

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

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

1. Gabbala Ralalage Kirula Hastha Bandara
2. Gabbala Ralalage Kasun Manaram Bandara
both of, No. 528/14 D,
2nd Division, Maradana,
Colombo 10.

SC (FR) Application No. 307/2017

Petitioners

Vs.

1. Mr. S. M. Keerthirathna
The Principal
Ananda College,
P. de S. Kularatne Mawatha,
Colombo 10.
2. Mr. T. A. D. Dhammika T. Perera
Member of Interview Board
Ananda College,
P. de S. Kularatne Mawatha,
Colombo 10.
3. Mr. K. Bimal P. Wijesinghe
Member of Interview Board
Ananda College,

P. de S. Kularatne Mawatha,
Colombo 10.

4. Mr. R. M. D. D. C. Randeniya
Member of Interview Board
Ananda College,
P. de S. Kularatne Mawatha,
Colombo 10.

(The 2nd – 4th Respondents are members of the panel of Interview for Admission of students to Grade 1 for 2018 to Ananda College, Colombo 10)

5. Mr. Sunil Hettiarachchi
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla

6. Director of National Schools
Ministry of Education,
Isurupaya,
Battaramulla

7. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Buwaneka Aluwihare, PC, J
 Priyantha Jayawardena, PC, J
 Murdu N. B. Fernando, PC, J

Counsel : Ranjan Gooneratne for the petitioners
 Sureka Ahmad, SC for the respondents

Argued on: 2nd of April, 2018

Decided on: 28th of February, 2019

Priyantha Jayawardena PC, J

Facts of the case

The 2nd petitioner filed this application as the next friend, on behalf of his son, the 1st petitioner, who was a minor at the time of filing this application. The petitioners submitted that the acts of the 1st to the 6th respondents constituted ‘executive or administrative action’ in terms of Article 126 of the Constitution and the said respondents had infringed the fundamental rights of the petitioners guaranteed under the Constitution.

The 1st respondent is the Principle of Ananda College, Colombo 10. The 2nd to 4th respondents are members of the interview panel for admission to grade 1 for the year 2018. The 5th respondent is the Secretary to the Ministry of Education and the 6th respondent is the Director in charge of National Schools.

The 2nd petitioner submitted that, in response to a notification published by the 5th respondent in national newspapers, he submitted an application in terms of Clause 6.1 of Circular No. 22 of 2017, seeking admission of the 1st petitioner to Ananda College, which is a Government National School, on the basis that the petitioners are living in close proximity to the school. Further, it was submitted that the petitioners reside in premises bearing assessment No. 528/14D, which is about 75 meters from Ananda College.

Along with the said application for admission, the petitioners had submitted the Registered Electoral lists from the year 2010 to 2016, a Household Enumeration card issued by the Colombo Municipal Council, a copy of a pass book issued by the Bank of Ceylon branch in

Maradana, a health certificate of the 1st petitioner, the school leaving certificate of the 2nd petitioner issued by Asoka Vidyalaya Colombo 10, a certificate of residence and a character certificate of the 2nd petitioner issued by the Grama Niladhari.

Interview

The petitioners submitted that they were called for an interview by the 1st respondent. Accordingly, they went for the interview and was requested to mark the house that they reside in, on a google map. Thereafter, they were informed to produce documentary proof to prove the ownership of their residence. Consequently, the 2nd petitioner had produced a Household Enumeration Card issued by the Colombo Municipal Council in 1987, in order to prove the ownership of their residence. However, the interview panel had refused to consider the said Household Enumeration Card as proof of ownership of the house bearing assessment No. 528/14D, as it is not a document stipulated in Clause 6.1 of Circular No. 22 of 2017. Furthermore, the interview panel had refused to consider the rest of the documents submitted by the petitioners in support of the application for admission as the petitioners did not produce a document to prove the ownership of the house that they were residing in.

Appeal

Thereafter, the 2nd petitioner submitted an appeal in terms of Circular No. 22 of 2017, stating that the petitioners were living in close proximity to the school and their application was not considered by the interview panel. The petitioners further submitted that, it was the duty of the 1st to 4th respondents to consider all documents submitted by the petitioners along with the application for admission to the school and to award marks accordingly.

The petitioners contended that the documents referred to in Clause 6.1 of the said Circular are not exhaustive and the Enumeration Card issued by the Colombo Municipal Council was sufficient proof of the ownership of the residence. Moreover, the petitioners submitted that not awarding marks for the documents furnished by them, in support of the application, was illegal and unlawful.

Fundamental Rights Application

The petitioners submitted that, the petitioners had a “*grant*” issued in respect of premises bearing Assessment No. 528/14D and accordingly, the 2nd petitioner had ownership to the said premises in terms of the said “*grant*”. Therefore, the 2nd to 4th respondents who were members

of the Interview Panel acted in violation of the said Circular No.22 of 2017 by rejecting the petitioners' application on the ground that the 2nd petitioner had not produced documents to prove the ownership of residence in terms of the said Circular.

Thus, the petitioners submitted that the rejection of the 1st petitioner's application for admission to Ananda College; is arbitrary, capricious, unreasonable, discriminatory and amounts to an infringement of the petitioners' fundamental rights guaranteed to them under Article 12(1) of the Constitution.

Submissions of the 1st Respondent

The 1st respondent filed objections and submitted that though the marks were not allocated for the documents furnished by the petitioners by the interview Panel, the Appeals Board considered all the documents furnished by the petitioners and awarded marks to the petitioners according to the said Circular.

Decision of the Appeals Board

The 1st respondent submitted that, after considering the appeal submitted by the petitioners, the Appeals Board granted the following marks to the petitioners.

- | | |
|--|--------|
| 1) Marks for registering in the Electoral Register of both parents | – 15 |
| 2) Ownership of residence | – 00 |
| 3) Additional documents to confirm the place of residence | – 2.75 |
| 4) Proximity to the school from the place of residence | – 45 |

However, marks were not given to the Household Enumeration card submitted by the petitioners, as it is not a document stipulated in Clause 6.1 of the said Circular to prove the ownership of the residence.

Accordingly, the petitioners had been awarded 62.75 marks in total, based on the documents furnished by them to support their application. However, as the cut off mark was 71.75, the 1st petitioner was not admitted to the school.

In the circumstances, the respondents submitted that, the petitioners had failed to establish a violation of their Fundamental Rights guaranteed to them by the Constitution.

Now I will consider the method of selection to Government schools.

Allocation of Marks

Clause 6.0 of the Circular No. 22 of 2017 states that out of the vacancies existing in Grade One in a school, the children belonging to different categories including children of residents in close proximity to the school should be selected through an interview. The subject matter of the instant application is in respect of the said category.

Clause 6.1 of the “Instructions related to the admission of children to Grade One in Government Schools for the year 2018” issued by the Ministry of Education, stipulates that the marking scheme applicable to applicants applying for admission under the category of children living in close proximity to the school. i.e.

- | | |
|--|------|
| 1) Marks for registering in the Electoral Register of both parents | – 30 |
| 2) Ownership of residence | – 15 |
| 3) Additional documents to confirm the place of residence | – 05 |
| 4) Proximity to the school from the place of residence | – 50 |

The said Circular set out the criteria of which the marks should be given to each of the above categories. Since the subject matter of this application is in respect of “ownership of residence”, the allocation of marks under the said category will be considered in this judgment.

Documents in proof of ownership of residence

The Clause 6.1 of the said Circular stipulates the documents that are required to prove the ownership of the residence. Clause 6.1 states;

“The following documents will be accepted as the **documents in proof of ownership** of the place of residence.

- a. Title Deeds
- b. Deed of Gift/Certificates of ownership
- c. Government awards
- d. Documents issued under Temples and Devala Act
- e. Declaration Deeds more than 10 years confirmed by extracts
- f. Houses purchased on housing loans/hire purchased schemes (the lease agreement with the owner and payment receipts)

In case a title deed or a deed of gift is written on a declaration deed, the said declaration deed should have been registered for 10 years or more.

- If the ownership of the place of residence is in the name of the applicant/spouse – 15 marks
- When the ownership is in the name of the mother/father of the applicant/spouse – 10 marks
- **When the ownership is in another name, these marks shall not be given.** [emphasis added]

If required the ownership could be verified by examining the extracts and duplicate copies.

- Registered leased bond/Government quarters (the letter of confirmation by the department head) (Residents in bachelor's quarters are not applicable) / documents to confirm as lease residents under the housing rental act. - 6 marks
- In case of a registered leased bond is written on a declaration deed, the said declaration deed should have been registered for ten years or more.”

The issue that is required to be determined in the instant application is as follows;

Whether the Household Enumeration Card issued by the Colombo Municipal Council can be considered as documentary proof to establish the ownership of the premises bearing Assessment No. 528/14D, in terms of Clause 6.1 of Circular No. 22 of 2017 issued by the Ministry of Education?

Conclusion

The 2nd petitioner submitted that the Colombo Municipal Council issued an Enumeration Card for the premises bearing Assessment No. 528/14D, 2nd Division, Maradana, to Godagama Arachchige Sominona who is the maternal grandmother of the 2nd petitioner.

It was submitted that, Godagama Arachchige Sominona died intestate and on her death, the said premises bearing Assessment No. 528/14D, devolved on her daughter Thomas Gamage Swarnalatha, the mother of the 2nd petitioner, who has been residing in the said premises from 1987 with her husband and three children.

The 2nd petitioner relied on the said Household Enumeration Card, to prove his ownership to the said premises. The 2nd petitioner further submitted that it is his ancestral home and the petitioners have been residing in the said premises since their birth.

The 2nd petitioner submitted that, the premises devolved on his mother after the demise of his maternal grandmother, G. A. Sominona. However, it is pertinent to note that, the said Enumeration card contained the name of one G.A. Sominona as the chief occupant of the said premises and the names of the petitioners are not included in the said Enumeration card.

The petitioners produced an affidavit from the other five children of the said G. A. Sominona (maternal grandmother of the 2nd petitioner), stating that they are not residing in the premises bearing Assessment No. 528/14D, and does not claim the ownership of the said premises.

As mentioned above, Clause 6.1 of the said Circular, stipulates the list of documents that are accepted as documents in proof of ownership of the place of residence. Accordingly, the petitioners had been awarded 2.75 out of 5 marks by the Appeals Board, for confirming their residence after considering the “additional documents to confirm the place of residence” produced by them.

However, no marks were awarded for the household enumeration card issued by the Colombo Municipal Council in proof of the ownership of the residence as it is not a document specified in terms of Clause 6.1 of the said Circular.

Further, I am also of the opinion that the Household Enumeration Card cannot be considered as proof of ownership of a residence in terms of Clause 6.1 of the Circular. In terms of Clause 6.1, marks could not be awarded for the Household Enumeration Card furnished by the petitioners as it is not a document specified in the said Clause of the Circular

In any event the said Household Enumeration Card is not in the name of the 2nd petitioner or his spouse. According to Clause 6.1, no marks can be awarded when the ownership is in someone else’s name. Further, the said Household Enumeration Card cannot be considered as a “grant” as submitted by the petitioners.

In the circumstances, I am of the opinion that the petitioners are not entitled to claim marks for the ownership of the premises bearing assessment No. 528/14D. Hence, the Appeals Board has not violated the Circular No. 22 of 2017, by not granting marks under Clause 6.1 of the said Circular.

However, I am of the opinion that, the interview panel should have considered the other documents submitted by the petitioners and granted marks for the said supporting documents in terms of Clause 6.1 of Circular No. 22 of 2017, even though the petitioners did not have documentary proof to prove the ownership of their residence.

Later, this error had been rectified by the Appeals Board. Hence, I hold that the petitioners' fundamental rights have not been violated by the respondents. Accordingly, the application is dismissed.

No costs.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J

I agree

Judge of the Supreme Court

Murdu N. B. Fernando, PC, J

I agree

Judge of the Supreme Court