

K. Prasanna Kumar V. District Secretariat Ampara

RTIC Appeal Documentary)/ [1693]/[2019]- Order adopted as part of the formal meeting of the Commission on [07/07/2020]

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)

Chairman: Mr. Mahinda Gammampila
Commission Member: Mr. S. G. Punchchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Ms.Kishali Pinto-Jayawardena

Appellant: K.Prasanna Kumar
Notice issued to: Designated Officer, District Secretariat Ampara

RTI Request filed on	14/03/2019
IO responded on	02/04/2019 (Acknowledgement)
First Appeal to DO filed on	08/06/2019
DO responded on	No Response
Appeal to RTI filed on	04/07/2019

Brief Factual Background:

The following information was requested on 14.03.2019 from the District Secretariat Ampara

- 1. The details regarding the 500 houses constructed in Nuraicholai in 2006 for the victims of tsunami including the expenses for the construction, name and other details of the beneficiaries and the facilities attached to the houses*
- 2. The details regarding the 500 houses constructed in Marudhamunai-Mettuvattai in 2006 for the victims of tsunami including the expenses for the construction, name and other details of the beneficiaries and the facilities attached to the houses*

The I/O acknowledged the appeal on 02.04.2019 but did not respond within the time period stipulated in the Act. Therefore the Appellant appealed to the Designated Officer (D/O) on 08/06/2019 who failed to respond within the time frame stipulated in the Act. The Appellant thereafter preferred an appeal to the Commission on 04/07/2019.

Matters Arising During the Course of the Hearing:

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures of the RTI Commission's Appeal (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. **As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.**

The Commission observed that by the letter dated 26.12.2020 PA has responded to the Appellant as following.

The Item No 01

Details of the Nuraicholai Tsunami Housing Scheme.

Expenditure of housing Construction -Information not in our possession

Details of the Beneficiaries - Beneficiaries list has not been finalized.

Facilities of Housing Scheme

i.	Multi-Purpose building	01
ii.	Market Building	01
iii.	Boys School	01
iv.	Girls School	01
v.	Mosque	01
vi.	Hospital	01
vii.	Bus Stand	01
viii.	Play Ground	01

Details of the Tender Procedure – Information not in our possession

The Item No 02

Details of the Maruthamunai Mettuwattai Tsunami Housing Scheme.

Expenditure of housing Construction -Information not in our possession

Details of the Beneficiaries - Beneficiaries- 96 list has been attached

Details of the Tender Procedure - Information not in our possession

Order:

The Public Authority has failed to prove to the satisfaction of the Commission that it is not in possession, custody and control of the information related to the expenditure of the Housing Construction. Furthermore the PA has failed to give reasons as to why it is not the responsible funding authority in relation to the construction. The PA is directed to provide clarification on the following,

- i. Establish why the PA is not the responsible authority for the expenditure of the mentioned Housing Construction?
- ii. If the PA is not the agency to disperse with the funds in relation to the Housing Construction, who is the responsible agency and who has had the financial responsibility in terms of the same?

The Commission observes that the Housing scheme is a construction utilizing public funds for which the Public authority needs to be strictly accountable. It is further emphasized that the key objective of implementing the Right to Information Act is to promote accountability and transparency of government including the usage of public funds in order to foster a culture of accountability and transparency.

The Appeal is adjourned.

Next date of hearing: 2nd September 2020

RTIC Appeal Documentary)/ [1693]/[2020] -Order adopted as part of the formal meeting of the Commission on 02.09.2020

Chairman: Mr. Mahinda Gammampila
Commission Member: Mr. S. G. Punchchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Ms.Kishali Pinto-Jayawardena

Appellant: K.Prasanna Kumar
Notice issued to: Designated Officer, District Secretariat Ampara

Matters Arising During the Course of the Hearing:

There has been no response from the Public Authority to the order issued by the Commission directing the PA to provide satisfactory clarifications on the points mentioned above, i.e.,

- i. Establish why the PA is not the responsible authority for the expenditure of the mentioned Housing Construction?

- ii. If the PA is not the agency to disperse with the funds in relation to the Housing Construction, who is the responsible agency and who has had the financial responsibility in terms of the same?

Order:

It is noted that the DO has failed to comply with Order dated 07.07.2020 wherein it was directed that clarifications on the two points raised above be provided by the PA. The attention of the DO is accordingly drawn to Section 39 (1) (e) of the Act which states that,

Section 39 (1) (e)

Every person who....fails or refuses to comply with or give effect to a decision of the Commission... commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Accordingly non-compliance with an order of the Commission in an offence under and in terms of the Act can result in a prosecution in terms of Section 39 (4) of the Act. Section 39 (4) states as follows;

Section 39 (4)

A prosecution under this Act shall be instituted by the Commission.

Accordingly the DO is directed to comply with Order dated 07.07.2020 within two weeks of the receipt of this Order.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

The Appeal is adjourned

Next Date of Hearing: 13.10.2020
