

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 894-02-2021

Babu Khan

Vs

Higher Education Commission

Date: 06.07.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mr. Babu Khan, filed an application dated 15.12.2020 under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Pakistan before the Chairman, Higher Education Commission, Islamabad for the provision of the following information/record:

- i) *List of MS/Ph.D students who got failed in their academic programs but reimbursement of the scholarship amount under the contract has been waived off by H.E.C from 2006 to 2020.*
- ii) *List of MS/PhD students who got failed in their academic programs but completion of MS/Ph.D on their own expenses option has been given by H.E.C from 2006 to 2020.*

2. The application was not responded by the respondent within the stipulated time provided in the Act; hence the appeal dated 2.2.2021 before the Pakistan information Commission.

B. PROCEEDINGS.

3. The notice of the Commission was responded by the Director General (Media)/ Public Information Officer vide letter dated 5.4.2021. The relevant part is reproduced as under:

“It is requested that appellant Mr. Babu Khan was awarded scholarship for “MS leading to PhD Studies” in France by Higher Education Commission (HEC) and he failed to complete course of study. His case was presented in National Scholarship Management Committee (NSMC) for decision and the committee decided that he will refund the cost of studies along with penalty @ 15% but he has failed to refund.

Due to non-compliance of the said decision, HEC filed a recovery suit in December 2018 as per approved rules and the same is sub judice. The appellant has concealed the above mentioned material facts with malafide intention.

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It is further requested that the information required is exempted from disclosure vide Section 16(1)(i)(v) of the Right of Access to Information Act, 2017.”

4. The appellant is not satisfied with the reply and has reiterated the provision of the requested information through his letter dated 14.4.2021.

C. ISSUES.

- i- Whether the requested information/record is public record under the meanings of the Act?
- ii- Whether the pendency of the recovery suit against the appellant debars him from seeking the requested information/record?
- iii- Whether the nondisclosure of the sub-judice suit proves malafide against the appellant?
- iv- Whether the requested information/record is exempted from disclosure under Section 16(1)(i)(v) of the Act?

D. COMMISSION’S VIEW.

Issues No. i & iv:

- i) The appellant in his application has requested the List of MS/Ph.D students who got failed in their academic programs but reimbursement of the scholarship amount under the contract has been waived off by H.E.C and the list of MS/PhD students who got failed in their academic programs but were granted option for the completion of MS/Ph.D on their own expenses, by H.E.C for the period 2006 to 2020. The organization in the reply has claimed exemption from disclosure of the desired information/record while referring Section 16(1)(i)(v) of the Act. Section 16(1)(i)(v) exempts the disclosure of the information which is likely to prejudice the proceedings in any court or tribunal but the respondent has not expressed in detail how the desired information will prejudice the proceedings of the court. The information sought by the appellant is the category of record that ought to have been placed on the notice board of the office of the organization and also merits to be published on its website to maintain transparency in the reimbursement of the scholarship amount because transparency is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people.
- ii) There is no cavil in holding that the reimbursement of the scholarship amount is dispersed from the coinage funded by the citizens of the country. The citizens has the fundamental and Constitutional right under article 19A of the Constitution of Pakistan fortified by statutory right under the Right of Access to Information Act, 2017 to seek information in the matters of public importance from any public body. The plea of the respondent does not carry weight hence the Commission is of the considered view that the requested information/record is the public record and is not exempted from disclosure.

Issues No. ii & iii

- i) The respondent has objected the sharing of the information/record while referring the pendency of recovery suit before the court of law filed by the organization against the appellant. The record requested by the appellant may be instrumental and contributory, in aid to the litigation in his matter against the department. The objection raised by the respondent is ill founded and baseless because the appellant has the vested right of fair trial under article 10A of the Constitution of Pakistan for the determination of his civil rights and obligations. The right vested in a person for seeking his remedy provided in the law must be interpreted liberally to bolster the recognized fundamental rights of access to justice.
- ii) For the reasons mentioned in the preceding para the Commission has no reason to believe *malafide* on the part of the appellant in seeking the desired information/record nor can it be attributed mere for the pendency of civil suit before the court of law.
- iii) Furthermore nondisclosure of the pendency of the recovery suit is not fatal for the reason that the applicant under section 11(5) of the Act, is not required to provide reasons for his application for information/record.

E. ORDER.

The appeal is allowed. The Director General (Media)/ Public Information Officer, is directed to furnish the information/record requested by the appellant through his application dated 15.12.2020, forthwith, but in any case not later than ten days of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 5.7.2021

Certified that this order consists of three (3) pages, each page has been read and signed.