

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

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

SC. FR Application No. 422/2017

Jothirathna Nanayakkarage Oshem
Shelumiyal Nanayakkara (Minor)
Appearing by his Next friend Guardian ad
litem
Jothirathna Nanayakkara Lathik Suranga,
Both of No. 470/11 B, Colombo Road,
Gintota, Kosgahawatta,
Galle.

Petitioner

Vs.

1. Mr.Sampath Weragoda,
The Principal,
Richmond College,
Galle.
2. Director National Schools,
Ministry of Education, Isurupaya,
Battaramulla.
3. The Secretary,
Ministry of Education, Isurupaya,

Battaramulla.

4. L.B.B. Theekshana,
Guardian and Father LBN Euka
No.14, 1st lane, Madapathala, Eliot Road,
Galle.
5. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : Buwaneka Aluwihare PC J
Sisira J de Abrew J
L.T.B. Dehideniya J

Counsel : Gnaneshwaran for the Petitioner
Yuresha de Silva SSC for the Attorney General

Argued on : 11.1.2019

Decided on : 6.3.2019

Sisira J de Abrew J

The Petitioner by this petition alleges that his fundamental rights guaranteed by Article 12(1) and 14(1)(e) of the Constitution have been violated by the Respondents. This court by its order dated 4.4.2018, granted leave to proceed for alleged violation of Article 12(1) of the Constitution.

The Petitioner submitted an application to Richmond College Galle to admit his son to Grade I in Richmond College Galle under the category of Non-Roman Catholic Christian quota and Proximity category. The Petitioner's son was not selected as he did not receive sufficient amount of marks. According to 1R9(c), **seventeen** students were selected to be admitted to Grade I in Richmond College Galle under the category of Non-Roman Catholic Christian quota and Proximity category and the Petitioner's son was able to secure 2nd place in the waiting list. Later, the son of the 4th Respondent was disqualified from the list of seventeen students and as a result the Petitioner son was moved to the 1st place in the waiting list. It is to be noted here that seventeen students were admitted to Grade I in Richmond College Galle under the category of Non-Roman Catholic Christian quota and Proximity category. According to 1R9A and paragraph 17 of the affidavit of the 1st Respondent **three** Non-Roman Catholic Christian students were admitted to Grade I in Richmond College Galle under the brother category (brothers who are already in the school). According to 1R9B and paragraph 17 of the affidavit of the 1st Respondent, **one** Non-Roman Catholic Christian student was admitted under the old boys' category. It is therefore seen that twenty one Non-Roman Catholic Christian students were admitted to Grade I in Richmond College Galle. Learned Counsel for both parties at the hearing before us admitted that in terms of circular bearing No.22/2017 dated 30.5.2017 pertaining to admission of children to Grade I marked 1R1, only twenty one Non-Roman Catholic Christian students could be admitted to Grade I in Richmond College Galle. It is therefore seen, that **seventeen** students were admitted to Grade I in Richmond College Galle under the category of Non-Roman Catholic Christian quota and Proximity category (1R9C); that **three** Non-Roman Catholic Christian students were admitted to Grade I in Richmond College Galle under the brother category (1R9A); and that

one Non-Roman Catholic Christian student was admitted under the old boys' category (1R9B). Learned counsel for the Petitioner contended that above mentioned four students referred to in documents marked 1R9A and 1R9B could not have been admitted under the Non-Roman Catholic Christian quota as the said students do not belong to the category of Non-Roman Catholic Christian students. Learned counsel for the Petitioner further contended that if the four students referred to in documents marked 1R9A and 1R9B were not admitted, son of the Petitioner would have been admitted to Grade I in Richmond College Galle. This was the only ground urged by learned counsel for the Petitioner. He did not dispute thirty eight (38) marks given to the Petitioner under the Proximity Category. I now advert to this contention. Where is the evidence to support the contention that the aforementioned four students referred to in documents marked 1R9A and 1R9B do not belong to the category of Non-Roman Catholic Christian students? When the court invited learned counsel for the Petitioner to produce evidence on this matter, he failed to do so. He drew our attention to document marked P5K which document was issued by Methodist Church Sri Lanka. This document only speaks about the Petitioner's son. It is noted that there is no evidence to support the above contention of learned counsel. Further the Petitioner has failed to name the parents of the above four students as respondents to this petition. This court cannot make any adverse declaration regarding them without giving a hearing to them.

When I consider all the above matters, the above contention of learned counsel for the Petitioner cannot be accepted and has to be rejected.

For the above reasons, I hold that the Petitioner has failed to prove the allegation levelled by him in his petition. I further hold that the Petitioner's fundamental

rights have not been violated by the Respondents. For the aforementioned reasons, I dismiss the petition of the Petitioner.

Parties in case No. SC FR 430/2017 agreed to abide by the judgment that may be delivered in this case. Since I have dismissed this case (SC FR 422/2017), the Petition in case No. SC FR 430/2017 too stands dismissed.

Petition dismissed.

Judge of the Supreme Court.

Buwaneka Aluwihare PC J

I agree.

Judge of the Supreme Court.

L.T.B. Dehideniya J

I agree.

Judge of the Supreme Court.