

M. G. Lalith Ananda v. Ministry of Education

RTIC Appeal/28/2017 (*Heard as part of the meeting of the Commission on 31.07.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. SelvyThiruchandran

Appellant: Mr. M. G.Lalith Ananda

Notice issued to: Mr. S.Hettiarachchi–Secretary, Ministry of Education

Represented by: Mr. H. Hewage, Additional Secretary (Information Officer), and Mr. Prasad Weerasiri (Assistant Director of Education- National Operation Room)

Present at Hearing: Piyathissa Ranasinghe, Director General, Right to Information Commission

The Secretary to the Ministry of Education, Mr S. Hettiarachchi was represented by Mr. Mr. H. Hewage, Additional Secretary, Ministry of Education (Information Officer), and Mr. Prasad Weerasiri, Assistant Director of Education Ministry of Education.

The Appellant has requested the following categories of information which relates to the admission of children of persons in the below mentioned categories contrary to specified circulars and guidelines issued by the Ministry of Education. The information requested, in detail is as follows.

1. Information relating to the admission of the children of doctors, university lecturers, judges, government servants, teachers of the respective schools and other persons, to all National Schools in Sri Lanka starting January 2015 to date (17.03.2017), and which admissions have been made contrary to the below circulars.

Name of the School to which they were admitted;

The Child's name;

Parent's / Guardian's name and occupation;

Address;

Date on which admission was given and the grade to which the child was admitted;

Reasons for admitting the student;

2. Certified copies of all letters issued by the Ministry of Education to the relevant Principals of the Schools directing them to admit the students listed under 1
3. Certified copies of all letters issued the Ministry of Education to different parties agreeing to admit students listed under 1

Examples of the relevant circulars that need to be adhered to as stated in the Appellant's information request were as follows:

Circular No 17/2016 dated 16.05.2016

Circular No 23/2013 dated 23.05.2013 and all the amendments relating to such

No 23/2013 dated 18.06.2014

No 23/2013 dated 30.06.2014

No 34/2015 dated 29.12.2015

Circular No 20/2006 dated 23.05.2006.

At the hearing, the Appellant stated that he had not received any response from the Ministry of Education regarding his information request. Mr.Hewage (Information Officer) and Mr.Weerasiri on behalf of the Ministry of Education stated that the Public Authority responded to the Appellant by letter no. ED/RTI/1703/038 dated 03.07.2017 sent through registered post which stated that no admissions have taken place contrary to the specified circulars and refusing to provide the information under Section 5(1) (a) of the Act. However since the letter was returned to the Ministry, it was furnished to the Appellant in the presence of the Commission.

Elaborating on the reasons for refusing the information request Mr.Weerasiri stated that no students had been admitted contrary to circulars which had been informed to the Appellant. At present circular no. 2017/22 as amended is followed in the admission of students to Grade 1 and circular no. 2008/37/1 is followed in the admission of students from Grade 2 to 11. Mr.Weerasiri further stated that the admission to Advanced Level classes is done by the respective schools.

The position of the Public Authority was that since the Appellant's request only relates to information contrary to the said circulars and given the fact they have informed the Appellant that

there were no such contrary actions taken, they are unable to provide the information. Also it was further maintained that the Secretary to the Ministry had discretion in that regard.

The Appellant stated that he will use the averment given in writing by the Public Authority to the effect that no children were admitted contrary to the afore-stated circulars for the purpose of further steps to be taken in law in judicial fora. He also clarified from the Commission as to whether, if the Public Authority misrepresents facts before the Commission, that the RTI Act, No 12 of 2016 mandates consequential punishments in law to which question, the answer was given in the affirmative by the Commission.

The Public Authority further apprised the Commission that in terms of a revised procedure adopted at the said Public Authority, the Principals of National Schools were appointed as Information Officers while the Designated Officer was the Secretary to the Ministry. Information Officer (IO) Mr Hewage stated that the ambit of his duties as IO was limited to information being asked directly from the Public Authority.

Order:

Having heard both parties in respect of this matter, the Commission has taken note of the fact that the Appellant is amenable to limit his information request to information in respect of admissions to girls' schools in the Colombo District rather than the generalized and wide nature of the information initially requested.

However, it is of record that the Appellant's request was subject to a condition relating to the information asked being in regard to admissions made that were 'contrary to the said circulars.' In response to that claim, the Public Authority had informed the Appellant that there were no such contrary actions taken. The Appellant states that it is his firm belief that admissions had taken place contrary to the said circulars but it appears that this is only his belief.

In regard to the claim by the Public Authority that the Secretary to the Ministry has discretion in regard to the admission of children, it is relevant to remind the Authority that discretion is mandated to be properly exercised in law. It is a principle of settled law that unfettered discretion

cannot be exercised by a public functionary. Apart from the duties laid down under and in terms of the RTI Act in this regard, it is also pertinent to point out that Section 35 of the Act states as follows;

‘Every officer in a 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.’

In the instant case, the response of the Public Authority that no action had taken place in regard to the admission of children in the facts and circumstances specified by the Appellant in his information request submitted under and in terms of the RTI Act ‘contrary to the aforesaid circulars’ is furnished to the Appellant. He is informed that, since his request is made conditional by him to the allegation that the information should relate to actions ‘taken contrary to the circulars’ and since the Public Authority has denied that any action has taken place in a manner that is so contrary and in the absence of any indication that such violations have occurred, the Commission is constrained from proceeding further in this instant appeal.

The Appellant is at liberty to file a fresh information request or take necessary action pursuant to law. Given that the Ministry of Education has now initiated a scheme under the Act whereby the Principals of National Schools are the Information Officers as at 19.06.2017, the Appellant may file a revised information request if he wishes to the said Principals of the relevant national schools from which he wishes to obtain the information. If the Appellant is unsatisfied with the response of the Information Officers or there is no response he may appeal to the Designated Officer and therefrom to the Commission as mandated under the Act.

The Appeal is hereby concluded.
