

S. Rubatheesan v Sri Lanka Parliament

RTIC Appeal (In – Person) **369/2021** – Order adopted as part of the formal meeting of the Commission on **20.07.2021**

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
Commissioner: Ms. Kishali Pinto-Jayawardena
Commissioner: Mr. S. G. Punchchihewa
Commissioner: Dr. SelvyThiruchandran
Commissioner: Justice RohiniWalgama

Director-General: D G M V Hapuarachchi

Appellant: S. Rubatheesan
Notice issued to: Designated Officer, Sri Lanka Parliament

Appearance / Representation:

Appellant: S. Rubatheesan (via Zoom)
PA: G. Thatchanarany, (Head, RTI Section and Deputy Director – Administration);
P.K.D.S.W. Wijegunawardhana (Deputy Principal Officer)

RTI Request filed on	05.01.2021
IO responded on	19.02.2021
First Appeal to DO filed on	31.03.2021
DO responded on	07.05.2021
Appeal to RTI filed on	30.04.2021

Brief Factual Background

The Appellant filed above dated information request with the Public Authority, requesting for the below:

- “1. How much does a day of parliamentary sitting cost the taxpayer?”*
- 2. What has been the MPs’ turnout during the last 10 years or so? Please provide details of Parliament sittings from 2010.*
- 3. How long is an MP required to be in his seat or at committee meetings?*
- 4. What action is taken against the MPs who scoot away or do not turn up in Parliament without applying for leave?*
- 5. Will the MPs be allowed to import duty-free vehicles? Any decisions have been taken in this regard?*

At the Right to Information Commission of Sri Lanka

6. *How much is the duty concession an MP is entitled to?*
7. *How much do the MPs get by way of bank loans for importing their vehicles?*
8. *What is the interest rate as well as the payback period?*
9. *Have the members of previous Parliaments (2010, 2015) paid back their vehicle loans in full?*
10. *How many MPs have sold their duty-free vehicle permits and how much have they raised therefrom?*
11. *What are the educational qualifications of the members of the current Parliament, especially the ministers?*
12. *How many MPs have criminal charges against them?*
13. *There were allegations that some elderly MPs sexually harassed their female counterparts in the last Parliament(2015). The then Speaker Karu Jayasuriya promised to look into them and requested the victims to make formal complaints. Was an inquiry held?*
14. *If yes, give us the copy of the report in English or Sinhala?*
15. *Provide details of the meal prices offered to MPs*
16. *Is this the same meal provided to others including media persons, workers and staff?*
17. *How many visitors can an MP bring to Parliament and entertain them inside Parliament including meals?*
18. *Provide full details of allowances and benefits provided to MPs.*
19. *Are there any sitting MPs who informed the Parliament that they do not need the personal security guard (PSD)? If yes, please provide details of them.”*

The Information Officer replied on 19.02.2021, providing the below information:

“The information requested by you is given below

1. *The average cost of a sitting day cannot be calculated as the cost for month varies monthly due to many reasons*
2. *According to a business Committee decision, the attendance of members can be obtained through the minutes of parliament website from 01.09.2015. (<http://www.parliament.lk/en/business-of-parliament/minutes-of-parliament?start=420>)*
3. *There is no such requirement. but according to the Article 66 of the Constitution, a member’s seat can be vacant. In addition, Article 127(7) of the standing Order sets out some requirements for attending committee meetings for MPs.*
4. *Please refer the article 66(f) in the Constitution 1978.*

At the Right to Information Commission of Sri Lanka

5. *The requested information is not in the possession, custody, or control of Parliament of Sri Lanka. Please forward your request for information to the Parliamentary Affairs Division under the Ministry of Public Service Council and Local Government in this connection.*
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10. *The requested information is not in the possession, custody, or control of Parliament of Sri Lanka. Please forward your request for information to the Parliamentary Affairs Division under the Ministry of Public Service Council and Local Government in this connection.*
11. *Educational Qualifications relate to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure “*
Further, according to the Article 90 of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978, the only qualification to be elected as a member of parliament is that the person is qualified to be an elector. No references had been made to the education qualification of an MP in Article 90 and 91 of the Constitution
12. *The requested information is not in the possession, custody, or control of Parliament of Sri Lanka*
13. *Please provide sufficient details about the mentioned statement made by Hon. Karu Jayasuriya.*
14. *Please provide sufficient details about the mentioned statement made by Hon. Karu Jayasuriya.*
15. *Rs.200*
16. *Yes. Additional dishes will be provided on request*
17. *12 visitors per day – an extra cost to be paid for meal*
18. *Annex 1*

At the Right to Information Commission of Sri Lanka

19. *The requested information is not in the possession, custody, or control of Parliament of Sri Lanka. Please forward your request for information to the Ministry of Public Security in this connection”*

Upon Appeal to the Designated Officer, the Designated Officer replied as below,

“Question 11

Educational Qualifications of Member of Parliament have not been recognized in terms of the provisions stipulated in Articles 90 and 91 of the Constitution of the Democratic Socialist Republic of Sri Lanka. Therefore, I kindly inform you that I have no grounds to interfere with the decision given by the Information Officer.

Question 12

I kindly inform you that I have no grounds to interfere with the decision given by the Information Officer.

Question 13 and 14

There was no such inquiry held.”

Thereafter, the Appellant preferred an Appeal to the RTI Commission on 30.04.2021.

Matters Arising at the Hearing:

The Appeal before the Commission proceeded on points of information no. 11 and 12 listed in the information request to which the Appellant stated that he was limiting himself to.

The PA had filed Written Submission dated 16.07.2021, stating that Articles 90 and 91 of the Sri Lankan Constitution sets out the qualifications and disqualifications for election as Members of Parliament, and that in accordance with the said Articles, Members of Parliament are “not bound to provide any such information to the Parliament.”

Further, due to the large volume of information requests received by the PA regarding the educational qualifications of Parliamentarians, it was informed to the Commission that by letter dated 10th May, 2021, the Secretary General of Parliament has taken steps to write to all Parliamentarians, stating *inter alia* that “if you are willing to provide this information, you are kindly requested to furnish me your educational and professional qualifications on the attached specimen as early as possible enabling to disseminate such information to the requests of the citizens”.

In regard to details of criminal charges against MPs, the PA asserted that this information is not within the possession, custody or control of the PA in terms of Section 3 (1) of the RTI Act.

At the hearing before the Commission on 20.07.2021, the Appellant stated that the position of the PA that the educational qualifications and details of criminal charges has not been obtained by the PA is not acceptable as there is a duty incumbent on the Parliament of Sri

Lanka to collect these details of elected members of Parliament as part of their portfolio. He reiterated that there is high public interest in collecting and maintaining this information given that the people have a right to know about the educational qualifications and details of criminal charges against their representatives in Parliament, notwithstanding the absence of any mandatory legal stipulation which makes it compulsory for the Parliamentarians to submit these details to Parliament.

The representatives of the PA reiterated that there is no requirement on the part of the PA to obtain the educational qualifications of Parliamentarians in terms of Articles 90 and 91 of the Constitution. Even so, it was emphasized that the PA (the Parliament) had, under the hand of the Secretary General, written to all Parliamentarians by letter dated 10.05.2021 requesting them to furnish such information in the light of information requests received by citizens. However, as at this date, the PA has not received a response to the aforesaid letter by any of the aforesaid Parliamentarians.

With regard to point of information no.12, pertaining to the number of MPs with criminal charges against them and upon the RTI Commission querying from the PA whether the PA does not see the relevance and importance of obtaining information regarding criminal charges, if any, lodged against MPs given the high public interest in this regard, the representative of the PA submitted that, if there is a Court case against a MP, a letter with the Case Number is given to Parliament by said MP. Further, it was clarified that the PA does not implement an administrative mechanism to obtain this information from the MPs and that, therefore the information is not within the possession, custody or control of the Parliament within the terms of Section 3 (1) of the RTI Act.

Order:

In consideration of the above facts, law and relevant public interest considerations, the Commission enters into Final Order as below:

Relevance of Articles 90 and 91 of the Constitution

The PA has pleaded before this Commission that in terms of Article 90 and 91 of the Constitution, there is no disqualification that arises in terms of the educational qualifications of the MPs, and that therefore they are not required to file such information before Parliament.

Articles 90 and 91 of the Constitution state as below,

“90. Every person who is qualified to be an elector shall be qualified to be elected as a Member of Parliament unless he is disqualified under the provisions of Article 91.

91. (1) No person shall be qualified to be elected as a Member of Parliament or to sit and vote in Parliament –

(a) if he is or becomes subject to any of the disqualifications specified in Article 89;

(b) if he –

At the Right to Information Commission of Sri Lanka

(i) stands nominated as a candidate for election for more than one electoral district at a General Election,

(ii) stands nominated as a candidate for election by more than one recognized political party or independent group in respect of any electoral district,

(iii) stands nominated as a candidate for election for an electoral district and before the conclusion of the election for that electoral district he stands nominated as a candidate for election for any other electoral district, or

(iv) being a Member of Parliament, except in the circumstances referred to in Article 70 (7) or Article 155(4)(i), stands nominated as a candidate for election for any electoral district;

(c) if he is the President of the Republic;

.....”

The Appellant, in counter-response, argued that the people have a right to know about the educational qualifications of their representatives in Parliament, notwithstanding the absence of any mandatory legal stipulation which makes it compulsory for the Parliamentarians to submit these details to Parliament. The Appellant emphasized that, regardless of a legal duty arising on the Public Authority in this regard, there is a distinct public duty on the PA, namely Sri Lanka Parliament, by virtue of the public interest therein to obtain such details.

Furthermore, it is of note that the Appellant’s information request does not concern the question as to whether disqualification of any MP arises in terms of his/her educational qualifications(emphasis ours) in terms of the applicable law. Rather, the information that the Appellant has requested for is, simply, a question of what the educational qualifications of the MPs are(emphasis ours). Thus, it is our view that the PA’s citation of Articles 90 and 91 is relevant only in so far as to justify its position that the said information is not within the possession, custody or control of the PA in terms of Section 3 (1) of the RTI Act.

Inapplicability of Section 5 (1) (a) of the RTI Act to the release of educational qualifications

It has been accepted on record that the PA does not have the abovesaid information in its 'possession, custody or control' under and in terms of Section 3(1) of the RTI Act and consequently is unable to act in terms of the said information request. As such, during the course of the hearing before us, the PA did not pursue the position taken in its Written Submissions dated 16.07.2021, that, “it is personal information covered by Section 5 (1) (a) of the Right to Information Act No. 12 of 2016.”

Notwithstanding the above, the Commission determines that reliance on Section 5 (1) (a) is inapplicable to the case at hand. The information requested concerns the educational qualifications and criminal charges of Members of Parliament. Section 5 (1)(a) is to the effect that,

5 (1) (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure

We rule that the said information does not come within the ambit of Section 5 (1)(a) in that firstly, it has a direct relationship to ‘public activity or interest’ within the meaning of that Section and secondly, as a consequence thereof that, there is no ‘unwarranted’ invasion of privacy thereby. It is of direct comparative interest that in *Union of India v Association for Democratic Reforms* [2002 (3) SCR 294], the Indian Supreme Court held that constituencies have a right to know about *inter alia* the educational qualifications and criminal charges, if any, of elected representatives, as this is an exercise which furthers the citizens’ right to make an informed decision about who should represent them in Parliament.

The contention by intervening parties arguing that the citizen’s right to know about the affairs of the Government does not mean that citizens have a right to know the personal affairs of MPs or MLAs was dismissed by the Court as being ‘totally misconceived.’ The Bench pointed out that this was not a question of ‘knowing personal affairs’ of MPs but only amounted to ‘limited information’ that was essential for maintaining the transparency of a country’s legislature.

Overriding Public Interest and the duty incumbent on the PA to obtain details regarding educational qualifications and criminal charges against MPs

In any event, the public interest in disclosure of the said information is paramount as envisaged in Section 5 (4) of the RTI Act,

5 (4) Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

The right of the citizenry to know, *inter alia*, the qualifications and criminal charges and/or convictions of their elected representatives is part of the freedom of expression, information and franchise as this information furthers the ability of a constituency to make an informed decision at elections. In *Union of India v Association for Democratic Reforms* [Supra], the Court stressed as follows;

“One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations.....A successful democracy posits an ‘aware’ citizenry.” [Vide page 16 of the judgment]

The judgment also identified lacuna in the existing legislation where no provision has been made for the collation of information from candidates contesting elections and called for the following information to be collected;

“(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past if any, whether he is punished with imprisonment or fine?”

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof;

(3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate.” [Vide page 21 of the judgment]

More recently, in *Rambabu Singh Thakur v Sunil Arora and Ors* ((2019) 3 SCC 224; decided on 13.02.2020), it was reminded by the Court that obtaining details of criminal charges in regard to candidates was a duty incumbent on political parties as well.

Steps taken by the PA to obtain information relating to the educational qualifications of MPs

Proceeding on the basis that the requested information is not currently within the possession, custody or control of the PA in terms of Section 3 (1) of the Act, it is encouraging to note that the PA has taken the first steps in this regard by writing to all Members of Parliament (MPs) by letter dated 10.05.2021 to obtain information on the relevant educational qualifications, citing requests for information made by citizens under the RTI Act. However, the PA has affirmed before this Commission that not a single MP had responded to the said request to date.

The absence of any response even after the lapse of more than two months since the aforesaid letter is undeniably a matter for concern in the context of the overriding public interest as referred to in this Order. The Commission directs the PA to apprise the Appellant forthwith of any responses to the above stated letter, with copy to the Commission. We further note that, contingent on the said information being furnished, the PA has undertaken to update their website with the educational qualifications of MPs albeit without a specified timeline.

Information relevant to criminal charges of MPs

We emphasize the paramountcy of this information being available to the citizenry. As pointed out by the Indian judiciary, “*a successful democracy posits an ‘aware’ citizenry*” [Vide *Union of India v Association for Democratic Reforms(Supra)*] for which purpose, the said information is of high public interest. As such, it is our view that it is incumbent on the PA to take requisite steps to obtain the said information from elected representatives of the Sri Lanka Parliament and to make the same available of public record.

Appeal Concluded

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).