

The Right to Information Commission

C. P. Udawatta

Department of Physical Science &
Training,
Faculty of Applied Sciences,
Sabaragamuwa University of Sri
Lanka,
Belihuloya.

-Appellant-

RTIC App/No: 246/2021

Vs.

**Sabaragamuwa University of Sri
Lanka**

P.O. Box 02, Belihuloya,
70140,
Sri Lanka

-Public Authority-

Before : 1. Justice Upaly Abeyrathne (Rtd.) - Chairman
2. Justice Rohini Walgama (Rtd.) - Commissioner
3. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
4. Mr. Jagath Liyana Arachchi (Attorney-at-Law) - Commissioner
5. Mr. A.M Nahiya - Commissioner

Appearance : The Appellant is absent.
The Public Authority represented by Mr. Saman Uyangoda, Registrar.

Written Submission : Appellant - Not Submitted
Public Authority - 16.02.2021, 18.08.2021, 11.01.2022,
16.09.2022

Date of Hearing : 24.02.2022, 29.08.2022

Decided on : 08.12.2022

Decision of the Commission

Brief Factual Background

The Appellant made the information request dated 2020.09.07 as below:

Individual evaluation marks sheet by each evaluator (expert panel + Council) at the selection interviews of the post of Vice Chancellor/SUSL held on 2020.09.02 at the SDI auditorium.

The Acting Vice Chancellor of the Public Authority responded on 2020.09.11 & 2020.10.09 as follows;

Response dated 2020.09.11-

“We wish to inform you that we have forwarded all the documents related to the Vice Chancellor appointment held on 02.09.2020 to the University Grants Commission. Therefore, we are not in a position to provide information as requested.”

Response dated 2020.10.09 -

“I wish to inform you that we have forwarded all the documents related to the Vice Chancellor appointment held on 02.09.2020 to the University Grants Commission according to the section 2 (xv) of the UGC circular No. 02/2020 dated 04th May 2020.

However, based on your request Actg. Registrar of our university has informed to Information Officer (with a copy to you) of the UGC by the letter dated 30th September 2020 to take an appropriate action in this regard.”

Dissatisfied with these responses, the Appellant lodged an appeal with the Designated Officer (DO), the Vice Chancellor of the Public Authority on 03.11.2020. As the DO failed to respond within the time period stipulated in the Act, the Appellant preferred an appeal to the Commission on 24.11.2020.

On 18.08.2021, the Designated Officer of the Public Authority apprised the Commission as follows;

“The originals of the proceedings of the ...meetings together with the applications recommended by the Special Council meeting for the post of Vice Chancellor has already been handed over to the Chairman/UGC on 07.09.2020, and it was informed to the applicant by letter dated 11.09.2020 (Annex 2).

But, the above applicant appealed to the University several times to provide such information and therefore the University forwarded his RTI application to the UGC in order to take appropriate actions in this regard.

In the meantime, the UGC by letter dated 18.02. 2021 returned the originals of the proceedings with regard to the appointment of Vice Chancellor of SUSL since the relevant proceedings were over.

Accordingly, as per 29 (1) of the Right to Information Act No 12 of 2016, the University requested consent of each evaluator of the Evaluation Committee and the Special Council Meeting held on 02.09.2020 in order to issue the individual marks sheet given by the above meeting, to the above applicant.

Accordingly, 26 members were requested their consent and six of them did not agree to provide their individual evaluation marks, three of them agreed to provide the results and other 17 members did not respond.”

In response to the order of the Commission dated 29.08.2022, which allowed the parties to file written submissions if necessary, the Public Authority submitted their further written submissions stating, *inter alia*, below;

“...විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් නිකුත් කරන ලද කොමිෂන් සභා චක්‍රලේඛ අංක 02/2020 ප්‍රකාරව 2020.09.02 වන දින ශ්‍රී ලංකා සබරගමුව විශ්වවිද්‍යාලයේ උපකුලපතිවරයකු තෝරා පත්කර ගැනීමේ සම්මුඛ පරීක්ෂණය සාර්ථක පැවැත්විණි. ඒ අනුව, ඊට අදාළ ඇගයුම් කමිටුවේ හා විශේෂ පාලක සභා රැස්වීමේ ඇගයීම් කටයුතු වලට අදාළ සියලුම ලියකියවිලි රහස්‍ය ලේඛලය යටතේ විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ සභාපතිවරයා වෙත 2020.09.07 වන දින ඉදිරිපත් කරන ලදී.

පසුව, වරින් වර අපේක්ෂකයින් විසින් තොරතුරු දැනගැනීමේ අයදුපත්‍ර විශ්වවිද්‍යාලය වෙත යොමු කරන ලදී. ඒ වන විට විශ්වවිද්‍යාලය සතුව එම තොරතුරු නොතිබූ බැවින් එම අයදුම්පත්‍ර විශ්වවිද්‍යාලය විසින් විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව වෙත යොමු කරන ලදී. ඒ අනුව, විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව එම රහස්‍ය තොරතුරු අයදුම්කරුවන් වෙත ලබාදීමට පිළිබඳව අපගේ එකඟතාවය 2020.12.23 දිනැති ලිපියෙන් විමසන ලදී. එයට පිළිතුරු ලෙස අප විසින් 2021.01.11 දිනැති ලිපිය විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව වෙත යොමු කරන ලදී. කෙසේ වුවද, 2021.02.18 වන දින එම සියලුම ලියකියවිලි නැවතත් විශ්වවිද්‍යාලය වෙත විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව මගින් යොමු කරන ලදී.

ඒ අනුව 2020 මැයි 04 වන දින නිකුත් කරන ලද 02/2020 කොමිෂන් සභා චක්‍රලේඛයේ දෙවන වගන්තියේ දඟවන අනු වගන්තියේ, (ඇමුණුම I)

“ඇගයුම් කමිටුවේ වාර්තාව සහ සාමාජිකයින් විසින් ලබාදුන් තනි ලකුණු ඉතා රහස්‍යව පාලක සභාවේ ලේකම්තුමා භාරයේ තැබිය යුතුය.”

යැයි සඳහන් කර ඇති බැවින් එම රහස්‍ය ලියකියවිලි ඉතා රහස්‍යව පාලක සභාවේ ලේකම්වරයා වන ලේඛකාධිකාරීතුමා භාරයේ රහසිගතව ඇත.

තවද, යම් තොරතුරක් හෙළිදරව් කිරීමේදී ප්‍රවේශය ප්‍රතික්ෂේප කළ යුතු රහස්‍ය තොරතුරු සම්බන්ධව 2016 අංක 12 දරණ තොරතුරු දැනගැනීමේ අයිතිවාසිකම පිළිබඳ පනතේ මෙසේ සඳහන් කර ඇත....

ඉහත කරුණු සලකා බලා ඔබගේ උපදෙස් ලැබෙන්නේ නම්, 2020.09.02 දින, ශ්‍රී ලංකා සබරගමුව විශ්වවිද්‍යාලය සඳහා උපකුලපතිවරයකු තෝරාපත් කරගැනීමට අදාළව පහත තොරතුරු ලබාදිය හැකි බව කාරුණිකව දන්වා සිටිමි.

1. ඇගයුම් කමිටුව විසින් අපේක්ෂකයන් වෙත ලබාදුන් මුළු ලකුණු අඩංගු සහතික කළ ලේඛනයක්.
2. පාලක සභාව වෙත අපේක්ෂකයන්ගේ ඒකල ඉදිරිපත් කිරීමෙන් පසුව පාලක සභාව විසින් අපේක්ෂකයන්ට ලබාදුන් මුළු ලකුණු අඩංගු සහතික කළ ලේඛනයක්.
3. පාලක සභාව විසින් විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව වෙත යොමුකරන ලද ලේඛනයේ සහතික කළ පිටපතක්.”

Consideration

Examination of the relevant documents in this Appeal indicates that, the Public Authority had, by their letters dated 11.09.2020 and 09.10.2020, cited the fact that, all relevant documents related to the Vice Chancellor appointment held on 02.09.2020 had been forwarded to the University Grants Commission, as reason for inability to release the information.

We note that, no exemption in terms of Section 5 (1) of the Right to Information Act had been raised in respect of the said failure to release at that stage by the Public Authority. Moreover, the Designated Officer of the said Public Authority had failed to respond to the appeal lodged by the Appellant to him, thus violating the mandatory provisions of Section 31 (2) and (3) of the Right to Information Act, No 12 of 2016 (hereafter, the RTI Act).

Before this Commission, the Public Authority raised *inter alia* Section 5 (1) (i) as grounds to refuse to release the information in issue. Section 5 (1) (i) of the Right to Information Act, No 12 of 2016 (‘the RTI Act’) states the relevant exemption to the denial of information by a Public Authority as follows;

subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority concerned by a third party and the third party does not consent to its disclosure;

Section 29 details as to how the exemption contained in Section 5(1) (i) may be applied, i.e.; first, the information must relate to or be supplied by a third party to the Public Authority and second, such information must be treated as confidential at the time that the information was supplied. In all instances where these facts are satisfied, the Public Authority must, within one week of the receipt of the request, invite the said third party by notice issued in writing, to agree or refuse the disclosure of the requested information, within seven days of the receipt of that notice.

If the third party does not respond within that time limit or if permission to release is so given, the Public Authority must release the information so requested. However, if permission to release is refused, the Public Authority shall deny the release of the said information. Upon the

denial to release, the Commission has the discretion to release the information, despite objections raised by a third party, provided that the release of the information concerned demonstrably outweighs the private interest in non-disclosure (*Vide*; proviso to Section 29(2)).

Applying these sections to the facts, what the appellant has asked for is the 'individual evaluation marks sheet by each evaluator (expert panel + Council) at the selection interviews of the post of Vice Chancellor/SUSL held on 2020.09.02 at the SDI auditorium.'

The Public Authority has referred to the University Grants Circular (UGC) Circular 02/2020 to establish its position that the above stated documents must be 'kept confidentially under the custody of the Secretary to the Council' (vide Section 2 ix) of the said Circular). Perusal of the record reveals that, at the time the information request was made, and given the fact that the information issue had been sent to the UGC, the UGC had asked the Public Authority if the information could be released.

In response thereto, the Public Authority had stated that, information that is 'not confidential' as per the provisions of the RTI Act, may be provided, (vide letter dated 11.01.2021 sent by the Acting Registrar of the Public Authority to the UGC). The said information was thereafter returned by the UGC, to the custody, control and possession of the Public Authority on 18.02.2021 since, 'the relevant proceedings were over.' (Vide written submissions of the Public Authority dated 18.08.2021).

Further, the Public Authority has, by its Written Submission dated 18.08.2021, apprised the Commission of the fact that, acting under Section 29 of the RTI Act, consent of each evaluator of the Evaluation Committee and the Special Council Meeting held on 02.09.2020 in order to issue the individual marks sheet given by the above meeting, had been requested. Consequently, out of the 26 members from whom consent was requested, six members did not agree to provide the individual evaluation marks, three of them agreed to provide the results and other seventeen members did not respond.

In consequence thereof and in respect of the three members who had agreed to release the results as well as the seventeen members who did not respond, the relevant information should have been released by the Public Authority in terms of Section 29(a) and (b). We do not see this evidenced on the face of the record.

Consequent to hearings before the Commission on 29.08.2022, the Public Authority informed the Commission that, consequent to a direction thereof, that it was willing to release;

- a. A certified document containing the total marks awarded to the candidates by the Evaluation Committee.
- b. A certified document containing the total marks awarded to the candidates by the Governing Body after submission of candidates' CVS to the Governing Body.

- c. A certified copy of the document forwarded by the Governing Body to the University Grants Commission

We note however that the items of information listed above by the Public Authority do not however correspond to the items of information asked for by the Appellant in his information request dated 07.09.2020.

Where the application of Section 5(1) (i) read with Section 29 is concerned which is the ground relied upon by the Public Authority to refuse release of the information, we note that, on the face of UGC Circular 02/2020, the condition of ‘confidentiality’ applies to an ongoing process in respect of the selection of a Vice Chancellor.

In this case, the Appellant is requesting information that relates to a process which has completed as affirmed by the Public Authority itself (*vide*, ‘...the relevant proceedings were over.’ written submissions of the Public Authority dated 18.08.2021). In fact, more than two years have lapsed since the date of the relevant documentation. As such, we do not find that any requirement of ‘confidentiality’ applies in the circumstances of this case, bringing Section 29 (1) of the RTI Act into operation.

Following careful consideration of the matters before us, we find that, in any event, the public interest evidenced therein adequately meets the standard stipulated in Section 5(4) and the proviso to Section 29(2) which confers the power to this Commission to order the release of information, notwithstanding any objections raised by a third party against its disclosure. We decide that the public interest thereto demonstrably outweighs the private interest in non-disclosure in the circumstances of the case.

It is our view that the due and proper functioning of the Public Authority in terms of procedures followed in the appointments of Vice Chancellors is of paramount public interest. The Public Authority functions on public funds and is under an obligation to follow open and transparent methods in regard to the same.

Apart from Section 5(1) (i) read with Section 29, the Public Authority also and for the first time, raised Section 5(1) (a), (d), (g) and (L) as grounds to deny the information in its final submissions dated 16.09.2022. We are cognizant that appeals made to this Commission under Section 32 of the RTI Act are against a decision/non-decision of the Designated Officer. It is an abdication of the statutory function of the Designated Officer not to respond, as apparent in this instant case and then, at the very advanced stage of appeal before this Commission, to raise varied exemptions in Section 5(1) of the RTI Act as a basis to refuse to release the information requested. The Public Authority is directed to refrain from such conduct in the future when responding to right to information requests as this contradicts both the spirit and letter of the RTI Act.

For the foregoing reasons, we direct that all items of information asked by the Appellant in his information request dated 07.09.2020 be released by the Public Authority before 25.12.2022.

The Commission further decides that the failure to release the said information on or before the said date would lead to prosecution before the relevant Magistrate's Court under Section 39 of the said Act.

For the completeness of this decision, we place on record that, in terms of rule no. 11 of Right to Information Commission Rules of 2017, the Public Authority is not entitled to charge any fee from a citizen for the release of the information upon a decision made by this Commission.

The Director General is directed to convey the Order to the Appellant, the Information Officer and the Public Authority.

Appeal Concluded.