

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 & 126 of the Constitution of the Republic.

1. R. L. Buddhika Yangani Henri,
2. Hewa Bettage Sadiv Sasmin (minor)

The Petitioners of; 294/A/1, Matara Gedarawatta, Gunersekara Mawatha, Puvakwatta, Kuburugamuwa.

Petitioners

S.C. (F/R) Application No. 116/2021

Vs.

1. Francis Welege, Principal,
Rahula College, Matara. (Chairman)
- 1A. Sudath Samarawickrama, Principal,
Rahula College, Matara.
1. Padmini Ganewatta, Principal Primary Section
2. Nuwan Senaka Representative of the Old Boys Association
The 1st to the 3rd Respondent of; Interview Board, Rahula College, Matara
3. H.D.B.L. Gunathilaka, Additional Director of Minister, Isurupaya

4. P.A.U. Dulmani
5. P.K. Nanayakkara, Deputy Vice Principal of Sujatha Vidyalaya
6. C.R. Vikramanayaka, Representative of the School Development Committee
7. Manuranga De Silva, Representative of the Old Boys Association
The 4th to 8th Respondents of; Appeals Board, Rahula College, Matara
8. Director- National Schools, Isurupaya, Battaramulla.
9. Secretary, Ministry of Education, Isurupaya, Battaramulla
10. Hon. Attorney General; Attorney General's Department, Hulftsdrop, Colombo 12.

Respondents

BEFORE: S. THURAIRAJA, P.C., J.

KUMUDINI WICKREMASINGHE, J.

JANAK DE SILVA, J.

COUNSEL: Ms. Fadhila Fairoze for the Petitioners

Nayomi Kahawita SC for the 1A and 10th Respondents

ARGUED & : 23/03/2022

DECIDED ON

JANAK DE SILVA, J.

In this matter, Court has granted leave to proceed against the Respondents under Article 12(1) of the Constitution. Further, on 19/01/2022, Court has made a direction in terms of prayer (d) to the petition, directing the 1A Respondent to reserve a vacancy at Rahula College, Matara for the 2nd Petitioner.

An application was submitted to admit the 2nd Petitioner to Rahula College, Matara for the year 2021. The application is marked as P5(a).

According to the applicable circular governing the admission of children to Rahula College, Matara for the year 2021, a total of 180 students had to be admitted at the interviews conducted in accordance with the relevant circulars.

In terms of Clause 6.0 of Circular marked P3(a) and the Guidelines marked P4, 25% of the intake is reserved for the children of Old Boys. Accordingly, for the year 2021, a total of 45 students should have been admitted under the Old Boys Category.

Admittedly, the 2nd Petitioner obtained 50 marks at the interview while the cut off mark for the Old Boys Category was 55.5.

The learned State Counsel admits that in the event the 2nd Petitioner is found by this Court to be entitled to 5.5 marks more than what he received, he is entitled to be admitted to Grade 1 of Rahula College, Matara for the year 2021.

One of the main contentions of the learned Counsel appearing for the Petitioners is that they did not get marks for the documents marked P11, P12 and P13.

The learned State Counsel admitted this position but submitted that marks were not allocated as these 3 documents bear the signature of the Deputy Principal of Sri Rahula College. The learned State Counsel drew the attention of Court to item No. 7 in the log entry marked X5 where it is stated that in order to be considered under the Old Boys Category, the leaving certificate signed by the Principal of Sri Rahula College must be

submitted. Furthermore, it is stated there that if the document signed by the Principal cannot be produced, the document certified by the person having custody will be acceptable. It is also observed that item No. 4 therein states that certificates submitted for consideration under Old Boys Category must be signed by the Principal, Rahula College, Matara. P11, P12 and P13 do not bear the signature of the Principal, Rahula College, Matara.

In this regard, Court observes that the leaving certificate marked P7 has been issued by the Deputy Principal, Rahula College, Matara. However, the Interview Board has considered this document and given 14 marks for the 2nd Petitioner after having considered the period his father was a student at Rahula College, Matara.

Having done so, the Interview Panel failed to give the necessary marks for the document P11, P12 and P13 which have been signed by the Deputy Principal, Rahula College, Matara. The Interview Panel and the school authorities cannot approbate and reprobate.

Scrutton, L.J. in *Verschures Creameries Limited vs. Hull & Netherland Steamship Co. Ltd.* [(1921) 2 KB 608 at 612] held:

"A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction."

Samarakoon C.J. in *Visuvalingam and Others v. Liyanage and Others* [(1983) 1 Sri L.R. 203 at 227] adopted the principle with a different formulation by stating that one *"cannot blow hot and cold."*

In *Ranasinghe v. Premadharmma and others* [(1985) 1 Sri.L.R. 63 at 70] Sharvananda C. J. held:

“In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. When the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one, he cannot afterwards assert the other; he cannot affirm and disaffirm.”

We are of the view that having accepted P7 and given marks for that document, the Interview Panel should have also given marks for P11, P12 and P13.

Furthermore, it is observed that before the Appeals Board, the Petitioners produced documents marked P29a, P29b and P29c signed by the Principal Sri Rahula College Matara which essentially contained the same contents as P11, P12 and P13. They were not considered on the basis that they are new documents. In our view, Clause 10.3 of P4 is wide enough to empower the Appeals Board to consider these 3 documents as they contained the same contents of the 3 documents submitted to the Interview Panel albeit signed by the Principal, Rahula College, Matara.

In the aforesaid circumstances, we are of the view that the 1st to 8th Respondents have acted arbitrarily in refusing to give marks for the 3 documents marked P11, P12 and P13.

The learned State Counsel acting in accordance with the best traditions of the Attorney General’s Department conceded that the log entries referred to above and the acts of the 1st to 8th Respondents in refusing to give marks to documents P11, P12 and P13 after giving marks to P7 is arbitrary.

Upon our finding that P11, P12 and P13 are documents that the Interview Panel and the Appeals Board should have taken cognizance of and given marks, the 2nd Petitioner will be entitled to 6.5 marks in addition to 50 marks already obtained by him.

Accordingly, 2nd Petitioner becomes entitled to receive 56.5 marks and thus becomes entitled to be admitted to Grade 1 of Rahula College, Matara for the year 2021.

For the forgoing reasons, we hold that the 1st to 8th Respondents have violated the fundamental rights guaranteed to the Petitioners in terms of Article 12(1) of the Constitution by arbitrarily refusing to admit the 2nd Petitioner to Grade 1 at Rahula College, Matara for the year 2021. We declare this refusal to be null and void.

We make order directing the 1A Respondent to admit the 2nd Petitioner to Grade 2 for the year 2022 at Rahula College, Matara.

Court makes further order awarding the Petitioners compensation in a sum of Rs. 25,000/- to be paid by the 1st to 8th Respondents within 3 months of today.

Application allowed.

Registrar is directed to forthwith communicate this judgment to the 1A Respondent with copy to the Hon. Attorney General.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT