

**Bahirathy Rasanen v. Jaffna College**

RTIC Appeal (Documentary Proceedings)/[ 1715 (A)/2019]- Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) and Order adopted as part of the formal meeting of the Commission on 20/11/2019.

**Chairperson:** Mr. Mahinda Gammampila

**Commission Member:** Mr. S.G. Punchihewa

**Commission Member:** Justice Rohini Walgama

**Director General:** Mr. D.G.M.V Hapuarchchi

**Appellant:** Bahirathy Rasanen

**Notice issued to:** Jaffna College

<b>RTI Request filed on</b>	07/11/2018
<b>IO responded on</b>	No response
<b>First Appeal to DO filed on</b>	-
<b>DO responded on</b>	-
<b>Appeal to RTIC filed on</b>	17/12/2018

**Brief Factual Background:**

The Appellant by information request dated 07.11.2018 requested the following:

1. Copies of the certificates of Ordinary and Advanced Level examinations of all teachers and Principal, Deputy Principal and Vice Principals of Jaffna College active 07/11/2018 in any capacity and status.
2. Copies of degree and diploma certificates of all teachers, Principal, Deputy Principal and Vice Principals of Jaffna College active 07/11/2018 in any capacity and status. This refers to certificates and diplomas from Universities, Teachers, Colleges, College of Education and all other institutions of education.
3. A complete list of all teachers, Principal, Deputy Principal and Vice Principals of Jaffna College active 07/11/2018 in any capacity and status.
4. Copies of appointment and Private School Branch approval letters of all teachers, Principal, Deputy Principal, Vice Principals and the Manager of Jaffna College active 07/11/2018 in any capacity and status. The appointment letters should include approval given by the Manager.
5. Copies of annual income and expense reports that Jaffna College has sent to Zonal Education Office and/or Private School Branch and/or Zonal Office of Education since 2007 until 07/11/2018.
6. Copies of the annual timetables of the teachers of Jaffna College and the approval letters for the timetables from Private School Branch and/or Zonal Office of Education since 2007 until 07/11/2018.

7. Copies of the Minutes with all attachments of the meetings of the Board of Directors of Jaffna College from 28/06/2018 until 07/11/2018.
8. Copies of a document called “calculation of the teaching in Government approved unaided private schools” or a similar document that states the student/teacher ratio of Jaffna College and contains the approval of Private School Branch of the ratio for years 2015,2016,2017 and 2018. Kindly include any information you have sent to Zonal Office of Education and/or Private Branch for the calculation and approval of this ratio for 2019.
9. Copies of any written communication that exist for the student teacher ratio and government approval of teachers since 2013 until 07/11/2018 for Jaffna College. This includes communication with teachers, Zonal Office of Education and Private Branch on any excess teachers and the 16 teachers that are not approved by the Branch according to an attached document.
10. A copy of the complete audit report including the Management Letter on Board of Directors of Jaffna College prepared by Ernst & Young for 2017.
11. Copies of the Minutes of the meetings and the names of the members of the Executive, Auditing, Administration and Hiring Committees in 2017 and 2018.
12. Names of all the Managers Jaffna College has ever had, copies of their appointment letters and all the years they served.
13. A copy of valid government regulation for an unaided private school that states that the Manager of Jaffna College has to approve decisions related to staff and the rest of his/her powers.
14. Details of donations from any source in Australia since 2007.
15. Details of funding from JDCSI including UCA funding for the 5 year plan including details of the plan
16. A copy of the Grievance Procedures of Jaffna College
17. A copy of the Jaffna College Policy Manual
18. Details of the donations received to purchase a vehicle for the principal of Jaffna College
19. A copy of the first and second triennial plans of Jaffna College
20. A copy of the letter sent to TJCF 05/01/2017 regarding the implementation of the Strategic Plan prepared by Ernst & Young in 2014 and any other similar letters since 2014.
21. Copies of all bids received for selecting providers of services for the College in 2017 and 2018 and details of the accepted bids and providers.
22. Details of Rs. 2 152 597/= that were spent on trustee and board meetings in 2015
23. Details of Rs. 200 000/= write off for JDCSI electricity in 2015
24. Details of expenses paid for Institute Day in 2015, 2016, 2017 and 2018
25. Details of expenses and income of Prize Giving events in 2015, 2016, 2017 and 2018
26. Details of contributions to JDCSI in 2017 and 2018
27. Details of loans from JDCSI in 2017 and 2018
28. Details of insurance and lease installments in 2016, 2017 and 2018.
29. Details of written off staff loans in 2015, 2017 and 2018
30. Details of the expenses for building repairs and maintenance in 2015, 2016, 2017 and 2018
31. Details of the expenses for sports equipment and training in 2015, 2016, 2017 and 2018
32. Details of travelling and vehicle maintenance in 2015, 2016, 2017 and 2018.
33. Details of hostel expenses in 2015, 2016, 2017 and 2018.

34. Details of unpaid ETF and EPF contributions in 2015, 2016, 2017 and 2018
35. Copies of documents that were sent for Australian citizens (interns) and Department of Immigration and Emigration for their visas to work in Sri Lanka at the school.
36. Copies of all documentation related to transferring money to USA in 2017 and 2018 to pay for legal expenses or any other reason
37. Copies of all agreements with members of the staff of Jaffna College to provide services against payment for Board of Directors of Jaffna College or Jaffna College for 2016, 2017 and 2018
38. A copy of the agreement to retain legal services in USA

In an earlier decision (RTIC 64/2017), the Commission advised the Appellant to submit an information request to the Board of Directors of Jaffna College to obtain the remaining requested information.

On the premise that the Board of Directors of Jaffna College does not have a separate Information Officer (IO) or a Designated Officer (DO), the Appellant submitted her information request to the Chairman of the Board, who failed to respond. As there is no appointed DO as required by Section 23 of the Right to Information Act No.12 of 2016, the Appellant appealed directly to the Commission on 17.12.2018.

### **Matters Arising During the Course of the Hearing:**

The Public Authority has not filed written submissions while the Appellant has filed written submissions.

The Appellant by written submissions dated 11.07.2018 stated that the Board of Directors of Jaffna College should be considered a Public Authority for the following reasons:

1. Board of Directors of Jaffna college and their successors were incorporated by Ordinance No.07 of 1894 by the Governor and Legislative council of Ceylon on 03.12.1894. Under Section 31(K) of the Right to Information Act No.12 of 2016 (hereinafter RTI Act), the institutions can be thus considered as a “private educational institution including institutions offering vocational or technical education which are established, recognized or licensed under any written law.”
2. Government notification in Gazette 18.06.1967 makes the Board of Directors of Jaffna College an approved charity based on a written law namely, the Income Tax Ordinance Section 44a (1) as amended by Income Tax (amended) Act No.36 of 1951. Therefore, under Section 31(k) of the RTI Act, it could be considered a “private educational institution including institutions offering vocational or technical education which are established, recognized or licensed under any written law.”
3. The Appellant went on to state that the Board of Directors of Jaffna College is registered and approved as an unaided private school by the Private school branch of the Ministry of Education with Identity Number 1011032 and school type 1 AB. According to the Appellant, it arranges and serves as a correction center for examinations with an agreement with the Examination Branch of the Ministry of Education.

4. According to the Constitution of the Board of Directors of Jaffna College dated 10.10.2014 the institution shall be known as Jaffna College. The Constitution states that the “Board of Directors of Jaffna College is an incorporated body by an ordinance enacted by the Government of Ceylon with the advice and consent of the Legislative Council.”
5. The Board of Directors of Jaffna College is a non-governmental organization receiving substantial funds from an international organization *Trustees of Jaffna College fund* incorporated in Boston, Massachusetts, USA 03/05/1877. For 2017, the *Trustees of Jaffna College fund* initially approved funding of USD 369,985 (equivalent to LKR 57,000,000). The Board of Directors of Jaffna College also receives substantial funding from international alumni organizations based in Canada, UK, New Zealand and Australia.
6. The Board of Directors of Jaffna College is used as a polling station registered with the Election Commission of Sri Lanka, thus providing a public service.

It was the Appellant’s position that the Board of Directors of Jaffna College is a school, charity, polling station, examination center and examination correction center. The Appellant contends that these are public services or functions and show a contract, partnership, an agreement or license from the government or its agencies. The Appellant submitted that the Board of Directors of Jaffna College is thus a private entity or organization which is carrying out a statutory or public function or service, under a contract, partnership, an agreement or license from the government or its agencies or from a local body.

**Order:**

It is noted that Jaffna College is incorporated by Ordinance No.7 of 1984 as “*An Ordinance to incorporate the Board of Directors of the Jaffna College*”

The Preamble of Ordinance No.7 of 1894 states as follows:

“Whereas several of the inhabitants of the Northern Province have established an institution called and known as “The Jaffna College” at Batticaloa, the district of Jaffna, and it is found desirable to constitute certain persons one body politic and corporate for the purpose of effectually transacting all affairs connected with the said college according to the constitution agreed by its founders; Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council.....”

Section 1 and 2 of Ordinance No.7 of 1894 stipulates that Jaffna College shall be incorporated under the name of the “Board of Directors of Jaffna College” and the corporation may sue and be sued.

Section 43(b) of the RTI states as follows:

*(b) any body or office created or established by or under the Constitution, any written law, other than the Companies Act No. 7 of 2007, except to the extent specified in paragraph (e), or a statute of a Provincial Council;*

Accordingly, the Commission concludes that as an education institution incorporated under a written law of Ordinance No.7 of 1894, Jaffna College is a Public Authority within the ambit of Section 43 of the RTI Act.

Therefore, attention of Jaffna College as a Public Authority is brought to Section 23 of the Right to Information Act which states as follows:

*23. (1) (a) Every public authority shall for the purpose of giving effect to the provisions of this Act, appoint, within three months of the date of coming into operation of this Act, one or more officers as information officers of such public authority and a designated officer to hear appeals.*

As Jaffna College has failed to respond to the notices of the Commission issue in terms of Rule 19 the appeal is converted to an in-person hearing in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017). The PA is ordered to appear before the Commission under and in terms of Section 15 of the RTI Act. The attention of the PA is drawn to the fact that the failure to appear before the Commission constitutes an offence in terms of Section 39 (1) (c) of the RTI Act and shall warrant a prosecution in terms of the powers vested with the Commission by Section 39 (4) of the Act.

The Appeal is adjourned.

Next date- 28.04.2020

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).

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