

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

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

C.A (Writ) Application No. 158/2017

1. Wathudura Bandhanage Lakindu,
Ameesh Pehesara (Minor),
No. 65/2A, Sapumal Place Road,
Paragodawatta, Bope, Galle.

Appearing through his Next Friend;

Wathudura Bandhanage Naleen
Priyangana (Father),
No. 65/2A, Sapumal Place Road,
Paragodawatta, Bope, Galle.

2. Wathudura Bandhanage Naleen
Priyangana (Father),
No. 65/2A, Sapumal Place Road,
Paragodawatta, Bope, Galle.

3. Gonapinuwala Withanage Thushani,
No. 65/2A, Sapumal Place Road,
Paragodawatta, Bope, Galle.

PETITIONERS

Vs.

1. Sampath Weragoda,
Principal,
Richmond College, Galle.
2. N.U. Pushpakumara.
3. Hemantha Dodangoda.
4. Pradeep Kaluarachchi.
5. Prasanna Liyanage.
6. Dilrukshi Galhena.

Members of the Interview Board for
the Selection of Students for Admission
to Grade 1 – Richmond College, Galle.

7. W. A. Wickramasinghe,
Chairman.
8. S.P.M. Gunasekara.
9. T. Hewa Walgama.
10. M. K. Piyasiri.
11. Nilanthi Gallage.
12. H. G. Wini Ariyadasa.

Members of the Appeals and
Objections Investigation Board for
Admission of Students to Grade 1 of
Richmond College, Galle for 2017.

13. Sunil Hettiarachchi,
Secretary, Ministry of Education,
Isurupaya, Battaramulla.
14. A. W. K. W. Manuja Manwidu,
Sri Piyaathna Mawatha,
Bope, Galle.
15. W. K. S. Sanjeewa,
Sri Piyaathna Mawatha,
Bope, Galle.
16. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: P. Padman Surasena, J/ President of the Court of Appeal
Arjuna Obeyesekere, J

Counsel: Chamara Nanayakkarawasam with Hiranya Damunupola and
Dinesh De Silva for the Petitioners

Milinda Gunatilake, Senior Deputy Solicitor General for the 1st –
13th Respondents

Argued on: 3rd July 2018

**Written Submissions of the
Petitioner tendered on:** 17th July 2018

Decided on: 25th September 2018

Arjuna Obeyesekere, J

The Petitioners have filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari quashing the decision of the 1st – 12th Respondents not to admit the 1st Petitioner to Grade 1 of Richmond College, Galle;
- b) A Writ of Certiorari quashing the decision of the 1st – 12th Respondents to admit the 14A Respondent to Grade 1 of Richmond College, Galle;
- c) A Writ of Mandamus directing the 1st – 13th Respondents to admit the 1st Petitioner to Richmond College, Galle.

The 1st Petitioner was born on 21st August 2011 to the 2nd and 3rd Petitioners. Upon completion of 5 years of age, he became eligible for admission to Grade 1 of a government school in 2017.

Admission of students to Grade 1 of Government Schools for the year 2017 was governed by Circular No: 17/2016 issued by the Ministry of Education. The said Circular has been annexed to the petition marked 'P13'. According to 'P13', for the year 2017 the maximum number of students that can be admitted to a single class was limited to 39. Of this 39, a maximum of 5 slots are reserved for the children of those serving in the Armed Forces and the Police Force. Thus, after making provision for the said reservation, 50% of the vacancies are allocated to those coming under the category of 'Children of residents in close proximity to the school.'¹ To be eligible to apply under this

¹එකලට ආසන්න පදිංචිකරුවන්ගේ දරුවන්. The balance vacancies are distributed among five other categories specified in 'P13'.

category, the parents must be resident within the administrative district where the school is situated.²

The 2nd Petitioner states that he has been living at No. 65/2, Sapumal Place Road, Paragodawatte, Bope, Galle from the time he was born in 1978. He claims that his house is situated approximately 500 metres away from Richmond College, Galle. In his birth certificate annexed to the petition marked 'P2', his father's address is given as 'Paragodawatte, Bope, Galle'. The letter of appointment issued by the Southern Provincial Council to the 2nd Petitioner in August 2000³ gives the address as '65/2, Sapumal Place Road, Paragodawatte, Bope, Galle.' The marriage certificate of the 2nd and 3rd Petitioners dated 20th May 2002⁴ gives the above address as the address of the 2nd Petitioner. The birth certificate of the 2nd and 3rd Petitioners' eldest child⁵ gives the 2nd Petitioner's address as '65/2, Sapumal Place Road, Paragodawatte, Bope, Galle.' In addition, the 2nd Petitioner has produced electricity bills issued in his name in 2004 for the said premises. All these documents prove that the Petitioner has been resident at '65/2, Sapumal Place Road, Paragodawatte, Bope, Galle' and was thus eligible to apply under the above category.

The 2nd Petitioner had accordingly submitted an application seeking admission of the 1st Petitioner to Grade 1 of Richmond College, Galle under the aforementioned category of 'Children of residents in close proximity to the school'.

² Section 3.7 of Circular 'P13'.

³ Produced with the petition, marked 'P4'.

⁴ Produced with the petition, marked 'P5'.

⁵ Produced with the petition, marked 'P11'.

The Circular 'P13' requires an interview to be held where the number of applications exceeds the number of vacancies. Each applicant is allotted marks at the interview, with the maximum marks that could be allotted being 100. Under the said category of 'Children of residents in close proximity to the school', marks are allotted under four sub-categories.

It is admitted between the parties that the Petitioner was allotted a total of 92.5 marks at the interview, allotted under each of the four sub-categories, as follows.

Sub-Category No. in the Circular	Description of the Sub-Category	Maximum marks	Interview Marks
6.1(I)	Number of years that the applicants name has been included in the Electoral Register ⁶	35	35.0
6.1(II)(a)	Documents in proof of the ownership of residence ⁷	10	07.5
6.1(II)(b)	Additional documents to prove residence ⁸	05	05
6.1(III)	Number of schools located closer to the place of residence than the school applied ⁹	50	45
	Total	100	92.5

⁶ පදිංචිය සනාථ කිරීම සඳහා පත්දැකීම් නාමලේඛනයේ ලියාපදිංචිය

⁷ පදිංචි ස්ථානයේ හිමිකම් තහවුරු කරන ලේඛන

⁸ පදිංචිය තහවුරු කරන අතිරේක ලේඛන

⁹ පදිංචි ස්ථානයේ සිට පාසලට ඇති ආසන්නතාව

The fact that 50% of the vacancies available in Grade 1 of a government school are allocated to those living close to the school demonstrates the policy of the Government in providing a child with a school that is close to his place of residence. The above marks structure is weighed in favour of those who have been living close to a particular school, for a period of over five years. While recognizing residence as the primary criterion under this category, the marks structure gives special recognition to those who own their place of residence by allotting an additional 10 marks for ownership of the place of residence.

There is no dispute among the parties with regard to the marks allotted under sub-categories 6.1(I), 6.1(II)(b) and 6.1(III) . Thus, the Petitioners' long period of residence at the aforementioned address, as set out earlier in this judgment, has been recognised and rewarded by the Interview Board as well as by the Appeals Board.

The dispute in this case relates to the marks allotted to the 2nd Petitioner under Sub-category 6.1(II)(a) under which a maximum of 10 marks are allotted for 'documents in proof of **ownership** of residence'.

Section 6.1(II)(a) of Circular '**P13**' sets out three requirements that must be satisfied by an applicant if he/she is to receive the **maximum number** of ten marks allotted under this category. They are:

- 1) The applicant or his spouse must possess one of the documents of title in proof of ownership listed in Section 6.1(II)(a), such as a deed of transfer, a deed of gift, grants and permits by the Government, etc.

- 2) The said document of title must be in the name of the applicant or his spouse.
- 3) A period of five years calculated as at the date of closing of applications should have lapsed after the execution of the said document of title.

Thus, it is clear that the authorities indeed evaluate the quality of the ownership of residence and does not merely look for the establishment of ownership of residence.

The Petitioners claim that the property, on which they are resident, had been owned by the paternal grandfather of the 2nd Petitioner and had devolved on his paternal uncle, Wathudura Bandhanage Reginald. On 5th November 2011, Reginald had executed Deed of Transfer No. 94 annexed to the petition marked 'P18', by which the 2nd Petitioner had purchased an extent of 10 perches out of the said land. There is no dispute between the parties that the 2nd Petitioner is the owner of the property where the Petitioners reside. The Petitioner is therefore in possession of a deed of transfer in respect of the property at which he is resident, thereby fulfilling the first two the requirements of Section 6.1(II)(a).

The deed of transfer in favour of the Petitioner has been executed on 5th November 2011. The closing date of applications was 30th June 2016.¹⁰ Thus, as at the closing date of applications, the Petitioner had not owned the said place of residence for a period of five years.

¹⁰ Vide Section 16 of Circular 'P13'.

Section 6.1(II)(a) contains specific provisions with regard to reduction of marks where the applicant has not owned the property for five years. The manner of calculating the marks in this regard which have been set out in detail in Section 6.1(II)(a) is re-produced below:

“අදාළ පුද්ගලයාගේ නමට පදිංචිය තහවුරු කරන ලේඛන පැවරී, ඉල්ලුම්පත් භාර ගන්නා අවසන් දිනට වසර 05 ක් හෝ ඊට වැඩි කාලයක් ගත වී ඇත්නම් සම්පූර්ණ ලකුණු ද වසර 05 ට අඩු හා වසර 03 ක් හෝ ඊට වැඩි කාලයක් ගත වී ඇත්නම් මුළු ලකුණු ප්‍රමාණයෙන් 75% ක් ද වසර 03 ට අඩු හා වසරක් හෝ වසරකට වැඩි නම් මුළු ලකුණු ප්‍රමාණයෙන් 50% ක් ද වසරකට වඩා අඩු නම් 25% ක ලකුණු ප්‍රමාණයක් ද ලබාදිය යුතු ය. (පදිංචි ස්ථානයේ නිමිකමට හා අතිරේක ලේඛන සඳහා මෙය අදාළ කර ගත යුතු ය.)”

Since the 2nd Petitioner's deed of transfer had not been executed five years prior to the closing date of applications, it was inevitable that the 2nd Petitioner would lose marks. This is because he did not have the requisite quality in the ownership he held relating to that property. Therefore, the mere establishment of the 2nd Petitioner's long standing residence in that property cannot earn him the full marks as that cannot be a substitute for the criterion set out in the relevant Circular 'P13'.

The Interview Board comprising of the 2nd – 6th Respondents had applied the above provision of Circular 'P13' and decided that the 1st Petitioner was not eligible to receive the maximum number of marks. Accordingly, the 1st Petitioner had only been allotted 7.5 marks under Section 6.1(II)(a) of 'P13'.

The 2nd Petitioner, being dissatisfied with the said mark, had submitted an appeal. The Appeals Board had agreed with the marks allotted by the Interview

Board. Thus, the total marks allotted to the Petitioner remained at 92.5. The cut-off mark for admission to Grade 1 of Richmond College, Galle for the year 2017 was 92.8 and therefore, the 1st Petitioner was not eligible for admission to Grade 1 of Richmond College, Galle for the year 2017.

Being dissatisfied with the decision of the Interview Board as well as the Appeals Board to allocate only 7.5 marks under Section 6.1(II)(a) of Circular 'P13', the Petitioners have filed this application seeking *inter alia* the aforementioned relief.

Having closely examined the aforementioned provisions in Section 6.1(II)(a), this Court is of the view that where an applicant has been the owner of a property for a period of less than five years but more than three years as at the closing date of applications, the maximum number of marks that could be allotted is 7.5. In this instance, the 2nd Petitioner became the owner of the property on which he resides only on 5th November 2011. The last date for the submission of applications was 30th June 2016.¹¹ Thus, it is clear that the 2nd Petitioner has not been the owner of the said property for a period of 5 years and is only eligible to receive 7.5 marks in accordance with the provisions of the said Circular.

However, the Petitioners contend that the Interview Board had a discretion to allot more than 7.5 marks to the 1st Petitioner, taking into consideration the fact that he had had ownership for 'almost' 5 years and that the refusal by the Interview Board and the Appeals Board to exercise that discretion is arbitrary, irrational and illegal. Thus, the question that needs to be decided by this Court

¹¹ Vide Section 16 of Circular 'P13'.

is whether the Interview Board and the Appeals Board have been vested with discretion and if so, whether the refusal to exercise that discretion is arbitrary, irrational and illegal.

It would be appropriate to bear in mind the following passage of Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service¹², when considering the argument of the Petitioner:

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

“By ‘irrationality’ I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’¹³. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

In support of his argument that the Interview Board has discretion, the learned Counsel for the Petitioner has relied on Section 5.8 of Circular ‘**P13**’, which reads as follows:

¹² 1985 AC 374 .

¹³ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223.

“පළමු ශ්‍රේණියට ලමයින් ඇතුළත් කිරීම සඳහා පත් කරන සම්මුත පරීක්ෂණ මණ්ඩලයට ලමයින් තෝරා ගැනීමට අදාළව සියලුම සෑදූ කලකා බලා සුදුසු පරිදි තීරණ ගෙන ක්‍රියාත්මක කිරීමේ බලතල තිබේ. එසේම ලබාදී ඇති චක්‍රලේඛ විධිවිදානවලට අනුකූල වන පරිදි තෝරා ගැනීමේ කටයුතු කරගෙන යා යුතු අතර, චක්‍රලේඛයේ සඳහන් කරුණු පිළිබඳ විග්‍රහ කරගැනීමද, තෝරාගැනීමේ ගැටලු පිළිබඳ තීරණ ගැනීමද සම්මුත පරීක්ෂණ මණ්ඩලයේ වගකීම වේ”

This Court is of the view that Section 5.8 does not give the interview board the power to take whatever decision they think is right. On the contrary, Section 5.8 specifically requires the interview board to act in accordance with the provisions of the Circular. This Court observes that admission of children to Grade 1 of all government schools is carried out in accordance with ‘**P13**’ by multiple interview boards and hence, it is important that uniformity is maintained by such boards and the provisions of the Circular are strictly adhered to, unless the discretion is apparent and obvious. This entire exercise of admitting children to schools can end up in chaos and confusion, if each interview board can decide for itself. In fact, the Petitioner has adverted to the fact that he was allotted 10 marks by the interview board dealing with admission of children to Mahinda College, Galle, thus showing the need for the interview board to act strictly in accordance with the circular and thereby maintain consistency.

This Court has examined the Circular marked ‘**P13**’ and notes that the Interview Board has in fact been vested with limited discretion with regard to allocation of marks under certain categories. For example, under Section 6.1(II)(b) of ‘**P13**’¹⁴, only five marks can be allotted, with one mark being allotted for each document produced by an applicant to prove residence.

¹⁴ Section 6.1(II)(b) – Titled “Additional documents to prove residence”.

However the type of documents that can be produced under this category can vary and thus, the Interview Board has a discretion with regard to the type of documents that can be submitted under this Section, as long as the said documents establish residence. Similarly, under the Old boy/ Old girl category,¹⁵ 25 marks are allotted for Sports and Extra-curricular achievements of the parent during his/her school career. The Interview Board has discretion with regard to the kind of achievements for which marks can be allotted and the mark that can be allotted for such achievement.

However, this Court does not find any such discretion being vested in the Interview Board under Section 6.1(II)(a). This Court is of the view that if the ownership of the property in question has been for less than five years but for more than three years, the Interview Board can only allot 7.5 marks.

The argument advanced by the learned Counsel for the Petitioner, that by the time the appeal hearing took place, the Petitioner had complied with the five year requirement is not tenable in view of the specific wording of Section 6.1(II)(a) of 'P13' that the requirement must be satisfied as at the closing date of applications. There is no room within Section 6.1(II)(a) that permits the Interview Board to take into consideration matters such as the five year requirement being fulfilled at the time of the hearing of the appeal as the Section very clearly lays down the date as at which the five years must be completed. The position however may have been different if the relevant paragraph did not contain the words, 'ഉദ്യോഗസ്ഥൻ അഥവാ അതിന്റെ ഭാര്യ', in which event the Petitioners' argument may have carried more weight.

¹⁵ Section 6.2 of 'P13'.

Unfortunately for the Petitioner, this clause is clear in its application and does not leave room for the Interview Board to exercise any discretion.

That said, can it then be argued that the Interview Board acted irrationally? This Court does not think so. There is nothing outrageous in the decision to only allocate 7.5 marks under Section 6.1(II)(a) nor does the said decision defy logic. Is the decision to allot only 7.5 marks unreasonable? Again, this Court does not think so. As noted by Wade and Forsyth,¹⁶ *'Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits'*.

In these circumstances, this Court cannot agree with the submission of the learned Counsel for the Petitioner that the Interview Board had discretion or that the decision of the interview board is irrational or unreasonable.

The Petitioner has also argued that the admission of the 14A Respondent is suspicious as the details pertaining to the 14A Respondent in the Interim Marks List and the Final Marks List does not tally. The Respondents have produced with their Statement of Objections, the Certificate of residence relating to the 14B Respondent issued by the Grama Niladhari marked 'R2' which gives the address of the 14B Respondent as '160/A, Sri Piyaathana Mawatha, Bope, Galle'. While this Court notes that there are discrepancies between the two lists in respect of the 14A Respondent, this Court is of the view that no material has been presented to this Court to establish that the

¹⁶ Administrative Law, 11th Ed, page 302.

admission of the 14A Respondent is illegal or contrary to the provisions of the Circular 'P13'.

This Court also observes that the Petitioners have not established the manner in which the admission of Christian students over and above the minimum percentage has prejudiced the rights of the Petitioners.

In these circumstances, this Court refuses to issue the Writs of Certiorari and Mandamus prayed for. This application is dismissed, without costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal