A copy of the Application submitted by the Petitioner for admission is marked as P-5 (a). In the Application, the category upon which the Application has been submitted is mentioned as follows;

“ක්‍රිස්තියානි ආගමික පදනම (ආසන්නතම ක්‍රිස්තු ධර්මය උගන්වන පාසල)”

In terms of Clause 7.1 in P-4 (a) there is no category under which a child could be admitted to a Government school based on religion. Therefore, it is understood that the Petitioner has preferred the Application under the category of close proximity to the school.

Clause 4.2 in P-4 (a) reads thus;

“in filling vacancies in schools vested to the Government under Assisted Schools and Training Schools (Special Provisions) Act, No. 5 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 religion, the 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 set apart for the said religion shall be proportionately divided among other religions.”

Admittedly, Kingswood College Kandy is a Government school which was vested in the Government under the aforementioned Act, No. 5 of 1990 and/or Act, No. 08 of 1961. The document marked P-4 (d) attached to the Petition shows the statistics regarding the religious composition of students at Kingswood College when it was vested in the Government. P-4 (d) is neither an original nor a certified copy. In the statement of objections, the 1st Respondent has stated that P-4 (d) is an unsigned document with no verifiable identifiable source nor can it be established as being authentic and therefore no possibility for the School to rely on the same. The Court of Appeal (Appellate Procedure) Rules, 1990 regarding the Applications to the Court of Appeal provides thus;

3. (1)(a) Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be

accompanied by the originals of documents material to such Application (or duly certified-copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court **may**, *ex mero motu* or at the instance of any party, dismiss such Application (emphasis added).

Accordingly, the Court of Appeal has the discretion to entertain or dismiss an Application exercising its jurisdiction under Article 140 of the Constitution if the Application does not comply with the requirements mentioned in Rule 3. Therefore, even if the petitioner failed to tender the originals or duly certified copies in the form of exhibits with the petition and affidavit, in the interest of justice the Court could admit documents which are neither originals nor certified copies.

In the case of *Senanayake vs. Commissioner of National Housing*¹ Saleem Marsoof J. held that,

“I am of the view that the Court of Appeal (Appellate Procedure) Rules, 1990 have been formulated to facilitate the judicial process and with a view of achieving justice rather than injustice. It appears from Rule 3 (14) that it is contemplated that where there is some non-compliance with the Rules, the Registrar should put up the application for an order of court. The intention of this Rule is to give opportunity for the Court to exercise its discretion with respect to the matter as is implicit from the use of the word “may” in the last sentence of Rule 3(1)(a). Furthermore, I am of the view that in applications for prerogative relief where this Court enjoys a supervisory jurisdiction, Court

¹ (2005) 1 SLR 182

should not non-suit a party where the non-compliance with Rules take place due to no fault of that party.”

The Petitioner has submitted to Court the judgment of the Supreme Court in the fundamental right application bearing No. 335/2016 in which the Court considered the same document the Petitioner has tendered to the Court in the instant action marked as P-4(d). That action was also regarding the admission of a child to Kingswood College Kandy and the document had been certified by the Methodist Church. Therefore, since the Supreme Court has admitted and considered the same document there is no impediment for this Court to accept it.

Furthermore, P-4(d) is a vital document in deciding the composition of students belonging to different religions at the time of vesting Kingswood College to the Government. It is helpful for the School in admitting children to Grade 1 every year. Therefore, the Respondents should possess the original or a certified copy of P-4(d) or any other document that could be used to decide the religious composition in admitting students to Grade 1 every year as long as Clause 4.2 of the Circular marked P-4(a) prevails. Considering all the above-stated facts and circumstances, I decided to accept and rely on the document marked as P-4(d).

According to the letters marked as P-11(b) and P-11(c) issued by the Methodist Church the child concerned with this Writ Application is a Christian who belongs to Methodist Denomination. According to P-4(d), the total number of students when Kingswood College vested to the State in 1960 was 898 and the total number of Methodist students was 71. Therefore, the percentage of Methodist students who studied at the school at the time of vesting was 8%. In terms of Clause 4.2 of P-4(a) in filling vacancies the proportion of students who belonged to different religions at the time of vesting the

school to the Government should be taken into consideration and the total number of vacancies in the School should accordingly be divided among different religions and categories mentioned in Clause 7.1 in P-4(a). As per the journal entry dated 21.03.2022, the Petitioner has filed a document in Court by way of a motion issued by the Ministry of Education indicating the details about the students admitted to Grade 1 of Kingswood College in the year 2021. According to that document, the total number of students admitted for the year 2021 was 140; out of them, 3 students were non-Christians. In terms of Clause 7.1 of P-4(a), 50% of the total number of students should be admitted based on residence and therefore out of 140 students 70 should be residents of proximity to the School. On that basis in terms of P-4(d), 8% of 70 should be Methodist students. Therefore, the total number of Methodist students admitted to Grade 1 of the School for 2021 should be 6. Nevertheless, even though there are no provisions in P-4(d) to consider the students based on non-Christian, only 3 students had been admitted under all six categories mentioned in Clause 7.1 in P-4(a). Therefore, it is clear that the decision taken by the 1st Respondents to accommodate 3 students based on non-Christian is against the Circular issued by the Ministry of Education marked as P-4(a) and guidelines marked as P-4(c) and the directions mentioned in P-4(d). The 1st Respondent does not argue that there is any other school other than Kingswood College in which the child could have been admitted based on residence. Considering all the above-stated facts and circumstances, I hold that the decisions of the 1st and 2nd Respondents marked as P15 and P17 respectively not to be admitted the child of the Petitioner's son are illegal and ultra vires. Therefore, the Court decides to issue a Writ of Certiorari quashing the said decisions of the 1st and 2nd Respondent and issue a Writ of Mandamus compelling the 1st Respondent to admit the child to a Grade which the students admitted to Grade 1 in 2021 are now studying before the next school term

starts in September this year. This judgment should apply to the connected Writ Application bearing No. CA Writ 189-21. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL