

**A. D. Wijesinghe v. Commission to Investigate Allegations of Bribery and Corruption (CIABOC)**

RTIC Appeal (In – person) 195/2018 (*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:** Mr. A. D. Wijesinghe

**Notice issued to:** Sunetra Jayasinghe, AAL, Deputy Director General (Designated Officer), Commission to Investigate Allegations of Bribery and Corruption

**Appearance/ Represented by:**

Appellant - Mr. A. D. Wijesinghe

PA - Absent

<b>RTI Request filed on:</b>	18.12.2017
<b>IO responded on:</b>	20.12.2017
<b>First Appeal to DO filed on:</b>	02.01.2018
<b>DO responded on:</b>	No response
<b>Appeal to RTIC filed on:</b>	05.02.2018

**Brief Factual Background:**

The Appellant had by request dated 18.12.2017 requested information pertaining to the complaint No. BC 648/13. The Appellant further requested

1. Statements recorded from the alleged parties,
2. Independent observations or recommendations made by the inquiry officer,
3. Any documents or attachments,
4. A copy of the minutes of the Commission on record reflecting the decision to close the file, including reasons adduced for the closure and
5. The reasons as to why several letters sent under registered cover had not been replied to inquiring into the closing of the file concerned relating to the above complaint

The IO had denied the information by a letter dated 20.12.2017 citing Section 5 (1) (h) of the RTI Act which in effect states that

*the disclosure of such information would-*

## At the Right to Information Commission

- (i) *cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or*
- (ii) *(ii) expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained;*

and Section 17 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 which reads as follows;

*Every member of the Commission, the Director-General and every officer or servant, appointed to assist the Commission shall, before entering upon the duties of his office, sign a declaration that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purposes of giving effect to the provisions of this Act.*

The Appellant thereafter lodged an appeal with the DO on 02.01.2018. As the DO failed to respond within the time period stipulated under the Act, the Appellant preferred an appeal to the Commission on 05.02.2018.

### **Matters Arising During the Hearing**

Upon being queried by the Commission, the Appellant explained the background in relation to the complaint on which the information request was based. The Appellant submitted that a complaint was made to the Securities Exchange Commission and the Colombo Stock Exchange (CSE) against a broker. The CSE being the regulator, had stated that it could not look into the matter as the broker had, in its opinion, performed his duties without fail. The Appellant being dissatisfied with this decision of the CSE had then preferred an appeal to the Board of Appeal (Dispute Resolution Committee) which decided unanimously against the CSE, concluding that the broker had in fact acted in breach of his duties and made recommendations in line with this conclusion to remedy the situation and caution the broker.

However as these recommendations were not implemented, the Appellant complained to the Commission to Investigate Allegations of Bribery and Corruption (the PA). The PA conducted an inquiry into the matter and closed the file in an abrupt manner without adducing any reasons. The Appellant subsequently made the information request which gave rise to this appeal, which requests *inter alia*, the minutes of the PA which show on record the decision taken to close the file, including reasons for such closure.

The Appellant submitted that he had also written to the Constitutional Council regarding this complaint.

### **Order**

Under and in terms of the RTI Act, No 12 of 2016, upon a Public Authority deciding to refuse to disclose information, the precise subsection of Section 5 of the Act must be cited in order to justify non-disclosure and the PA must also satisfactorily discharge the burden imposed on it under Section 32 (4) which states that; ‘on appeal, the burden of proof shall be on the Public Authority to show that it acted in compliance with this Act when processing a request.’

On the facts of this appeal, it is evidenced that Section 5 (1) (h) has been cursorily pleaded by the Public Authority as a basis for refusal with absence of sufficient justification in that regard and moreover, without specification if the relevant subsection which has been applied by the Public Authority therein is 5 (1) (h) (i) or 5 (1) (h) (ii) or both, as the case may be. These distinctions are important for the reason that the file in relation to this matter has been

At the Right to Information Commission

closed as apparent from the documentation before us. Further elucidation of the matter by the Public Authority has not been possible as it is absent and without representation on this date of hearing despite being noticed. The attention of the Public Authority is drawn to Section 39 (1) (c) of the Act which provides that the failure to appear before the Commission upon being requested to do so, amounts to an offence under this Act.

It must also be noted that Section 17 of the Commission to Investigate Allegations of Bribery and Corruption Act No. 19 of 1994 must be assessed in the light of Section 4 of the RTI Act, which provides as follows;

*The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.*

The matter is re-fixed for hearing on 17.07.2018 to ascertain further steps to be taken in this regard. A copy of the Record of Proceedings of this hearing is directed to be sent to the Public Authority.

The Appeal is adjourned.

\*\*\*\*\*