

H.C.S. de Zoysa Siriwardena v. Sri Lanka Army

RTIC Appeal/89/2017(*Heard as part of the meeting of the Commission on 06.11.2017*)

Acting Chairperson: Ms. Kishali Pinto-Jayawardena

Commission Members: Mr. S.G. PUNCHIHEWA

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer) and Brigadier
A.W.M.P.R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by: Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army (Appellant)
Major General A.W.M.P.R. Seneviratne, Information Officer, Sri Lanka Army
Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army
Captain W.H.S. Soysa

The Appellant was present at the hearing. The Public Authority was represented by Major General A.W.M.P.R. Seneviratne (Information Officer), Major R.D. Uduwilaarachchi (Legal Officer) and Captain W.H.S. Soysa.

In this case, the Appellant had requested the following information relating to an investigation conducted by the special court of the Sri Lankan Army (the Public Authority) in relation to the sexual abuse of the Appellant by Major General (AAL) R. P. Rajapathirana, RSP USP, by an information request dated 02.05.2017:

1. Certified copies of court summons for 01.08.2014 issued to conduct the initial investigation
2. Certified copies of the hand written initial investigation report of the Court.

3. Certified copies of observations and conclusions
4. Certified copies of related documents
5. Certified copies of Conclusion arrived at by the Commander of the Army
6. Since in the initial investigation court legal officers were also witnesses, the information/ qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army.

Responding to the information request by the Appellant, the Information Officer (IO), Major General A.W.M.P.R. Seneviratne, by letter dated 12.05.2017 had directed the Appellant to make a request to her immediate supervisor, and (failing which) to the Commander of the Army in order to obtain the requested information. Upon the receipt of the letter from the IO, the Appellant had forwarded her information request to her supervising officer on 14.05.2017. Having received no response from the supervising officer, the Appellant had then filed an appeal by letter dated 05.06.2017 to the Designated Officer (DO), the Commander of the Army. The DO had not responded to the appeal. Thereafter, the Appellant had appealed to the RTI Commission by letter dated 28.08.2017.

Upon the Commission querying as to whether or not the Public Authority (PA) is refusing access to the information requested, the IO stated that the PA was not refusing access to the information requested, but was however merely asking the Appellant to follow the internal procedure established by the Sri Lanka Army Act in order to obtain the requested information since the Appellant was still an officer of the Army and in active duty. The Appellant then directed the attention of the Commission to the numerous number of internal requests that she had made in order to obtain the above mentioned items of information since the end of the investigation on 21.07.2015. Upon the perusal of documents that the Appellant had brought with her, it became evident that she had made internal requests to obtain the aforementioned items of information by letters dated 31.01.2016, 31.03.2016, 18.05.2016, 27.10.2016 and 15.02.2017 and that all such internal requests had been futile in obtaining the information.

Order

In the instant matter, the Public Authority had not provided the information requested under the RTI Act by the Appellant and has asked the Appellant to follow the internal procedures of the

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Public Authority established by the Sri Lanka Army Act in order to obtain the requested information. Section 25 of the RTI Act clearly states that an information officer shall make a decision either to provide the information requested or to reject the request on any one or more of the grounds referred to in section 5 of the RTI Act, and shall forthwith communicate such decision to the citizen who made the request.

The Commission is bound by its statutory duty to give effect to the spirit and letter of the Act with regard to the principle of maximum disclosure which mandates that the right to information can be refused only when the specified exceptions in Section 5 (1) are invoked. It is noted that the Sri Lanka Army is a Public Authority that comes within the purview of the RTI Act and therefore has a statutory duty to abide by its provisions. The manner, in terms of which the RTI request dated 02.05.2017 made by the Appellant had been considered, adheres neither to Section 25 nor to any of the subsections of Section 5 (1) of the RTI Act.

Therefore, noting the fact that certain items of information requested by the Appellant such as court summons etc. are information requests that are justified by principles of natural justice, the PA is directed to reconsider the information request of the Appellant dated 02.05.2017 and to inform the Commission of its decision, as required by Section 25 of the RTI Act, either to provide the information requested or to reject the request on any one or more of the grounds referred to in Section 5 of the RTI Act, when the matter is taken up at the next hearing on 27.11.2017. The matter relating to copies of adverse reports against the Appellant requested by the Appellant in another information request which is also dated 02.05.2017 will also be heard at the next hearing on 27.11.2017.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Heard as part of the meeting of the Commission on 27.11.2017)

Chairperson: Mr. Mahinda Gammanpila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. PUNCHIHEWA

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer) and Brigadier
A.W.M.P.R. Seneviratne (Information Officer), Sri Lanka Army

Appearance/ Represented by: Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army (Appellant)
Major General A.W.M.P.R. Seneviratne, Information Officer, Sri Lanka Army
Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army
Major DCDA Dissanayake, Legal Officer, Sri Lanka Army
Captain W.H.S. Soysa

The Appellant was present at the hearing.

The Public Authority (PA) was represented by Major General A.W.M.P.R. Seneviratne, Information Officer (IO), Major R.D. Uduwilaarachchi, Legal Officer, Major DCDA Dissanayake, Legal Officer and Captain W.H.S. Soysa.

Pursuant to the order given by the Commission at the first hearing, the PA had provided all items of information except Item Nos. 2 and 4 of the original information request, namely, certified copies of the hand written initial investigation report of the Court and certified copies of related documents.

With regards to Item No. 2, i.e. certified copies of the hand written initial investigation report of the Court, the PA pleaded Section 5 (1) (a) of the RTI Act on the basis that the particular investigation report contains evidence provided by a number of witnesses on sensitive matters. The Appellant objected to the PA's argument and stated that the PA could apply the doctrine of severability as is provided for under Section 6 of the Act, and provide parts of the Report that did not contain sensitive information of others. However, the PA reiterated that since even the cross examination conducted at the inquiry referred to sensitive information, severability could not be applied to the document in question.

With regard to Item No. 4, ie. certified copies of 'related documents', the PA submitted that the information asked for, is too vague. The Appellant conceded that point.

Upon perusal of the relevant documents brought by the PA, the Commission queried further in regard to Item No. 6, i.e. the information/ qualifications of the officer/s who drafted/prepared the conclusion reached by the Commander of the Army since a document affirming the details/credentials of the individuals who had drafted the document had not been produced before the Commission. The PA stated that since the Commander had signed, it was indicative of the fact that the Commander had drafted the document. It was categorically stated on record that as the Director of the Legal Division of the Sri Lanka Army, was a witness at the Court Inquiry, he had not been involved in the drafting of the document. The Commission expressed an opinion that it seemed untenable that the Commander of the Army would, himself, draft the conclusion of the inquiry. .

The PA, upon the Commission's request, had brought the information requested by the Appellant pertaining to another information request dated 02.05.2017, which was also being considered at the present appeal. The Appellant had asked for the following items of information by the abovementioned information request.

1. Adverse Reports made against the Appellant.
2. Relevant policy records on adverse reports

The PA had brought two adverse reports against the Appellant and agreed to provide policy records stating the fact that such policy records were, in any case, readily available to any Sri Lanka Army personnel. The Appellant stated that there were several other adverse reports against her other than the two produced by the PA. Since the PA categorically stated that to its knowledge these two reports were the only adverse reports made against her, the Commission asked the Appellant to list the other adverse reports of which she was aware in order to assist the PA to locate such reports. The Appellant provided the names of two such adverse reports.

Order

In the instant matter, the Appellant is satisfied with the information pertaining to Item Nos. 1, 4 and 5 of her original information request dated 02.05.2017. In relation to item 2 regarding the investigation report, the submission of the PA that this will implicate other parties in a manner that may infringe Section 5 (1)(a) is noted and upheld.

The PA is directed to provide the adverse reports listed by the Appellant at the hearing and any other adverse report against the Appellant that the PA is able to locate on the assurance of the PA that it will provide such adverse reports.

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The PA is further directed to revert on Item No.6 of the original information request dated 02.05.2017, i.e. the information/ qualifications of the officer/s who drafted/prepared the conclusion reached by the Commander of the Army, since it cannot be assumed that the Commander's signature at the end of the document is an indication that he, himself, drafted such document. An official document recording the drafters of the above document may be submitted at the next hearing. The PA is also directed to revert on item No 3 of the information request. The next hearing will be on 30.01.2018 and written submissions (if any) are to be filed by both parties before 23.01.2018.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 30.01.2018)

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
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M.P.R. Seneviratne (Information Officer), Sri

Lanka Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Brigadier A. M. S. B. Atapattu Director Media Sri Lanka Army
Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army
Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Hearing:

At the start of the hearing, the Appellant clarified the documents which were provided by the PA at the previous hearing. She stated that items 1, 4 and 5 had been provided to her. However they had not been authenticated by the PA. The PA agreed to authenticate the documents.

The items in issue are

2. Certified copies of the hand written initial investigation report of the Court.
3. Certified copies of observations and conclusions
6. Since in the initial investigation court legal officers were also witnesses, the information/ qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army.

The Appellant had also requested

3. Adverse reports made against her.
4. Relevant policy records on adverse reports

Although the PA was directed to file written submissions on the previous occasion before 23.01.2018 it had failed to do so. Further, it became evident that in relation to item 2 it is the mere word of the PA that the inquiry report (which is a handwritten report including the entire proceedings) affects the privacy of third parties. On being queried, the PA submitted that there was no further inquiry thereafter.

Although at the previous hearing the impression was that item 3 i.e. certified copies of observations and conclusions were provided to the Appellant, the Appellant stated that these are those arrived at, at the conclusion of the inquiry mentioned in item 2 and separate from those of the Army Commander's conclusions mentioned in item 3.

With regard to item 6 (i.e. qualifications of the officer/s who drafted/prepared the Conclusion reached by the Commander of the Army), the PA stated that the Commander of the Army will take responsibility as he has signed the said Conclusion. The PA stated that it is unable to identify the officers who wrote this as some officers have retired. Further, due to the fact that the normal division of the PA which is in charge of drafting these documents was unable to participate as the allegations were against an officer of the said division (i.e. the legal division) officer/s of other divisions carried out this duty under the supervision of the Army Commander.

The PA further submitted that the general procedure is such that if the legal officer does not draft another commanding officer in accordance with the rank and seniority will draft the decision. In this particular instance a Grade II or officer of a higher grade would draft the decision. At the Battalion level the commanding officer is a Grade I officer so accordingly the decision will be drafted by a Grade I officer.

It further became evident on the submissions made by both parties before this Commission that an inquiry was held at the HRCSL subsequent to a complaint lodged with it by a witness in the Appellant's inquiry. The Appellant herself was called to give evidence and the PA submitted that although she was released from her duties for the said purpose she failed to appear before the HRCSL.

The PA submitted the adverse reports and the policy reports before the Commission.

Order:

The PA is directed to provide the adverse reports and the policy reports to the Appellant.

The Commission is generally cautious in the release of preliminary inquiry reports since it may impact the maintenance of authority and impartiality of the judiciary in subsequent formal inquiries and court proceedings. However in this instance since no such further action is contemplated based on the conclusion reached by the Commander of the Army (item 5 of the request which has been produced before the Commission and issued to the Appellant) the PA is directed to submit a copy of the hand written initial investigation report of the Court (which will include items 2 and 3 of the information request) for the perusal of the Commission along with a summary of the said report redacting the parts which may affect the privacy of third parties. Although at the previous hearing the Commission noted and upheld the PA's objection to the provision of the preliminary inquiry report, subsequent to detailed perusal of the Army Commander's Conclusion and the Appellant's continuous insistence of the grave injustice caused to her during the course of the inquiry evident in here written and oral submissions before the Commission, the Commission sees no prejudice caused to the PA in providing a copy of the inquiry proceeding merely for the perusal of the Commission in the first instance.

In relation to item 6, i.e. the qualifications of the officers who drafted the Conclusion signed by the Army Commander, the PA is directed to file written submissions including all the submissions made before the Commission today in relation to such.

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The hearing will continue on 23.02.2018. The Appeal is hereby adjourned.

RTIC Appeal/89/2017(*Order adopted as part of a formal meeting of the Commission on 23.02.2018*)

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 Walagama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka
Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Brigadier A. M. S. B. Atapattu Director Media Sri Lanka Army

Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Course of the Hearing:

At the previous hearing the PA was directed to submit a copy of the hand written initial investigation report of the Court (which will include items 2 and 3 of the information request) for the perusal of the Commission along with a summary of the said report redacting the parts which

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may affect the privacy of third parties. While the PA submitted printed copy of the said inquiry report (items 2 and 3), the PA requested for an extension of the period of time to submit the handwritten document which had to be located from the relevant office. The PA submitted that the content of the printed report was identical to the handwritten report. A summary of the said report redacting the parts which may affect the privacy of third parties was also submitted for the perusal of the Commission. The PA reiterated that this particular report and the summary affects the privacy of officers who gave evidence during the proceedings.

The Appellant made submissions on the fact that previous documents issued to her were not signed and sealed to her satisfaction. The PA said that it will take steps to remedy this issue and stated that the Information Officer will sign on the documents placing his seal. The seal however indicates only his designation/ rank in the within the Army (without name) as this is the manner in which the seal is designed by the PA.

Order:

Upon brief perusal of the inquiry report, it is noted that the inquiry report is in extent more than 2000 pages which the PA has reduced to 36 pages in its summary. It is further evident that during this process a lot of redaction has taken place.

The PA is directed to locate and submit before this Commission a copy of the handwritten inquiry report on 16.03.2018.

The Appeal is hereby adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 16.03.2018)

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. SelvyThiruchandran

Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), SLA

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army
PA - Brigadier A. M. S. B. Atapattu, Director -Media, Sri Lanka Army
Major D. C. D. A. Dissanayaka, Legal Officer, Sri Lanka Army
Major R.D. Uduwilaarachchi, Legal Officer, Sri Lanka Army

Order:

The PA handed over the copy of the handwritten inquiry report as directed on the previous occasion.

The matter is to be considered on 03.04.2018 once the hand written inquiry report is compared with the summary provided by the PA.

The appeal is adjourned.

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 03.04.2018)

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: Captain H.C.S. de Zoysa Siriwardena
Notice issued to: Commander of the Army (Designated Officer)
Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka
Army

Appearance/ Represented by:

Appellant - Captain H.C.S. de Zoysa Siriwardena, Legal Officer, Sri Lanka Army

PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Matters Arising During the Course of the Hearing:

The Commission having perused through the inquiry report, brought to the attention of the PA that the summary provided at the hearing of 23.02.2018 is an inadequate reflection of the contents of the full inquiry report. The Commission noted in particular that certain sections of the proceedings favourable to the Appellant have been omitted entirely, specifically responses by witnesses, favourable to the Appellant.

The Commission further noted that it is inclined to the release of the entirety of the evidence by witnesses that have been in favour of the Appellant. The Commission also noted that it is not clear in regard to the identity of the specific witnesses whose privacy will be affected and the basis for contending the same, according to the submissions of the PA at the previous hearings.

The Appellant submitted that the entire handwritten report be released to her as there are markings on the report made by officers of the PA which have a significant bearing on her case.

Order:

Upon comparison of the inquiry report, with the summary handed over by the PA, it is evident that the summary is an inadequate reflection of the full inquiry report. It is directed that the observations and conclusions of the inquiry report in their entirety, as well as the summary provided by the PA be released to the Appellant today.

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It is noted in particular that evidence in favour of the Appellant has not been adequately represented in the summary. The PA is directed to release the full contents of the evidence of witnesses favourable to the Appellant. This includes the evidence of the 5th, 12th, 16th, 17th and 18th witnesses. The PA is further directed to prepare a list of witnesses whose privacy will be affected (as pleaded on previous hearings by the PA itself) by the release of the information along with the basis for submitting the same.

The appeal is adjourned.

Next date of hearing: 30.05.2018

RTIC Appeal/89/2017(Order adopted as part of a formal meeting of the Commission on 30.05.2018)

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: Captain H.C.S. de Zoysa Siriwardena

Notice issued to: Commander of the Army (Designated Officer)

Brigadier A.W.M. P. R. Seneviratne (Information Officer), Sri Lanka

Army

Appearance/ Represented by:

Appellant – Absent

PA - Major D. C. D. A. Dissanayaka Legal Officer Sri Lanka Army

Captain W. H. S. Soysa, Subject Officer Sri Lanka Army

Major A W K A D Amarathilake, Legal Officer, Sri Lanka Army

Matters Arising During the Course of the Hearing:

The appellant is not present for the hearing.

Following up on the query in releasing the evidence with regard to the list of favourable witnesses as per the report, the PA submitted a letter dated 16.04.2018 by which the Public Authority had raised the exemption of Section 5(1)(a) relating to privacy in regard to the release of evidence given and any references thereto to that evidence, of two female officers of the Public Authority at the inquiry, as reflected in the report of the inquiry in the custody of the Commission.

The PA also brought to the notice of the Commission that the list of witnesses requested relate to statements made by lady officers and hence, should be dealt with in a sensitive manner.

Order:

The Public Authority is directed to obtain official confirmation by the two female officers, namely that the said officers were not in agreement to releasing excerpts of their evidence on privacy grounds.

We see no reason as to why the remainder of the inquiry report could not be disclosed to the appellant excluding the above mentioned items of information.

These submissions are to be made to the Commission on or before 17.07.2018.

The appeal is adjourned.

Next date of hearing: 17.07.2018
