



**In the Pakistan Information Commission, Islamabad**

**Appeal No 1174-06/21**

**Syed Hammad Husain**

(Appellant)

Vs.

**COMSATS University**

(Respondent)

**ORDER**

**Date:** August 11, 2021

**Zahid Abdullah:** Information Commissioner

**A. The Appeal**

1. The Appellant filed Appeal on February 02, 2021, to the Commission, stating that he had submitted information requests to the Rector, Comsats University, Islamabad on January 05, 2021, under the Right of Access to Information Act 2017 but did not receive any response from the public body.

2. The information sought by the Appellant is as follows:

*“I had sent an email to your kind self on 28th September 2020 and a follow up email on 10th October 2020 with a request to share the final report of inquiry conducted from 10th to 15th Feb, 2017. No reply was received from your side. Copies of both emails are attached with this letter.*

*Also attached herewith is a copy of the official notification of the said inquiry, ref no. CIIT ISB(HR)/Notif-58/2017/760, dated February 9, 2017, signed by Muhammad Rizwan Anwar, Manager (HR)”*

**B. Proceedings**

3. Through a notice dated February 15, 2021, sent to Rector, Comsats University, Islamabad stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The appeal was fixed for hearing on March 11, 2021 and both parties were informed through notices sent on February 25, 2021.

5. Mr. Arif Mushtaq, Deputy Registrar, Comsats University attended the hearing and requested time to provide the requested information. The hearing was adjourned for March 18, 2021.

6. Mr. Arif Mushtaq, Deputy Registrar, Comsats University attended the hearing held on March 18, 2021, and again requested for time to provide the requested information. The hearing was adjourned for March 25, 2021.
7. Through a notice dated March 24, 2021 the Respondent was directed to submit written arguments within 15 working days, otherwise the appeal will be decided Ex Parte in the light on the record available on the file and the Right of Access to Information Act 2017.
8. The Respondent through a letter vide No. CUL/Legal-Reg/21/787 dated April 13, 2021 submitted its response which is as under:

*“Reference to Pakistan Information Commission's (PIC), Hearing Summon No. 887- 02/21 dated March 24, 2021 to the Rector, CUI.*

*It is submitted that the Inquiry Committee was constituted in the year 2017 vide CUI's letter No. CHIT-ISB(HR)/Notif-58/2017/760 dated February 9, 2017. The Recommendations of the said Inquiry Committee were neither approved nor disapproved by the then Authorized Officer (Rector, CUI) under CUI's Employees Efficiency and Discipline Statutes, 2006 in the matter of faculty members, therefore, the said Recommendations had not attained finality therein and have no value in the eyes of law.*

*Since neither any final order or decision has ever been passed on the said Inquiry Committee's Recommendations therefore, as per Section 6(d) of the Right of Access to Information Act, 2017 it can not be termed as public record nor under Section 7(b) & (c) thereof CUI is under an obligation to provide any information to the Appellant with regard to record excluded from the definition of public record.”*

9. Response of the public body was shared with the appellant on April 22, 2021.
10. The Appellant on May 04, 2021 submitted rejoinder to the information shared with him, which is as under:

*“The explanations provided by Deputy Registrar Comsats University are not acceptable as they are misleading, false and an attempt to conceal facts. FACTS AS PER CIIT EMPLOYEES EFFICIENCY AND DISCIPLINE STATUTES 2006*

*The inquiry procedure is clearly defined in the CIIT Employees Efficiency & Discipline Statutes 2006, (herein after referred to as E&D Statutes) where the Inquiry Committee has been granted the powers of a civil court. (E&D Statutes Clause 23)*

*The inquiry procedure is enshrined in the following clauses of E&D Statutes:*

*E&D Statutes, Clause 8 (b) states:*

*The Authorized Officer shall decide whether, in the light of facts of the case or the interests of justice, an inquiry should be conducted through an inquiry Officer or Inquiry Committee. If he/she decides, the procedure indicated here shall apply.*

*Contrary to the misleading explanation of Comsats University in its response, an inquiry report does not require the "approved by the Authorized Officer. Rather, his mandate is to initiate*

*further proceedings based on the recommendations of the report. The only approval or the decision the Authorized Officer is required to take as per the Statutes is whether the case merits an inquiry, which in this case was duly decided by the Authorized Officer, and an inquiry committee was constituted by him through notification no. CIIT-ISB(HR)/Notif-58/2017/760, dated February 9, 2017.*

*After this step, the inquiry procedure is defined clearly where the role of the Authorized Officer is only to take necessary action once he receives the final report, as shown below. E&D Statutes, Clause 9 states:*

*On receipt of the report of the Inquiry Officer or Inquiry Committee, the following procedure shall apply:*

(a) if it is proposed to impose a minor penalty, he/she (Authorized Officer) shall pass orders accordingly.

(b) If it is proposed to impose a major penalty, he/she shall forward the case to the Authority along with the charge and statement of allegations served on the defendant, the explanation of the defendant, the findings of the inquiry committee, and his own recommendations regarding the penalty to be imposed. The Authority may pass such orders as it may deem proper.

The Authorized Officer violated Clause 9 of E & D Statutes by not taking either of the steps mentioned above

### **LEGALITY AND FINALITY OF THE INQUIRY REPORT**

Given the above, it is evident from the Statutes that the entire inquiry procedure is divided into two independent phases, whereby each phase is a complete and final legal phase:

Phase-1: Inquiry proceedings by a formally constituted inquiry committee and submission of the signed report with recommendations for further action.

Phase-2: Further action by the Authorized Officer.

In the subject case the first phase was duly and legally completed, bringing it to its finality, strictly in accordance with the E&D Statutes "Procedure to be observed by Inquiry Committee" Clauses 16 to 22.

However, the second phase of implementing the penalty, was willfully and deliberately not undertaken by the Authorized Officer because of malafide intent to protect the accused defendant. Instead of proceeding with the Inquiry Committee recommendations, as he was duty-bound to do, as per the Statutes, he illegally concealed the report, which constitutes abuse of authority, violation of the Statutes and norms of Natural Justice and a violation of Code of Civil Procedure, 1908. However, this second phase has no bearing on the legality and finality of the submitted Inquiry report.

Note: It is important to highlight that the then Director/In-Charge campus Dr Raheel Qamar, who became Acting Rector a month after the submission of the report, and to whom the report was submitted for initiating necessary action against the accused defendant, was himself included in the inquiry as a party to this case as an abettor and accomplice. Therefore, he chose to illegally conceal the report. The present Rector is continuing with the same illegality by concealing the report and protecting the accused defendant.

### **CONCLUSION**

As shown above in accordance with the E&D Statutes, the said inquiry report did not require any further endorsement, approval or stamp from the Authorized Officer, Rector, Director/In-Charge Campus or the Board. It was complete in all respects, final and legal in the eyes of law.

Therefore, the assertion of Comsats University in their aforementioned response that "The recommendations of the said Inquiry Committee were neither approved nor disapproved by the then Authorized Officer... therefore the said recommendations had not attained finality therein and have no value in the eyes of law" is a deliberate misrepresentation and misinterpretation of the E&D Statutes, an attempt to create hurdles in the smooth functioning of the Honourable Commission, to mislead it from finding true facts. It is also an attempt and abetment by the bonafide Rector of Comsats University with mala fide intentions to keep the report hidden from public eye to protect the accused defendant.

### **PRAYER**

I humbly request the Honourable Pakistan Information Commission to direct the Rector/Principal Officer of Comsats University Islamabad under Article 3 (1) of Government of Pakistan's Right of Access to Information Act, 2017 to submit the said Inquiry Report, which is a public document."

11. The appeal was again fixed for hearing on June 03, 2021. No one appeared on behalf of the Respondent. The hearing was adjourned for July 08, 2021.

12. Mr. Asif Mushtaq, Deputy Registrar, Comsat University appeared before the commission and again request for time to provide response to the queries of the appellant, the hearing was adjourned for August 05, 2021.
13. The Respondent on August 05, 2021 submitted its response during the hearing, which is as under:

*“With reference to Pakistan Information Commission's (PIC) Appeal No. 887-02/21 dated June 16, 2021.*

*It is submitted that during the last hearing on July 08, 2021, undersigned was directed to submit a copy of minutes of Inquiry Committee constituted on a complaint filed by Syed Hammad Hussain, the appellant. The PIC also conveyed that after analyzing the minutes of the said Committee, it will be decided whether to hand over the minutes to the appellant or not.*

*Furthermore, it is noteworthy to mention that Syed Hammad Hussain has received the desired copy of minutes of Inquiry Committee and in response; he wrote an email to an official of CUI on July 28, 2021 that shows that he got the desired document (copy enclosed).*

*In the light of above as purpose having been served, it is requested to PIC to please close the Appeal No. 887-02/21 filed by Syed Hammad Hussain.”*

*14. The Appellant through telephonic conversation on August 06, 2021 also confirmed to this commission that he received the requested information.*

#### *C. Issues*

*15. The instant appeal has brought to the fore following issues before this commission: Did the Respondent, COMSATS follow procedure laid down in the Right of Access to Information Act, 2017, henceforth referred to as Act, to respond to information request of the citizen?*

*Should penalty be imposed on the Registrar for causing inordinate delay in providing the requested information to the citizen?”*

#### **D. Discussion and Commission's View on Relevant Issues**

14. The Rector, COMSATS caused inordinate delay in providing copy of the final report of inquiry conducted from 10th to 15th Feb, 2017 which should have been already available on the web site of the COMSATS.
15. In the instant appeal, the Rector, COMSATS University, deemed to be Public Information Officer, (PIO), as required under Section 9 of the Act when a PIO is not designated by the head of a public body, failed to perform following obligations under the Act.

I. Failure to provide “written acknowledgement in response to” a request for information filed by citizen as required by Section 10 (1) of the Act.

II. Failure to follow procedure enunciated in the Act for acceptance and refusal of request for information laid down in Section 13 (2) of the Act which is as under:

“(2) The designated official shall process the request and by notice in writing inform the applicant that---

- a) A request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of the prescribed fee. On payment of the fee the designated official shall provide the requested record, or
- b) The request has been rejected-

i. On the basis that it does not comply with the provisions of this act and the rules made there under but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;

- ii. On the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found;
  - iii. On the basis that it is incorrect, because it relates to information which is substantially the same information that has already been provided to the same applicant during last six months; or
  - iv. In whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision.
16. The Respondent also failed in adhering to the timeline for responding to the information requests as required under Section 14 (1) and (2) of the Act as the PIO did not respond to the information request at all.
17. The Rector, COMSATS has neither designated Public Information Officer, as required under the Right of Access to Information Act 2017 nor ensured implementation of Section 5 of the Act.
18. The fact that the Respondent has caused delay in providing to the requested information to the Appellant highlights following two issues:
  - (A) That the Respondent has violated timeline mentioned in the Act to provide the requested information to the Appellant; and
  - (B) That had the Respondent implemented provisions of this Act, including, but not limited to Section 4 and 5 of the Act, the unwarranted delay in providing the requested information to the Applicant could have been avoided.
19. This commission has held through its different detailed judgements that federal public bodies are not giving primacy to proactive disclosure of information through their web sites and that proactive disclosure of information is not given serious consideration it deserves.
20. While all federal public bodies were legally bound to implement Section 5 of the Act within six months of the commencement of this Act, it is painfully obvious from the responses of the public bodies that work on proactive disclosure of information is progressing at a glacial pace. This clearly suggests that the public bodies have demonstrated paper-thin grasp of the significance of the transparent functioning of public institutions through proactive disclosure of information.
21. This commission has also established through its different Orders that not only information is to be made available to citizens as required under Section 5 of the Act but it has to be made available on the web sites in a manner that it is accessible for all citizens, including those with different disabilities by incorporating web accessibility standards in the design and development of web site.<sup>11</sup>.
22. Citizens of Pakistan through their elected representatives have included the provision of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.
23. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

## **E. Order**

24. Appeal is disposed of as the requested information is provided to the Appellant.
25. The Rector, COMSATS is directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put contact details of PIO on its web site as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
26. The Rector, COMSATS is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 along with final report of inquiry conducted from 10th to 15th Feb, 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission within 30 days of the receipt of this Order.
27. Copies of this order be sent to the Rector, COMSATS and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

August 11, 2021

This order consists of 6 (six) pages, each page has been read and signed