

M.N Farouk v South Asian Institute of Technology and Medicine Ltd (SAITM)

RTIC Appeal (In-Person Hearing)/ [859/2019] - Order adopted as part of the formal meeting of the Commission on 26.03.2019.

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)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Appellant: M.N Farouk

Notice issued to: Designated Officer (DO) SAITM

Appearance/ Represented by:

Appellant – M.N Farouk

PA - Hemantha Tennakoon, Company Secretarial
Ashique Hameed, Attorney-at-Law

RTI Request filed on	16.10.2018
IO responded on	18.10.2018
First Appeal to DO filed on	22.10.2018
DO responded on	No response
Appeal to RTIC filed on	26.11.2018

Brief Factual Background:

The Appellant had by request dated 16.10.2018 requested certified copy of the Medical Student's Transcript covering the period September 2014 to June 2018 in a format accepted to the General Sir John Kotalewala Defence University (KDU).

- a) *Student Name: Fathima Tasneem Ra'na Farouk*
- b) *Student's NIC: 9669113703 V*
- c) *Student's Institute Identity No: MF 14011MDF0014*

The Information Officer (IO) on 18.10.2018 responded stating the following,

'Under and in terms of Section 3 (1) of the Right to Information Act (RTI) SAITM is a private owned company

Also drawn the attention to following documents,

1. *The document signed by M.N. Farouk as a parent dated 24.08.2014 as a declaration agreeing fully to terms and conditions set out to by the SAIMM policy of payment of fees and the consequences the student has to face in the event of failure for payment.*
2. *The letter sent to you by me dated on 16th July 2018 under the topic of submission of names and certificates of SAIMM students to UGC.*

Also it is informed to you that student's transcript is not a public document and it is only issued once (copies are not issued) when the relevant institution makes a formal request directly from the issuing authority. The transcript is sent in a confidential manner to the requesting authority if the reason for the request is acceptable and the student is informed accordingly'.

Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 22.10.2018. As the DO too failed to respond within the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 26.11.2018.

Matters Arising During the Course of the Hearing:

Upon being queried by the Commission the Appellant explained the background to the information request. The Appellant submitted that the relevant information request pertains to the Medical Student's Transcript covering the period September 2014 to June 2018.

The representative of SAIMM submitted that the Appellant in his Appeal to the Right to Information Commission (RTI Commission) designated KDU as the DO. For that reason, the KDU should be noticed to appear before the RTI Commission today.

Further, the representative of SAIMM submitted that it is not a PA under and in terms of the RTI Act since the SAIMM is a company duly incorporated under the Companies Act, No. 7 of 2007 and it operates as a private entity entirely and the State hold no shares of the same.

Upon being queried as to whether SAIMM is required to obtain a license to operate as a University and or Educational Institute annually, the representative of SAIMM submitted that he will inquire into this and inform about it with its written submissions.

Order:

Under and in terms of the RTI Act, No. 12 of 2016, upon a Public Authority submitting that it does not come under the purview of this Act, the PA must satisfactorily prove that it does not fall under and in terms of Section 43 of the RTI Act. Further, the PA must also satisfactorily discharge the burden imposed on it under Section 32 (4) which states that; 'on appeal, the burden of proof shall be on the Public Authority to show that it acted in compliance with this Act when processing a request. SAIMM is directed to submit written submission and relevant documents to establish the same one month before the hearing date. If the Appellant wishes he can submit further written submissions.

Upon being queried the Appellant submitted that letter dated 22.10.2018 was addressed to KDU as the Designated Officer.

Upon being queried as to whether the said medical student's transcript has already been sent to the KDU, the representative of SAIMM submitted that he is not aware of such. In the forgoing

circumstances, as a matter of fact in the instant matter neither the representative of SAIMT can confirm whether the relevant transcript was already sent to the KDU.

Of consent of the Appellant and SAIMT, the KDU will be notified to appear before the Commission on the next hearing date.

The Appeal is adjourned.

The Next hearing date: 17.07.2019

RTIC Appeal (In-Person Hearing)/ [859/2019] - Order adopted as part of the formal meeting of the Commission on 17.07.2019

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)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

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

Appellant: M.N Farouk

Notice issued to: Designated Officer (DO) SAIMT

Appearance/ Represented by:

Appellant - M.N Farouk
PA - Hemantha Tennakoon, Company Secretarial
A. Hameed, Attorney-at-Law

Matters Arising During the Course of the Hearing:

The Appellant stated that he has tendered written submissions to the Commission on 18.03.2019 and 15.07.2019. SAIMT has submitted written submissions on 16.06.2019.

The representative for SAIMT went on to state that he is unaware of the contents of the Appellants written submission dated 15.07.2019 as a copy was not received.

SAITM sought permission from the Commission to peruse the 15.07.2019 written submission by the Appellant and respond with counter-submissions, if needed. Accordingly, the appeal was adjourned granting SAIMT the opportunity to file counter-submissions.

The appeal is adjourned. Next date- 26.11.2019

RTIC Appeal (In-Person Hearing)/ [859/2019] - Order adopted as part of the formal meeting of the Commission on 26.11.2019

Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila

Commission Member: Mr. S.G. Punchihewa

Commission Member: Dr. Selvy Thiruchandran

Commission Member: Justice Rohini Walgama

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

Appellant: M.N Farouk

Notice issued to: Designated Officer-, SAIM

Designated Officer- Kothalawala Defence Academy (KDU)

Matters Arising During the Course of the Hearing:

The appeal was re-fixed for consideration on 03.12.2019

The Appeal adjourned.

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RTIC Appeal (In-Person Hearing)/ [859/2019] - Order adopted as part of the formal meeting of the Commission on 03.12.2019

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)

Chairperson: Mr. Mahinda Gammampila

Commission Member: Ms. Kishali Pinto-Jayawardena

Commission Member: Mr. S.G. Punchihewa

Commission Member: Dr. Selvy Thiruchandran

Commission Member: Justice Rohini Walgama

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

Appellant: M.N Farouk

Notice issued to: Designated Officer – SAIM

Designated Officer – KDU

Matters Arising During the Course of the Hearing:

The representative on behalf of SAIMT raised a preliminary objection against SAIMT being referred to as a Public Authority (PA) in the previous orders of the Commission. Reiterating its stance informed to the Commission by way of a letter dated 11.07.2019, the representative for SAIMT stated as follows:

“the company and its staff has been referred to as a Public Authority. The averments in paragraphs 2 and 3 presupposes that the company is submitted to the jurisdiction of the Commission, which the company denies.”

Accordingly, the Commission clarified that a ruling has not been made on whether or not SAIMT is a PA, as defined by the Right to Information Act No.12 of 2016. While noting that the appeal to the Designated Officer (DO) was made to the Sir John Kothalawala Defence Academy (KDU), the Commission has not as yet entered into a finding of whether or not SAIMT is a Public Authority. Accordingly, previous references to SAIMT as the appropriate PA has been corrected of record.

When queried from the Commission on the position of KDU on the status of sending the transcript in question, the representative on behalf of KDU stated that, KDU has written to the University Grants Commission (UGC) in order to obtain its approval. In response, the UGC has informed that the student in question does not have a valid registration, therefore SAIMT has not issued the certificates of this student to UGC. Furthermore, it was brought to the notice of the Commission that KDU is not in possession of the requested transcript.

Reiterating the position in its written submission dated 16.06.2019 the representative for SAIMT made the following submissions:

- The Right to Information Act should be read together with Article 14A of the Constitution.
- The preamble of the Right to Information Act No.12 of 2016 refers to the right of access to information in Article 14A of the Constitution and adopts measures enumerated in the Act to give effect to this right of access to information while Article 14A of the Constitution states that the right of access to information is rendered operative according to the terms of the Act. The right of access to information operates only against those institutions that are listed in Article 14(1)(a) to (d). It is the position of SAIMT that there is a nexus between the Act and Article 14A of the Constitution which would have to be read together to determine the scope and purpose of the Act and Article 14A of the Constitution.
- SAIMT submits that there is a discrepancy between Article 14(1)(a)-(d) of the Constitution and Section 43 of the Act.
- Article 14(1)(a) to (d) refers to State institutions and persons referable to those State institutions while Section 43 of the Act in defining a Public Authority includes higher education institutions/ private educational institutions that are disassociated from the State.

In response, the Commission noted that the objections raised by SAIMT is applicable to the filing of Fundamental Rights applications before the Supreme Court on the basis of Article 14A. The Right to Information Act No.12 of 2016 is a separate statute which lays down the categories of Public Authorities. Section 43 (j) of the Act encompasses higher education institutions to include:

(j) higher educational institutions including private universities and professional institutions which are established, recognised or licensed under any written law or funded, wholly or partly, by the State or a public corporation or any statutory body established or created by a statute of a Provincial Council;

In this respect the Commission queried whether SAIMT is “licensed under any written law.” The representative for SAIMT responded in the affirmative stating that the educational institution is licensed under the Universities Act as a degree awarding authority. He went on to state that while SAIMT is a licensed institution, in terms of executive and administrative functions it does not come within the purview of the RTI Act. The Commission noted that the RTI Act is not limited to administrative or executive action as it has a far wider scope encompassing private and corporate entities within a particular sphere as defined in the Act. It was submitted on behalf of SAIMT that in terms of the Special Determination by the Supreme Court in relation to the Right to Information Bill SC (SD) No.22/2016, a precondition of control by the State of institutions described as a Public Authorities in Section 43 of RTI Act was required in order for the said institutions to fall within the ambit of the RTI Act.

The Commission queried whether the release of the information in question predicated on the payment fees for which the representative of SAIMT responded stating that he will revert to the Commission with further information in this regard.

Order

Attention is drawn to the "Right to Information Rules of 2017 (Fees and Appeal Procedure)" Gazette No. 2004/66 published on 03.02.2017.

Rule 8 (2): Access to Information

“Excepting the situations mentioned in Rules 5, and 6, the prescribed fee should be paid in full before access to the material is given to the citizen making the request.”

SAITM is directed to apprise the Commission whether the disclosure of the transcript is predicated on the payment of fees and if there is an agreement which stipulates that the appellant should make a payment for the information to be released.

SAITM is further directed to inform the Commission on the procedure followed in sending the information in question from SAIMT to KDU and/or UGC and the terms of that particular release.

SAITM is directed to file written submissions on or before 28 January 2020 with a clarification of the terms of the agreement under which SAIMT releases transcript of the nature that the

requestor has asked for to KDU and/or UGC and at what point, whether before or after payment, as specified in the agreement.

The Appellant is directed to furnish written submission on or before 25 February 2020 on whether he has followed the procedure stipulated under the agreement with SAITM in order to obtain the transcript in question.

The Appeal is adjourned. Next date- 28 April 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).
