

**F. Sabra Zahid v Judicial Service Commission**

RTIC Appeal (In-Person)/237/2018 - 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) – Heard as part of a formal meeting of the Commission on 19.06.2018

**Chairperson:** Mr. Mahinda Gammampila  
**Commission Members:** Ms. Kishali Pinto-Jayawardena  
Dr. Selvy Thiruchandran  
Justice Rohini Walgama  
**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellant:** Ms. F. Sabra Zahid  
**Notice Issued to:** H Sanjeewa Somaratne, Deputy Secretary, Judicial Service Commission (Designated Officer),

**Appearance/ Represented by:**

Appellant - Ms. F. Sabra Zahid  
Ms. Ermiza Tegal  
Public Authority - D. M. D. L. Bandara, Senior Assistant Secretary, Judicial Service Commission

<b>RTI Request filed on</b>	24.11.2017
<b>IO responded on</b>	06.12.2017
<b>First Appeal to DO filed on</b>	13.12.2017
<b>DO responded on</b>	23.01.2018
<b>Appeal to RTIC filed on</b>	02.03.2018

**Brief Factual Background:**

The Appellant by information request dated 24.11.2017 requested the following;

1. Number and nature of complaints received against Quazi judges in the year 2016, with a breakdown for each jurisdiction.
2. Number and nature of complaints that are ongoing (i.e. after the complaint has been lodged but the matter has not been resolved) as at November 2017.
3. Number and nature of complaints pending for over two years as at November 2017.
4. Number and nature of disciplinary actions taken by the Judicial Service Commission against Quazi's in the years 2012, 2013, 2014, 2015 and 2016 (Details for each year

separately including the specific name of the Quazi court and the nature of disciplinary action taken)

All information is requested in a table format and to be certified by the PA to be true and correct according to available records.

5. Certified copies of all decisions against Quazi judges in the period 2012 to 2016 in proof of answer to request 4 above

The IO responding on 06.12.2017 had denied the information citing Section 5 (1) (j). Thereafter the Appellant lodged an appeal with the DO on 13.12.2017. The DO affirmed the decision of the IO on 23.01.2018. The Appellant preferred an appeal to the Commission on 02.03.2018.

### **Matters Arising During the Course of the Hearing:**

The Deputy Secretary of the PA submitted that the information had been denied on the basis that it relates to interdisciplinary issues and is of a sensitive nature relating to the functioning of the Quazi courts and would be 'prejudicial to the maintenance of the authority and impartiality of the judiciary' in terms of what is contemplated by Section 5 (1) (j) of the RTI Act.

It was queried by the Commission from the Deputy Secretary of the PA as to whether the PA has indeed, taken action in relation to the complaints made by members of the public against Quazi judges to which he responded stating that it does take action in that regard; however that information is not publicized as the entertainment of information requests relating to disciplinary action may lead to a situation where even charge sheets issued against judges which constitute extremely sensitive information will have to be disclosed which will result in extreme prejudice caused with respect to these inquiries. The PA further submitted that these are internal inquiries presided over by the Chief Justice.

In the submissions made on behalf of the Appellant in response to these concerns raised by the PA, it was stated that several recorded cases of complaints made against Quazi Judges are available, based on research conducted, and that the persons who made the complaints are unaware as to the status of/ progress made in relation to the inquiries conducted in response to these complaints. It was submitted that the provision of the information requested would be in furtherance of transparency and accountability on the part of the PA. It was further submitted that the disclosure of the information requested (which effectively encompasses the progress, status and timeline of processing the complaints) will not undermine the 'authority and impartiality of the judiciary' but would enhance public confidence in the system as complainants would know what action and when such action is being taken. Further at present, the PA submitted that the only information made public in relation to the Quazi judges was in relation to their transfers.

Written Submissions on behalf of the Appellant were tendered before the Commission.

### **Order:**

By letter dated 18.06.2018, the PA has declined to issue the information requested in this Appeal on the basis that it 'includes sensitive information relating to Quazi judges' and citing Section 5 (1) (j) of the RTI Act. Section 5 (1) (j) of the Act exempts disclosure in instances where

disclosure 'would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary.'

It is of specific note that the requested information in items 1-3 relates to statistical information that does not pertain to charges laid against individual Quazi judges or to other detailed information. Those requests are as follows;

1. Number and nature of complaints received against Quazi judges in the year 2016, with a breakdown for each jurisdiction.
2. Number and nature of complaints that are ongoing (i.e. after the complaint has been lodged but the matter has not been resolved) as at November 2017.
3. Number and nature of complaints pending for over two years as at November 2017.

Upon the Deputy Secretary of the PA being asked by us if such statistical information is not included in the Annual Reports of the PA and if so, as to what was the last Annual Report issued by the Public Authority, the response to both questions was that he was not entirely sure. For the purposes of determining what information relating to this matter would constitute information that may legitimately be released under the Act, it would be preferable to assess the same as against the information contained in the Annual Reports of the PA, as indicating the baseline standard relating to information already in the public domain.

For this purpose the PA is directed to provide its annual reports pertaining to the relevant years as set out in the information request, namely 2012-2017, in order for the Commission to carry out its statutory task of assessing as to whether the requested information may be released or not, as mandated by the RTI Act.

Further, the attention of the PA is drawn to Section 15(b) of the RTI Act which states as follows;

*For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-*

*(b) to examine such person under oath or affirmation and require such person where necessary to produce any information which is in that person's possession, provided that the information which is exempted from disclosure under section 5 shall be examined in confidence;*

As it was submitted on behalf of the Appellant that research on her part had disclosed complaints of irregular conduct on the part of Quazi judges during the aforesaid years, it is directed that such material is also presented before us.

The Written Submissions of the Appellant are accepted and the provision of a copy to the PA is noted of record.

The Appeal is adjourned.

Next Date of Hearing: 07.08.2018

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