

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

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Anjali Thivaak Pushparajah Rohan
 2. Rohan Rahul Ayushman
- Both of No 161/11,
Galle Road, Bambalapitiya,
Colombo 04.

Petitioners

SC /FR/ Application No 06/2017

Vs,

1. Akila Viraj Kariyawasam (M.P)
Hon. Minister of Education,
Ministry of Education,
"Isurupaya" Battaramulla.
2. Sunil Hettiarachchi,
Secretary- Ministry of Education,
"Isurupaya" Battaramulla.
3. B.A. Abeyrathna,
Principal- Royal Collage,
Colombo 07.
4. L.W.K. Silva
5. R.M.I.P. Karunaratna
6. L.K. Jayathilaka
7. A.G.P.A. Gunawansa
8. T. Tennakoon
4th to 08th above all
Members of the Interview Board
(Admissions to Year 01)
Royal Collage,
Colombo 07.

9. A.G.N. Jayaweera
10. G.V. Jayasooriya
11. M. Ratnayake
12. M.H. Sunny
13. U.Malalasekara
14. Inoka Gunn
09th to 14th above all
Members of the Appeal Board
(Admissions to Year 01)
Royal Collage,
Colombo 07.
15. P.N. Illepperuma
Director- National Schools,
“Isurupaya” Battaramulla.
16. Hon. the Attorney General,
Attorney General’s Department,
Colombo 12.

Respondents

Before: S.E Wanasundera PC J
Nalin Perera J
Vijith K. Malalgoda PC J

Counsel: Ian Fernando with Dusantha Kularatne Instructed by Ms. Sumudu Ratnayake
for the Petitioners
Dr. Avanthi Perera, SSC for the 1st, 2nd, 3rd 15th and 16th Respondents
Sanjeewa Jayawardena, PC for the 7th Respondent
Asthika Devendra for the 13th Respondent

Argued on: 27.10.2017

Judgment on: 30.11.2017

Vijith K. Malalgoda PC J

The two Petitioners namely, Anjali Thivaak Pushparajah Rohan and Rohan Rahul Ayushman had complained before this court, that their Fundamental Rights guaranteed under Article 12-1 of the Constitution had been infringed by not admitting the 2nd Petitioner to the grade one at Royal College, Colombo 7, for the year 2017

As submitted by the Petitioners, the 1st Petitioner tendered an application under Residency / Close Proximity category as per the circular No 17/2016 which governed the school admissions to grade one for the year 2017, to all government schools, issued by the second Respondent.

Clause 6 (a) of the said circular had identified seven categories under which children were admitted to government schools and the criteria for selection and the marking scheme in respect of each categories are laid down in the said circular. It is not disputed that the application submitted to Royal College, Colombo 7, by the 1st Petitioner was under the category of Residency/Close Proximity which identified under clause 6 (a) (I) of the said circular.

Under clause 6.1, 50% of the total number of vacancies were allocated to the children comes under the said category and how such parents should establish their residence and how the marks should be allocated based on the documents produced by the applicant is identified under the said clause.

As observed by this court maximum of thirty five marks are allocated for establishing the residence by the Electoral Registers during the past five years. Maximum of fifty marks are allocated to the distance and maximum of ten marks are given to the nature of the ownership to the property and balance five marks are given for the additional documents submitted in proof of the residence under the said circular.

Out of the ten marks given to the nature of the ownership to the property, the applicant is entitled to the maximum ten marks, if the property is in the name of the applicant and/or the spouse for five years or more but the property is in the name/names of the parents of the applicant for five years or more the applicant is only entitled to get six marks.

If the property is a leased or rented property the applicant will only get four marks out of ten marks under the said clause, if the applicant can establish the rent or lease for period of five years or more. The marks allocated under clause 6 II (a), also depends on the number of years the applicant can establish by documents and the applicant will get a percentage of the above marks depend on the number of years he had lived in the said premises as identified in the said clause.

As revealed before this court the 1st Petitioner, the mother of the child had applied for admission of the 2nd Petitioner to grade one of Royal College Colombo 07 under the aforesaid category and in support of her application, submitted several documents including title deeds and extracts of Electoral Register. At the time the Petitioners submitted the application their permanent residence was at No. 161/11 Galle Road, Bambalapitiya.

The Petitioners have received a letter dated 09.08.2016 from Royal College, requesting them to attend an interview on 26.08.2016 (P-5). When the Petitioners went for the said interview, before facing the main Interview Panel, they had to go before four panels which were assigned the following duties.

- a) Panel one –Check the National Identity Card
- b) Panel two- Check Electoral Registers
- c) Panel three- Check the availability of other government schools within the close proximity
- d) Panel four- Granting marks

The documents to be checked by each panel were completed by the first three panels and the Petitioners went before the 4th panel. Having checked all the documents including the title deeds which were in the name of the grandmother of the 1st Petitioner, the 4th Panel had informed the Petitioner that they cannot consider the application of the Petitioners and refused to grant any marks to the Petitioners.

When the Petitioners went before the interview board consisting of 3rd to the 8th Respondents, they declined to entertain the Petitioners application, obtained the signature of the 1st Petitioner on a paper and concluded the interview without granting any marks. The Petitioners further submitted before this court that the 3rd Respondent made an endorsement on the paper that she was asked to sign to the effect, “No proof to the residence deed belonging to the applicant’s grandmother”

As observed by me, the Petitioners main contention before this court was to challenge the said decision of the interview panel, when the said interview panel concluded that the Petitioners have failed to establish their residence, whereas the Petitioners had submitted documentary proof as required by the circular No 17/2016 in proof of their residence, except under clause 6 II (a) of the said circular, where she is only entitled to obtain a maximum of ten marks under the said circular and thereby the said Respondents have acted in violation of the Fundamental Rights guaranteed under Article 12 (1) of the Constitution.

Clause 9 of the circular 17/2016 had provided for an appeal process for the applicants who were not satisfied with the selections made by the Interview Panel and, acting under the said provision, the 1st Petitioner has forwarded an appeal against the decision of the interview panel. The appeal procedure is discussed under clause 10 of the said circular and according to clause 10.6, the appeal board appointed under clause 10.2 is only entitled to go through the documents submitted at the interview only and therefore they cannot go through any fresh documents during the appeal. When going through the document tendered on behalf of the Petitioners before this court I observe that, the 1st Petitioner had submitted a fresh deed in order to establish her ownership (P-12). The said deed is a deed of gift with regard to premises No. 161/11 Galle Road, Bambalapitiya, and the donors were the heirs of the late Mrs. Madasamy Marimuttu Leela who is the grandmother of the 1st Petitioner and the donee is the 1st Petitioner. The Appeal Board had correctly refused to entertain the said deed in favour of the Petitioners and the decision of the Selection Board was not changed by the Appeal Board. Since the said decision to refuse to entertain the deed 3131 produced marked P-12 by the Appeal Board was taken in accordance with the Provisions of clause 10.6 of the circular 17/2016, I am not inclined to consider the allegation against the Appeal Board with regard to the refusal to consider the said deed.

In the said circumstances the only matter before this court is to consider whether the conduct of the Selection Board when they concluded that the Petitioners have failed to establish their residence as required by circular 17 of 2016 and the conduct of the Appeal Board by confirming the said decision, had violated the Fundamental Rights of the Petitioners, guaranteed under Article 12 (1) of the Constitution.

In this regard, it is important to consider the material available before the Interview Panel and the Appeal Board and therefore I will now proceed to analyze the material placed before the said panels by the Petitioners.

Under clause 6.I.I (a) of the said circular, maximum of 35 marks are allocated for establishing the residence by the Electoral Registers during the last five years. In order to obtain full marks, names of both the parents should be in the Electoral List during the five year period. The Petitioners have tendered marked P-18-1 to 18-10 the extracts of the Electoral Register with regard to the premises number 161/11. According to the said extracts, both the father and mother of the 2nd Petitioner have established their residence by submitting Electoral Registers since the year 2007. Being the eldest child of the family, the 1st Petitioner has submitted that her name was in the Electoral Register since year 2000 until year 2006. (Extracts P-18-11 to 18-17)

As submitted by the 1st Petitioner, her family had lived in the said premises with her parents during this period and it is observed that both the electricity bills and the water bills to the above premises had been issued in the name of the 1st Petitioner's mother Mrs. M. Meenachchi. However Petitioners have submitted telephone bills of the Petitioners since year 2013 for the above premises, and other documents such as the marriage certificate, birth certificate of her children including the 2nd Petitioner's birth certificate, student record book details of her eldest daughter who is attending St. Anthony's Balika Maha Vidyalaya, Colombo 03, bank book and health cards.

When going through the above documents, it is observed by me that, the 1st Petitioner had submitted sufficient proof to establish that, she lived with her parents in the above address until her marriage which took place in the year 2007 and since then lived with her parents at the same address until she submitted the present application to Royal Collage in the year 2016. During this period she gave birth to two children and their birth certificates are also produced in poof of her residence. Since her parents were alive and lived in the same premises, she could not obtain electricity or water bills in her name and therefore one cannot expect her to submit those bills under her name.

As further observed by me, the property in which the 1st Petitioner lived with her family and her parents, were originally belonging to her grandmother but, after her death the families have not taken any interest to get their succession rights but, revealed from the material placed before court, that there were two houses bearing assessment numbers 161/11 and 161/10 and 161/11

was occupied by the mother of the 1st Petitioner and 161/10 by the uncle of the 1st Petitioner. (The only heirs according to the deed of gift to the 1st Petitioner)

As no marks were allocated to the Petitioner's application, no steps were taken to inspect the Petitioner's residence prior to 01.01.2017. However, as revealed before this court, subsequent to the filing of the present application, steps were taken to inspect the premises in question. The said inspection revealed that those who went for inspection could not find a bedroom and/or bed inside the premises but some photographs and house hold utensils were observed inside the said premises.

Even though this court is reluctant to make any remark on the above observation by the team which went for the inspection, I cannot ignore the fact that there are people who live with lots of hardships and therefore one cannot expect everybody in this country to have a bedroom with a bed in their houses.

With regard to the observations made at the site inspection, the Respondent relied on the decision in ***Liyana Mudiyansele Don Suchithra Alexander and other Vs, P. Srilal Nonis Director of National School and others SC/FR/64/2010*** SC minute dated 21.05.2010 where J.A.N. de Silva CJ observed the importance of site inspection reports when the court decided to dismiss an application when the school had been unable to verify whether the Petitioner's were physically residing at the given address.

However when considering the material already discussed, there is no doubt with regard to the residence of the 1st Petitioner, since she was able to establish that she had been living in the said address from her childhood, and therefore I see no relevance to the above decision.

In the case of ***Dasanayakage Gayani Geethika and two others Vs, D.M.D. Dissanayake, Principal, D.S. Senanayake College, Colombo 07 and five others SC/FR 35/2011***, SC minute dated 12th July 2011 Suresh Chandra (J) observed the criterion that should apply when allocating marks for 'residence' under clause 6.I as follows;

"A consideration of clause 6.I of the circular (RI) shows that the main consideration for selection of children under the category of "Children of those who are resident close to the school," would be the Applicant's place of residence. The relevant indices or criteria that are

to be taken into account regarding the establishing of same are set out in 6.I -I- IV referred to above.

The main thread which runs through all four categories is the concept of “Residence”

The ordinary meaning that is given to “Residence” is “the place where an individual eats, drinks, and sleeps or where his family or his servants eat, drink and sleep. (Wharton’s Law Lexicon).

Residence as envisaged by the said circular would imply a permanent abode which has been used for a continuous period. The manner in which 35 marks have been allotted would indicate that the continuity in residence should be at least for a period of five years. Such residence does not necessarily connote ownership as the circular speaks of leases whether registered or unregistered being acceptable for the purpose of establishing residence. Credence is also given to the acceptability of other documents such as utility bills, employment letters, bank documents, letters received etc which would all serve as items establishing the genuineness of the residence. Such documents if available for a long period of time would indicate that they have been obtained for the purpose of getting a residential qualification. Procurement of such documents is sometimes referred to as “manufacturing” of documents. Care has to be taken in identifying such “manufactured” documents from genuine documents. Therefore Interview Panels should consider all the documents that are submitted by a prospective applicant and assess them carefully and see whether the cumulative effect of such documents would establish the genuine residence of such applicant.

According to clause 6.I, 35 marks are given for the electoral register extract which seem to be the basic and most important criterion and that the other documents referred to in sub-clause 6.I-II and III substantiate or confirm the residence given in the electoral register extract. Therefore, if the electoral register extracts have been accepted and the entitlement of full marks (35) have been given, there is no reason as to why such an applicant cannot get marks under sub-clause 6.I-IV which is 50 marks less five marks for each school from the residence to the school applied.

In R2 the interview sheet, under the category for other schools, the figure “6” being entered is significant, which would mean that there are six other schools between the residence and the relevant school for which 30 marks would be deducted and the applicant would be entitled to 20 marks. This is apparently the reason why the figures “20” have been entered in R2 within brackets and for some reason best known to the Interview Panel has been struck off with an oblique stroke and with the note “not entitled to marks as there is no valid deed.

It is my view that, once marks are given under clause 6.I for the Electoral Register Extracts which satisfies the criterion of “residence”, then such an applicant is entitled to marks under clause 6.I –IV. Therefore accepting the fact that 20 marks could have been given as is seen in R2, to deprive the Petitioners of such marks is incorrect and they are entitled to 20 marks on that score.”

When considering the observations by Suresh Chandra (J) referred to above, I observe that the facts and circumstance in the present case are almost similar to the said case. However during the argument before us, attention of the court was drawn to clause 6.1.III (a) by the Senior State Counsel and submitted that the granting 50 marks for proximity can only be considered, if the residence is proved by the Petitioner, and in the absence of title deeds, the Petitioner has failed to establish her residence as required by the said circular.

I cannot agree with the said submission of the Senior State Counsel and in this regard I agree with the view taken by Justice Suresh Chandra when he held that, once marks are given under clause 6.1 for Electoral Register Extracts which satisfied the criterion of ‘residence’, then such applicant is entitled to marks under clause 6.1-IV.

As further observed by me, the Interview Panel had refused to grant marks to the 2nd Petitioner and therefore there is no material before this court to ascertain the marks entitlement of the 2nd Petitioner.

However in the written submissions filed on behalf of the 1st, 2nd, 3rd, 15th and 16th Respondents, the maximum marks the 2nd Petitioner would have been entitled, has been identified as follows;

6. II (a) Deeds etc 0/10

6. I (II) (b) Additional Documents 03/05

6. I (III) Proximity 0/40

In view of the position this court has now taken, that the 2nd Petitioner is entitled for marks under proximity category, it is presumed from the above marking, that the 2nd Petitioner is entitled for 40/50 under proximity category.

As revealed during the argument, the cut-off mark under Tamil speaking category for the year 2017 at Royal College, Colombo 07 was 63 marks and the 2nd Petitioner is entitled for 78 marks to gain admission to Royal College.

Under paragraph 28 of the Petition, the Petitioner's have submitted 19 names of students who were selected for Admission to Royal College for the year 2017 under the said category and submitted that, the said 19 students who should have been placed below the 2nd Petitioner as per the distance to their Residence from the school. The above position taken up by the Petitioners confirms the fact that the 2nd Petitioner is entitled to obtain marks, well above the cut-off mark.

The Interview Panel has failed to evaluate the document submitted on behalf of the 2nd Petitioner and allocate marks to him. The said Panel had acted arbitrarily when they decided not to grant marks. The Panel appears to have considered the concept of residence in a very abstract manner. They failed to consider the documents submitted on behalf of the Petitioners, when the said documents clearly establish the residence of the Petitioners. The Interview Panel should have been mindful of the fact that it is the ambition of every parent to admit their child to a school of their choice and look at the documents not in a stereo typed manner but in a reasonable manner, to grant the entitlement of every child who come before them.

In the above circumstances I hold that the 3rd to the 14th Respondents have violated the Fundamental Rights guaranteed under Article 12 (1) of the Constitution when they refused to grant any marks to the 2nd Petitioner at the interview and thereby refused admission to the 2nd Petitioner to grade one at Royal College, Colombo 07.

Therefore I make order directing the Respondents to take steps to admit the 2nd Petitioner to Grade 1 or to the appropriate Grade of Royal College, Colombo 07 forthwith.

Judge of the Supreme Court

S.E Wanasundera PC J

I agree,

Judge of the Supreme Court

Nalin Perera J

I agree,

Judge of the Supreme Court