

K. Prasanna Kumar V. Ministry of Education, Sabaragamuwa Province

RTIC Appeal Documentary)/ [1936]/[2020]- Order adopted as part of the formal meeting of the Commission on [07/07/2020]

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairman: Mr. Mahinda Gammampila
Commission Member: Mr. S. G. Punchchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Ms.Kishali Pinto-Jayawardena

Appellant: K.Prasanna Kumar
Notice issued to: Designated Officer, Ministry of Education, Sabaragamuwa Province

RTI Request filed on	06/07/2019
IO responded on	28/08/2019 (After the appeal to the DO)
First Appeal to DO filed on	15/08/2019
DO responded on	No Response
Appeal to RTI filed on	20/09/2019

Brief Factual Background:

The following information was requested by the Appellant on 06/07/2019

The following information for the years of 2015- 2018

- 1. The number of students drop out from Tamil medium schools in the Sabaragamuwa province annually*
- 2. The reasons for the drop out*
- 3. The number of students admitted to Tamil medium schools in the Sabaragamuwa province annually*
- 4. The number of students who passed the G.C.E (O/L) examination and the number of students who failed the G.C.E (O/L) examination in the Tamil medium schools in the Sabaragamuwa province*
- 5. The number of students who passed the G.C.E (A/L) examination and the number of students who failed the G.C.E (A/L) examination in the Tamil medium schools in the Sabaragamuwa province*
- 6. The number of students who have been qualified to the Educational Colleges from the Tamil Medium schools in the Sabaragamuwa province (based on subjects)*
- 7. The number of students who have been qualified to the universities from the Tamil medium schools in the Sabaragamuwa province (based on subjects)*
- 8. The number of teachers and principals who serve in the Tamil medium schools in the Sabaragamuwa province*
- 9. The number of vacant posts of teachers and principals in the Tamil medium schools in the Sabaragamuwa province*

10. *The number of students who study in the Tamil medium schools in the Sabaragamuwa province*
11. *The number of students who sat for the Grade five scholarship examination from Tamil medium schools in the Sabaragamuwa province*
12. *The number of students who passed the Grade five scholarship examination from Tamil medium schools in the Sabaragamuwa province.*

The I/O did not respond within the time period stipulated in the Act so the Appellant appealed to the Designated Officer (D/O) on 15/08/2019. Subsequent to the appeal to the D/O the I/O responded by the letter dated 28/08/2019 that the PA has forwarded the appeal to the relevant division and will be providing the information once it becomes available to the PA. The Appellant did not receive any responses from the I/O or D/O, so the Appellant thereafter preferred an appeal to the Commission on 20/09/2019.

Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures of the RTI Commission's Appeal (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

Order

The Commission observes that Information officer and Designated officer have failed to adhere to the statutory duty cast upon them by the Right to Information Act No. 12 of 2016. The attention of the PAis drawn to the following Sections.

Sec 3 (1)

Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.

Sec 24(3)

On receipt of a request, an information officer shall immediately provide a written acknowledgement of the request to the citizen.

Sec 25(1)

An information officer shall, as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 24, make a decision either to provide the information requested for on the payment of a fee determined in accordance with the fee schedule referred to in section 14(e) or to reject the request on any one or more of the grounds referred to in section 5 of this Act, and shall forthwith communicate such decision to the citizen who made the request.

Sec 31(2)

The designated officer shall issue a receipt on the acceptance of the appeal, to the citizen making the appeal, and in any case within three working days.

Sec 31(3)

The decision on any appeal preferred under subsection (1), shall be made by the designated officer within three weeks of the receipt of the appeal and shall include the reasons for the said decision including specific grounds for the same.

The attention of the Public Authority is drawn to the fact that it is under an obligation to provide the information in its possession, custody and control under and in terms of Section 3 of the Act unless the PA is of the view that it is exempted under Section 5 of the Act.

Accordingly the PA is directed to release the information requested by the Appellant or, if the Public Authority is unable to provide the information due to it coming within an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.

The Appeal is adjourned.

Next date of hearing: 2nd September 2020

RTIC Appeal Documentary)/ [1936]/[2020] - Order adopted as part of the formal meeting of the Commission on 02.09.2020

Chairman: Mr. Mahinda Gammampila
Commission Member: Mr. S. G. Punchchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Ms.Kishali Pinto-Jayawardena

Appellant: K.Prasanna Kumar
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Matters Arising During the Course of the Hearing:

There has been no response from the Public Authority to the notice issued by the Commission directing the PA to release the information requested by the Appellant or, in the event the Public Authority is unable to provide the information due to it falling within an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.

Order:

It is noted that the DO has failed to comply with Order dated 07.07.2020 wherein it was directed that the information requested by the Appellant be released to the Appellant or reasons for rejection under a specific clause of Section 5 (1) of the Act be communicated by the PA. The attention of the DO is accordingly drawn to Section 39 (1) (e) of the Act which states that,

Section 39 (1) (e)

Every person who....fails or refuses to comply with or give effect to a decision of the Commission... commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Accordingly non-compliance with an order of the Commission in an offence under and in terms of the Act can result in a prosecution in terms of Section 39 (4) of the Act. Section 39 (4) states as follows;

Section 39 (4)

A prosecution under this Act shall be instituted by the Commission.

Accordingly the DO is directed to comply with Order dated 07.07.2020 within two weeks of the receipt of this Order.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

The Appeal is adjourned

Next Date of Hearing: 13.10.2020
