

K. S. T. Jayasinghe v. Department of Co-operative Development Southern Province

RTICAppeal(In-Person)/119/2018 (*Order adopted as part of a formal meeting of the Commission on 20.04.2018*)

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)

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

Appellant: Mr. K S T Jayasinghe
Notice Issued to: K. N. L. K. Wijenayaka DO/ Commissioner of Co-operative Development, Southern Province

Appearance/ Represented by:
Appellant - Mr. K S T Jayasinghe
B Priyanga Attorney-at-Law
Public Authority - Chandrika Wickramasinghe Deputy Commissioner

RTI Request filed on	22.11.2017
IO responded on	30.11.2017 (acknowledgement), 18.12.2017
First Appeal to DO filed on	18.12.2017
DO responded on	20.12.2017
Appeal to RTIC filed on	04.01.2018

Brief Factual Background:

On 22.11.2017, the Appellant requested a document related to correspondence between officers of the PA and the Appellant in relation to permissions granted for the transfer of the Appellant's membership, from one division of the PA's Co-operative Society to another in or around 2012.

The IO denied the information on 18.12.2017 citing Section 5 of the RTI Act based on the fact that the information requested concerns a writ matter currently pending before the High Court of Tangalle. Dissatisfied with this response, the Appellant lodged an appeal with the DO on 18.12.2017 to which the DO responded on 20.12.2017 reiterating the response of the IO. Thereafter the Appellant preferred an appeal to the Commission on 04.01.2018.

Matters Arising During the Course of the Hearing:

The PA submitted that it is refusing the information as there is a pending court case. It was further submitted that Section 5 (1) (h) (i) had been cited incorrectly as the exemption relied on by the PA was Section 5 (1) (j).

Order:

At the Right to Information Commission of Sri Lanka

The attention of the PA is drawn to the fact that the mere existence of a court case does not exempt information under and in terms of Section 5 (1) (j). As Section 5 (1) (j) states that, 'the disclosure of such information would be in contempt of court or prejudicial to the maintenance of the authority and impartiality of the judiciary,' the PA is directed to file written submissions as to how exactly this particular letter would be 'prejudicial to the maintenance of the authority and impartiality of the judiciary,' on or before 04.05.2018.

The matter is fixed for further hearing on 05.06.2018.

RTIC Appeal (In – person) 119/2018 (*Order adopted as part of a formal meeting of the Commission on 05.06.2018*)

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Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms Kishali Pinto-Jayawardena

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Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. K.S.T. Jayasinghe

Notice issued to: Designated Officer, Department of Co-operation Development Southern Province

Appearance/ Represented by:

Appellant - Mr. K.S.T. Jayasinghe

PA - Chandrika Wickramasinghe, Department of Co-operation Development Southern Province

Matters Arising During the Hearing

The PA in its written submissions dated 03.05.2018 had submitted that it had not provided the information requested as it is in relation to a pending writ matter, (W) 03/2017, before the High Court of Tangalle filed by the Appellant himself. The PA submitted that the release may be prejudicial to the said case as among the relief prayed for is the cancellation of the decision/ order by the Commissioner of Co-operative Development Southern Province.

In its written submissions the PA further submitted that the document requested by the Appellant is a letter by the then Commissioner of Co-operative Development (Southern Province) to and external party in response to a petition lodged concerning the transfer of the Appellant's membership. The PA had further submitted that the said decision concerns the transfer of the membership of the Appellant and as such the letter which is the subject matter of this Appeal (from, the Commissioner of Co-operative Development Southern Province to another party) directly relates to the said case. The PA submits that the case had already been filed at the time of the information request and had been called in court several times subsequently. The PA had submitted that the information falls within Section 5 (1) (f). Section 5 (1) (f) exempts information which consists of,

any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any

written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority.

The PA further submitted that there is no public interest in the disclosure of the said information.

Order

The attention of the PA is drawn to the fact that, as stated by us during the previous hearing of this Appeal, the mere pendency of a court case does not result in the information requested falling within either Section 5 (1) (j) or Section 5 (1) (f) of the Act. Further the contention that there is no public interest which outweighs the ‘harm that would result from the disclosure’ does not stand as the PA has failed to demonstrate how the information falls within the said Sections in the first instance. In this instance the PA has failed to show how the disclosure of the information would ‘prejudicial to the maintenance of the authority and impartiality.’ Further, a document furnished by a Public Authority to the Office of the Attorney General for the purposes of filing in a court case does not necessarily bring the said document within the ambit of Section 5(1) (f) of the Act for the reason that Section 5(1) (f) only exempts information ‘which is not permitted to be disclosed under any written law’ (emphasis ours). The Public Authority did not cite any relevant section of the law for that purpose.

The PA is directed to forward all relevant documents in relation to the said pending writ matter, (W) 03/2017), before the High Court of Tangalle to this Commission within two weeks of the receipt of the Order in order for the Commission to ascertain if the said information requested in this Appeal is peripheral or central to the said ongoing court case.

The matter is adjourned for 14.08.2018.

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