

Dushyanthi Suriapperuma v. Sri Lanka Medical Council

RTIC Appeal (In Person)/36/2017 -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) -*(Heard as part of the meeting of the Commission on 20.11.2017)*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Appellant: Dushyanthi Suriapperuma

Notice issued to: Dr. S. Terrence G.R. de Silva, Registrar, Sri Lanka Medical Council

Appearance/ Represented by: Ms. Dushyanthi Suriapperuma (Appellant)

Mr. Upali Amarasiri, Attorney at Law (Counsel for the Appellant)

Ms. Varuni Gunaratne, Attorney at Law

Public Authority represented by Ms. Bashini Hettiarachchi, Legal Officer, Sri Lanka Medical Council, and Dr. S. Terrence G.R. de Silva, Registrar, Sri Lanka Medical Council.

The Appellant made an information request on 21.02.2017 wherein she requested the Annual Reports of the Sri Lanka Medical Council (SLMC) for the years 2005 to 2016. She stated that the SLMC is obliged to produce its annual reports before Parliament. However in response to the Appellant's request by letter dated 23.03.2017, the SLMC had stated that it had not printed its annual reports since 2012. Further upon appeal to the DO on 03.04.2017 she was provided with the same response verbally and did not receive any other response within the three week time period in which the DO has to respond. Following this, the Appellant appealed to the RTI Commission on 19.06.2017.

At this hearing, the Counsel for the Appellant informed the Commission, that she had only been able to obtain the Annual Report of the SLMC for the year 2011, and that Annual Reports were public documents that the SLMC was obliged to produce. He requested from

the Commission that if the Annual Reports were not available for the period 2012-2016, then the 'meeting minutes' of the SLMC, for the said period should be provided to the Appellant. The Commission observed that this request had been made at the second stage of Appeal to the Commission and not in the initial information request.

The Public Authority had sent in written submissions dated 24.08.2017 and signed by Dr. S. Terrence G. R. de Silva, the Registrar of the Sri Lanka Medical Council. The response stated that the SLMC was a statutory body established under the Medical Ordinance No. 26 of 1927 and all matters including administration was governed by the said statute and several related regulations. It further stated that there was no requirement either in the statute or in any of the applicable regulations to prepare and publish annual reports. The Submission also stated that in certain years the PA has published annual reports under no statutory obligation to do so.

The Public Authority, therefore stated, in its written submissions that there were no reports published for the years 2012, 2013, 2014, 2015 and 2016 and therefore it was unable to provide the unpublished documents and that they had explained the same to the Appellant. Elucidating further before the Commission, the Public Authority submitted that it had published Annual Reports for the years 2006 up till 2011. The 2012 Annual Report was in the process of publication.

At the instant hearing the Counsel for the Appellant stated that the PA has presented 'parts of the annual reports' in Court in relation to the case no. SC (Spl) LA Application No 41/17 CA No 187/16 (the SAITM case). The Public Authority denied this claim. The Commission noted that 'minutes' of meetings which may contain matters that are thereafter reflected in Annual Reports are different from the claim that 'parts of the annual reports' were produced before court.

The Counsel for the Appellant queried as to whether a PA is allowed to evade an information request under the RTI Act by pleading that the information asked for has not been printed. The Commission informed the Appellant and her Counsel that if the PA did not publish Annual Reports, it was a burden lying solely on the PA and that it could not be compelled by the Commission to print the Annual Reports.

Counsel for the Appellant queried as to whether the PA had at least printed a limited amount of the Annual Reports for the period 2012-2016. The PA stated as of record that no report was printed for the said period, not even a limited amount.

Where the provision of minutes of the meetings is concerned, the PA submitted that the minutes may contain personal details of medical personnel, details of disciplinary and other inquiries being held, punishments imposed, etc. The Legal Officer of the SLMC informed the Commission that the Public Authority would be pleading the exemption under Section 5 (1) (e) of the Act. Section 5 (1) (e) states that access to information may be denied (subject to the public interest override in Section 5 (4)) when-

“the information could lead to the disclosure of any medical records relating to any person, unless such person has consented in writing to such disclosure;”

In response, Counsel for the Appellant emphasized that the Appellant was only interested in obtaining information about policy decisions and on private medical education, and not personal details or medical records of any individual.

Order

The PA has stated on record that Annual Reports of the PA had not been printed for the years 2012-2016. Following upon this, the Appellant has requested the ‘Meeting Minutes’ for the said years containing references to policy decisions in general and decisions concerning private medical education in particular which may ordinarily be reflected in the Annual Reports.

Additional information requests made at the second stage of appeal before the Commission, which have not been laid before the relevant PA at the initial stage of filing the request for information under Section 25 of the Act, would ordinarily not be permitted by this Commission. However in this case, the request for the minutes of the meetings as aforesaid has been made by the Appellant as an alternative to the initial information request, given that the PA has affirmed as of record that the Annual Reports (the information asked for) has not been printed.

In the circumstances and since both parties are before the Commission, we allow the request of the Appellant that, if the Annual Reports were not available for the period 2012-2016, then the ‘Meeting Minutes’ of the SLMC, for the said period containing information that would ordinarily be reflected in Annual Reports of the PA, should be provided.

The objection raised by the PA re the minutes containing personal details is taken cognizance of. The PA’s attention is drawn to Section 6 of the RTI Act No. 12 of 2016 which states,

“Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.”

The PA is therefore directed to provide to the Appellant, details in the meeting minutes that relate to content relating to policy decisions in general and decisions concerning private medical education in particular which would ordinarily have been published in the Annual Reports of the PA (which are unquestionably, documents that must be made available to the public) by severing any personal details or details relating to medical records from the same. The PA has accepted on record that it would first examine and extract from the minutes of the PA for the year 2012 in this regard.

The PA is directed to provide to the Appellant the information obtained from the minutes as aforesaid for the year 2012 at the next hearing of this Appeal.

The Appeal is adjourned.

Next date of hearing: 16/01/2018

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RTIC Appeal (In Person)/36/2017 -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) -(*Heard as part of the meeting of the Commission on 16.01.2018*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Justice Rohini Walgama

Appellant: Dushyanthi Suriapperuma

Notice issued to: Dr. S. Terrence G.R. de Silva, Registrar, Sri Lanka Medical Council

Appearance/ Represented by: Ms. Dushyanthi Suriapperuma (Appellant)

Mr. Upali Amarasiri, Attorney at Law (Counsel for the Appellant)

Dr. Terrence de Silva, Registrar, Sri Lanka Medical Council

The Registrar of the Sri Lanka Medical Council brought a draft of the Annual Report of the PA for the year 2012. He stated that it had been given to the Council for approval. The PA also stated that since Council elections were going on there would be a delay in handing over the draft annual reports for the following years. When queried as to when the election process would be over the Commission was informed it would take a further 3 months. The Commission informed the PA that only meeting minutes were being requested at present and not draft reports. The PA submitted that it had inadequate staff and it would take time to go through the meeting minutes for each year.

Order

There cannot be inordinate delay in providing the information. The PA is directed to hand over the draft Annual Report for 2012 to the Appellant. The PA is directed to provide the Meeting Minutes for 2013 to the Appellant at the next hearing of this appeal.

The Appeal is adjourned.

Next date of hearing: 16/03/2018

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RTIC Appeal (In Person)/36/2017 -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) -*(Heard as part of the meeting of the Commission on 16.03.2018)*

Chairperson: Mr. Mahinda Gammampila

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The Registrar of the PA provided the Extracts of the Council Meeting Minutes for 2013 the content of which would be included in the Annual Report for the year. He also stated that the Annual Report would be printed once Council approval is received and that even the draft Annual Report of 2012 which he handed over at the last hearing would be subject to Council approval. He further reiterated that the PA had not filed any minutes in the Court of Appeal. He noted that what he was providing was the complete minutes for the year 2013 of which not everything would be included in the Annual Report.

The Registrar also stated that the Council meeting is held every month and that extracts of those meetings are provided in the Annual Report in the public interest. He stated that the PA was in the process of preparing the Reports for the years 2015 -2017 at present.

Counsel for the Appellant stated that they requested to know the decisions made by the PA and that the court decisions had not been included in the minutes provided. The Registrar informed the Commission that only summaries of court cases were included in the Annual Reports. Counsel for the Appellant noted that information about court cases had been available in previous Annual Reports of the PA. He also noted that the meeting minutes did not contain the board decisions and other relevant decisions taken by the PA. The Registrar of the PA informed the Commission that the Draft Annual Report for 2012 had been drafted in accordance with the contents of previous Annual Reports. He submitted that if the Appellant informed the Commission which relevant section of the Report she was interested in he could provide the information relating to that section alone without going through all the minutes.

Counsel for the Appellant then informed the Commission and the PA that they were interested in obtaining the 'Policy Decisions taken by the PA in relation to Medical Education and a summary of the court cases 2011- to date.'

Order

The PA is directed to provide the information as per the streamlined request at this hearing i.e. 'Policy Decisions taken by SLMC in relation to Medical Education and a summary of the court cases 2011- to date'. One part of the information is to be provided within five weeks from the date of this hearing and the remaining information is to be provided within the following 5 weeks.

The Appeal is adjourned.

Next date of hearing: 24/04/2018