

MEGHALAYA INFORMATION COMMISSION

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Complaint/No.MIC/Complaint/19/2008/

Shri Harikumar P. of Pallathadka 671551, Kasargod, Kerela - Complainant

-Vrs -

Shri K.C.Abraham, Centre Head, Institute of Chartered Financial Analysts of India (ICFAI) University Shillong Centre. - Respondent

14-5-2008

ORDER

1. The Complainant Shri Harikumar P. of Pallathadka 671551, Kasargod, Kerela filed the instant Complaint before the Commission on 22-2-2008. It was received in the Commission on 27-2-2008. The facts leading to the complaint are as follows:
(i) That the ICFAI University being a public authority under Section 2(h) of the RTI Act has failed to implement the provisions of the RTI Act, in as much, as the University authority has failed to designate and notify the Public Information Officer (PIO), the Assistant Public Information Officer (APIO), and the Designated Appellate Authority (DAA) as required under the law and as a result it has denied information seekers of access to records/documents and information held by it.
(ii) The University authorities has failed to publish complete and correct information in its Website.
2. Because of such alleged failure on the part of the above named University authority, the Complainant had asked for imposition of penalty amounting to Rs.25,000/- (Rupees Twenty five thousand) each to the Registrar of the University and to the Executive Head of the University and also to compensate the Complainant who had suffered losses and detriment including mental tension etc as he has not been able to get the required information either through the University authority or through its Website.
3. The Commission after scrutiny of the complaint petition registered a Complaint Case under section 18(a) of the RTI Act and initiated the process of enquiry.
4. Vide Order dated 17-3-2008, the Commission has summoned the Registrar of ICFAI University Shillong Centre and also the Commission & Secretary, Education Department, Govt. of Meghalaya to appear before it for the enquiry and hearing on 14-4-2008.
5. Subsequently the Govt. of Meghalaya declared 14-4-2008 as a local holiday and no hearing could be held. However, on the next day i.e. on 15-4-2008 the Complainant appeared before the Commission. Presuming that the Complainant had come from a distance place for the hearing the Commission heard the Complainant in absent of the Respondent and re-fixed on 28-4-2008 as the next date for hearing the case.
On 24-4-2008, Shri K.C.Abraham, the Head of Shillong Centre of the University and DAA appeared on behalf of the Public Authority. The Complainant and the Commissioner & Secretary, Education Department, Govt. of Meghalaya were both

absent. Finding that the Respondent, Shri K.C.Abraham has just joined the Shillong Centre of the University and was not in a position to clarify queries put by the Commission on the process of enquiry, the Commission directed the public authority to file an affidavit on the next date fixed for hearing stating the following facts:

- (1) Date of appointment of PIO/APIO and Designated Appellate Authority with copies of such appointment letters/ Orders.
- (2) Date of creation of the Website of I.C.F.A.I., University.
- (3) Whether the Website contains the names and designation of the PIO/APIO and the Designated Appellate Authority of the Public Authority.
- (4) Whether the University has published the 16th Manuals as required under Section 4(1)(b) of the RTI Act, if so, the date of which it was published.
- (5) Whether the above Manuals have been placed in the Website of the University, if so, when? if not, when the University intends to accomplish this task?
- (6) The relevant information in respect of Tura Centre of the University.
- (7) The ground for not imposing the penalty/compensation as prayed for by the Complainant.

6. On 14-5-2008 the date fixed for hearing the case. The Respondent is present and filed the affidavit. The Complainant and Commissioner & Secretary, Education Department, Govt. of Meghalaya were however absent.
7. (i) According to the Affidavit filed by the Respondent as well as the oral evidence tendered by him, the ICFAI University at the initial stage of its establishment believed, without ulterior motive, that being a Private University, without any financial aids from the Govt., it is not a public authority under the RTI Act. However, subsequently the University authority learned that the University is in fact a public authority under the RTI Act being created by law made by the State Legislature of Meghalaya. Due to above initial confusion, some delay has occurred in creating the necessary facilities for implementing the RTI Act as a public authority.
 - (ii) The public authority viz., the ICFAI University Shillong Centre has already designated and appointed PIO, APIO and DAA as follows: (1) Shri Sandipan Chakraborty, Administrative Officer as PIO w.e.f. 8-4-2007, (2) Shri Alexis Mishel, Administrative Officer as APIO w.e.f. 3-10-2007 and (3) Shri K.C.Abraham, Centre Head has been appointed as DAA w.e.f. 3-4-2008. Copies of appointment letters have been enclosed as Annexures to the affidavit.
 - (iii) The University had created its own Website in the month of August, 2007, however, the Website did not contain the names and designation of the PIO, the APIO, and the DAA at the time of its creation, but the information in full has been placed in the Website recently.
 - (iv) The University has published the Manual under Section 4(1)(b) of the RTI Act but has not been able to place the whole information of the Manual in its Website yet as more information has to be collected for incorporation into the Manual.
 - (v) Tura Centre is operating undergraduate courses and is administratively under Shillong Centre.

8. The issues before the Commission are:
- a. Whether the ICFAI University is a public authority under the RTI Act.
 - b. Whether there is any denial/intentional delay on the part of the Respondent to implement the RTI Act.
 - c. Whether penalty/compensation would be awarded.

9. As verbally stated by the Respondent, the ICFAI University Shillong Centre was started in the early part of 2007 and classes started functioning only on the month of September 2007. Therefore, the University has been set up only recently and during the initial stages of establishment there was some confusion of the applicability of RTI Act to such Private University as the ICFAI Shillong. However, the University authority realized subsequently that it is a public authority on its own right as it was created/established under a law made by the Meghalaya State Legislature in accordance with Section 2(h)(c) of the RTI Act. The University authority had then taken steps to appoint Shri Sandipan Chakraborty, Administrative Officer as PIO on 8-4-2007, Shri Alexis Mishel, Administrative Officer as APIO on 3-10-2007 and Shri K.C.Abraham, Centre Head as DAA on 3-4-2008.

The Commission is, therefore, convinced that there has been no willful denial on the part of the ICFAI University authority to implement the provision of the RTI Act. Apart from the initial confusion as admitted by the Public Authority which normally happened in many Public authorities at the initial stage, there has been no inordinate or intentional delay on the part of the authority to designate the PIOs who are the kingpins in the process of the implementation of the RTI Act. This is supported by the fact that the PIO and the APIO were already in position long before the date the Complainant filed his petition before the Commission on 22-2-2008.

10. The Respondent admitted that the Public authority had not been able to place the information on appointment of PIO, APIO and DAA on the Website early; but now it has already been done. The Commission is of the opinion that there are many Public authorities in the State Govt. Departments/Public Sector Undertakings who have appointed/designated all the functionaries under the RTI Act and published the same in their offices but never appeared in their Websites (since many of them don't have Websites). Therefore the absent of the information on functionaries required to be created under the RTI Act in the Website of the University does not imply that the University has not appointed the required functionaries.

Having examined the matter in its entirety, the Commission is pleased to Order as follows:

- (i) The Respondent should, within 1(one) month placed in the official Website of the University all the relevant information as required under Section 4(1)(b) of the RTI Act including the names, the designation and the address of all functionaries under RTI Act and other Sou-Moto disclosures as required under Section 4(2) of the RTI Act for all the Centres of the University in Meghalaya.

- (ii) The instant complaint has been made by the Complainant before the Commission against the failure on the part of the public authority to implement the provision of the RTI Act and not against any specific PIO for failure to discharge the duties/function under the law. In the instant case, the Commission is convinced that the ICFAI University had taken concrete steps to implement the provisions of the RTI Act by appointing the PIO and the APIO much before the date of filing of the instant complaint by the Complainant before this Commission. Hence, the question of penalty does not arise.
- (iii) The Complainant has claimed compensation for the losses and detriment suffered by him for not being able to file his application for information with the public authority due to non-implementation of the provisions of the law by it. From what has been discussed above, the Commission found that the public authority has started functioning long before the act of filing of the instant petition by the Complainant. The Complainant appears to have depended only on the Website for information without checking through other means of communication about the functioning of the public authority. As a matter of fact, had the Complainant filed his RTI application, if any, with the Registrar of the University or with any PIO of the State Public authorities, it could have been dealt with according to the law by the concerned public authority. The Commission therefore find no justification for awarding compensation to the Complainant in the instant case.

Before parting with the case, the Commission had taken note of the fact that there are other Universities created under the Acts of Meghalaya State Legislature such as the Martin Luther University and the William Carey University. The Commissioner & Secretary, Education Department, Govt. of Meghalaya has been asked to appear before the Commission to inform the status of implementation of RTI Act by such Universities. Since the Commissioner & Secretary, Education Department, Govt. of Meghalaya was not present on the dates of hearing, the Commission hereby required the Commissioner & Secretary, Education Department, Govt. of Meghalaya to conduct an enquiry on the status of implementation of RTI Act by the Martin Luther University and the William Carey University of Meghalaya in his capacity as an administrative head of the Nodal Department and to come up with report of compliance indicating their status on 30th June, 2008.

Case disposed of as above.

(G.P.Wahlang)
C.I.C.

Memo No.MIC/Complaint/19/2008/

Dated Shillong, the 14th May, 2008

Copy forwarded to:-

1. Shri K.C.Abraham, Centre Head, ICFAI University, Shillong, Soomer House, 3rd Floor, Malki, Dhankheti, Near IFAD Office, Shillong – 793001.
2. The Commissioner & Secretary, Education Department, Govt. of Meghalaya, Shillong.
3. Shri Haikumar P. of Pallathadka – 671551, Kasaragod District, Kerela.

(P.T.Rani)
Under Secretary,
State Information Commission,
Meghalaya, Shillong.