

Dr. Kumarasiri Manage v Secretary, Ministry of Education

RTIC Appeal/65/2017 (*Heard as part of the meeting of the Commission on 16.10.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Dr. Kumarasiri Manage

Notice issued to: Mr. Sunil Hettiarachchi, Secretary, Ministry of Education (Designated Officer)

Notice also issued to: Mrs. S. K. Aviruppola, Principal, Visakha Vidyalaya (Information Officer at the time of the appeal to the Commission)

Appearance/ Represented by: Dr. Kumarasiri Manage,

Dr. B. A. J. Indrathilaka

Ms. S. K. Aviruppola, Principal, Visakha Vidyalaya

Ms. Pushparani Samaranayaka, Sectional Head (Primary)

The Appellant, Dr. Kumarasiri Manage was present at the hearing.

Mr. Sunil Hettiarachchi, Secretary, Ministry of Education (Designated Officer) and Mrs. S. K. Aviruppola, Principal, Visakha Vidyalaya, the designated Information Officer (IO) at the time of the appeal to the Commission were absent when the matter was taken up for hearing. Upon the direction of the Commission, the relevant public officers were notified and inquiry made as to why they had not presented themselves before the Commission subsequent to receiving notice. The IO stated that she would present herself before the Commission with the requisite documents at the earliest opportunity. The Commission, after consulting with the Appellant, postponed the hearing until the IO arrived and upon arrival of the IO, took the matter up for consideration.

In this case, the Appellant had requested the following information by an information request dated 22.04.2017 sent to the Principal, Visakha Vidyalaya:

1. The number of students in each Grade 4 class of Visakha Vidyalaya Colombo 05 as at 22.04.2017.
2. Following details regarding school admissions to Grade 1
 - a. The list of names and number of students admitted, through interviews, to Grade 1 in 2014

- b. The list of names and number of students whom the Special Appeal Board recommended be admitted in 2014 (The students who were admitted under the direction/order of the Secretary of the Ministry of Education)
- c. The list of names and number of students admitted through letters issued by the Ministry of Education in 2014
- d. Details of the students admitted in a manner other than by following the above mentioned procedure from January 2014 to date
 - i. Name of the student
 - ii. Date of admission
 - iii. Reason/s for admittance

Responding to the request by the Appellant, the Principal of Visakha Vidyalaya had informed by letter dated 29.04.2017 that she had written to the DO for advice and intended to take further action based on the advice of the DO (Secretary of the Ministry of Education).

Upon the Commission querying as to why advice had been sought from the Ministry in that regard as the Act stipulated a strict exercise of independent discretion by public officers vested with statutory duties, she pointed out that at the time that the information request was submitted to her, namely on 22.04.2017, she had not been appointed an IO. During that period, all information requests under the Act were being directed to the Ministry of Education. Therefore she had written to the Ministry for advice. She stated that she had been appointed as IO subsequent to a circular dated 19.06.2017 by the DO (Secretary, Ministry of Education), whereby Principals of National Schools were appointed as IOs in regard to information requests relating to the respective schools.

On receipt of the aforesaid response of the Principal of the said school (who had not been appointed an IO when the information request had been made, namely on 22.04.2017), the Appellant appealed to the Secretary, Ministry of Education by letter dated 20.06.2017 requesting the release of the information. However, the Appellant stated that he had not received a response by the Secretary to date. Upon the Commission perusing the files in the custody of the Principal of the said school, it transpired that a letter (dated 06.10.2017) signed by the Secretary (the DO at the time of the date of this letter) had been copied to the Principal and addressed to the Appellant,

rejecting the provision of the information. However, the Appellant stated categorically on record that he had not received this letter by the DO as of this date.

Order

A clear breach of the law and procedure mandated by the RTI Act, No 12 of 2016 (the Act) and RTI Regulations gazetted on February 3rd 2017 (Gazette No 2004/66) is evidenced on the part of the relevant Public Authority, namely the Ministry of Education and the designated DO, the Secretary to the said Ministry.

In the first instance, the DO has failed to appear before this Commission or send a representative on his behalf, despite being noticed to do so under the RTI Act and the Rules of the Commission gazetted on February 3rd 2017 (Gazette No 2004/66). The Public Authority has provided no explanation as to the failure thereof and attempts made by the staff of this Commission to contact him on the date of the hearing were not fruitful. This constitutes an offence under and in terms of Section 39 (1) (c) of the Act, incurring specific legal consequences in terms of that Section.

In such an eventuality, the Commission is empowered under Section 39(4) to initiate a prosecution in the relevant court. Section 39 further specifies that the conviction of such an offence carries with it the penalty of a fine and/or imprisonment for a term not exceeding two years.

Furthermore, the DO's rejection of the instant information request by letter dated 06.10.2017 (which the Appellant states that he had not received) is a bare refusal to furnish the information and does not contain the citation of the relevant section under which an exemption under Section 5 (1) of the Act may be pleaded. This is a serious contravention of Section 31 (3) of the Act.

Section 31 (3) states as follows;

- (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 Public Authority is in violation of the statutory duty laid upon the said Public Authority and its Secretary, the DO in this instance which mandates a refusal of information only on the specified grounds detailed in Section 5(1) of the Act.

Moreover, due to the failure on the part of the relevant Public Authority to put into place clear procedures in regard to the handling of information requests, this particular information request submitted by the appellant on 22.04.2017 has not been effectively responded to by the responsible Public Authority.

At the time of the submission of the information request (namely 22.04.2017), the said Public Authority, namely the Ministry of Education had been directly handling all information requests. It was only with effect from 19.06.2017 and almost two months after the instant information request had been made under Section 24 (1) of the Act, that Principals of National Schools had been appointed as IOs to process information requests relating to the respective schools. Therefore the Principal of the school cannot be faulted in the circumstances of the case as she was not the named IO at the time in question. The responsibility of conforming to the Act in this regard fell fairly and squarely on the shoulders of the Public Authority, the Ministry of Education.

Thereafter, the Appellant wrote to the Secretary of the said Public Authority, the Ministry of Education on 20.06.2017. Even at that stage, no response was received by him. The rejection of the information request by the DO by letter dated 06.10.2017, a copy of which was furnished by the Principal of the said school, namely the IO indicates not only that the DO had failed to cite a specific exemption under Section 5 (1) of the Act but that he had failed to adhere to the time limits of responding to the appeal in terms of Section 31 (3). The Appellant appealed to this Commission on 12.07.2017 and notices were sent to the Respondents on 26.09.2017.

A hastily written refusal by the DO (which refusal is, in any event, not in conformity with the Act), dated 06.10.2017 follows a delay of well over three months since the Appellant first submitted the appeal to the DO on 20.06.2017 and follows soon after notices were sent to the DO by the Commission.

The whole constitutes multiple violations of Section 31 and Section 39 (1) (c) of the Act as well as the violation of Regulations promulgated by the Minister of Parliamentary Reforms and Mass Media, gazetted on February 3rd 2017 (Gazette No 2004/66). This Commission takes considered note of the same in the context of its duty under Section 14 (a) to ‘monitor the performance and ensure the due compliance by public authorities of the duties case upon them under this Act.’

In consideration of this Appeal on its substantive merits, the Principal of the relevant school (the IO at the time of the appeal to the Commission) presented the relevant information in issue. She stated that she is willing to provide the said information on an order of the Commission.

Upon perusing the relevant material placed before us, it is evident that this appeal concerns, in part, information of a similar nature already released in appeals before the Commission relating to the name lists and numbers of children admitted to Grade One in other schools (RTIC Appeal No 25/2017, Minutes of 21.08.2017). The Designated Officer in question has not cited any specific ground under Section 5 (1) of the Act to deny the information. It is therefore idle to speculate as to what grounds may have been put forward as a reason. The Principal of the said school, who became the information officer at the time that the appeal was filed before this Commission, has cited concerns in regard to the safety and security of the children concerned. The information that has been asked for is limited to name lists, the numbers of the children who have been admitted and their addresses which confirms to the same information released by the Public Authority in RTIC Appeal No 25/2017(Minutes of 21.08.2017) in which instance, the information had been released by the Public Authority after the appellant in that case had appealed to the Commission.

In this instance and in addition, the requested information relates to letters issued by the said Public Authority authorizing the admission of particular children to Grade One of the said school. These letters pertain to the exercise of discretionary powers in office by public functionaries and is therefore of demonstrable public interest, the release of which information satisfies the requirements laid down in Section 5(4) of the Act. It is notable that the preamble to the Act emphasizes the need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information.’ The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure

which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked and in any event, where the public interest becomes uppermost. It bears repetition that in this instance, the Designated Officer in question has not cited any specific ground under Section 5 (1) of the Act to deny the information, either before the Commission or in other letters issued by the said Public Authority.

In these circumstances, we order the release of the information in relation to items 1 and 2. (a) - (c) of the information request. Based on the information released, the relevant details pertaining to 2 (d) ie; details of students admitted outside the above mentioned procedures from January 2014 to date (name, date of admission and reasons for admitting the students) may be ascertained by the Appellant.

The Appeal is hereby concluded.
