

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

In the matter of an Application for order in the nature of Writ of *Mandamus* and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Asanka Christopher Wickramasinghe,  
No: 1192, Pamunugalhena Watta Road,  
Kottawa North,  
Pannipitiya.

On behalf of

Dinithi Resadara Wickramasinghe  
(Minor)

**Petitioner**

CA (Writ) Application No: 280/2016

Vs.

1. P.N. Rajapakse,  
Principal,  
Anula Vidyalaya,  
Nugegoda.
2. Weerasekara Mudiyansele Bandusena,  
Secretary,  
Ministry of Education,  
Isurupaya  
Battaramulla.
3. Prabath Nalaka Illeperuma,  
Director of National Schools,  
Ministry of Education,

Isurupaya  
Battaramulla.

4. Honourable Akila Viraj Kariyawasam,  
Minister of Education,  
Ministry of Education,  
Isurupaya  
Battaramulla.

5. Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : A.L. Shiran Gooneratne J.

**Counsel** : Lakshan Dias for the Petitioner.

Manohara Jayasinghe, SSC for the Respondents.

**Argued on** : 20/09/2017

**Written Submissions filed on:** 14/10/2017

**Judgment on** : 11/06/2018

**A.L. Shiran Gooneratne J.**

The Petitioner has invoked the jurisdiction of this Court seeking a mandate in the nature of writ of Mandamus to compel the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to enforce the directive contained in document marked P6, to admit the Petitioner's daughter to grade 3 of Anula Vidyalaya, Nugegoda. (hereinafter sometimes referred to as the said school)

The Petitioner submits that by letter dated 30/11/2015, marked P1, the 3<sup>rd</sup> Respondent has informed the Petitioner of his approval to admit the Petitioner's daughter to grade 2 of the said school for the year 2015. In response to the said letter, the 1<sup>st</sup> Respondent has informed the Petitioner by letter dated 03/12/2015, marked P2, to be present in school with his daughter on 04/12/2015, together with the required documents as specified in the said letter. The Petitioner further submits that on the said date the Petitioner was advised by the 1<sup>st</sup> Respondent to obtain further approval from the 3<sup>rd</sup> Respondent to have the child admitted to grade 3 for the year 2016, to which the 3<sup>rd</sup> Respondent granted approval by letter dated 11/12/2015, marked P3.

However, the Petitioner states that the 1<sup>st</sup> Respondent having observed that the Petitioner's child was a Roman Catholic, had sought for time to get further approval from the 3<sup>rd</sup> Respondent to admit the child. The 3<sup>rd</sup> Respondent having considered the affidavits and the pre-school certificates marked P5, P5A to P5C, once more by impugned letter dated 08/02/2016, marked P6, has approved the Petitioner's child to be admitted to the said school.

The documents filed of record does not suggest that the Petitioner at any time was called for an inquiry regarding his application nor was he informed about the status of the said application. The Petitioner is challenging the inaction as

stated above, on the part of the Respondents, on the basis of illegality and legitimate expectation.

The Respondents together with their statement of objections has attached letter dated 18/01/2106, marked R3, written by the 1<sup>st</sup> Respondent to the 3<sup>rd</sup> Respondent, that the Petitioners child cannot be admitted, since the said school is a Buddhist Scholl, which has no percentage representing Roman Catholics students. Similar sentiments have been expressed by the 3<sup>rd</sup> Respondent to the 1<sup>st</sup> Respondent in letter dated 22/02/2016, marked R4, where it is stated that the school consists of 100% Buddhist children and therefore, the 1<sup>st</sup> Respondent is not required to proceed as requested, by his letter dated 08/02/2016.

The child seeking admission comes from a mixed religious background, where the father is Roman Catholic and the mother a Buddhist. With the blessings of her parents, the child is a student and a follower of Buddhism, as observed in the affidavits and the pre-school certificates filed of record.

In this background, it is interesting to note that the decision refusing to admit the child taken by the Respondents was not communicated to the Petitioner nor was the Petitioner afforded the right of hearing of his grievance. It is also observed that adequate reasons were not given in arriving at the said decision contained in the letter dated 22/02/2016, marked R4.

In the case of *Sundarkaran Vs. Bharathi and others*, (1989) 1SLR 46, *Amerasinge J. quoted the dicta of Lord Wright in General Medical Council Vs. Spackman* (1963) 2All E R 66 H.L. which stated,

If the principals of natural justice are violated in respect of any decision it is indeed, immaterial whether the same decision would have been arrived at, in the absence of the essential principles of justice. The decision must be declared no decision.

In the case of *Bandula Vs. Almeida and others* (1995) 1 SLR 309, *Wadugodapitiya J. quoting Lord Denning in Schmidt Vs. Secretary of State for Home Affairs* (1989) 1 All E R 904, stated that,

The Petitioner has a right or interest---- of which it would not be fair to deprive him without hearing what he may have to say.

In the above case the Court also held that,

The general rule is that a right to a hearing constitutes a minimum pre-requisite of natural justice.

In the circumstance, I find that the Petitioner has not been afforded a fair hearing prior to the decision taken by the 3<sup>rd</sup> Respondent not to admit the child, as reflected in letter dated 22/02/2016, marked R4, addressed to the 1<sup>st</sup> Respondent, which violates the petitioner's right to a due inquiry.

Accordingly, I direct the Respondents to hold an inquiry a fresh, forthwith, which conforms to the Petitioners right to a fair hearing, and entitled to, under the principals of natural justice.

Therefore, the Petition is partly allowed. There is no order for costs.

JUDGE OF THE COURT OF APPEAL