

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an application under and in terms of Article 126 reads with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C.F.R Application No: SC FR/185/18

1. Attanayake Mudiyansele Thimeth Senuja  
Bandara Attanayake
2. Attanayake Mudiyansele Indika Umesh  
Bandara Attanayake
3. Mapa Herath Mudiyansele Sudarshani  
Mapa Herath

All of;

No: 284/A/2, Randipola Watta,  
Ambilmeegama,  
Pilimathalawa

**Petitioners**

**Vs.**

1. R.D.M.P. Weerathunga,  
The Principal and Chairman of the  
interview board to admit students to  
Grade 1,  
Kingswood College,  
Kandy.

2. B.M.H.A. Bandara,  
The Vice Principal,  
Kingswood College,  
Kandy.
3. S.A. Wijekoon,  
Secretary of the Interview Board to  
admit students to Grade 1,  
Kingswood College,  
Kandy.
4. P.G.M. Herath,  
Member of the Interview Board to admit  
students to Grade 1,  
Kingswood College,  
Kandy.
5. R.M. Inoka Lasanthi,  
Member of the Interview Board to admit  
students to Grade 1,  
Kingswood College,  
Kandy.
6. M. Abegunasekara,  
President of the Appeals and Objections  
Board to admit students to Grade 1,  
Kingswood College, Kandy  
And Principal,  
Girl's High School, Kandy.
7. S.P. Vidanagamge,  
Secretary of the Appeals and Objections  
Board to admit students to Grade 1,  
Kingswood College,  
Kandy.

8. Subashini Hemalatha,  
Member of the Appeals and Objections  
Board to admit students to Grade 1,  
Kingswood College, Kandy  
And Deputy Principal,  
Pushpadana Girl's College, Kandy.
  
9. Kodithuwakku,  
Member of the Appeals and Objections  
Board to admit students to Grade 1,  
Kingswood College,  
Kandy.
  
10. Director of National Schools  
Ministry of Education,  
Isurupaya,  
Baththaramulla.
  
11. Sunil Hettiarachchi,  
Secretary,  
Ministry of Education,  
Isurupaya,  
Baththaramulla.
  
12. G.G.S.B. Alahakoon,  
No: 134/1, Heennarandeniya,  
Gampola.
  
13. G.G.C.B. Alahakoon,  
No: 134/1, Heennarandeniya,  
Gampola.

14. S.D. Kolambage,  
No: 71/165,  
2<sup>nd</sup> Lane,  
Heerassagala Road,  
Kandy.
15. N.N. Kolambage,  
No: 71/165,  
2<sup>nd</sup> Lane,  
Heerassagala Road,  
Kandy.
16. I.K.D.S.B. Siriwardana,  
No: 08, Mulgampala Road,  
Kandy.
17. I.K.D.M. Siriwardana,  
No: 08, Mulgampala Road,  
Kandy.
18. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

Before : L. T. B. Dehideniya J  
P. Padman Surasena J and  
E. A. G. R. Amarasekara J

Counsel : Thishya Weregoda with Iresh Seneviratne, Sanjaya Marambe,  
Sewwandi Marambe, Prathap Welikumbura, Manusha Gamage  
and Thamila Perera for the Petitioners.

Rajiv Goonetilleke, SSC, for the 2<sup>nd</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 18<sup>th</sup>  
Respondents.

Argued on : 18.05.2020

Decided on : 07.05.2021

### **E.A.G.R. Amarasekara J**

The 1<sup>st</sup> Respondent who is the Principal of the Kingswood College Kandy had refused to admit the 1<sup>st</sup> petitioner (a minor aged five) to Grade 1 of the Kingswood College Kandy for the year 2018. The Petitioners by Petition dated 06.06.2018 complained to this Court that the said refusal has violated their fundamental rights guaranteed under Article 12(1) of the Constitution. Thus, the question to be considered is whether the 1<sup>st</sup> Petitioner child is entitled to be admitted to the Kingswood College as per the relevant criteria under which they applied.

The 2<sup>nd</sup> Petitioner is the father and the 3<sup>rd</sup> Petitioner is the mother of the minor. The Petitioners have applied to admit the 1<sup>st</sup> Petitioner to the Kingswood College under the category of 'Children of Parents who are Past Pupils of the School' (Hereinafter sometimes referred to as "Past pupils' category"). By the letter dated 10.12.2017, the Respondents informed the Petitioners that the 1<sup>st</sup> Petitioner had failed in obtaining the minimum number of marks required to be admitted to the school under the relevant category. As per the journal entry dated 06.03.2019, leave was granted by this Court to see whether any infringement has taken place in terms of Article 12(1) of the Constitution.

The admissions to the government schools for the year 2018 is regulated by Education Ministry School Admission Circular No. 22/2017 dated 30<sup>th</sup> May 2017. Though the said circular is marked as **P2(a)** in the Petition, it has not been tendered with the Petition. As per the journal entry dated 11.06.2018, the petitioners have sought permission to tender said **P2a** and **P10** later and the permission was so granted, but as per the journal entries, it appears that those

two documents have not been tendered by the Petitioners. However, the said circular has been tendered with the objections marked as **E**.

The Petitioners in their petition and affidavit refers to certain evidential material relating to or revealed in or given to or given before the inquiry that took place before the Human Rights Commission- vide paragraphs 22, 23, 27c, 28b, 29, 30b, 30c, 30d and 35b of the Petition and corresponding paragraphs of the affidavit. As **P10**, namely the proceedings before the said commission that is referred to in the paragraph 34 of the Petition was not tendered as per the permission given, those averments have become mere statements not supported by the best evidence. It is pertinent to note that aforesaid paragraphs have not been admitted by the 2<sup>nd</sup> Respondent in his affidavit dated 10.07.2019, but has explained his stance or denied, as the case may be, through several other paragraphs contained in his affidavit in objection.

Aforesaid Kingswood College Kandy is a national school and applications were called in 2017 for admission of students for Grade 1 for the year 2018. The 2<sup>nd</sup> Petitioner has applied for admission of the 1<sup>st</sup> Petitioner to Grade 1 of the school under the Past Pupils' category as laid down in clause 6.2 of the 'Instructions related to the admission of children to Grade One in Government Schools for the year 2018' by the Ministry of Education which was marked as **P2b** with the Petition ( hereinafter sometimes referred to as guidelines) and clause 7.3 in the above Circular No. 22/2017.

Under the category of 'Children of Parents who are Past Pupils of the School' the child's mother/father/legal guardian may apply as a Past Pupil who studied in the school and the selection will be made under the following marking scheme;

- i. Applicant's period of study in the school at the rate of 02 marks for each class studied (one shall not get marks for stay in the same grade for more than one year) – maximum 26 marks
- ii. Educational achievements gained by applicant during the schooling period – maximum 25 marks
- iii. Achievement gained through co-curricular activities by applicant during schooling period – maximum 25 marks
- iv. Membership in Past Pupils Association, educational achievements after the period of schooling and different types of co-operations extended

for the development of the school. – maximum 24 marks (for different types of co-operation extended to the development of the school only a maximum of 06 marks can be given).

The circular also directs that the maximum marks indicated at ii, iii, iv above shall be distributed at the discretion of the Interview Board without being contrary to the instructions given in the said circular.

It is common ground that the number of vacancies available for admission under Past Pupils' category of the Kingswood College for the relevant year was 33 students, which being the 25% of the total vacancies as per the Circular No. 22/2017. The Petitioners were allocated 43.5 marks at the interview and the 1<sup>st</sup> Petitioner was placed at the 33<sup>rd</sup> position and was included in the provisional list of those who had been selected. The cut off mark for the same was also 43.5 as at the time of provisional list. However, it is apparent that another child, namely the 16<sup>th</sup> Respondent, who also obtained 43.5 marks was placed at the 32<sup>nd</sup> position since his residence was in close proximity to the school. Even though, close proximity to school was not a criterion to give marks under the past pupil category, the placement of the 16<sup>th</sup> Respondent who received the same marks was not challenged by way of an appeal or objections by the Petitioners under clause 10.1 of the circular. As such, placement of the 16<sup>th</sup> Respondent shall not be allowed to be challenged in this application since the Petitioners did not use their right to appeal or objection as provided by the circular. It is also observed, that the circular does not provide for how should the placement or selection be done when there are many applicants who have received same marks for the last vacancy or when there are limited number of vacancies. Furthermore, this court observes that as per the clause 12.10, the Secretary to the Ministry has been given power to supervise and settle issues that may arise in relation to the enforcement of the circular. Thus, if the Petitioners have met with a problem which is due to the lack of a provision to meet such situation in the circular, they could have referred it to the Secretary to the Ministry for relief when the 16<sup>th</sup> Respondent was placed before the 1<sup>st</sup> Petitioner. No such reference has been made to the Secretary by the Petitioners. Moreover, the averments in the Petition does not allege any infringement caused by placing the 16<sup>th</sup> Respondent above the 1<sup>st</sup> Petitioner and no relief is sought against the 16<sup>th</sup> Respondent- vide paragraph 2(i) of the Petition. Allegations are made against the marks given to the

12<sup>th</sup> Respondent and the 14<sup>th</sup> Respondent after the appeals made by them and placing them above the petitioner and the 16<sup>th</sup> Respondent in the final list respectively in the 33<sup>rd</sup> and 31<sup>st</sup> positions. Even though, certain submissions have been made with regard to the placement of the 16<sup>th</sup> Respondent above the 1<sup>st</sup> Petitioner in the written submissions tendered by the Petitioners, it is clear, as explained above, such placement was neither challenged through an appeal to the Appeal and Objection Investigation Board (hereinafter sometimes referred as Appeal Board) as per the circular nor challenged in the petition tendered to this court.

Hence, after the appeals made on behalf of the 12<sup>th</sup> and 14<sup>th</sup> Respondents, the 1<sup>st</sup> Petitioner's name as well as the 16<sup>th</sup> Respondent's name had not been included among the selected students for admission to Kingswood College for 2018 in the final list, and according to the said final list (P7), the cut off mark had been increased to 44. Further the, the Petitioner who originally had the 33<sup>rd</sup> position as per the temporary list, has obtained the 35<sup>th</sup> position.

The 14<sup>th</sup> Respondent, who originally had obtained 42 marks after the interview received additional 3 marks at the Appeal Board. Thus, he obtained a total of 45 marks and thereby became eligible to be admitted to the school.

Also, the 12<sup>th</sup> Respondent, who originally had obtained 36.5 marks obtained additional 7.5 marks and thereby obtained a total of 44 marks through the Appeal made securing the final and 33<sup>rd</sup> position in the final list of children eligible to be admitted to the Kingswood College for the year 2018.

Thus, after the appeal process the 16<sup>th</sup> Respondent who originally obtained the 32<sup>nd</sup> position was demoted to the 34<sup>th</sup> position just above the 1<sup>st</sup> Petitioner who became the 35<sup>th</sup> in the final list while having the same marks, namely 43.5.

It should be noted that the Petitioners have not challenged the original marks that the Petitioners were given at the interview. The basis of this application is that, as stated above, the additional marks 3 and 7.5 obtained by the 14<sup>th</sup> Respondent and the 12<sup>th</sup> Respondent respectively at the Appeal Board, were wrongfully allocated. Hence, if the Petitioners can successfully show that both the 14<sup>th</sup> and 12<sup>th</sup> Respondents were wrongfully selected, they can establish that their entitlement to get the 1<sup>st</sup> Petitioner admitted to the Kingswood College was affected and as such their rights are infringed, but if they fail in establishing that

such allocation of additional marks to both the 14<sup>th</sup> and 12<sup>th</sup> Respondents or either of them is wrongful, they cannot establish that their rights to get the 1<sup>st</sup> Petitioner admitted to the school was infringed since in such a situation the Petitioner's placement in the list would be below the 33<sup>rd</sup> position. If the additional marks given to one of them is wrong, it will affect only the right of the 16<sup>th</sup> Respondent to get himself admitted as his position in the temporary list as well as in the final list is above the Petitioner. In such a case, even if there is an irregularity, the Petitioners may fail, since they cannot claim as of a right that as per the circular, the 1<sup>st</sup> Petitioner could have been selected. Thus, it is necessary for the Petitioners to establish that additional marks given to both the 14<sup>th</sup> and 12<sup>th</sup> Respondents are wrongfully given to get relief in this application.

In the aforesaid backdrop, this Court has to see whether any infringement has caused by the additions of marks to the 14<sup>th</sup> Respondent and 12<sup>th</sup> Respondent based on the appeals made to the Appeal Board. As per paragraph 11.6 of the Circular 22/2017, the candidates cannot present new documents at the Appeal stage but must rely on the same documents that were presented at the interview. It appears from the petition that the Petitioners attempt to indicate that certain marks added by the Appeal Board are not supported by the originally tendered documents to the Interview Board. - vide paragraphs 7,26, 27b, 27c, 28b, 29, 31, 35b etc. However, subject to what is referred later on this judgment, no acceptable proof is placed before this court to come to a finding that the additions of marks done by the Appeal Board to both 14<sup>th</sup> and 12 Respondents were done by considering new documents tendered through appeal. The Position of the contesting Respondents is that by an oversight certain marks were not allocated to the 14<sup>th</sup> and 12<sup>th</sup> Respondents by the Interview Board and those were added by the Appeal Board (also see paragraph 8, 9, 10, 12, 14, 16 etc. of the affidavit filed in objection by the 2<sup>nd</sup> Respondent).

The Petitioners seems to rely on the fact that the 14<sup>th</sup> and 12<sup>th</sup> Respondents have signed admitting the marks given by the Interview Board as correct. Just at the interview a candidate may not have sufficient time to concentrate on the marking scheme and various criteria used in giving marks. As such, mere acceptance of the correctness of marks shall not defeat their right to appeal if they later on within the appealable period see that the marks given are not correct. In the application at hand 14<sup>th</sup> and 12<sup>th</sup> Respondents have appealed within time and, if the Appeal

Board's finding that marks given by the Interview Board were not accurate is correct, they are entitled to relief they obtained from the Appeal Board. The right to appeal to the Appeal Board is given irrespective of the fact whether they admitted the marks given by the Interview Board at the interview or not. The admission of the marks given by the Interview Board at the interview is not an admission which establishes that the documents considered by the Appeal Board are new documents. It only indicates that the 14<sup>th</sup> and 12<sup>th</sup> Respondent failed to point out that they are entitled to more marks at the interview using the documents tendered before the Interview Board. In this backdrop, I would prefer to consider the marks given to 14<sup>th</sup> and 12<sup>th</sup> Respondents as per the appeal made to the Appeal Board.

**In respect of the 14<sup>th</sup> Respondent:**

In this regard, the Petitioners point out that, the additional 3 marks awarded to the 14<sup>th</sup> Respondent by the Appeal Board were on the basis that the interview panel had not allocated marks for the Diploma Certificate produced by the 15<sup>th</sup> Respondent, father of the 14<sup>th</sup> Respondent child. They argue that it was due to the fact that the duration of the course was not indicated in the said Certificate and since the 15<sup>th</sup> Respondent failed to produce documentary proof to verify the duration at the interview stage, they cannot at the Appeal stage produce new material and get the marks re-evaluated.

In response to the above allegation, the Respondents have argued that since the Interview Board process a large number of applications, it is possible to overlook documents in the process, and specifically, in this scenario, there was no additional material produced in the Appeal stage, and a document to confirm the duration of the said Course was with the application- vide paragraph 14 b.

As per the journal entry dated 11.01.2019, on the request of the petitioners, this Court has directed the 1<sup>st</sup> Respondent to submit the documents as prayed in the prayer (h) of the petition and, those documents have been submitted marked as A1, A2, B1 to B 26, C1 to C10, D1 and D2 with a motion dated 25<sup>th</sup> 01. 2019. The said documents have been referred to in the affidavit filed in objection by the 2<sup>nd</sup> Defendant – vide paragraph 20 of the affidavit filed by the 2<sup>nd</sup> Respondent. Among those documents C9 is the relevant Diploma Certificate of the 15<sup>th</sup> Respondent, the father of the 14<sup>th</sup> Respondent child and C10 is the document that

confirms the duration of the Diploma Course. There is no material to show that this C10 was submitted only to the Appeal Board. C9 is dated 21.03.2015 and C10 is dated 20.11.2015. The application with regard to the admission of 14<sup>th</sup> Respondent is dated 11.06.2017. Thus, it is clear that C10 was not a document prepared later on to submit to the Appeal Board but a document issued to the 14<sup>th</sup> Respondent's father (15<sup>th</sup> Respondent) even prior to making the application for admission. On the other hand, when marks are given to the educational qualification gained after leaving the school by the past pupil, and such marks are distributed as per the discretion of the Interview Board (vide Clause 7.3.4 and 7.3.5 of the circular marked **E** and Clause 6.2 of the guidelines marked **P2(b)**), and when the certificate itself does not reveal the duration, it appears that it is the duty of the Interview Board to get the duration verified before rejecting to give marks on such certificate since there is no description as to the duration of the course that relates to the said educational qualification either in the circular or the guidelines or in the application marked **C2**. As such, I do not think one cannot find fault with the Appeal Board, if the Appeal Board attended to the errors made by the Interview Board with regard to the duration of the Diploma Course when the Diploma Certificate was available. It was also observed that the Petitioners did not strenuously challenge the additional 3 marks given to the 14<sup>th</sup> Respondent during the hearing.

As elaborated above this Court does not have sufficient material to decide that the addition of 3 marks to the 14<sup>th</sup> Respondent by the Appeal Board is wrongful. As such with that 3 marks 14<sup>th</sup> Respondent's total marks increased up to 45 marks giving him a place for admission to the school above the Petitioners as well as the 16<sup>th</sup> Respondent who was already above the 1<sup>st</sup> Petitioner in the temporary list. This situation pushed down the placement of the 1<sup>st</sup> Petitioner below the 33<sup>rd</sup> Position where only 33 vacancies existed. In that backdrop, non-placement of the 1<sup>st</sup> Petitioner in the final list among the selected candidates itself cannot give a standing for the Petitioners to challenge the list as of a right, since there was no challenge to the placement of the 16<sup>th</sup> Respondent above the Petitioner.

**In respect of the 12<sup>th</sup> Respondent:**

The particulars pertaining to the admission of the 12<sup>th</sup> Respondent has been tendered as B1 to B26 by the Respondents. However, this Court observes that the

application of the 12<sup>th</sup> Respondent is not tendered along with those documents and, therefore this court is not in a position to compare and decide whether the marks given in the mark sheet marked B1 corresponds to the application made by the 12<sup>th</sup> Respondent. Not submitting the application of the 12<sup>th</sup> Respondent after the aforesaid direction made on 11.01.2019 has to be weighed against the contesting Respondents. The Petitioners bring to the attention of this Court that B1 mark sheet is replete with corrections and alterations and therefore cast a serious doubt as to the genuineness of the allocation of marks during the Appeal. However, a doubt arisen due to corrections and alterations may not suffice since there shall be grounds to show that such corrections and alterations are not due to various calculations done in considering different material available but only done in view of wrongfully giving marks not entitled to the 12<sup>th</sup> Respondent. It must be also noted that there is nothing to indicate that documents marked and tendered as B2 to B26 were not available before the Interview Board.

When considering the additional 7.5 marks obtained by the 12<sup>th</sup> Respondent at the appeal stage, it appears as per the documents marked as B1 and D1 that the said additional marks were allocated as given below;

<u>Category</u>	<u>Interview Marks</u>	<u>Marks after Appeal</u>	<u>Reason</u>
Prize	none	01	prize
Competitions	none	1.5	Drama
Societies	02	04	posts held
Contribution to school	2.5	5.5	contribution

With regard to the above additional marks allocated to the 12<sup>th</sup> Respondent, it is the position of the contesting Respondents that the marks are justifiable as per the documents marked B1 – B26 of the brief.

As per the documents marked as B8 and B7 the addition of 1.5 marks and 2 marks for co-curricular activities under achievements in Drama Competition and for post held in Societies can be considered reasonable.

It is not clear why the marks for contribution to the school was increased by 3 marks. The maximum that can be given for such contribution seems to be 6 marks- vide **P2(b)** guidelines and the Circular marked **E**. Thus, to give 5.5 marks for

such contributions it must be an outstanding contribution. When the Interview Board gave 2.5 marks for such contribution, the Interview Board must naturally have an idea with regard to the contribution made by other candidates as they are privy to the other applications, but during the Appeal, when the Appeal Board increased the marks by adding 3 more marks, it is not clear whether the members of the Appeal Board had any idea or comparative view with regard to the contributions made by other candidates. If they increased the marks without any idea about the contributions made by other candidates, especially the candidates whose applications were rejected, it cannot be said that such increase of marks for contribution to the school is justifiable. However, this Court does not have sufficient material to state that the Appeal Board acted wrongfully in that regard. However, none of the documents marked as B2 to B26 shows that the 12<sup>th</sup> Respondent's father won any prize for hand writing for 1 mark to be given by the Appeal Board as per B1. Thus, it appears, out of 7.5 marks added by the Appeal Board to the marks of the 12<sup>th</sup> Respondent, one mark is given without any supporting document. When that one mark is reduced, the 12<sup>th</sup> Respondent gets only 43 marks which is less than the marks received by the 16<sup>th</sup> Respondent and the 1<sup>st</sup> Petitioner. Hence the placement of the 12<sup>th</sup> Respondent in the 33<sup>rd</sup> position in the final list cannot be approved and that should have been given to the 16<sup>th</sup> Respondent and the 1<sup>st</sup> petitioner's place should have been the 34<sup>th</sup> position in the final list. Since there were only 33 vacancies, it was the 16<sup>th</sup> Respondent who has been affected by this wrongful act and not the Petitioner, since the 1<sup>st</sup> Petitioner's place which should be the 34<sup>th</sup> place in the final list, the Petitioners still cannot claim any entitlement for admission to Kingswood College, Kandy. Hence, even if this court observes some irregularity or wrongful act in giving marks to the 12<sup>th</sup> Respondent, this Court cannot find any infringement of the Petitioners' rights by refusing to admit the 1<sup>st</sup> Petitioner to the said school, since being in 34<sup>th</sup> place he is not entitled to admission. Since the Petitioners have not challenged the placement of the 16<sup>th</sup> Petitioner through an appeal or otherwise, this Court cannot be satisfied that the Petitioners have status to file an application on the basis of refusal to admit the 1<sup>st</sup> Petitioner to the said college. Even though, the Petitioners did not appeal against the placement of the 16<sup>th</sup> Respondent above the 1<sup>st</sup> Petitioner in the temporary list and also had stated in the Petition that the 16<sup>th</sup> and 17 Respondents were added only to give notice to them and no relief is sought against them, now in the written submissions has

submitted that persons who are similarly circumstanced must be treated equally. However, if the circular is silent and number of vacancies are limited, I do not think this Court can find fault with the relevant authorities if they created a reasonable criteria or reasonable classification among the candidates who gained the same marks to decide who should be given priority to fill the vacancies. On the other hand, there is no proof of service of notices of this application to the 16<sup>th</sup> and 17 Respondents as per the journal entries and they were absent and not represented during the hearing. As per the brief what has been served on them seems to be a notice of a motion to get the matter re-listed (vide journal entry dated 10.09.2018 and the relevant motion dated 07.09.2018 and attached postal article receipt) and perhaps, the date of hearing -vide journal entry dated 06.03.2019. Under such circumstances, this court cannot consider 16<sup>th</sup> and 17<sup>th</sup> Respondents as respondent who are slumber on their rights and not vigilant. Without 16<sup>th</sup> and 17<sup>th</sup> Respondent being given a proper chance to present their stance, this Court cannot come to a conclusion that they have slept over their rights. Thus, it is not proper to make any order that may affect the rights of the 16<sup>th</sup> Respondent.

It is argued by the contesting Respondents that the Appeal Board does not appear to have considered the fact that the 13<sup>th</sup> Respondent (The father of the 12th Respondent) had represented the school in Cricket, Rugged, Boxing and Athletics and should be entitled for 03 marks for representing the school in sports whereas he was only given 01 mark. Further he has won the 1<sup>st</sup> place at the Central Province Drama Competition **(B8)** and second place in the same in 1994 **(B9)** and the Appeal Board seems to have missed the document B9 for which they should have given 2 marks and instead given only 1.5 marks for the document marked B8. However, as per the Circular marked **E** as well as the Guidelines marked **P2(b)**, it appears that the distribution of marks under these items was at the discretion of the Interview Board, and it is also mentioned in **B1** that with regard to achievements in Dance, Music, Drama etc., marks are given only for one level in one section. To consider whether this argument is correct or not, sufficient materials are not placed before this Court to indicate how the Interview Board used its discretion with regard to the distribution of marks under the relevant co-curricular activities.

### **Legitimate Expectation**

The Petitioners have stated in the petition that they have a Legitimate Expectation that in the event the ranking of the 1<sup>st</sup> Petitioner is affected due to any amendments made by the Appeal Board, the petitioners would be given a reasonable opportunity to present their case before the publication of the final list and it has to be so given in the interest of procedural fairness and keeping in line with the rules of natural justice. The Petitioners has brought the attention of the Court to Clause 10(3) of the guidelines P2(b) which provides that persons who forwarded the objections, the persons who are subject to objections and the persons who forwarded the appeals will be separately subjected to investigation by the said Appeal Board during the appeal process. The Petitioners further state that the said circular does not provide any opportunity for persons whose names appear in the provisional list, against whom no objections have been raised, to be heard by the Appeal Board, if they are not included in the final list. It is further alleged that there is a breach of natural justice since they were not given any opportunity to assess the validity of the additional marks given to the 12<sup>th</sup> and 14<sup>th</sup> Respondents - vide paragraphs 36 to 40 in the Petition. In reply to these paragraphs the 2<sup>nd</sup> Respondent in his affidavit in objections state that the procedure as set out in the circular was followed.

In this regard it should be noted that the Circular No.22/2017 marked E states in paragraph 12.1.2 that in the event, children who became eligible as per the temporary list become ineligible due to the appeals and objections made to the Appeal Board, the parents of those children must be summoned before the Appeal Board and only after their eligibility is inquired into, the final decision should be made by the Appeal Board. Thus, the Circular provides an opportunity for the children who are listed at the tail end of the provisional list and who may lose their opportunity to get admissions, to get their marks re- evaluated, when there is a risk of losing admissions. As such, there is no need for a legitimate expectation in a purported lacuna of provisions for remedy in the circular for such a situation but there is an express provision giving an opportunity to be heard by the board. In an administrative process for selection, one cannot expect to give an opportunity to a party to cross-examine or challenge others' documents like in a trial before a court house. The position of the contesting Respondents is that they followed the procedure set out in the Circular. This Court cannot find fault with the 3 marks given to the 14<sup>th</sup> Respondent even after the Petitioners placed

their facts before this Court. There is no direct allegation in the Petition that the Petitioners were denied an opportunity in terms of clause 12.1.12 of the Circular. As such I am not inclined to hold that the Fundamental Rights of the Petitioners were infringed by not giving a proper hearing during the process of selection.

**Conclusion**

As per the reasons elaborated above, the place obtained by the 14<sup>th</sup> Respondent by obtaining 45 marks after the appeal made is correct, even if the 12<sup>th</sup> Respondent loses his 33<sup>rd</sup> position in the list of eligibility to be admitted to the Kingswood College. In that backdrop, 33<sup>rd</sup> position should have been given to the 16<sup>th</sup> Respondent. As there are only 33 vacancies, it is the view of the Court that the Petitioners cannot complain as of a right that the 1<sup>st</sup> Petitioner was eligible to be admitted to the Kingswood College. As such, the refusal to admit the 1<sup>st</sup> Petitioner to Kingswood College cannot be considered as an infringement of the Fundamental rights of the Petitioners.

Hence this application is dismissed with no costs.

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Judge of the Supreme Court.

L. T. B. Dehideniya, J

I agree.

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Judge of the Supreme Court.

P. Padman Surasena, J

I agree.

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Judge of the Supreme Court