

J. K. M. D. Jayasundera

v

Anula Vidyalaya, Nugegoda

RTICAppeal(In-Person)/241/2018 - *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 21.08.2018

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

Director-General: Piyathissa Ranasinghe

Appellant: Ms. J. K. M. D. Jayasundera
Notice Issued to: The Principal Anula Vidyalaya Nugegoda

Appearance/ Represented by:

Appellant - Ms. J. K. M. D. Jayasundera
Mr. Sampath Idamgodage (accompanying the Appellant)

Public Authority - Y N Piyadigamage,
R G C N Rajapaksha

Brief Factual Background:

The Appellant had by requested dated 08.12.2017 requested the following information;

- I. A certified copy of the Selected List publicized in accordance with/ subsequent to the first interview held in 2017 for the selection of students for the grade one class under the Past pupils category
- II. A certified copy of the Waiting List publicized in accordance with/ subsequent to the first interview held in 2017 for the selection of students to the grade one class under the Past pupils category
- III. A certified copy of the Appeal Board report subsequent to the consideration of appeals against the decisions made subsequent to the first interview held in 2017 for the selection of students to the grade one class under the Past pupils category
- IV. A Certified copy of the Final Selected List publicized, subsequent to the Appeal Board decisions resulting from the consideration of appeals against the decisions made subsequent to the first interview held in 2017 for the selection of students to the grade one class under the Past pupils category
- V. A Certified copy of the Waiting List publicized, subsequent to the Appeal Board decisions resulting from the consideration of appeals against the decisions made subsequent to the first interview held in 2017 for the selection of students to the grade one class under the Past pupils category

- VI. A certified copy of a document which substantiates the position that, of the children listed in V above, whether any one or more have been admitted to Grade 1 of Anula Vidyalaya to date.
- VII. Of the students admitted to Grade 1 one of Anula Vidyalaya from those listed in V above to date,
- a) A certified copy of the interview mark list and certified copies of the documented evidence/ documents based on which the marks were awarded
 - b) The amended mark list subsequent to the Appeal Board decision/ certified copies of the Appeal Board decision and certified copies of the documented evidence/ documents on which the decisions were based.

As the IO failed to respond the Appellant lodged and appeal with the DO on 02.02.2018. The DO by an undated letter, directed the IO (The Principal Anula Vidyalaya) to respond. As necessary action was not taken within the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 28.02.2018.

Matters Arising During the Course of the Hearing:

The Appellant submitted that she was in receipt of the information requested by items I, II, IV and V. Explaining the delay in relation to responding to the Appellant's information request the representatives of the IO submitted that since an inquiry had been conducted in relation to the admission to Grade 1 the relevant files had been in the custody of the Ministry of Education.

With respect to item No III the PA's response was that there was no such Appeal Board report in existence. The PA was queried as to whether any document is maintained by the Appeal Board to indicate the changes made during the appeal process to which the PA responded submitting that only the results sheet that is prepared is available.

With respect to item No VI the PA was queried as to whether any students were admitted to which the PA responded in the affirmative. As the hearing progressed it became evident that 4 students on the waiting list had been admitted.

With respect to item VII a) the PA submitted that it is unwilling to provide the information of its own accord as the disclosure of this item of information Item VII a) and VII b) and would affect the privacy of third parties.

The Appellant submitted that only through the disclosure of this item of information can a comparison be made and the discrimination in failing to admit her child to the PA (Anula Vidyalaya Nugegoda) be demonstrated.

Order:

The PA's concern for the privacy of the third parties is noted. Section 5 (1) (a) exempts information provided if,

(a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

Nevertheless, under and in terms of Section 5 (4) if the public interest in disclosure outweighs the harm caused, the information must be disclosed. Section 5 (4) states that

At the Right to Information Commission of Sri Lanka

Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

In the context that discrimination on the part of the PA as alleged by the Appellant in admissions to Grade One of the PA, may only be demonstrated by the provision of the information requested under item VII a) and VII b), it is necessary to ascertain whether the public interest in the disclosure of the information outweighs the harm caused and/or whether certain parts of the information may be severed under and in terms of Section 6 of the Act and provided to the Appellant, for which an inspection of the information denied is necessary. Section 6 of the Act states that,

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.

With respect to Item VII a) and VII b) the PA is directed to provide the information sought, in relation to the four students admitted from the waiting list, to the Commission for an inspection. The attention of the PA is drawn to Section 15 (c) of the Right to Information Act No. 12 of 2016 which states that

For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-... to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act.

The PA is directed to produce the information before the Commission within one week of the receipt of the order.

The Appeal is adjourned.

Next date of Hearing: 11.09.2018
