



#MINORMATTERS

SRI LANKAN CASE LAW ON RELIGIOUS FREEDOM RELATED ISSUES

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SC DETERMINATION NO. 2/2001

CHRISTIAN SAHANAYE DORATUWA PRAYER CENTRE

Christian Sahanaye Doratuwa Prayer Centre (incorporation) bill was placed on the order paper of Parliament on 10th May 2001. The constitutionality of these papers was challenged before the Supreme Court.

The Petitioner had two main arguments:

1. Clauses 3 and 4 of the bill are not in line with Article 10 of the Constitution which states that "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice." Clauses 3 and 4 include the objects and powers of the Corporation. The objectives of the Corporation include "to borrow or raise money for the purposes of the Corporation" and "to draw, accept, discount...bills of exchange, cheques, promissory notes...in Sri Lanka and elsewhere."

Therefore, the Petitioner argued that these clauses along with the clauses which state that the Corporation will assist persons to obtain job opportunities and will train persons to engage in self-employment, render the activities commercial and economic in nature and not purely related to the observance and practice of a religion. The Petitioners further argued that this will result in conversion of persons through 'allurement or other subtle means' resulting in the infringement of the freedom of thought, conscience and religion according to Article 10 of the Constitution. The Petitioner also argued that the Corporation will obtain a more favourable position than other persons engaged in religious activities due to objectives of a commercial and economic nature of the Corporation thus resulting in the infringement of the right to equality under Article 12(1) of the Constitution.

The Judges of the Supreme Court referred to anti-conversion

legislation in India and a judgment by the Indian Supreme Court in the case of *Rev. Stainislaus v. State of Madhya Pradesh* where the Indian Supreme Court stated that there is no fundamental right to convert a person to one's own religion as opposed to the right to disseminate the tenets of one's religion, and that purposely converting a person will infringe the freedom of conscience of all citizens. The Sri Lankan Supreme Court stated that while the Sri Lankan Constitution does not grant the fundamental right to propagate one's religion, the freedom of thought, conscience and religion is an absolute right with no restrictions. Therefore, the Court opined that the reasoning of the Indian Supreme Court should be all the more applicable to Sri Lanka. The Court stated that the rights guaranteed under Articles 14(1)(e) and 14(1)(g) should be kept separate. Article 14(1)(e) provides for "the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching." Article 14(1)(g) guarantees "the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise." Therefore, the Court stated that combining these two freedoms will result in the infringement of Article 10 of the Constitution.

2. The second argument of the Petitioner was that the rules of the Corporation which have been in force before it sought incorporation from Parliament are not in line with the Constitution as those are rules which have not been sanctioned by Parliament. The Supreme Court upheld this argument as well as stated that the clause in the bill which enables the Corporation to make changes to those rules that were already in force, is also unconstitutional.

The Supreme Court concluded that as the main clauses, which are Clauses 3 and 4 are not in line with Article 10 of the Constitution, the bill can only be passed if it obtains two-thirds majority in Parliament and is approved by the people at a Referendum.



SC SPECIAL DETERMINATION NO. 2/2003

NEW WINE HARVEST MINISTRIES (INCORPORATION)

New Wine Harvest Ministries (incorporation) bill was placed on the order paper of Parliament on 10th January 2003. The constitutionality of these papers was challenged before the Supreme Court.

The Petitioner argued that Clause 3 of the bill includes objectives not of a purely religious dimension, but also of a socio-economic and economic dimension which will include persons of other religions and beliefs as well as assist in the spread and promotion of the Christian faith. The Petitioner further argued that Clause 4 of the bill which states the powers of the Incorporation and includes elements such as power to raise funds, receive grants and acquire and dispose of property, will strengthen the financial capacity of the Incorporation 'to induce and allure persons of other religions and convert them to the faith that is sought to be spread.' The Petitioner argues that these clauses violate Article 10 of the Constitution which provides that "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice."

The Hon. Attorney General supported the arguments put forward by the Petitioner.

The Interventient-Petitioners arguing on behalf of New Wine Harvest Ministries stated that each religion promotes its

teachings and that all religions have 'altruistic objectives' to enhance the socio-economic condition of all people irrespective of their religious identity.

The Court alluded to the Supreme Court Determination SC Determination No. 2/2001 - Christian Sahanaye Doratuwa Prayer Centre, and agreed that uplifting the socio-economic conditions of the people belonging to other religions apart from the Christian faith can result in the infringement of the freedom guaranteed in Article 10 of the Constitution.

The Court disregarded examples of previous laws put forth by both the Petitioner and the Interventient-Petitioner on the grounds that the Court is not allowed to review already existing laws and that previous laws should not be considered as a standard of consistency with the Constitution.

The Court also stated that the Articles of Association were not known as they do not form part of the bill and therefore Parliament cannot sanction rules, the content of which is not known. Though the Interventient-Petitioner stated that those rules were for internal purposes, the Supreme Court opined that the extent to which those rules might affect others is not evident without the content of the rules being disclosed. Therefore, the Supreme Court agreed with the Petitioner that this aspect was also not in line with the Constitution.

The Supreme Court concluded that as the main clauses, which are Clauses 3 and 4 are not in line with Article 10 of the Constitution, the bill can only be passed if it obtains two-thirds majority in Parliament and is approved by the people at a Referendum.



SC DETERMINATION NO. 19/2003

PROVINCIAL OF THE TEACHING SISTERS OF THE HOLY CROSS OF THE THIRD ORDER OF SAINT FRANCIS OF MENZINGEN OF SRI LANKA (INCORPORATION)

Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis of Menzingen of Sri Lanka (incorporation) bill was placed on the order paper of Parliament on 9th July 2003. The constitutionality of clauses 3 and 5 of the bill was challenged before the Supreme Court.

The Petitioner argued that the objects of the Corporation set out in Clause 3, will lead to alluring persons of other religion to convert to Catholicism by the provision of services and benefits such as 'medical facilities, education to children and also providing care for the infants, aged, orphans, destitutes...' The Petitioner further contended that these benefits and services are provided by taking advantage of the youth, inexperience and disability of such persons.

Therefore, the Petitioner stated that Clause 3 will infringe Article 10 of the Constitution which states that "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice" and Article 9 of the Constitution which provides that "The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)."

The Hon. Attorney General supported the arguments put forward by the Petitioner.

The Supreme Court referred to a judgment by the Indian Supreme Court in the case of Rev. Stainislaus v. State of Madhya Pradesh where the Indian Supreme Court referred to Article 25(1) of the Indian Constitution which includes the freedom to 'propagate' one's religion. The Sri Lankan Supreme Court stated the Sri Lankan Constitution which does not grant the fundamental right to propagate one's religion, can therefore be considered more restrictive.

The Supreme Court quoted the Indian case referred to above, where the Indian Court states that there is no fundamental right to convert a person to one's own religion

as opposed to the right to disseminate the tenets of one's religion, and that purposely converting a person will infringe the freedom of conscience of all citizens. The Court agreed with the Sri Lankan Supreme Court Determination No. 2/2001 - Christian Sahanaye Doratuwa Prayer Centre and stated that the reasoning of the Indian Supreme Court would apply more forcefully to Articles 10 and 14(1)(e) of the Sri Lankan Constitution.

The Court also referred to the European Court decision in Larissis v. Greece which considers the influence that can be exerted by one party on another in certain relationships such as between a teacher and student or guardian and minor. The Court opined that Clause 3 envisages working with young children, those with disabilities or in a lower economic status which can render such persons susceptible to influence and infringe upon their freedom of thought. The Court also refers to another European Court decision in Kokkinakis v. Greece to state that material or social advantage can be used to convert persons.

The Sri Lanka Supreme Court was of the view that Clauses 3 and 5 of the Bill can be used to exert improper pressure to induce persons to convert in violation of Article 10 of the Constitution.

Further, the Supreme Court quoted Supreme Court Determination No. 2/2001 and reiterated that the Sri Lankan Constitution does not grant the right to propagate one's religion, that propagation does not equate to conversion and that propagation of Christianity is an infringement of Article 9 of the Constitution and will affect the very existence of Buddhism.

Further, the Petitioner and the Additional Solicitor General argued that Clause 4 of the Bill which refers to the Constitutions and Statutes of the Incorporation, is in violation of the Constitution as those Constitutions and Statutes and the possible changes which might be made in the future to those Constitutions and Statutes are not before Parliament.

The Supreme Court appreciated the assistance given by the Counsel for the Petitioner and the Additional Solicitor General. The Supreme Court concluded that as the main clauses, which are Clauses 3 and 4 are not in line with Article 10 of the Constitution, the bill can only be passed if it obtains two-thirds majority in Parliament and is approved by the people at a Referendum.



SC SPECIAL DETERMINATION NOS. 2-22/2004

THE PROHIBITION OF FORCIBLE CONVERSION OF RELIGION

A bill titled 'Prohibition of Forcible Conversion of Religion' was tabled on Parliament in July 2004. The bill was challenged in the Supreme Court and the Supreme Court made a special determination on the bill. The bill sought to prevent conversions that take place as a result of fraud, allurement or force.

Those opposing the bill argued that clause 2 of the bill read with clause 8 are inconsistent with Articles 9, 10, 14(1)(e), 12(1) and 12(2) of the Constitution. They also argued that the fundamental right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice in Article 10 of the Constitution was an absolute right and any attempt to restrict the right to practice and manifest a religion guaranteed under Article 14(1)(e) by using Article 15(7) will take away the absolute right in Article 10.

The Court stated that Article 10 includes the right to hold any religion or belief however 'bizarre' it might be and the right to change one's religion, but stated that the bill only tried to prevent conversions through fraud, force or allurement.

The Court also made reference to Article 18(2) of the International Covenant on Civil and Political Rights (ICCPR) which stated that "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The offence of allurement referred to "causing a temptation or an inducement by offering a person...some benefit calculated to fascinate him or attract him which may affect his decision."

It was argued by those opposing the bill that any acts of benevolence or charity will also now be counted as falling within the definition of allurement. The Court noted that this argument merits their consideration. Reference was made to the case of Kokkinakis v. Greece in the European Court of Human Rights, which sought to distinguish true evangelism from improper proselytism.

The Supreme Court was of the opinion that subject to certain changes in the Clause 8(a), (c) and (d) of the bill, which mainly included the definitions of what constitutes fraud, force and allurement, (which, in the opinion of the Court was, to a great extent consistent with similar provision in the penal code), clause 2 of the bill read with clause 8 was not inconsistent with Articles 9, 10, 14(1)(e), 12(1) and 12(2) of the Constitution.

The Court agreed that clause 3 which included a stipulation that the convert, the facilitator and a witness to the ceremony should notify the Divisional Secretary of the conversion, was inconsistent with Article 10 of the Constitution.

The Court also stated that clause 4 relating to implementation of clause 3, and the non applicability of the criminal procedure code rendered clause 4 inconsistent with Article 10. Similarly clause 5 relating to the institution of proceedings in the Magistrate's Court and clause 6 relating to the power of the minister to make rules and regulations were also inconsistent with Article 10.

The court recommended the following:

- The bill be passed with a 2/3rd majority in parliament and be approved by the people at a referendum;
- Clause 3 and 4(b) be deleted;
- Amend clause 4(a) of the bill;
- Revise the definition of force, fraud and allurement;
- Amend clause 8 (c) and (d) of the bill.



CA 781/2008

CHURCH OF THE FOURSQUARE GOSPEL IN SRI LANKA AND ANOTHER VS. KELANIYA PRADESHIYA SABHA OTHERS

In this case, the needed permits were obtained from the relevant Pradeshiya Sabha and the building work commenced. However, the work was interrupted by Buddhist Clergy and area residents, on the grounds that the using of musical instruments in high volume and unusually loud religious activities caused breach of peace and sound pollution.

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The Court of Appeal stated that the Petitioners have the duty to abide by the approval granted under Section 8K(1) of the UDA Act.

Further, the Court stated that the construction of the building has only commenced and that the respondents have not

complained of any violation on the part of the Petitioners of the building permit in relation to the development activity. The only condition was that the building should not affect the rights of the others.

The court also pointed out that use of the building will not pose a problem as the building was approved for a residential purpose and has not yet been completed.

The Court also stated that the objections raised by the residents and Buddhist Clergyman is in relation to the use of musical instruments in high volume and unusually loud religious activities, which they allege are causing breach of peace and sound pollution.

The Court of Appeal pointed out that these objections are not in relation to the building that is to be constructed but are in relation to an existing status of affairs and existing building and that any affected person can take action according to law to address the issue.

Therefore, the Court concluded that the order to stop the construction of the said building was in excess of the powers given to the Chairman of the Kelaniya Pradeshiya Sabha and the Pradeshiya Sabha. Therefore, the Court issued a writ of certiorari to quash the order contained in the letter of the 2nd Respondent dated 2nd July 2008 which cancelled the approval granted for the construction of the building.



SC / FR 92 / 2016

M. J. M. FARIL AND ANOTHER VS. BANDARAGAMA PRADESHIYA SABHA AND SIX OTHERS

In 2008, the President of the Board of Trustees of the Wekada, Jumma Mosque and the Principal of the “Anas Bin Malih Quaran Madrasa” Dhamma School (hereafter referred to as the Petitioners) applied to the relevant Pradheshiya Sabhawa, for the approval of a development plan to put up a two storeyed school building, the approval was duly granted and a development permit was issued. Though the construction work of the 1st floor was delayed due to financial reasons, the school commenced and 30 students were enrolled as boarders.

Thereafter construction work of the 1st floor commenced and the Pradheshiya Sabhawa informed the President of the Board of Trustees that the development permit that was issued earlier lapsed and a fresh permit should be obtained. Further, the Petitioners were also informed that the residents of the area had complained about the construction. The residents and the Buddhist Priest stated that the Petitioners were constructing a Mosque, instead of a Dhamma School. The Petitioners were made to address a letter to the Pradheshiya Sabhawa wherein they were told to state that the purpose of construction was for a school and to obtain approval for same. Thereafter, an amended development plan was submitted to the Pradheshiya Sabhawa which was approved. When the concrete slab was laid the Pradheshiya Sabhawa through the Senior Police Officer directed the Petitioners to suspend the construction due to complaints made by residents and Buddhists monks. Thereafter, the police by letter informed the Petitioners that as the construction was allegedly for a place of worship and not for a school, it cannot be done without necessary approval, and therefore, requested the Petitioners to cease construction.

The Petitioners filed a Fundamental Rights application in the Supreme Court of Sri Lanka, on the basis that the freedom of religion and the right to equality had been infringed.

The main reasons cited by the Respondents for prohibiting the construction of the school were:

- (1) What was in fact being built was a Mosque, for which permission had not been obtained;
- (2) A breach of peace should be avoided as there were protests from the residents in the area and from Buddhist Monks;
- (3) As per the 2008 Circular, approval of the Ministry of Religious Affairs should be obtained to construct the proposed Dhamma School.

The Counsel for the intervenient petitioner refers to the definition given to law in Article 170 of the Constitution. Article 170 states that “law” means any Act of Parliament, and any law passed by the legislature (Parliament) before the Sri Lankan Constitution was introduced, and which includes an Order in Council (an order approved by the Privy Council which was the highest Court for Sri Lanka until 1972). At this point, the Learned Judges state that the ‘definition to ‘law’ does not cause any confusion and it could be easily understood. It is very simple and clear.’

Thereafter, the Learned Judges go on to state that the “... main question is whether the Respondents are responsible and liable as pleaded to deprive the Petitioners equal protection of the law.” Further, the judges are of the opinion that that material placed before court indicates that the building was intended to be a Mosque. The judgment makes reference to earlier instances of religious tensions and adds that ‘lessons have not been learnt by a certain section of the community.’

The judges state that it cannot be concluded that the Petitioners were denied equal protection of the law. The court goes on to say that “What is necessary should be done to avoid a crisis situation which could spread to other areas of our country.”

It is emphasised that the guarantee of equal protection of the law should be taken to mean protection of equal laws and that an element of intentional and purposeful discrimination should be present for there to be a denial of equal protection of the law.



Reference is made at this point to the case of Budhan Chowdhary V. State of Bihar 1955 AIR (SC) 191 per Das, CJ and the court goes on to emphasize the fact that acts of the Respondents have not been discriminatory and hence have not amounted to a violation of Article 12(1) of the Constitution.

The judges rely on an agreement between the parties that only a Dhamma School for Muslim children will be constructed. However, the Petitioner has stated that the Petitioner was given no choice but to sign a letter to the 2nd Respondent stating that the construction was only for a school and seeking approval for the same.

Further, continuous protests which led to the authorities suspending the construction are also referred to in the judgment. The judges are of the opinion that the "Petitioners' party seems to have deliberately violated the agreement to put up a school."

With regards to the 2008 Circular, on page 12 of the judgment, the Learned judges state that "The prayer to the petition does not call upon the Buddha Sasana Ministry to quash the relevant circulars issued by the Ministry. Therefore, I cannot conclude that the Respondents acted contrary to circulars."

The Petitioners had however, prayed that document P14 be declared null and void. This document which is a letter by the 3rd Respondent states that the construction should cease as approval has not been gained from the Religious Affairs Ministry.

At this juncture, the 2008 Circular is referred to again, and the court states that "According to this Circular (3A R4 (e) any person who constructs a Dhamma School has to obtain the approval of the Ministry of Religious Affairs" which the Petitioners have not done.

In response to the argument by the Counsel for the Petitioners that the 2008 Circular does not come within the interpretation of law, the judges refer to the case of Wickrematunga Vs. Anuruddha Ratwatte (1998) 1 SLR 201. In that case, it was stated that "law" in Article 170 of the Constitution includes regulations, rules, directions, principles, guidelines and schemes designed to regulate public authorities. Therefore, the argument that the circular is not within the interpretation of law is rejected. (In the case of Wickrematunga Vs. Anuruddha Ratwatte the judges have also stated that "in the context, whilst Article 12 erects no shield against merely private conduct, public authorities must conform to constitutional requirements, in particular to those set out in Article 12 even in the sphere of contract; and where there is a breach of contract and a violation of the provisions of Article 12 brought about by the same set of facts and circumstances, the aggrieved party cannot be confined to his remedy under the law of contract.")

Therefore, the court concluded that "As the Petitioners have not obtained the approval of the Ministry of Religious Affairs to construct the proposed Dhamma School, the stand taken by the 3rd Respondent in P14 is correct. Therefore, the application to declare P14 null and void should be rejected" and the court dismissed the application.



SC / FR 353 / 2016

A. B. T. RASANGA VS. THE PRINCIPAL, KINGSWOOD COLLEGE AND THREE OTHERS

In this case, the Petitioner filed a fundamental rights application under Article 12(1) of the Constitution guaranteeing right to equality, against Kingswood College, Kandy, for refusing admission to his son, to Grade One.

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The Petitioner stated that he submitted an application for school admission to Grade One for the year 2017 under the quota allocated to Christians. However, after the interview, the Petitioner's son's name was only placed as No. 6 on a "waiting list", indicating that his son had not gained admission to the school.

The Petitioner argued in Court that his son is entitled to gain admission under the said quota provided in Section 3.2 of the Instructions related to the admission of children to Grade

One in the Government Schools for the year 2017. Section 3.2 states that "In filling vacancies in schools vested to government under 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 accordingly divided among different religions and categories."

The school argued that there was no record available to show the number of Christians students studying at Kingswood College as at 1961, and therefore, in the absence of such information the school was not in a position to implement Section 3.2.

However, the Court did not agree with this argument put forward by the school and the Learned Judges stated that by not considering Section 3.2, the Principal has "...acted arbitrarily and unreasonably and thereby infringed the Petitioner's fundamental rights." Therefore, the court held that the Petitioner's fundamental right under Article 12(1) of the Constitution has been violated by the Principal and the Court directed the Principal to admit the Petitioner's son to Grade One of Kingswood College.



SC / FR 335 /2016

THIYAGARAJAH MAHENDRAN V. THE PRINCIPAL, KINGSWOOD COLLEGE, KANDY AND THREE OTHERS

The Petitioner filed a fundamental rights application in this case, asking that his son be admitted to Grade One of Kingswood College, Kandy, for the year 2017. The fundamental rights application was based on Clause 3.2 of the Instructions and Regulations regarding admission of children to Grade One in Government Schools for the Year 2017.

Clause 3.2 states that "... In filling vacancies in schools vested to 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 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 accordingly divided among different religions and categories..."

However, the Deputy Principal argued that as there were no confirmed statistics with relation to the number of children per religion to be admitted to the school, the school cannot implement the said Clause 3.2.

The school had refused admission on certain technical grounds, such as stating that the name of the Petitioner was different in the application form in comparison to other documents such as house deeds submitted by the Petitioner and that the house number was not consistent in the documents submitted. However, the Court pointed out that the name of the Petitioner which is T. Mahendran, is consistent, including in the signature placed by the Petitioner in the application, and that only in the application form, the name of the Petitioner has been written as T. Mahendram.

Similarly, the Court took notice of the fact that the Petitioner had got the confusion over the house number rectified and

submitted the documents for reconsideration, but was yet denied school admission.

The Court highlighted the fact that Clause 3.2 applied to all categories under which school admission is sought, such as 'close proximity to the school', 'parents being past pupils' and 'siblings are admitted to the same school' etc.

As the school stated that they are not in possession of confirmed statistics, the Court relied on the Summary of Reports of Schools Under the C.H.E., from the Agenda of the Synod 1961 of the Methodist Church, Sri Lanka held at Scott Hall, Kollupitiya, Colombo 3 - pages 85 and 86, certified as a true copy by the President of the Methodist Church of Sri Lanka, which was submitted by the Petitioner.

In relation to Kingswood College, Kandy, the report read that "There are 899 pupils of whom 186 are Christians. The Staff remains at 45 with 4 excess teachers and 33 Christians..." Therefore, the Court calculated the percentage of Christian students to be admitted to be approximately 20%, or 13 to 14 students under the proximity category. However, only one Christian child was admitted to Grade One.

Therefore, the Learned Judges stated that "...when a Christian child has applied to be admitted to Kingswood College, Kandy under any category, if the documents show that he is a Christian and if the number of Christian children already admitted are not above the allowed percentage of 20% intake under the religion category, then that child has a right to be admitted under Clause 3.2 of the Circular." The Court also stated that the two Statutes of Parliament, namely, Act No. 5 of 1960 and Act No. 8 of 1961 should be adhered to and pointed out that the school should have at last tried to find out relevant documents with regards to this issue, which has repeatedly been canvassed before the Supreme Court, especially as not all can afford to pursue a fundamental rights application.

The Learned Judges concluded by saying that the fundamental rights of the Petitioner in Article 12(1) of the Constitution has been violated and an order was made to admit the Petitioner's son, to Grade One of Kingswood College, Kandy.