

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

*In the matter of an Application under  
and in terms of Articles 17 and 126 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.*

S.C. (F/R) 63/2018

Darmaraja Nilithi Prasadi (Minor)

Appearing by her Next friend

Guardian ad litem

Perumal Darmaraja

Both of No.55, Walpitawatta,

Balgoda, Poddala.

**PETITIONER**

vs.

1. Ms. Sandhya Airani  
Pathiranawasam  
The principal,  
Southlands College,  
Galle.
2. Director of National Schools  
Ministry of Education,  
"Isurupaya", Battaramulla.
3. The Secretary,  
Ministry of Education,

"Isurupaya", Battaramulla.

4. C.C. Jayasinghe  
Parent/Guardian of N.N.  
Jayasinghe,  
No. 130/C, Hakkanawatha,  
Kumme Baddegama.
5. J.V.P. Darshana  
Parent/ Guadian of J.V. Rishadhi,  
Dinlini,  
No. 124/3, Elliot Road,  
Galle.
6. H.M.N. Dhilrukshi,  
Parent/ Guardian of H.T.S.  
Nethusara,  
Keenaduwa, Gonapura, Poddala.
7. K.M. Manimekala,  
Parent/ Guardian of Isil  
Nethusadhi,  
No 70/12, Sri Panyaloka Mawatha,  
Ginthota,  
Galle.
8. The Hon Attorney General,  
Attorney General's Department,  
Colombo 12.

## **RESPONDENTS**

**BEFORE** : **JAYANTHA JAYASURIYA, PC, CJ**  
**B. P. ALUWIHARE, PC, J AND**  
**S. THURAIRAJA, PC, J**

**COUNSEL** : M. P. Ganeshwaran with P. A. J. Dilan Perera for the Petitioners.  
Parinda Ranasinghe, PC, ASG with Ms. Nayomi Kahawita SC for  
the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 8<sup>th</sup> Respondents.  
Lakshan Dias with Ms. Maneesha Kumarasinghe for 5<sup>th</sup> and 7<sup>th</sup>  
Respondents instructed by Ms. Nayanathara Weerasinghe.

**WRITTEN** 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 8<sup>th</sup> Respondents on 20<sup>th</sup> May 2021.

**SUBMISSIONS** : 5<sup>th</sup> and 7<sup>th</sup> Respondents on 09<sup>th</sup> May 2023.

**ARGUED ON** : 17<sup>th</sup> July 2019.

**DECIDED ON** : 3<sup>rd</sup> November 2023.

### **S. THURAIRAJA, PC, J.**

The instant case pertains to an Application filed in terms of Articles 17 and 126 of the Constitution by the Petitioner, namely Darmaraja Nilithi Prasadi, a minor appearing through her Next Friend, Guardian ad litem, namely Perumal Darmaraja (hereinafter referred to as the "Petitioner"). The Petitioner sought redress in connection with an alleged infringement of Fundamental Rights guaranteed under Articles 12(1) and 14(1)(e) of the Constitution by one or more of the Respondents to this Application.

The Respondents in this matter comprise the 1<sup>st</sup> Respondent, the Principal of Southlands College, Galle; the 2<sup>nd</sup> Respondent, the Director of National Schools,

Ministry of Education; the 3<sup>rd</sup> Respondent, the Secretary to the Ministry of Education; the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents, who are Parents/Guardians of students admitted to Southlands College, Galle; and the 8<sup>th</sup> Respondent, the Attorney General, who has been included as a Respondent in accordance with constitutional requirements.

This matter was supported before this Court on 9<sup>th</sup> May 2018, and leave was granted under Article 12(1) of the Constitution.

### **Factual Matrix**

The narrative of this case unfolds against the backdrop of the Petitioner's pursuit of admission by application dated 21<sup>st</sup> June 2017 to Grade One of Southlands College, Galle for the academic year commencing on 1<sup>st</sup> January 2018. This application was made on the grounds of the Petitioner's affiliation with the Christian faith and under the quota allocated for the admission of students belonging to said faith. The Petitioner's application was supported by a letter issued by Rev. A. Ravindra Kumar, the Superintendent Minister of Methodist Church, Galle Circuit, dated 23<sup>rd</sup> June 2017 (marked "P5b"), and a letter issued by the Cavalry Church dated 4<sup>th</sup> March 2017 (marked "P5c"), serving as evidence of the Petitioner and her family's Christian faith.

Subsequently, the Petitioner's father was invited to participate in an interview to appraise the qualifications of his daughter for admission to Grade One at Southlands College, Galle by letter dated 2<sup>nd</sup> August 2017 and issued by the 1<sup>st</sup> Respondent (marked "P6").

Following the interview, the Petitioner was informed that her application had received a total score of 75 marks. In particular, under clause 6.1(b)(iii) of the "Instructions regarding the Admission of Children to Grade One in Government Schools for the year 2018," issued by the Ministry of Education (hereinafter referred to as the "Instructions" and marked "P4"), the admissions application had scored 45 out of a total of 50 marks under the "Proximity of Residence" category.

Thereafter, the Petitioner, through her father, appealed to the 1<sup>st</sup> Respondent by letter dated 20<sup>th</sup> November 2017 (marked "P10"). The grounds for the appeal were two-fold: firstly, the Petitioner asserted the provision of proof of residence in light of the fact that her elder sister was attending the same school, as per section 6.1(b)(ii) of the Instructions; secondly, the contention was raised that, within the administrative District of Galle, there were no schools apart from Southlands College that offered non-Roman Catholic Christianity, as per section 6.1(b)(iii) of the Instructions.

Furthermore, the Petitioner, through her father, submitted a letter of objection dated 30<sup>th</sup> November 2017 (marked as "P11") to the 1<sup>st</sup> Respondent regarding the children of the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents, who were ranked higher than the Petitioner in the provisional list of successful candidates. The Petitioner alleged the use of fraudulent letters and the ineligibility of these students to be classified as Christian candidates.

The Petitioner contended that the 1<sup>st</sup> Respondent did not provide a response to the Petitioner's appeal, as stipulated by the guidelines outlined in section 10 of the Instructions issued by the Ministry of Education in the year 2018. Instead, the Petitioner asserted that she was made aware of her unsuccessful candidacy only upon the display of the final list of successful candidates on the Notice Board of Southlands College, Galle by the 1<sup>st</sup> Respondent on 8<sup>th</sup> January 2018.

The Petitioner further averred that the 1<sup>st</sup> Respondent had failed to adhere to clause 3.2 of the Instructions, which mandates that schools vested in the government, in accordance with the provisions of the Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and the Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961, maintain the original ratio of students belonging to different religious faiths at the time of the school's vesting in the government. In the case of Southlands College, Galle, the percentage of non-Roman Catholic Christian students was determined to be 6.9%, which would amount to 16 seats if a total of 240 students were to be admitted.

Thereby, the Petitioner posited that her non-admission to Grade One of Southlands College, Galle, is violative of Article 12, as the 1<sup>st</sup> Respondent failed to give regard to clauses 3.2 and 6.1 of the Instructions.

Conversely, the 1<sup>st</sup> Respondent averred that as per section 7.0 of the School Admission Circular No. 22/2017 (marked "R1"), 50% of the quota assigned for students of the Christian faith was to be selected from those applying under the "Proximity of Residence" category (comprising 8 students), and the remaining 50% was to be selected from other categories (also 8 students).

The 1<sup>st</sup> Respondent further asserted that, for the admissions cycle of 2018, only 4 students of the Christian faith applied under the other admission categories for Non-Catholic Christian students in terms of the Circular. Consequently, the remaining unutilised quota (4 seats) was made available to students of the Christian faith applying under the Proximity of Residence category, thereby increasing the total number of possible applicants from 8 to 12 students, under the said category.

According to the 1<sup>st</sup> Respondent, the deduction of 5 marks under the "Proximity of Residence" criteria from the Petitioner's application stemmed from the 1<sup>st</sup> Respondent's assumption that Christudeva Balika College, Galle, which also accepts students belonging to the Non-Roman Catholic Christian faith, was in closer proximity to the Petitioner's residence. Thereby, the application of the Petitioner scored below the cut-off mark (79.75 marks) for Grade One admissions in the year 2018.

In February 2020, during the course of these proceedings, the Court was informed of a vacancy on the list of successful candidates admitted to Grade One of Southlands College, Galle due to the 9<sup>th</sup> successful candidate leaving the school in Grade Five. The Petitioner, through her father and by letter dated 6<sup>th</sup> December 2022, requested for the admittance of the Petitioner to fill this vacancy under the quota assigned to non-Roman Catholic Christian students. The same had been refused by the school. The Additional Solicitor General maintained that admitting the Petitioner to Grade Six of

Southlands College, Galle would transgress the provisions of the government Circular No. 17 of 2023, dated 25<sup>th</sup> April 2023, which regulates the entry of students from Grades Two to Eleven. This submission was made in light of the fact that the Petitioner had not obtained sufficient marks to pass the Grade Five scholarship examination.

## **Analysis**

I observe that it is an undisputed fact that the mandated percentage of non-Roman Catholic Christian students to be admitted to Grade One at Southlands College, Galle stands at 6.9% as per the provisions of the Assisted Schools and Training Schools (Special Provisions Act) No. 05 of 1960, and the Assisted Schools and Training Schools (Supplementary Provisions) Act No. 08 of 1961.

In the present case, this is administered by Section 4.2 of Circular No. 22/2017 which states that:

*“1960 අංක 05 දරන උපකෘත පාඨශාලා සහ අභ්‍යාස විද්‍යාල (විශේෂ විධිවිධාන) හා 1961 අංක 08 දරන උපකෘත පාඨශාලා සහ අභ්‍යාස විද්‍යා (පරිපූරක විධිවිධාන) යන පනත් අනුව රජයට පවරා ගන්නා ලද පාසල්වල පුරප්පාඩු පිරවීමේ දී පවරා ගන්නා ලද අවස්ථාවේ තත් පාසලේ සිටි ආගමික සිසු අනුපාතය සැලකිල්ලට ගෙන පුරප්පාඩු සංඛ්‍යාව ආගම් අනුව හා එක් එක් ගණ අනුව බෙදා වෙන් කළ යුතු ය.”*

An approximate translation would read as follows:

*“In filling vacancies in schools vested to the government under the Assisted Schools and Training Schools (Special Provisions) Act No. 05 of 1960 and Assisted Schools and Training Schools (Supplementary provisions) Act No. 08 of 1961, the proportion of children belonging to different religions at the time of vesting the school to the government will be taken into consideration and the number of vacancies in the said school shall be divided proportionately among different religions and the categories.”*

The learned Counsel for the Petitioner relied on ***M.K. Wijethunga and others vs. The Principal Southlands College, Galle (SC/FR Application 612/2004, decided on***

**07.11.2005**), wherein Shirani Bandaranayake J (as her Ladyship was then) observed that, in terms of the extracts of the proceedings of the Methodist Church Synod held in January 1969, there had been 53 Christian students out of the total of 760 students at Southlands College, Galle working out a percentage of 6.9%.

However, it is prudent to inquire whether or not this stipulated ratio is to be maintained beyond the conclusion of the admissions period. I will address this issue following the examination of the 1<sup>st</sup> Respondent's review of the admission applications.

The 1<sup>st</sup> Respondent conceded that the score allocated to the Petitioner was erroneous; it was explained to this Court that the 5-mark deduction suffered by the said application was grounded in the incorrect assumption that Christudeva Balika College, Galle, accepted a quota of 10% or more of non-Roman Catholic Christian students.

Pertaining to clause 7.2.3 of Circular No. 22/2017, it is explicitly delineated that the maximum marks under the "Proximity of Residence" category shall be awarded only if the applicant's place of residence is substantiated and no other Government schools with primary sections exist in closer proximity to the applicant's residence than the school to which they have applied. In instances where other Government schools with primary sections, suitable for the child's admission and in closer proximity to the place of residence than the chosen school, are present, marks shall be deducted at the rate of 05 marks for each such school.

The said clause further stipulates:

*“අදාළ දරුවාට ඇතුළත් වීමට හැකි ප්‍රාථමික අංශ සහිත වෙනත් රජයේ පාසලේ යනුවෙන් අදහස් කරන්නේ එම දරුවාට ඇතුළත්වීමට අවශ්‍ය ඉගෙනුම් මාධ්‍ය අය සහිත පාසලක් ද, තමන්ට අදාළ ගැහැණු හෝ පිරිමි පාසලක් ද, මිශ්‍ර පාසලක් ද යන්න සහ අදාළ ළමයා අයිති ආගම වෙනුවෙන් 10% හෝ ඊට වැඩි ප්‍රතිශතයක් ඇතුළත් කර ගන්නා රජයේ පාසල වේ.”*

(Emphasis added)

An approximate translation of the above would read as follows:

*“Other Government primary schools that the child could be admitted implies a school that provides the learning medium the child has applied for, a girls’, boys’ or mixed school as appropriate for the child and **a school that admits 10% or more children of the religion to which the child belongs.**”*

(Emphasis added)

In light of the above, it is evident that a 5-mark deduction under the "Proximity of Residence" category is applicable only if a school that admits 10% or more students belonging to the candidate's affiliated religion—in this instance, Christianity—is situated closer to the candidate's residence.

The 1<sup>st</sup> Respondent has admitted to erroneously deducting marks based on the incorrect assumption that Christudeva Balika College, Galle, accepted a quota of 10% or more of non-Roman Catholic Christian students. In fact, the actual figure of accepted Christian students at that institution stood at a mere 2%. However, the 1<sup>st</sup> Respondent has contended the reversal of this deduction, the cut-off mark would be raised to 82.5 marks, while the recalculated score of the application submitted by the Petitioner would amount to 80 marks, and thereby, the Petitioner would continue to rank below the successful applicants admitted to Grade One.

At this juncture, it is important to clarify that this Court does not intend to question nor intervene in the admission of the 12 successful candidates, based on the revised cut-off mark of 82.5 marks following the rectification of the erroneous 5-mark deduction.

Nonetheless, the Petitioner’s application was unsuccessful due to the fact that it did not fulfil the requirements to be admitted. However, I observe that had the school authority properly inquired into the allegation made with regard to the admission of the children belonging to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, there would have been a

high likelihood that those students would have disqualified for admission under the quota assigned to non-Roman Catholic Christian students, in which event the Petitioner's application and admittance would have been successful.

While I do not wish to delve extensively into the matter regarding the eligibility of the applications of the children belonging to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents to Southlands College, Galle, it is important to underscore that, notwithstanding the contentions of the 1<sup>st</sup> Respondent to the contrary, it is indeed the duty of the school administration to ensure the validity and accuracy of admissions applications and their accompanying documentation before admitting students. Nevertheless, this Court refrains from intervening in the ongoing education of the children of the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, and thus, no order shall be issued in this regard.

Under these circumstances, I am of the view that the Petitioner's fundamental rights to equality guaranteed under Article 12(1) of the Constitution have been violated. Therefore, I direct the 1<sup>st</sup> Respondent, or the incumbent holder of the office of the 1<sup>st</sup> Respondent, and the 3<sup>rd</sup> Respondent to admit the Petitioner in S.C. (F/R) 63/2018, namely, Darmaraja Nilithi Prasadi, to the appropriate corresponding Grade of Southlands College, Galle forthwith.

***Application Allowed.***

**JUDGE OF THE SUPREME COURT**

**JAYANTHA JAYASURIYA, PC, CJ**

I agree.

**CHIEF JUSTICE**

**B. P. ALUWIHARE, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**