
RIZWAN AND ANOTHER

Vs.

PRINCIPAL, RICHMOND COLLEGE, GALLE AND OTHERS

SUPREME COURT
ALUWIHARE, J.
JAYAWARDENA, J.
M. N. B. FERNANDO, J.
SC/FR/292/2018
FEBRUARY 27, 2019

Fundamental rights—Article 12(1) of the Constitution—Grade one school admission

The 1st petitioner, the father of the 2nd petitioner submitted an application to Richmond College, Galle for the admission of the 2nd petitioner to grade one in the year 2018, under the proximity category based on clause 7. 2 of the circular dated 30. 05. 2017. At the interview, 15 marks were deducted under clause 7. 2. 3 on the basis that three schools other than the preferred school were situated in close proximity to the petitioner's residence. The contention of the petitioner was that the deduction of 10 marks for C. W. W. Kannangara Vidyalaya, Galle and Paramananda Vidyalaya, Galle was contrary to the circular since the said schools admit only 1 % of students

belonging to the Islamic faith. The petitioner relied on a document marked P13. The 2nd respondent Zonal Director of Education from whose office P13 was issued, was not represented before the court.

The respondents took up the position that the petitioner was eligible to seek admission to the said three schools without any hindrance. The petitioner did not challenge this position by way of counter objections.

In terms of clause 7. 2. 3. of the circular *“In the event of having other Government Schools with Primary Sections for the admission of the child which are closer to the place of residence than the School applied for, marks will be deducted at the rate of 05 marks from the maximum marks for each such closer School. Other Government Primary Schools that the child could be admitted mean, if the Government School concerned has the learning medium the child has applied for, if a girls or boys School or a mixed School appropriate for the child and if a Government School which can admit 10% or more children of the religion to which the child belongs.”*

Held:

The key word in clause 7. 2. 3. is “can”. Thus, the question that needs to be answered is how many children of Islamic faith “can” be admitted or what is the percentage of children of Islamic faith that “can” be admitted. The number of children or the percentage of children of Islamic faith actually admitted during the last few years is not material and is not the issue. What the petitioner should establish before the court is that there is a regulation or a rule that the school, being a Government School “can” admit only less than 10% of children belonging to the Islamic faith. The petitioner has failed to adduce any evidence to substantiate that the two schools “can” admit only 1 % of children belonging to the Islamic faith. The petitioner only relies on P13, the percentages of which are disputed by the respondents.

Cases referred to:

1. Laksith and another v. Chairman School Committee, Dharamashoka Vidyalaya, Ambalangoda and others [2009] 2 Sri LR 267
2. Dayawathie v. Principal Girl’s High School Kandy and others (SC/ FR/ 459/2017, SC Minutes of 05. 11. 2018)
3. Wijesinghe v. Attorney General [1978- 79- 80] 1 Sri LR 102
4. Snowden v. Hughes 321 U. S. 1 (1944)

APPLICATION under Article 17 and 126 of the Constitution for infringement of fundamental rights.

M. U. M. Ali Sabry, P. C., with Samhan Munzir and Hassan Hameed for the Petitioners.

Suren Gnanaraj, S. S. C., for the Respondents.

cur. adv. vult.

October 9, 2019

M. N. B. FERNANDO, J.

The 1st and 2nd Petitioners (“Petitioner”) have filed this application seeking a Declaration that the 1st and 2nd Petitioner’s Fundamental Rights guaranteed under Article 12(1) of the Constitution have been violated by one or more of the Respondents and for a Direction to the Respondents to admit the 2nd Petitioner to Grade One of Richmond College, Galle.

This Court granted Leave to Proceed on 26- 11- 2018 for the alleged violation of Article 12(1) of the Constitution against all the Respondents.

The facts of this case, as submitted by the Petitioners are as follows. The 1st Petitioner, the father of the 2nd Petitioner submitted an application dated 08- 06- 2017 to Richmond College, Galle for the admission of 2nd Petitioner to Grade One in the year 2018, under the core category “Children residing in close proximity to the School”, based on Clause 7. 2 of the Admission Circular dated 30- 05- 2017 (P1).

At the interview held on 24- 08- 2017 the 2nd Petitioner was granted 84 marks. 15 marks were deducted under Sub-Clause 7. 2. 3 for 3 schools situated in closer proximity to the Petitioner’s residence than the preferred school, Richmond College, Galle.

On 30- 10- 2017 the school published the ‘Provisional List’ of the students selected for admission to Grade One for the year 2018. The 2nd Petitioner’s name was not in the selected list. He was No. 1 in the ‘waiting list’. The 1st Petitioner submitted an appeal stating inter alia that the Interview Panel had deducted 10 marks under Sub-Clause 7. 2. 3 contrary to the provisions of the Admission Circular P1.

An Inquiry with regard to the appeal was held on 27- 11- 2017. The contention of the Petitioner was that the deduction of 10 marks by the Interview Panel under Sub-Clause 7. 2. 3 for CWW Kannangara Vidyalaya,

Galle and Paramananda Vidyalaya, Galle was contrary to the provisions of the Circular P1, since the said two schools admit only a restricted number of children (viz. 1 %) belonging to the Islamic faith. To buttress the said position, the Petitioner relied on a document marked P13. The Petitioner had obtained the said P13 from the Zonal Education Office, Galle, under the Right to Information Act on a request made by him, for a list of schools which admit less than 10% of children belonging to the Islamic faith.

The school published the 'Final List' of students selected for admission to Grade One in the year 2018 on 11- 01- 2018 and the 2nd Petitioner's name was not included in the list. The Petitioner thereafter, on 16- 01- 2018 lodged a complaint with the Human Rights Commission. Upon the Human Right Commission informing the Petitioner on 14- 09- 2018 that a violation of a Fundamental Right had not taken place, the Petitioner came before this Court on 20- 09- 2018.

The Petitioner's contention before this Court was that the deduction of 10 marks for CWW Kannangara Vidyalaya, and Paramananda Vidyalaya, Galle, was contrary to the provisions of the Circular P1. The Petitioners further submitted that if the said 10 marks (5 marks each for the said two schools) were not deducted, the 1st Petitioner would have obtained 94 marks and would have been on top of the list to gain admission to Richmond College, Galle over and above the four children selected under the quota for children belonging to the Islamic faith in the core proximity category. Thus, the Petitioner alleged, that Respondents actions were violative of his Fundamental Rights guaranteed by the Constitution.

The Respondents represented before this Court namely, 1st, 3rd, 4th and 14th Respondents (Respondents) took up the position that the Interview Panel correctly deducted 15 marks from the Petitioner on the premise that St. Aloysius College, Galle, CWW Kannangara Vidyalaya and Paramananda Vidyalaya, Galle, were in closer proximity to the Petitioner's residence than Richmond College, Galle and that the Petitioner who is of the Islamic faith was eligible to seek admission to the said three schools without any hindrance because the said three schools admit children of the Islamic faith without any restriction and/ or maintain a minimum or maximum percentage for children of Islamic faith of the total admissions.

The 1st Respondent, the Principal of Richmond College, Galle, in his Affidavit filed before this Court further submitted that Richmond College,

Galle being an Assisted School vested in the Government in or about 1960, had to maintain quotas for students of different religions, similar to those maintained at the time of vesting of the school in the Government vide Clause 4. 2 of the Admission Circular and was required to maintain a quota of 3. 1 % for children of the Islamic faith. Thus, out of the total student intake of 266 students for Grade One in the year 2018, 8 students had to be children belonging to the Islamic faith.

Further, the 1st Respondent submitted, in terms of the applicable Circular, 50% of the Islamic student quota had to be selected from those applying under the proximity of residence category and the balance 50% from the other categories mentioned in the Circular and the said percentages and numbers were maintained by Richmond College by admitting 4 students out of the 8 students mentioned above, from the proximity category. The Respondent also averred that the cut-off mark for admitting applicants of the Islamic faith under the proximity of residence category was 87 marks and admittedly the Petitioner obtained only 84 marks and therefore was placed in the waiting list, at the number one position.

The 1st Respondent further averred that by virtue of Sub-Clause 7. 2. 3. of the Admission Circular P1, from the maximum 50 marks that could be awarded, 5 marks had to be deducted for each school on the basis of proximity to other eligible schools. With regard to the Petitioner, three schools, namely, St. Aloysius College, Galle, CWW Kannangara Vidyalaya, and Paramananda Vidyalaya were in closer proximity to Petitioner's residence, than Richmond College and 15 marks had to be deducted. Further, the said three schools admitted children of Islamic faith without any hindrance, restriction or limitation, and without maintaining a minimum or maximum percentage unlike Richmond College, Galle which was an Assisted School and vide Clause 4. 2 had to maintain a particular quota and therefore the deduction of 15 marks (5 marks each for the said 3 schools) was in terms of the Circular. The Respondents also submitted that the Petitioner failed to secure sufficient marks over and above the four students selected under the quota for students of the Islamic faith seeking admission to Grade One of Richmond College, Galle, under the core proximity of residence category and therefore was not eligible to gain admission to Richmond College, Galle.

Upon perusal of the Brief before us, we observe that the Petitioner had not filed a Counter Affidavit contravening the position of the Respondents.

The Petitioner's submission before this Court was based upon the document issued by the Information Officer of the Zonal Education office, Galle, marked P13, dated 19- 09- 2017, obtained after the interviews were held for admissions to Richmond College, Galle, and tendered by the Petitioner to the Appeal Board. P13 referred to a few schools that admit less than 10% of children belonging to the Islamic faith. P13, did not refer to St. Aloysius College, Galle. But it referred to Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya. Against the said two schools, one percent (1 %) was recorded. We also observe that the Zonal Director of Education the 2nd Respondent, from whose office P13 was issued, was not represented before this Court by the State Counsel or by any other Counsel.

The 1st Respondent in his objections took up the position that since he had doubts about the accuracy of the percentages referred to in P13, he requested the 2nd Respondent to call for statistics directly from the Principals of the said two schools. The 1st Respondent further submitted, that CWW Kannangara Vidyalaya and Paramananda Maha Vidyalaya in fact, had not received sufficient number of applications to fill even one class and therefore, during the last few years, all applicants to Grade One of the said two schools, were admitted without any restriction, or limitation whatsoever. As observed earlier, the Petitioner had not challenged the said position before this Court by way of a Counter Affidavit or in the submissions made before this Court.

Thus, the main issue that this Court has to consider is whether the deduction of 10 marks for CWW Kannangara Vidyalaya and Paramananda Maha Vidyalaya is in violation of Sub-Clause 7. 2. 3 of the Admission Circular marked P1.

Sub-Clause 7. 2. 3. of the Admission Circular reads as follows: -

Proximity to the School from the place of residence

Maximum marks will be given only if the applicant's place of residency is proved and if there are no other Government Schools with Primary Sections located closer to the place of residence than the School applied for. In the event of having other Government Schools with Primary Sections for the admission of the child which are closer to the place of residence than the School applied for marks will be deducted at the rate of 05 marks from the maximum marks for each such closer School.

(Other Government Primary Schools that the child could be admitted mean, if the Government School concerned has the learning medium the child has applied for, if a girls or boys School or a mixed School appropriate for the child and if a Government School which can admit 10% or more children of the religion to which the child belongs.) (Maximum 50 marks)

Thus, if an applicant has proved his residence, the computation of marks begins for this Sub-Clause from a maximum of 50 marks and scales down depending on the number of schools that are located between the residence and the preferred school applied for by the applicant. 5 marks are deducted for each school without a limitation on the number of schools. Thus, the greater the number of schools, more marks are deducted and an applicant could even lose all 50 marks if there are 10 Schools in between. The applicant is required to name the said schools which are in closer proximity to the preferred school in the Application Form. The Application Form (P2) tendered to Court by the Petitioner does not indicate a single school under the particular column. The mark list (P11) buttresses this position. The column where the parents had to self-assess marks for schools in closer proximity to preferred school was left blank.

The application tendered by the Petitioner (P2) further revealed that the Petitioner applied only to two schools namely, Richmond College, Galle and Paramananda Vidyalaya for admission to Grade One in the year 2018 though the Admission Circular requires a parent to apply to at least six schools including three Provincial Schools. (vide Clause 5. 6)

The Respondent's position before this Court was that for Grade One admissions to Richmond College for the year 2018, based upon Sub Clause 7. 2. 3 of the Admission Circular, as was the practice in earlier years, across the board for all applicants, marks were deducted for St. Aloysius College, Galle, Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya respectively. With regard to the Petitioner, since all three Schools were located between the Petitioner's residence and Richmond College, 15 marks were deducted from the maximum 50 marks, awarding only 35 marks (i. e 50- 15=35 marks) under this particular Sub-Clause.

The Petitioner, although in his Application Form under the proximity Sub-Clause did not reveal or refer or name any school, it is observed

that the Petitioner before this Court is not challenging the reduction of 5 marks for St. Aloysius College, Galle. The Petitioner's grievance, based on P13, (the accuracy of which is in dispute by the Respondents) is only in respect of deduction of 10 marks for Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya. The Petitioner's contention is that the Petitioner being of Islamic faith is entitled to the said 10 marks.

The Sub-Clause clearly states that 5 marks should be deducted, for all school situated between the preferred school and the place of residence, provided it fulfills three conditions, namely, the school should have the learning medium of the child, a girls' or a boys' school appropriate for the child and a school which can admit 10% or more children of the religion to which the child belongs. The rationale for this provision is very clear. If there is a school in close proximity to which the child can gain admission, but admission is sought to a school further away, then marks should be deducted for such school for which admission was not sought, provided it is a Government School, it has the medium of learning, it admits children of the gender of the child and it has no quota restriction below 10% with regard to the religion to which the child belongs.

Thus, the Petitioner's case before this Court is that Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya are not schools that "can admit 10% or more children of the Islamic faith" and therefore, deduction of marks under Sub-Clause 7. 2. 3 for the said two schools, violates his Fundamental Rights guaranteed by Article 12(1) of the Constitution.

The only material placed before this Court to substantiate that the said two schools cannot admit more than 10% of children of Islamic faith is P13, which refers to one per cent (1%) against the name of the said two schools. P13 is disputed by the Respondents. In fact, the Respondent's contention before this Court is that there are no restrictions or limitations pertaining to admission of children of Islamic faith to the said two schools.

We observe that the key word in the said Sub-Clause is "can". Thus, the question that needs to be answered is how many children of Islamic faith "can" be admitted or what is the percentage of children of Islamic faith that "can" be admitted. The number of children or the percentage of the children of Islamic faith actually admitted during the last few years is not material and is not the issue. What the Petitioner should establish before this Court, is that there is a regulation or a rule that the school, being a Government School "can" admit only less than 10% of children belonging to the Islamic faith or that there are restrictions placed on the

said school with regard to admissions or the said school “can” admit only a particular number of children of a particular faith or a particular percentage of children belonging to a particular faith. For instance like the situation referred to in Clause 4. 2 of the Admission Circular (P1) pertaining to schools vested with the Government under Assisted Schools and Training Schools (Special Provisions) Act, No. 5 of 1960 and Assisted Schools and Training Schools (Supplementary Provisions) Act, No. 8 of 1961. The Petitioner has failed to adduce any evidence before this Court to substantiate that the said two schools “can” admit only 1 % of children belonging to the Islamic faith. The Petitioner only relies on P13, the percentages of which are disputed by the Respondents. The Petitioner has not placed material before this Court to even suggest that the said two schools were vested with the State and/or maintain quotas for different religions as encapsulated in Clause 4. 2 of the Admission Circular P1.

In any event, the provisions of the said Clause 4. 2 is in respect of filling of vacancies where consideration should be given to the proportion of children belonging to different religions at the time of vesting of the school with the Government. It does not speak of a minimum or maximum percentage.

Thus, the Petitioner has failed to adduce any material before this Court to indicate that the said two schools cannot or will not or restrict admission of children belonging to the Islamic faith. The failure of the Petitioner to adduce evidence before this Court should be considered from the perspective of the 1st Respondent who affirms that in fact, all applicants without any limitation or restriction will be admitted to the said two schools and the said two schools do not receive sufficient number of applications to fill up even one class.

The Respondents further submitted that in the year 2018 alone, the percentage of children belonging to Islamic faith admitted to CWW Kannangara Vidyalaya was 12% whereas for Paramananda Maha Vidyalaya it was 22%. As observed earlier, the Petitioner had not challenged this position by way of a Counter Affidavit nor established before this Court, that the said two schools cannot admit more than 10% of children belonging to the Islamic faith and therefore, the deduction of marks for the said two schools from the Petitioner, contravenes Sub-Clause 7. 2. 3 of the Admission Circular P1. Hence, we see no merit in the assertion of the Petitioner, that his Fundamental Rights have been violated by the Respondents.

We also observe in the Application Form P2, tendered by the Petitioner to Richmond College, Galle the Petitioner sought admission to only one other school and it was Paramananda Maha Vidyalaya, Galle. The Petitioner had failed to inform this Court, whether he was able to gain admission to Paramananda Maha Vidyalaya, Galle or whether the 2nd Petitioner was deprived of admission to the said school, on the ground that the percentage referred to in P13 for children of Islamic faith i. e. 1 % had been exhausted.

In the above circumstance, we hold that the Petitioner's application filed before this Court is misconceived in law and devoid of merit.

In the written submission filed before this Court, the Petitioner relies on the dicta of Anil Gooneratne J. in a Court of Appeal case *Laksith and another v. Chairman School Committee, Dharamashoka Vidyalaya, Ambalangoda and others*,¹ pertaining to a writ application, where His Lordship held, that "Education is one of the most important aspects in any civilized society as such authorities concerned are under a public duty to ensure and grant the right to admit a child to a school (if possible of his choice) if the admission requirements are fulfilled."

Whilst agreeing with the observations of the learned judge, we observe that the said statement is a qualified statement. It says "if admission requirements are fulfilled", then the authorities are under a public duty to ensure and grant the right to admit a child to a school, preferably of his choice.

In the instant application before us, the Petitioner has failed to fulfill the admission requirements referred to in Clause 7. 2 under the core category "Children of residents in close proximity to the school" and specifically the requirement stated in Sub-Clause 7. 2. 3 pertaining to 'Proximity to the School from the place of residence'. The Petitioner has failed to refer to a single school as being in close proximity to the preferred school in the Application Form tendered on 08- 06- 2017 (P2) and also in the Form submitted to the Interview Panel on 24- 08- 2017 (P11) and failed to self-assess marks for such Schools in the mark sheet P11. (vide Sub-Clause 7. 2. 3).

The Petitioner has also not given any justifiable reason or any reason as to why the Petitioner omitted to refer to St. Aloysius College, Galle, CWW Kannangara Vidyalaya and Paramananda Maha Vidyalaya in the Application Form and specifically St. Aloysius College, Galle, for which the deduction of marks is not challenged by the Petitioner before

this Court. Therefore, the admission requirements as referred to in the above quoted statement have not been fulfilled by the Petitioner in order to assert that the authorities have a public duty to admit the child to the school of his choice.

Further, the Petitioner has failed to establish before this Court, that Paramananda Maha Vidyalaya, Galle and CWW Kannangara Vidyalaya, Galle are two schools that restrict admission to children of Islamic faith and therefore, cannot admit 10% or more children of the Islamic faith which is the crux of the Petitioner's challenge before this Court. Thus, we observe that the Petitioner, has not established before this Court, that the decision to deduct 10 marks for Paramananda Maha Vidyalaya and CWW Kannangara Vidyalaya under Sub-Clause 7. 2. 3 for admission to Grade One of Richmond College, Galle, in the year 2018 by the Respondents, specifically the Interview Panel and the Appeal Board is discriminatory in nature and infringes the Petitioner's Fundamental Rights.

In concluding, I wish to refer to the case of *Dayawathie v. Principal Girls' High School Kandy and others*,² a recent Judgment of this Court pertaining to Grade One admissions to Girls' High School, Kandy, for the year 2018, based on the same Admission Circular which is referred to in the application before us as P1.

In the said Judgement, Aluwihare J. referred to the Judgement of *Wijesinghe v. Attorney General*³ and relied on Stone C. J.'s off-quoted dictum in *Snowden v. Hughes*⁴ and held, that it cannot be concluded that the Respondents in the said Fundamental Rights application acted with an insidious discretionary purpose when they refused to admit the Petitioner's daughter to Girls' High School, Kandy.

I wish to repeat the above mentioned dictum of Stone C. J. herein.

The judicial decision must of necessity depend on the facts and circumstance of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.

In the case before this Court as enumerated above, the Petitioner has failed to establish a single element of intentional and purposeful discrimination or unequal application of the law particularly to the children of Islamic faith.

In the said circumstances, I hold that the 1st and 2nd Petitioners have failed to prove that the deductions of 10 marks by the Respondents, for the two schools Paramananda Vidyalaya, Galle and CWW Kannangara Vidyalaya, Galle being in closer proximity to the residence of the Petitioner than the preferred school Richmond College, Galle was done arbitrarily and in contravention of the Admission Circular P1. Therefore, I hold that the Respondents have not infringed or violated the Fundamental Rights of the 1st and 2nd Petitioners guaranteed under Article 12(1) of the Constitution.

Accordingly, this application is dismissed.

ALUWIHARE, J. - *I agree.*

JAYAWARDENA, J. - *I agree.*

Application dismissed.

Judgment by: Murdu Fernando, PC, J.

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