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 writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CASE NO: CA/WRIT/0440/2014

Senadheerage Hesandu Dilsara,
No. 140/2, Saranapala Himi Mawatha,
Borella,
Colombo 08.

Appearing by:

Senadheerage Sujeewa Rajaratne,
No. 140/2, Saranapala Himi Mawatha,
Borella,
Colombo 08.

PETITIONER

VS.

1. Upali Gunasekara,
   The Principal,
   Royal College,
   Reid Avenue,
   Colombo 07.

1A. B. A. Abeyrathna,
   The Principal,
   Royal College,
   Reid Avenue,
   Colombo 07.

2. Kithsiri Liyanagamage,
   Principal,
   Ananda College,
   Colombo 10.

   And also,

   Chairman,
   Appeals and Protest Board,
   Grade 1 Admission,
   Royal College,
   Colombo 07.

3. S. D. Keerthisena,
   Deputy Principal,
   Royal College,
   Colombo 07.

4. Manju Ariyaratne,
   Representative,
   Royal College Union,
   c/o: Royal College,
   Colombo 07.

5. The Secretary,
   Ministry of Education,
   Isurupaya,
   Pelawatta,
   Battaramulla.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &**

K. K. A. V. SWARNADHIPATHI, J.

Counsel**:** Manohara de Silva, P.C. with Anusha N. Perusinghe for the Petitioner.

Priyantha Nawanna, P.C., A.S.G. for the 1st, 2nd, 3rd & 5th Respondents.

Rajeev Amarasuriya for the 4th Respondent.

Written Submissions on: 29.10.2019 (by the Petitioner).
17.09.2019 (by the 1st, 2nd, 3rd & 5th Respondents).
15.10.2019 & 24.01.2020 (by the 4th Respondent).

Argued on: 27.01.2021.

Decided on: 17.03.2021.

MOHAMMED LAFFAR, J.

1. The Petitioner in this application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking the discretionary remedies of writs of certiorari and mandamus.

2. The Petitioner is a minor and therefore makes this application, appearing by his next friend, his father Senadheerage Sujeewa Rajaratne.

3. After filing their respective statements of objection, the Respondents have moved that this court should in the first instance decide on the preliminary objections as to the maintainability of this application for judicial review and written submissions have been tendered expatiating on the preliminary objections.

4. For purposes of fully comprehending the scope of the preliminary objections raised on behalf of the Respondents, the factual matrix surrounding the basis of this application repays attention.

Factual matrix

5. In response to a circular No. 23/2013 dated 23.05.2013 (marked as 'P1') published by the 5th Respondent-Secretary, Ministry of Education, the Petitioner had submitted to the 1st Respondent- Principal of Royal College, Colombo 07, an application dated 07.06.2013 (marked as 'P2') seeking admission to Grade 1 of Royal College for the year 2014.

The application had been presented under the *'children of residents in close proximity to the school'* category. *[According to the 'Guidelines/Instructions and Regulations regarding admission of children to Grade 1' which is a component of the afore-stated 'Notification' entitled 'Instructions related to admission of children to Grade One in the Government Schools for the Year 2014' issued by the 5th Respondent, 50% of children of the maximum number of students who may be selected for Grade 1, should be selected from the 'Children of residents in close proximity to the school' category - vide Clause 6.0 (a) 1 of P1.]*

6. In the said application presented to the 1st Respondent - Principal of Royal College, Colombo 07, the Petitioner had taken up the position that, he together with his family, including her wife and the children are resident at No. 9/1A/1/1, Gomez Path, Havelock Town, Colombo 05, the same being approximately 650 meters distance from Royal College, Colombo 07.

7. In response to the aforesaid application for admission to Royal College, the Petitioner had been called for an interview which was subsequently held on 17.08.2013. At the interview, in support of their application, the Petitioner and the applicant (i.e., Petitioner's Father) had tendered for examination several documents – P4 to P7 to the Interview Panel (chaired by the 1st Respondent) which were required by the 1st Respondent.

8. According to the Petitioner, following the interview held on 17.08.2013, at which the afore-stated documents had been examined, the application for admission to Royal College, Colombo, presented by the Petitioner had received the following marks:

Criteria	**Maximum marks**	**Marks awarded to the Petitioner**
Clause 6.1.I-Residence	35	35
Clause 6.1.II-Documents in proof of place of residence	10	04
Clause 6.1.III-Additional documents in proof of place of residence	05	01
Clause 6.1.IV-Proximity to the school from the place of residence	50	20
Total	**100**	**60**

9. Based on the marks received for each category, the application of the Petitioner had received a total of 60 marks out of a maximum of 100, which is below the purported cut off point 64 marks and was therefore placed on the waiting list.

10. The Petitioner states that under Clause 6.1. IV in the above table, the Petitioner has been awarded 20 marks, having deducted 30 marks (i.e., 05 marks for each school) for the following six schools which purportedly exist *with primary sections that the Petitioner could be admitted to* between Royal College, Colombo 07, and the Petitioner's place of residence:

    1. Thurstan College, Colombo 07
    2. Isipathana Vidyalaya, Colombo 05
    3. Vidyathilaka Vidyalaya, Colombo 05
    4. St. Mary's Sinhala Vidyalaya, Colombo 05
    5. Lumbini Vidyalaya, Colombo 05
    6. Dudley Senanayake Vidyalaya, Colombo 05

11. However, the Petitioner states that as demonstrated by letter dated 15.08.2013 (marked as 'P9'), the Principal of Dudley Senanayake Vidyalaya, Colombo 05 has stated that the said school would not be admitting children to Grade 1 for the year 2014 since the said school is undergoing development under the National Programme for developing

a Thousand Secondary Schools. The Petitioner, by appending document P11, further submits that the Ministry of Education on 13.05.2013 issued a letter, inter alia, directing that schools which are to undergo development in terms of the National Programme for developing a Thousand Secondary Schools should not take steps in respect of Grade 1 admissions for the year 2014.

12. It is in these circumstances, the Petitioner submits that deducting 05 marks for Dudley Senanayake Vidyalaya, Colombo 05 is illegal, arbitrary, *mala fide* and *ultra vires* the provisions of the circular P1 as the said school cannot be considered as a *"Government School with primary section between the school applied to and the place of residence".*

13. Against the decision of the 1st Respondent to award the Petitioner only 60 marks having deducted 05 marks for Dudley Senanayake Vidyalaya, Colombo 05 as aforesaid, the Petitioner submitted an appeal dated 20.10.2013 to the Appeals and Protest Board consisting of the 2nd to 4th Respondents together with two others through the 1st Respondent.

14. Consequently, by letter dated 07.11.2013 (marked as 'P12-b'), the Petitioner's father was called to be present before the said Appeals and Protest Board on 30.11.2013. According to the Petitioner, at the hearing, the Petitioner's contention with regard to Dudley Senanayake Vidyalaya, Colombo 05 was accepted by the members of the Appeals Board and therefore the Petitioner was assured that the said error would be rectified.

15. However, when the final list of selectees for Grade 1 admission at Royal College, Colombo 07 was displayed on the school Notice Board, the Petitioner was once again placed on the waiting list, at No. 16 having purportedly scored only 60 marks. The Petitioner further states that the cut-off point on the final list too remained at 64 marks.

Appeal to the 5th Respondent, Secretary of Ministry of Education in terms of 11.10 of P1

16. The Petitioner submits that, being dissatisfied with the Interview Panel and the Appeals and Protest Board to award the Petitioner only 60 marks notwithstanding the matters placed before the Appeals Board, on 29.12.2013 he made an appeal to the 5th Respondent, the Secretary, Ministry of Education in terms of clause 11.10 of P1.

17. The Petitioner further states that in response to the aforesaid appeal to the 5th Respondent, the Petitioner is aware that a committee was appointed to inquire into the same and based on its findings the 5th Respondent by his letter dated 20.02.2014 (marked as 'P18') directed the 1st Respondent to admit the Petitioner into Grade 1 of Royal College, Colombo 07.

18. However, the Petitioner states that, despite numerous visits to meet the 1st Respondent subsequent to receiving P18, the 1st Respondent has refused or failed to comply with the direction made by the 5th Respondent as reflected in P18 and in the circumstances the Petitioner has not been admitted to Grade 1 of Royal College, Colombo to date. It is further revealed from the Petition that, due to the said refusal or failure of the 1st Respondent, the Petitioner dispatched two letters dated 13.03.2014 and 21.04.2014 to the 5th Respondent, bringing to his notice such refusal or failure of the 1st Respondent to admit the Petitioner to Grade 1 as directed by the 5th Respondent. These letters have been marked as P19-a and P19-b by the Petitioner.

19. The Petitioner further submits that, on or around 27.12.2013 he made a complaint to the Human Rights Commission against, inter alia, the aforesaid decision of the 1st to 4th Respondents to place the Petitioner on the waiting list by awarding the Petitioner only 60 marks. Pursuant to the document marked P20, it is clear that, upon the complaint made by the Petitioner, the Human Rights Commission held an inquiry on

several dates and at the end on 31.07.2014 made its recommendation, inter alia, to admit the Petitioner to Grade 1 of Royal College, Colombo 07.

20. However, the Petitioner further states that on 08.08.2014 when the Petitioner and his father met the 1st Respondent in anticipation of relief pursuant to P20, the 1st Respondent had informed the Petitioner and his father that the Petitioner would not be admitted to Grade 1 of Royal College. Therefore, the Petitioner further submits that similar to the aforesaid direction of the 5th Respondent to admit the Petitioner to Grade 1 which was not complied with by the 1st Respondent, the said recommendation of the Human Rights Commission too has been completely ignored and disregarded by the 1st Respondent and the Petitioner to date has not been admitted to Grade 1 of Royal College, Colombo 07.

21. In the above circumstance, the Petitioner argues that the refusal of the 1st Respondent to admit the child to Grade 1 of Royal College for the year 2014, the refusal to comply with the direction given by the 5th Respondent and the refusal to implement the recommendations of the Human Right Commission are unreasonable, irrational, malicious, illegal, against the principles of natural justice and *ultra vires* of the provisions of Ministry of Education circular–P1 and the provisions of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996.

22. In view of the foregoing, the Petitioner sought, inter alia, the following relief:

    b. A writ in the nature of certiorari to quash the decision of the Interview Panel consisting of the 1st Respondent together with four others to award the Petitioner only 60 marks by deducting 05 marks for the purported reason that Dudley Senanayake Vidyalaya, Colombo 05 qualifies as a school with a primary section that the Petitioner could be admitted to.

c. A writ in the nature of Certiorari to quash the decision of the Appeals and Protest Board consisting of the 2nd to 4th Respondents together with two others to award the Petitioner only 60 marks as evinced by P13 by deducting 05 marks for the purported reason that Dudley Senanyaka Vidyalaya, Colombo 05 qualifies as a school with a primary section that Petitioner could be admitted to.

d. A writ in the nature of Mandamus to order the 1st Respondent to comply with the direction made by the 5th Respondent as reflected in P18.

e. A writ in the nature of Mandamus to order the 1st Respondent to comply with the direction made by the Human Rights Commission of Sri Lanka as reflected in P20.

23. However, during the course of the argument, the Counsel for the Petitioner informed Court that he would confine his relief to prayer (d) of the Petition. Accordingly, this Court is invited to see the legality in granting relief (d) i.e., writ of mandamus.

Preliminary Objections

24. Before I proceed to set down the decisions on the preliminary objections, let me crystalize them in a nutshell. The objections some of which are often described as discretionary bars are as follows:

1. Suppression and misrepresentation of material facts or Absence of *Uberirimae fides*.
2. Non-citing of necessary parties who are entitled to be heard, as any order adverse would affect their rights.
3. The matter urged in the application had been adjudicated by the Supreme Court in a similar case.

Suppression of material facts or Absence of *Uberrima fides*:

25. The Respondents, in support of this preliminary objection, stated that the Petitioner had not been qualified based on the documents relied on by the Petitioner to satisfy residency criteria. More specifically, the learned Additional Solicitor General for the 1st-3rd and the 5th Respondents raised this objection on the basis that, being Deed of Lease No. 635 dated 14.05.2011 (P6-c), was a false or a forged document on the basis that the Notary Public who executed the said instrument has referred to the same as a Last Will in his monthly list submitted to the Land Registry, which had been made only to legitimize a claim for admission to school on the basis of residency criteria spelt out in P1.

26. Accordingly, it was argued by the learned Additional Solicitor General that, as stated in the Circular–P1 itself, the documents submitted for admission should remain intact until the selection process is over and even thereafter as it is permissible under the law to disqualify a student if documents are found to be false or forged. It was further argued by the learned Additional Solicitor General that the integrity of the documents should be maintained even when the matter is taken to judicial forum because the court is bound to look at the integrity and acceptability of the documents when a court of law is called upon to decide on the admission or otherwise of a student. Thus, it was the contention of the learned Additional Solicitor General that, the Petitioner has failed to satisfy this Court on the all-important issue of the integrity of the Deed of Lease, P6-c and thereby acted in breach of the principle of *uberrima fides,* which is a *sine qua non* for the success of the application.

27. However, when replying to the above contention, the learned President's Counsel for the Petitioner submitted that the Deed of Lease-P6c is duly registered by the land registry and the registration has not been cancelled or altered in terms of section 39 of the Registration of

Documents Ordinance, No. 23 of 1927 (as amended) and therefore the registration of the same is valid and stands to date. He further argued that, according to section 33 of the Notaries Ordinance, No. 01 of 1907 (as amended), in any event, non-compliance of the Rules of the Notaries Ordinance by the Notary Public cannot invalidate the Deed of Lease. Therefore, he submitted that the above contention against the validity of Deed of Lease P6-c is untenable and made without merit.

28. According to the scheme contained in P1, the scheme recognizes two categories of documents that may be produced in proof of residency. They have been identified as main documents and additional documents. Clause 6.1.I of the scheme stipulates the types of main documents that may be submitted in proof of residency and the assignment of marks for the submission of such documents. These main documents include (i) Title Deeds, (ii) Deeds of Gift, (iii) Certificates of ownership, (iv) Government awards, (v) Documents (lease agreements and payment receipts) relating to houses purchased on housing loans/hire purchase schemes, (vi) continuously registered lease bonds, and (vii) other documents confirming residency etc. It would be seen that the several categories of documents stipulated above, postulates non-insistence on actual ownership. Residency arising out of other forms of actual possession is also recognized. It is to be noted that the Petitioner's father (applicant) had submitted the above Deed of Lease P6-c, as a main document in proof of place of residence and accordingly, the Interview Panel consisting the 1st Respondent, *being satisfied* with P6-c, had awarded 04 marks out of a maximum 10.

29. Thus, this Court of the view that, the learned Additional Solicitor General's arguments on the validity of the document P6-c (which was already accepted by the Interview Panel), cannot be allowed first time in this forum.

30. In the circumstances, I see no merit in the contention of the Respondents that the Petitioner lacks *uberrima fides* and thus this court overrules the preliminary objection raised on this discretionary bar.

Non-citing of necessary parties:

31. The other preliminary objection that both Counsel for the Respondents have raised is that the Petitioner has failed to cite other students or their next of kin as Respondents who would be affected by the decision of this court to change the selection of students as urged by the Petitioner or to quash the decision of the Interview Panel and the Appeals and Protest Board [vide prayer (b) and (c) to the Petition dated 19.12.2014].

32. Further, referring to the document marked 1R4(B), Counsel for the 4th Respondent submitted that, if marks are not deducted as canvassed by the Petitioner, then there are seven more students, in addition to the Petitioner would then be entitled to marks more than 65 which is above the cut-off mark of 64, and if the Petitioner's argument is upheld, then all the eight students would get more marks than the present cut-off mark.

33. Furthermore, the Counsel for the 4th Respondent submitted that notwithstanding the other remaining students, the other 4 members of the Interview Board and 2 members of the Appeals Board have not been made as Respondents by the Petitioner.

34. As I mentioned before, since the Petitioner has confined his relief to only prayer (d) of the Petition i.e., Mandamus to order the 1st Respondent to comply with the direction made by the 5th Respondent, I am of the view that, suiting other remaining members of the Appeal and Protest Board is not necessary to adjudicate the instant application.

35. It has to be remembered that the power to issue writs vested by Article 140 of the Constitution in this Court is a supervisory power and not an appellate jurisdiction (vide *The Board of Trustees of the Tamil University Movement vs. F.N. de Silva*[1]) and in exercising the writ jurisdiction, this Court will not consider whether the decision is right or wrong in the context of the *greater benefit of the society or otherwise*, but *whether the decision is lawful or unlawful in the eyes of the law*. (Vide *Public Interest Law Foundation vs. Central Environment Authority*[2]).

36. As observed by Marsoof, J. in *J. S. Dominic vs. Minister of Lands & Others*[3] writs in the nature of certiorari and mandamus, which are granted by our courts *"according to law"* as provided in Articles 140 and 154P (4) (b) of our Constitution, had their origins in English common law and were known as *"prerogative writs"* as they were the means by which the Crown, acting through its courts, ensured that inferior courts or public authorities acted within their proper jurisdiction. The hallmark of such writs was that they were granted in the name of the Crown, as the title of every case indicated, but as the law developed, initially individual litigants were permitted to initiate proceedings in the name of the Sovereign, and in jurisdictions such as Sri Lanka, even without expressly referring to the Crown.

37. As H.W.R. Wade and C.F. Forsyth observe in Administrative Law, page 591 (9th Edn.), "*The Crown lent its legal lent its legal prerogatives to its subjects in order that they might collaborate to ensure good and lawful government."* The fact that our Constitution expressly refers to these writs by their ancient names shows that our Constitution makers intended to preserve the beneficial characteristics of these ancient remedies, which possess the inherent character and virility to be able to change to suit changing circumstances and needs. *It is therefore unthinkable that a court of law will subvert the objectives of these*

[1] [1981] 1 SLR 350
[2] [2001] 3 SLR 330 & CA/WRIT/173/2015, C.A. Minutes dated 03.07.2018.
[3] S. C. Appeal No. 83/08, S.C. Minutes dated 07.12.2010.

beneficial remedies by non-suiting a party through a process of tying it down in unshakable knots, as the Court of Appeal has sought to do in the instant case[4].

38. Therefore, I am of the view that the Petitioner has made the party to grant or issue a writ of mandamus to comply with the direction made by the 5th Respondent and the parties directly affected by the outcome of this case as Respondents to this application. Thus, this court overrules the preliminary objection raised on the issue of failure to cite necessary parties.

Matter being already adjudicated by the Supreme Court:

39. The other preliminary objection that the learned Additional Solicitor General has raised is that the matter urged in the instant application has been adjudicated by the Supreme Court in a similarly circumstances case.

40. The learned Additional Solicitor General submitted that it was not the Petitioner alone who was not eligible for admission but another 43 applicants including a few who had secured more marks than the Petitioner as borne-out. This is evident by document marked 1R-4(B). He further submitted that, although an applicant called A. M. Sandil Senila Ariyathilaka listed at No. 21 of 1 R-4(B) had challenged the reduction of marks under the same circumstances before the Supreme Court in Case No. SC. FR. No. 188/2014 (marked as '1R5(B)'), the Supreme Court did not interfere with the issue.

41. In contrast, the learned President's Counsel for the Petitioner in his written submission strenuously argued that the Supreme Court order, 1R5(B) that is being relied on pertains to a Fundamental Rights application filed by another aggrieved student and it is not that the Supreme Court has not interfered with the issue but that the issue

[4] Supra 3, pg. 15-16

never arose, and the proceedings were terminated. In evident, he highlighted the following passage of the order in case No. SC. FR. No. 188/2014 dated 11.12.2014:

> *"...we have indicated to counsel that he should present his application through Ministry of Education for admission to Grade II Royal College in 2015.*
>
> *Learned Additional Solicitor General is directed to inform the Secretary, Ministry of Education that this application should be viewed favourably having regard to the special circumstances of the case." [see pg. 2 & 3]*

42. Further, a careful perusal of the above judgment of the Supreme Court is suggested that, the Petitioner of the instant application had not been included as a party by the said applicant A.M. Sandil Senila Ariyathilaka (on behalf of the aggrieved child L.L. Amila Janali Liyanaarachchi).

43. In *Lanka Maritime Services Ltd. vs. Sri Lanka Ports Authority and six Others*[5]. It was held that,

per Saleem Marsoof, J.,

> *"I am of the opinion that there is no Rule of Court or principle of law which precludes the filing of a fresh application with respect to the same subject matter as an existing application but the Court may in the context of a writ application take into consideration the fact of the existence of the earlier application in exercising its discretion in regard to whether any new material placed before Court in the later application should be rejected or any additional relief prayed for in the latter case should be refused".*

[5] [2004] 3 SLR 332

It is trite law that the doctrine of res judicata precludes fresh proceedings only where there is a previous judicial decision on the same cause between the same parties. [vide pg. 336-337]

When there is no proper judicial pronouncement (including withdrawal without reservation of the right to initiate proceedings) in a case involving the same parties and the same cause, a Court will not dismiss any fresh action or application in limine and will entertain the subsequent action or application.

44. In the circumstances, I hold that where there is no prior judicial pronouncement in a case involving the *same parties and the same cause*, a Court will not dismiss any fresh action or application *in limine* and will entertain the subsequent action or application.

45. In Sri Lanka, fundamental right jurisdiction exists apart from and independent of writ jurisdiction where the latter is exercised *independently* by the Court of Appeal subject to appeal to the Supreme Court, and the former exclusively by the Supreme Court. Fundamental right jurisdiction is invoked in relation to violation of fundamental rights expressly stated in the Constitution whereas the writ jurisdiction is, broadly speaking, invoked to control the power of the bodies, which discharge duties of public nature. The acts complained of in a writ application do not necessarily give rise to complain of violation of fundamental rights guaranteed by the Constitution.

46. In *Pathirana vs. Victor Perera (DIG Personal Training Police)*[6] at 284-285, Sriskandarajah J. stated:

In applications for writs the courts have relaxed the rules of standing even wider than the rules of standing in fundamental rights applications in order to ensure good administration.

[6] [2006] 2 SLR 281

In *Wijesiri vs. Siriwardene*[7], Wimalaratne J. on behalf of the Supreme Court at page 175 stated:

> *In this connection it would be relevant to refer to the views of an eminent jurist on the question of locus standi. Soon after the decision of the Privy Council in Durayappah vs. Fernando (1967) 3 WLR 289, in an Article entitled Unlawful Administrative Action in (1967) 83 L.O.R. 499, H. W. R. Wade expressed the view that one of the merits of Certiorari is that it is not subject to narrow rules about Locus standi, but is available even to strangers, as the Courts have often held, because of the element of public interest. In other words it is a genuine remedy of public law, and all the more valuable for that reason (at p. 504). As regards the applications for Mandamus they should, in his view, in principle be no more exacting than it is in the case of the other prerogative remedies, because public authorities should be compellable to perform their duties, as a matter of public interest at the instance of any person genuinely concerned; and in suitable case, subject always to discretion, the Court should be able to award the remedy on the application of a public spirited citizen who has no other interest than a due regard for the observance of the law-Wade-Administrative Law (4th Ed) 608. The result of a restrictive doctrine of standing, therefore, would be to encourage the government to break the law; yet this is exactly what the prerogative writs should be able to prevent (p. 609). To restrict Mandamus to cases of personal legal right would in effect make it a private law remedy (p 610). These observations, with which I am in respectful agreement, appear to make the second requirement, insisted upon by Tambiah J. i.e.: some personal interest in the matter complained of, unnecessary. But the first requirement ought, in my view, to be satisfied and it is satisfied if the applicant can show a genuine interest in the matter complained of, and that he comes before*

[7] [1982] 1 SLR 171

Court as a public-spirited citizen concerned to see that the law is obeyed in the interest of all, and not merely as a busy body perhaps with a view to gain cheap publicity. As to whether an applicant satisfies this second requirement will depend on the facts of each case.

In *Perera vs. Central Freight Bureau of Sri Lanka*[8] at pg. 89-90, Marsoof J. stated:

As Lord Denning noted in R vs. Inland Revenue Commissioners ex p. National Federation of Self Employed and Small Business Ltd., (1982) AC 617 English Courts have orchestrated the generous view that "if there is good ground for supposing that a government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the court of law and seek to have the law enforced". In the course of his judgment in the same case, Lord Diplock observed as follows—"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer, were prevented by out dated technical rules of locus standi from bringing the matter to the attention of court to vindicate the rule of law and get the unlawful conduct stopped."

The rationale for the expanding canvas of locus standi in the context of certiorari and prohibition was explained by H.W.R. Wade-Administrative Law (8th Edition) pages 362 to 363 in the following words-

"The prerogative remedies, being of a 'public' character as emphasized earlier, have always had more liberal rules about standing than the remedies of private law. Prerogative remedies

[8] [2006] 1 SLR 83

are granted at the suit of the Crown, as the titles of the cases show; and the Crown always has standing to take action against public authorities, including its own ministers, who act or threaten to act unlawfully. As Devlin J said: Orders of certiorari and prohibition are concerned principally with public order, it being the duty of the High Court to see that inferior courts confine themselves to their own limited sphere". In the same sense Brett J. had said in an earlier case that the question in granting prohibition "is not whether the individual suitor has or has not suffered damage, but is, whether the royal prerogative has been encroached upon by reason of the prescribed order of administration of justice having been disobeyed". Consequently the court is prepared to act at the instance of a mere stranger, though it retains discretion to refuse to do so if it considers that no good would be done to the public."

Wade further goes on to observe at page 683 that-"…the House of Lords is clearly now determined to prevent technicalities from impeding judicial review so as to protect illegalities and derelictions committed by public authorities".

Sri Lankan Courts too have been quick to recognize standing of any citizen to seek relief against public authorities that stray outside their legitimate bounds.

47. Who can file a writ application? The short answer is - any "person" (as defined in section 2(s) of the Interpretation Ordinance) who has *"sufficient interest"* as opposed to the outdated requirement of *"personal interest"* because of the element of *"public interest".*

48. While, answering an important question whether a Trade Union can file a writ application, Professor Wade (Administrative Law, 9th Edn, at page 686) says that:

Lord Denning added: 'The court would not listen, of course, to a mere busybody who was interfering in things which did not

concern him. ***But it will listen to any one whose interests are affected by what has been done'****. The same tendency is illustrated by the courts' willingness to grant certiorari to a trade union acting on behalf of one of its members [as] in Minister of Social Security v. Amalgamated Engineering Union [1967] AC 725. This practice is now common.'*

If a total stranger can successfully file an application for writ in the spirit of "public interest", why cannot the Petitioner – an aggrieved person, who represents his child affected by the action or inaction of the Respondents, which is sought to be quashed by certiorari or ordered to be complied by mandamus, file this writ application?

Therefore, I overrule the preliminary objection regarding standing of the Petitioner to file this application.

49. Now, what the Petitioner is seeking to do by way of this application is to obtain a mandate order to the 1st Respondent to comply with the direction made by the 5th Respondent as reflected in P18.

50. It was submitted by the Petitioner that against the decision of the Interview Panel and the Appeals and Protest Board to award the Petitioner only 60 marks notwithstanding the matters placed before the Appeals Board as mentioned above, the Petitioner tendered a formal appeal dated 29.12.2013 in terms of clause 11.10 of P1 to the 5th Respondent - Secretary, Ministry of Education.

51. It was the position of the Petitioner that in terms of Clause 11.10 of P1, the Secretary to the Ministry of Education has the power of overall supervision of all matters pertaining to Grade 1 school admissions as well as the power to resolve any disputes that may arise.

The said clause 11.10 reads thus:

11.10. පළමූ වන ශ්‍රේණියට ළමයින් ඇතුළත් කිරීම සම්බන්ධ ව අධීක්ෂණය කිරීමටත් යම් ගැටලුවක් ඇති වුවහොත් එය නිරාකරණය කිරීමට *අදාළ තීරණ ගැනීමටත්* අධ්‍යාපන අමාතංශයේ ලේකම්ට අනුලංගනීය *බලය පැවරේ.*

(Vide page 14 of P1).

52. Therefore, the Petitioner further submitted that the said appeal preferred to the 5th Respondent is an appeal provided by law and having considered the appeal made by the Petitioner, the 5th Respondent by letter dated 20.02.2014-P18 directed the 1st Respondent to admit the Petitioner to Royal College, Colombo.

53. The contents of the document P18 is reproduced below in its entirety:

Ministry of Education

Date: 2014.02.20

විදුහල්පති,
රාජකීය විද්‍යාලය,
කොළඹ 7.

අධ්‍යාපන ලේකම් වෙත ලැබෙන අභියාවනා පිලිබඳ කටයුතු කිරීම
2014 පළමූ ශ්‍රේණිය

මව/පියා/භාරකරුගේ නම	: එස්. සුජීව රාජරත්න මයා
දරුවාගේ නම	: එස් හෙසඳූ දිල්සර
පාසලට ඉල්ලුම්කර ඇති ගණය	: පාසලට ආසන්න පදිංචිකරුවන්ගේ දරුවන්
පෞද්ගලික ලිපිනය	:නො.9/1ඒ/1/1, ගෝමස් පාත්, හෙව්ලොක් ටවුම, කොළඹ 5

උක්ත නම සඳහන් දරුවාගේ පියා විසින් මා වෙත යොමු කර තිබූ අභියාවනය පිළිබඳව තොරතුරු සොයා බලන ලදී. එහිදී අනාවරණය වූ කරුණු පිලිබඳ සලකා බලා දරුවා ඇතුලත් කිරීමට තීරණය විය.

උක්ත නම සඳහන් දරුවා 2014 පළමූ ශ්‍රේණියට ඇතුලත් කිරීම අනුමත කරමි. දරුවා ඇතුලත් කර මා වෙත් වාර්ත්තා කරන්න.

අනුර දිසානායක
ලේකම්
අධ්‍යාපන අමාත්‍යාංශය

පිටපත :-

1. එස්. සුජීව රාජරත්න මයා, නො.9/1ඒ/1/1, ගෝමස් පාත්, හෙව්ලොක් ටවුම, කොළඹ 5.

54. In this matrix, the Petitioner further argued that the said decision of the 5th Respondent has not been challenged by any party and has not been set aside by any court of competent jurisdiction and is therefore valid to-date. Thus, the Petitioner contended that the 1st Respondent is legally obliged to give effect to the said decision of the 5th Respondent and admit the Petitioner to Royal College, Colombo [vide paragraph 24 of the Petition and page 10 of the written submission tendered by the Petitioner].

55. Furthermore, the learned President's Counsel for the Petitioner, invited this Court to peruse the Supreme Court decision in SC. FR. No. 414/2017[9], where the Supreme Court upholding a direction made by the Secretary, Ministry of Education in admitting a child to Grade 6 in Vishaka Vidyalaya, Colombo in the year of 2019[10].

[9] S.C. Minutes dated 24.01.2019.
[10] In this case, Petitioner made an application to Vishaka Vidyalaya, Colombo to admit his child to Grade 1. However, the Principal of Vishaka Vidyalaya (the 1st Respondent) refused the admission of the said child to the Vishaka Vidyalaya. Thereafter, on an appeal made by the Petitioner to the Secretary to the Ministry of Education (the 2nd Respondent) in terms of circular marked P1, the said Secretary made an order that the petitioner's child should be admitted to Grade 1 in Vishaka Vidyalaya in the year 2014. However, the 1st Respondent did not comply the direction made by the 2nd Respondent. It was in those circumstances, the Petitioner had complained to SC that his fundamental rights guaranteed by Article 12(1) have been infringed by the 1st Respondent when she refused to admit the Petitioner's child to Vishaka Vidyalaya, Colombo.

56. It is important to note that, the learned Additional Solicitor General for Respondent who, inter alia, appearing for the 5th Respondent, in his statement of objection states that the power of the 5th Respondent under Clause 11.10 is meant to be exercised in relation to the entire group of students who are similarly circumstance-more particularly in relation to applicants who had presented cogent evidence in regard to residency [vide para. 20(ii) of the statement of objections dated 20.05.2015].

57. It is my view that, as observed by Chief Justice Sarath N. Silva (then he was) in *Haputhantirige and Others vs. Attorney General*[11] a circular containing the admission scheme is to be deemed the 'law' governing admission of children to State schools, as it is a *'binding process of regulation pertaining to the admission of children to government schools'*.

58. It is pertinent to see the following words of Sarath N. Silva C.J., in *Haputhantirige's* Case:

> *"It is plain to see that the Circular does not have any of the general characteristics that pertain to policy. It has a classification of 7 categories, a scheme of weighted marking and a related identification of documents that could be received in evidence. From a functional perspective it is the binding process of regulation laid down by the executive as regards the matter of admission to Government Schools. On the reasoning stated above it would constitute "the law" within the purview of Article 12(1) of the Constitution in reference to which the alleged infringement of the right to equality has to be judged."* [Vide pg. 115]

59. Furthermore, Wade, whilst discussing the legal form and characteristics of Circulars, states that although Circulars have no inherent legal effect, *"they may be used as a vehicle for conveying instructions to which*

[11] [2007] 1 SLR 101

some statute gives legal force…They may also contain legal advice of which the courts will take notice."[12]

60. Therefore, it is imperative that admission of children to Grade 1 of government schools be necessarily decided upon strictly in terms of this circular (the applicable 'law') and not determined according to any other ground, whatsoever. Further, in view of the position taken up by the learned President's Counsel for the Petitioner, this Court is required to examine the lawfulness of this 'law' and the accuracy of the application of the provisions of this 'law' to the merits of the application presented by the Petitioners to gain admission to Grade 1 of Royal College, Colombo.

61. I am inclined to the view of the Petitioner that, according to the Clause 10.11 of P1, the Secretary to the Ministry of Education has the power of supervision of all matters pertaining to Grade 1 school admissions as well as the power to resolve any disputes that may arise[13]. Certainly, also this power includes make necessary directions to his subordinates.

62. It is well recognised rule that when a lawful direction is made, there is a (mandatory) duty on the subordinate i.e., public officer to comply with it. No writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by our courts, as it is in England, when a writ of mandamus is asked for, could be stated as I find it set out in Halsbury's Laws of England (3rd Edn.), Vol.13. pg. 106:

> *"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that demand was met by a refusal"*

[12] H.W.R. Wade and C.F. Forsyth, *Administrative Law*, page at 735-736
[13] Vide SC. FR. No. 414/2017, S.C. Minutes dated 24.01.2019.

63. In the circumstances, I have no hesitation to conclude that the 1st Respondent's decision not to comply with the direction made by the 5th Respondent to admit the Petitioner into Grade 1 of Royal College, Colombo 07 is, to say the least, irrational and unreasonable according to the standard of unreasonableness would amount to an abuse of administrative authority set out in *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation*[14]. Therefore, the Petitioner is entitled to the relief-mandamus, as prayed for in the prayer (d) to the Petition.

64. As the instant application was preferred to enter the child, Senadheerage Hesandu Dilsara to Grade 1 in 2014, he should now be admitted to Grade 8 in 2021 at Royal College, Colombo 07.

65. Accordingly, this Court issue a writ of mandamus under prayer (d) of the Petition, against the 1st Respondent to comply with the direction made by the 5th Respondent, to admit the Petitioner, Senadheerage Hesandu Dilsara to Grade 8 in 2021, of Royal College, Colombo 07.

66. Considering the circumstances, I make no order for costs.

Application of the Petitioner is partly allowed.

Judge of the Court of Appeal

K. K. A. V. SWARNADHIPATHI, J.

I agree.

Judge of the Court of Appeal

[14] (1948) 1 KB 223. See also *Council of Civil Service Unions vs. Minister for the Civil Service* (1984) 3 All ER 935