

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

In the matter of an application for mandates in
the nature of a Writ of Mandamus under and
in terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

C.A(Writ) Application No: 154/2017

Pattiyakumburage Ravindra Prabath,
'Sriyani',
Bandaramulla,
Mirissa.

On behalf of
Pattiyakumburage Sithija Methsara,
(Minor)

PETITIONER

Vs.

1. Francis Welege,
Principal / President of Interview Board,
Rahula College,
Matara.
2. K.K.K. Kodituwakku,
President of Interview Appeal Board,
Rahula College, Matara.
3. Sunil Hettiarachchi,
Secretary,
Ministry of Education,

'Isurupaya', Battaramulla.

4. W.M.Jayantha Wikremanayake,
Director of National Schools,
Ministry of Education,
'Isurupaya', Battaramulla.
5. Hon. Akila Viraj Kariyawasam,
Minister of Education,
Ministry of Education,
'Isurupaya', Battaramulla.
6. Hon. Attorney General
Attorney General's Department
Hulftsdorp, Colombo 12.

RESPONDENTS

Before: P. Padman Surasena, J/ President, Court of Appeal
Arjuna Obeyesekere, J

Counsel: Lakshan Dias with Chinthaka Hettiarachchi for the Petitioner

Ms. Ganga Wakichtaarachchi, Senior State Counsel for the
Respondents

Argued on: 11th May 2018

Written Submissions: Tendered by both Parties on 8th June 2018

Decided on: 19th July 2018

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking a Writ of Mandamus on the 1st and 2nd Respondents to enroll his son Pattiyakumburage Sithija Methsara to Grade 1 of Rahula College, Matara.

The facts of this application very briefly are as follows. The Petitioner is an old boy of Rahula College, Matara. He had submitted an application seeking admission of his son to Grade 1 of Rahula College for the School Year 2017 under the 'Old Boys Category' as set out in Circular No: 17/2016 issued by the Ministry of Education, annexed to the petition marked 'P3'.

The Petitioner states that he was called for an interview on 27th August 2016. According to the Results Sheet of the Interviews published on the Notice Board of Rahula College, annexed to the petition marked 'P5', the cut off mark for admission was 34. The Petitioner's son had obtained 31.25 marks and was placed sixth on the waiting list.

Aggrieved by the marks allotted to his son, the Petitioner had forwarded an appeal in accordance with the provisions of Circular 'P3'. The Appeals Board had interviewed the Petitioner on 6th December 2016. The Petitioner claims that the Appeals Board increased the marks to 35.25. The Petitioner states that when the Final Results, annexed to the petition marked 'P6', were published on 22nd December 2016, he found "to his surprise" that the marks had been reduced to 32.25. Aggrieved by this decision to reduce the marks allotted to him by the

Appeals Board and by the consequent non-admission of his son to Rahula College, the Petitioner filed this application seeking the aforementioned Writ of Mandamus.

When this application was taken up for argument, the learned Senior State Counsel informed Court that the Petitioner had invoked the Fundamental Rights jurisdiction of the Supreme Court in respect of this matter¹. She submitted that the grievance or the "cause of action", so to speak, of the Petitioner and the documents tendered in both applications were identical. She stated further that after considering the factual circumstances set out in the limited objections filed by the Respondents and having heard Counsel, the Supreme Court had refused leave to proceed.² In these circumstances, the learned Senior State Counsel raised a preliminary objection relating to the maintainability of this application and submitted that the filing of this application is an abuse of the process of Court.

The Respondents have submitted with their Statement of Objections, a copy of the petition filed by the Petitioner in SC (FR) 16/2017, marked '1R5' and the affidavits filed by the 1st and 2nd Respondents in the Supreme Court, together with the documents attached thereto, marked '1R6'. This Court has examined the said petition and finds that the aforementioned complaint of the Petitioner to this Court is identical to the complaint that he made to the Supreme Court. The Petitioner had complained further to the Supreme Court that the admission of three students identified in the petition was irregular, as they have made financial

¹ SC (FR) Application No. 16/2017

² A copy of the Order of the Supreme Court has been produced with the Statement of Objections, marked "1R7"

contributions to the school. In this application, the Petitioner complains of only one such student. That is the only difference this Court sees between the facts of the two petitions and the complaints contained therein. Be that as it may, this Court finds that not only is the complaint of the Petitioner in both applications identical, the Petitioner as well as the 1st and 2nd Respondents were parties in the Supreme Court case. Most importantly the relief sought is identical in both applications – i.e. the admission of the Petitioner's son to Grade 1 of Rahula College.

As borne out by the order of the Supreme Court marked '1R7', a bench of three Judges of the Supreme Court, having heard the counsel for the Petitioner and the Respondents, have held that, '*we see no reason to grant leave to proceed with this matter*'.³

The avoidance of multiplicity of actions was considered in Shanthi Chandrasekeram v. D.B. Wijethunga and others,⁴ where Mark Fernando, J held as follows:

"Article 126(1) confers sole and exclusive jurisdiction in respect of infringements of fundamental rights, and Article 126(2) prescribes how that jurisdiction may be invoked. Article 126(3) is not an extension of or exception to those provisions; **if a person who alleges that his fundamental rights have been violated fails to**

³ The Supreme Court case was dismissed on 3rd March 2017. This Writ application was filed on 28th March 2017.

⁴ [1992] 2 Sri LR 293 at 297

comply with them, he cannot smuggle that question into a writ application in which relief is claimed on different facts and grounds, and thereby seek a decision from this Court. On the other hand, there could be transactions or situations in which, on virtually the same facts and grounds, a person appears entitled to claim relief from the Court of Appeal through a writ application under Article 140 or 141, and from this Court by a fundamental rights application under Article 126. Since those provisions do not permit the joinder of such claims, the aggrieved party would have to institute two different proceedings, in two different courts, in respect of virtually identical "causes of action" arising from the same transaction, unless there is express provision permitting joinder. The prevention, in such circumstances, of a multiplicity of suits (with their known concomitants) is the object of Article 126(3). (Emphasis added)

Although this Court is of the view that the Petitioner's application ought to be dismissed on the strength of the aforementioned preliminary objection raised by the learned Senior State Counsel, this Court would like to consider the substantive issue that has been raised in this application and put to rest any concerns the Petitioner may have that he has been treated unfairly by the Respondents.

Admission of students to Grade 1 of Government Schools for the year 2017 was governed by the Circular 'P3'. According to 'P3', students are eligible to be admitted to a school under six categories. While 50% of the vacancies are

allocated to those coming under the 'Proximity category'⁵ another 25% of the vacancies are allocated to children of old boys/old girls.⁶ The Petitioner had sought admission under the latter category.

Each student is allotted marks at an interview, with the maximum marks that could be allotted being 100. Under the Old boy/Old girl category, marks are allotted under four sub-categories. It is admitted between the parties that the Petitioner was allotted 31.25 marks at the interview, as follows.

	Category	Maximum marks	Interview Marks
1	Number of Years the applicant studied in School ⁷	25.00	12.00
2	Educational Performance during school ⁸	25.00	00
3	Sports and Extracurricular achievements during school ⁹	25.00	9.50
4	Membership of OBA and contribution to school ¹⁰	24.00	9.75
	Total	100.00	31.25

⁵ පාසලට ආසන්න පදිංචිකරුවන්ගේ දරුවන්

⁶ අදාළ පාසලේ ආදි සිසු සිසුවියන් වන මව්පියන්ගේ දරුවන්

⁷ අයදුම්කරු පාසලේ අධ්‍යාපනය ලැබූ වසර ගණනකට ලකුණු 2 බැරට්ටු

⁸ පාසලේ කාලය තුළ අයදුම්කරු විසින් ලබාගත් අධ්‍යාපන ප්‍රසාදන

⁹ පාසලේ කාලය තුළ අයදුම්කරු විසින් විෂය සමගාමී කටයුතු වලින් ලබාගත් ප්‍රසාදන

¹⁰ ආදි ශිෂ්‍ය සංගම කාමාවිකත්වය, පාසලේ කාලයේ පසු ලබා ඇති අධ්‍යාපන ප්‍රසාදන හා පාසලේ දියුණුව සඳහා ලබා දුන් විවිධ ආකාරයේ සහයෝග

Any person dissatisfied with the marks allotted may submit an appeal. As a result of an appeal filed by the Petitioner, he was summoned before an Appeals Board where the marks obtained under category three was increased from 9.5 to 12.5 and the marks obtained under category four was increased from 9.75 to 10.75. Thus, with an increase of 4 marks, the total mark allotted was 35.25. According to the Petitioner, this mark was sufficient to secure admission of his son to Grade 1 of Rahula College, Matara. As submitted before, the Petitioners complaint is that even though he obtained 35.25 marks, the published mark was **32.25** and that this reduction of 3 marks is arbitrary and illegal.

What this Court needs to satisfy itself is whether the Petitioners narration of events is true and if so, whether the reduction of 3 marks is arbitrary, illegal or irrational.

The Respondents have admitted the Petitioner's narration of events. According to the Marks Sheet of the Petitioner, annexed to the Statement of Objections marked '1R3', the Appeals Board has added 1 mark for category four. There is no dispute on this mark. According to '1R3', the Appeals Board had initially added 3 marks under category three, with one mark each for the Petitioners participation in an awareness programme conducted by the Society for the Prevention of Substance Abuse, scouting and for being a member of the Junior Western Band.

According to the affidavit of the 1st Respondent filed in the Supreme Court¹¹, the only instance where an adjustment was made to the marks published in the

¹¹Annexed to the Statement of Objections in this application marked '1R6'

Temporary List under the Old Boys category was with regard to the Petitioner. For this reason, the 1st Respondent had carefully examined the file of the Petitioner and found that the 3 marks given by the Appeals Board for the above mentioned activities was incorrect. According to the 1st Respondent, the Petitioner had already been given 1 mark each for participation in an awareness programme conducted by the Society for the Prevention of Substance Abuse, scouting and for being a member of the Junior Western Band by the Interview Board¹². This is also borne out by the detailed marks sheet, annexed to the Statement of Objections marked '1R4'. This Court accepts the explanation of the Respondents that the Interview Board had already given the Petitioner marks for these activities. Therefore, the Petitioner was not eligible to receive an additional 3 marks from the Appeals Board.

As there was no justification for the Appeals Board to have awarded an additional 3 marks, the 1st Respondent had placed an asterisk at the place where the 3 marks had been given on '1R3' and thereafter made an endorsement at the bottom left of '1R3' that, "මෙම ලකුණු 3 වැරදිමකින් ලබා දී ඇත. අතිරේක ලකුණු 01 ක් පමණ".

When the Appeals Board was reviewing their decision prior to publishing of the same in the Notice Board, they had been alerted to the above endorsement of the 1st Respondent and realized that the Petitioner had been awarded 3 marks inadvertently. The 2nd Respondent in her affidavit filed in the Supreme Court

¹² Documents to justify the allocation of marks under each of these activity have been annexed to the petition, marked as 'P2G', 'P2H' and 'P2I' respectively. As admitted by the Petitioner, these three documents have been produced to the Interview Board.

states that particular attention was given to files where an adjustment was being made to the marks given at the interview and that this led to the discovery of the mistake.¹³ The 2nd Respondent claims that she informed the Petitioner of this error over the phone but as the Petitioner failed to call over before the Appeals Board to rectify this error in the presence of the Petitioner, an endorsement had been made on the bottom of the reverse side of '1R3', reproduced below, which explains what transpired from the time of the interview by the Appeals Board to the publication of the results:

“ අතිශයින්ම අමතරව එක්වූ ලකුණු වල හා ගොනුවේ ඇති ලේඛණ සඳහා බැලීමේ දී ගැටලු සහගත තත්වයක් පෙනේ. එබැවින් ඒ විලිබදව නැවත පරීක්ෂා කර බැලීම සිහිසු පී. කේ. ආර්. ඔහුට දුරකථනයෙන් අමතන මුල් විටපත් රාශයේ මා හමුවන ලෙස 2016.12.19 දින දැනුම් දුන් අතර, ඒ මොහොතේ ඔහු රාජකාරියේ යෙදී සිටින බැවින් ගැඹුණු නොහැකි බවත්, පසුදින පැමිණෙන බවටත් විලිතුරු ලබා දෙන ලදී. එසේ වුවද, 2016.12.20 වන දින දුරකථන ඇමතුම් කිහිපයක් ගන්න ද සුභිචාර නොදැක්වූ අතර අදාළ පරීක්ෂණය සඳහා සහභාගී නොවීය. 2016.12.20 වන දින ගැනි ඉක්මනින් දුරකථනයට සුභිචාර දැක්වන වෙන් කෙටි පණුවකින් ද මා විසින් යවන ලදී. ඒ සඳහා ද කිසිදු සුභිචාරයක් නොදැක්වූ බැවින් ලකුණු නැවත සංශෝධනය කරන ලදී. ”

The Petitioner has confirmed that he received a telephone call and a short message (sms) but has not disclosed the contents thereof. This Court is satisfied with the genuineness of the narration of events described by the 1st and 2nd Respondents and the explanations offered by them that the Appeals Board had made a mistake when it initially allotted the Petitioner's son 3 marks. If this

¹³ Annexed to the Statement of Objections in this application marked '1R6'

mistake was not rectified, the Petitioner would have been successful in securing admission of his son to Rahula College, but this would have resulted in a student otherwise eligible being disqualified. In these circumstances, this Court is of the view that the actions of the 1st and 2nd Respondents are neither illegal, irrational or arbitrary.

The Petitioner has only pleaded for a Writ of Mandamus. It is trite law that for a Writ of Mandamus to lie, the petitioner must have a legal right to secure the performance of a legal duty. The Petitioner's legal right to be assigned marks in accordance with the marking scheme in the Circular 'P3' arises only if he is eligible to such marks. This Court has already concluded that the Petitioner is not eligible to receive from the Appeals Board marks for activities for which the Interview Board had already given him marks. In this background, the Petitioner has no legal right to receive the said 3 marks and correspondingly, the Respondents are under no legal duty to grant the Petitioner the additional 3 marks. Thus, the Petitioner is not entitled to the Writ of Mandamus prayed for.

Even assuming that the Circular marked 'P3' could attract a Writ of Mandamus, the Petitioner faces a difficulty. The Circular has a limit on the number of students that can be admitted to a class. If none of the admissions are quashed, the effect of issuing a Writ of Mandamus would be to admit children in excess of the number set out by the Circular, which would then be illegal and contrary to Article 140 of the Constitution. A Writ of Mandamus cannot be sought to enforce an illegality.

In these circumstances, this Court is of the view that the Petitioner is not entitled to a Writ of Mandamus. The Application of the Petitioner is accordingly dismissed, without costs.

Judge of the Court of Appeal

P. Palman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal