

**Prof. C Ellankumaran v. University of Jaffna**

RTIC Appeal(In-Person) /233/2018 - *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 a formal meeting of the Commission on 12.06.2018

**Chairperson:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr Selvy Thiruchandran  
Justice Rohini Walgama  
**Present:** Director-General Piyathissa Ranasinghe

**Appellant:** Prof. C Ellankumaran  
**Notice Issued to:** Designated Officer, University of Jaffna

**Appearance/ Represented by:**

Appellant - Prof. C Ellankumaran  
Public Authority - Mr N Rajavisahar, Deputy Registrar, University of Jaffna

<b>RTI Request filed on</b>	12.05.2017 and 17.07.2017
<b>IO responded on</b>	08.09.2017
<b>First Appeal to DO filed on</b>	29.09.2017
<b>DO responded on</b>	No Response
<b>Appeal to RTIC filed on</b>	01.02.2018

**Brief Background Facts**

The Appellant had requested the following items of information, by information requests dated 12.05.2017 and 17.07.2017

1. Reason for the provisions of PA 6/2004, regarding the 'Effective date (One year from the date of Charge sheet) of Full Salary and Compulsory Leave' not being correctly implemented after the reinstatement took place on 01.01.2015, without break of service of 01.10.2013
2. Reasons for not implementing the provisions of the Establishment Code for University Grants Commission and Higher Education Institutes which clearly stipulated in paragraph 14:2 of Chapter X, regarding placing on Special Leave instead of long term Compulsory Leave
3. Reasons for the continuation to impose of out of bounds (Against Rules of Natural Justice/Rules against Bias/Against Fundamental Rights) for about 3 years and 8 months
4. Reason for allowing Prof. V. Tharmaratnam to take part in the Appellants' matters at the council against the rules of natural justice and against the principles of Administrative Law as he was an offender in the Appellants' promotion process and he was identified and removed by the Senate and Council for malicious under marking in the Appellant's promotion process

Prior to making the second information request, the Appellant received a response from the Vice Chancellor by a letter dated 20.05.2017 stating that since the outcome on the formal inquiry against the Appellant and his case in the Court of Appeal were pending, the requested information could not be provided.

The Appellant received a response from the IO by letter dated 08.09.2017 stating item 2 of the request with regard to the provision of leave could be provided. Dissatisfied with the information provided, the Appellant appealed to the DO on 29.09.2017. As the DO failed to respond, the Appellant preferred an appeal to the Commission on 01.02.2018

### **Matters Arising During the Hearing**

On questioning the PA with regard to the DO's failure to respond, the PA submitted that the Appellant was requesting for the reasoning behind the PA's decisions and not information per se. The Commission responded stating that section 35 of the Act places a duty on the PA to provide reasons and an ongoing case at the Court of Appeal is not a ground to deny the provision of requested information.

### **Order**

Section 35 of the Right to Information Act No.12 of 2016 places a duty on the PA to give reasons with regard to decisions made.

Section 35 of the Act states as follows;

*“Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision.”*

The PA is directed to examine the information request and file written submissions explaining the reasons for denying the Appellant the requested information.

The Appeal is adjourned.

Next date of hearing: 31.07.2018

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RTIC Appeal (In-Person) /233/2018 - 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 a formal meeting of the Commission on 31.07.2018

**Chairperson:** Mahinda Gammampila

**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr Selvy Thiruchandran

**Present:** Director-General Piyathissa Ranasinghe

**Appellant:** Prof. C Ellankumaran

**Notice Issued to:** Designated Officer, University of Jaffna

**Appearance/ Represented by:**

Appellant -Prof. C Ellankumaran

Public Authority -Ms. Sugatha Kamaleswaran, Assistant Registrar, University of Jaffna

**Order:**

The Public Authority is directed to respond to the following queries of the Appellant i.e. queries 1, 2 and 3 of the information request:

1. *Why the provision of PAC 6/2004, regarding the Effective date (one year from the date of the charge sheet) of full salary and compulsory leave” were not correctly implemented after the reinstatement took place on 01.01.2015, without break of service from 01.10.2013*

2. *Why the provisions of the Establishment Code for UGC and HEIs, clearly stipulated in paragraph 14:2 of chapter X regarding placing on Special Leave instead of long term Compulsory Leave, were not implemented?*
3. *Why the imposition of out of bounds continued (Against Rules of Natural Justice/ Rules Against Bias/ Against Fundamental Rights) for about 3 year and 8 months?*

RTIC Appeal (In-Person) /233/2018 - *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 a formal meeting of the Commission on 11.09.2018

**Chairperson:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr Selvy Thiruchandran

**Director-General:** Piyathissa Ranasinghe

**Appellant:** Prof. C Ellankumaran

**Notice Issued to:** Designated Officer, University of Jaffna

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Appellant -Prof. C Ellankumaran

Public Authority -Ms. Sugatha Kamaleswaran, Assistant Registrar, University of Jaffna

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

The Designated Officer had responded to the said questions as directed on the previous occasion by response dated 20.08.2018. The Appellant responded on 23.08.2018 indicating his dissatisfaction with the response provided, claiming that the reasoning provided is flawed and requesting the Commission to instruct the PA to be present and submit proper written submissions on 11.09.2018.

The Commission questioned the rationale of the Public Authority in failing to respond to Question No. 2 of the Appellant regarding:

*Why the provisions of the Establishment Code for UGC and HEIs, clearly stipulated in paragraph 14:2 of chapter X regarding placing on Special Leave instead of long-term Compulsory Leave, were not implemented?*

The Commission observed that the refusal of the University Council to arrive at a decision with regard to the inquiry report owing to the Writ Case (88/2018) filed by the Appellant in which there is an active stay order is unacceptable as the said stay order does not deal with the matters referred to in his RTI request and thus cannot be brought within the relevant exemption.

The error in the Written Submission of the PA citing Section 14.2 as opposed to Section 14.1. of the Establishment Code was corrected.

The responses provided by the PA to Item Nos. 2 and 3 were deemed to be satisfactory. With respect to the Appellant's concerns regarding the validity/correctness of the responses given, this Commission cannot compel the PA to alter the reasoning however flawed it may be and that the Commission is only authorized to order the disclosure of the reasoning in existence. Further the decision taken by the PA can be disclosed while the merits of such a decision cannot be inquired into before the Right to Information Commission and may be raised before different for a with competence to consider the matter.

With regard to items 1 and 4, the release of the relevant portions of the Minutes of the Meeting including and limited to the information requested by the Appellant is directed in accordance with Section 6 of the RTI Act. Section 6 of the RTI Act states as follows;

*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.*

### **Order**

The PA is directed to provide the Minutes of the Meeting severing all information except that which will provide the reasons sought by the Appellant's information request with a copy to the Commission.

Next hearing on: 13.11.2018

RTIC Appeal (In-Person) /233/2018 - *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 a formal meeting of the Commission on 13.11.2018

**Chairperson:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr Selvy Thiruchandran

**Director-General:** Piyathissa Ranasinghe

**Appellant:** Prof. C Ellankumaran  
**Notice Issued to:** Designated Officer, University of Jaffna

**Appearance/ Represented by:**

Appellant -Prof. C Ellankumaran  
Public Authority -Ms. Sugatha Kamaleswaran, Assistant Registrar, University of Jaffna

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

The PA stated that the Minutes of the Meeting were sent to the Appellant on 09/11/2018. However, the Appellant claimed that he did not receive the said minutes of the meeting or a copy of the proceedings of the previous hearing.

A certified copy of the proceedings was handed over to both the Appellant and Public Authority. The PA handed over the Minute of the Meeting with regard to item 1 and 4 of the information request to the Appellant before the Commission.

The Appellant requested three weeks to peruse and respond to the minutes of the meeting and the proceedings that were handed over to him during the hearing.

**Order**

The Appellant is granted three weeks to respond to the documents handed over to him via written submissions and the Public Authority is given two weeks thereafter to forward its counter response. The matter is fixed for final order on 08.01.2019.

RTIC Appeal (In-Person) /233/2018 - *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 a formal meeting of the Commission on 08.01.2019

**Chairperson:** Mahinda Gammampila  
**Commission Members:** Kishali Pinto-Jayawardena  
S.G. Punchihewa  
Dr Selvy Thiruchandran

**Director-General:** Piyathissa Ranasinghe

**Appellant:** Prof. C Ellankumaran  
**Notice Issued to:** Designated Officer, University of Jaffna

**Appearance/ Represented by:**

Appellant -Prof. C Ellankumaran  
Public Authority -Ms. R. Tharsika, Assistant Registrar, University of Jaffna  
Ms. S Tharani, Management Assistant, University of Jaffna

**Matters Arising during the course of the hearing:**

The Appellant by his written submission dated 28.11.2018 had stated that if the matter is to be concluded on 08.01.2018, he requests the RTIC to order the DO of the PA to submit relevant documents related to issues (i), (iii) and (iv) or advise him to admit to the following averments:

- 1) Applications on the above issues were not tabled or presented at the appropriate meetings of the Council by Former Vice chancellor and Registrar and recordings were also avoided with hidden purposes
- 2) The DO has no obligations to deliver proper information and answers to the RTIC and DO does not need to obey the provisions of the RTI Act
- 3) The PA does not need to follow 'Rules of Administrative Law of this country and do not need to answer any authorities concerned.
- 4) The PA had prematurely decided to impose major punishments to the appellant and therefore PA did not follow the procedure and ignored natural justice, fundamental rights and the rule of law.

The PA in its letter dated 17.12.2018 stated that information requested under items no. 2 and 3 were deemed satisfactorily delivered to the appellant at the hearing on 11.09.2018. Further, it stated that since the PA was directed to provide information requested under items no. 1 and 4,

the PA sent to the Commission the relevant extracts of the Minutes of the Council by letter dated 09.11.2018.

**Order**

As the information requested by the Appellant was provided by the PA by letter dated 17.12.2018, the matter is hereby concluded.

Order is directed to be 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).

The Appeal is concluded.

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