

M. D. S. A. Perera v Divisional Secretariat Seethawaka- Hanwella

RTICAppeal(In person)/164/2017 (*Appeal heard as a part of a formal meeting of the Commission on 19.12.2017*)

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. M. D. S. A. Perera

Notice issued to: Divisional Secretary, Seethawaka- Hanwella (Designated Officer)

Appearance/ Represented by:

Appellant - Mr. M. D. S. A. Perera

PA - Mr. H. A. S. Jisantha Assistant Divisional Secretary

RTI request filed on	24.07.2017
IO responded on	31.07.2017 (acknowledgement) 07.09.2017
First Appeal to DO filed on	16.08.2017/ 28.08.2017
DO responded on	No Response
Appeal to RTIC filed on	21.09.2017

Brief factual Background:

The Appellant by information request dated 24.07.2017 requested the following information which relates to compensation paid to those affected by the explosions at the Salawa Army Complex.

1. The names and addresses of the owners to whom payments were made for the purposes of refurbishment of houses, where the value of the house was more than rupees one million and the amount paid to each owner.
2. The names and addresses of the owners to whom payments were made for the purposes of refurbishment of houses, where the value of the house was more than rupees one million and the amount paid to each owner.
3. The names and addresses of persons for whose household items were paid for and the amount paid to each person
4. The names of the three wheeler owners whose vehicles were damages and the amount paid to such owner
5. The names of business employees and the amount paid to each employee
6. The name list of self-employed persons and the amount paid to each self- employed person

In addition to the aforesaid payments the names, addresses and amounts paid to those affected by this incident and to whom payments were made.

The Information Officer (IO) responded on 07.09.2017 stating that all the information requested had been provided to their office by the Valuation Department as confidential information. As the information had been supplied in confidence by a third party (the Valuation Department) it cannot be provided since the third party had not consented to the disclosure. The PA had inquired from the Valuation Department as to whether it consents to the provision of the information by letter dated 18.08.2017. However, the PA stated that the Valuation department responded in the negative.

The Appellant on 16.08.2017 and 28.08.2017 submitted appeals to the DO stating that the information requested is the compensation paid by the PA and does not therefore fall within the third party exception even though it was made in line with the recommendation of the Valuation Department. The DO did not respond to the appeal. Accordingly an appeal was made to the Commission on 21.09.2017.

Matters Arising During the Hearing:

The Appellant reiterating his basis of appeal to the DO stated that information requested does not fall with the third party exception. The Appellant's argument was that since the PA made the payment it had not been supplied by a third party although the Valuation Department may have estimated the amount that is to be paid. Further, the Appellant submitted that in any event the Valuation Department made the estimate only in relation to the first three items of the information request whereas the PA is responsible for the last three items of the request.

The PA responding to this stated that the information requested was in fact what had been supplied by the Valuation Department as the amount paid to the persons affected was the amount as valued by the Valuation Department (in relation to items 1 to 3). There were no deviations (as there was an issue whether the costs incurred by the Sri Lanka Army were deducted) from the estimate of the Valuation Department and the full amount was paid. A circular was sent to the PA to this effect. The PA submitted that since it was unable to value the damage this was forwarded to the Valuation Department subsequent to which the estimates were sent back to the PA. The PA was instructed to make the payments accordingly.

The PA reiterated the fact that therefore the information was indeed that submitted by a third party from whom it asked for consent and by whom the said consent was refused. Since the refusal of consent by the Valuation Department was not on file with the Commission, the PA was questioned on the said response. The PA stated that it was by letter dated 28.08.2017.

The Valuation Department had informed the PA that since the matter in relation to the valuations of the *Salawa* army camp incident was being heard before the Supreme Court it cannot consent to the release of the information. When queried on the status of the cases at the HRCSL, the PA stated that during the course of the inquiry it was decided that on the complaint made by the Appellants to the HRCSL that the relevant officials are to act in line with its recommendations which included the provision of the opportunity of having the compensation paid reviewed. The

PA submitted that although it could accept appeals by persons dissatisfied with the amounts it had no power to decide on the amount to be awarded or rather to make a fresh estimate of the damage as that was a function to be exercised by the Valuation Department. The PA further stated when it made the estimates it did so on a normal basis. The persons aggrieved, subsequent to the conclusion of the inquiry at the HRCSL, decided to file a case in the Supreme Court alleging that the PA and the authorities concerned failed to act on the recommendations of the HRCSL.

The Appellant alleged that the valuation had been done without any basis and therefore had an issue with the manner in which the PA acted subsequent to the incident and that claims in excess of Rs. One million had been awarded.

The Commission queried from the PA as to the basis on which the HRCSL had arrived at its conclusions. The PA submitted that the HRCSL had considered the complaints of the persons whose estimates were extremely low and had thereafter held a discussion with the persons concerned.

It was also noted that the Appellant had submitted an appeal against the Valuation Department where the information requested is similar to the present appeal. The Appellant submitted that he was not requesting this information for any personal gain but rather because there appeared to be a misdirection/ allocation of funds on a large scale.

The further question of the Appellant having requested information in his official capacity was brought to the attention of the Commission by the PA. Called upon to respond, the Appellant stated that he was unaware as to whether or not he could make a request in his official capacity since the parameters of the Act were unclear. However in this instance the PA had processed the request regardless of the fact that an information request cannot be submitted in one's official capacity.

Order:

In this instance the PA has asked the Valuation Department for its consent to release the information in relation to items 1, 2 and 3 of this information request; the Valuation Department has responded on the basis that there is a court case/ inquiry pending and had declined to provide the said information.

In terms of the RTI Act, the mere existence of a court case is not a ground for the denial of information. There must be a direct link with the subject matter of the said pending case in a manner that is established as prejudicial to the maintenance of the authority and impartiality of the judiciary for an exemption under Section 5(1) (j) to be pleaded. Denial of the information on this basis alone is therefore contrary to the Act.

The PA is directed to bring the report of the HRCSL and the documentation in regard to the matter before the Supreme Court relevant to this appeal at the next date of hearing in order for the Commission to determine the applicability of Section 5(1) (j) as an exemption to prevent the release of information in items one to three of the instant information request. The PA is

directed to communicate with the Valuation Department in regard to the same and in the course of ascertaining the precise basis on which the denial of information is based in terms of Section 5(1) (j) and 5(1) i), both of which exemptions have been pleaded by the PA. Both parties are directed to file written submissions before the Commission if they so wish in regard to the aforesaid.

Considering the fourth item on the information request which concerns payment made to three wheeler drivers the PA states on record that no payments have been made. The PA has clarified that even though the Cabinet by memo dated MDM 16/1245/715/011 dated 18.07.2016 has categorized the payment to affected three wheelers, the relevant payments have not been made by the PA as estimation of the damage has not been possible.

With regard to the fifth item of the information request which are payments made to employees of business due to their loss of employment due to the ensuing situation, the PA submitted that in line with the aforesaid Cabinet Memo, Rs 10 000 had been paid for the three months following the incident. The same amount was paid in relation to self-employed persons under items 6. The PA states that once the Grama Sevaka ascertains the fact of self-employment/ the fact that the persons concerned were employees of businesses the amount agreed was paid in accordance with the Cabinet Memo. Of consent the PA agreed to provide the Appellant with the list of persons to whom such payments have been made. Therefore the issue only remains in relation to items one to three of the information request.

As this appeal concerns action taken by the Valuation Department, notices will be issued against it to appear on the next date of hearing which will be the 14th of February at 3.00 p.m..

The appeal is hereby adjourned to 14.02.2018

RTIC Appeal /164/2017 (*Appeal heard as a part of a formal meeting of the Commission on 14.02.2018*)

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: Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. M. D. S. A. Perera

Notice issued to: Divisional Secretary Seethawaka- Hanwella (Designated Officer)

Appearance/ Represented by:

Appellant - Mr. M. D. S. A. Perera

PA - Mr. H. A. S. Jisantha Assistant Divisional Secretary

Matters Arising During the Hearing:

This appeal was considered together with the appeal lodged by the Appellant against the Valuation Department (RTIC Appeal 05/2018), as decided on the previous occasion. The Valuation Department was represented and the matters arising during the course of this hearing follow from that appeal.

The PA was queried as to whether the amounts paid by it would be equal to the estimate by the Valuation Department. The PA submitted that if the payment had been made it would be equal to that estimated. The PA further submitted that it is refusing the information on the basis of Section 5 and the fact that 32 petitions had been lodged with the PA on the assumption that private information (i.e. the amount valued by the Valuation Department and paid by the PA in this instance) had been provided.

Order:

The PA is directed to file written submission on the applicability of Section 5 by 14.03.2018. The appeal is adjourned.

RTIC Appeal /164/2017 (Appeal heard as a part of a formal meeting of the Commission on 15.05.2018)

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

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Matters Arising During the Hearing:

The PA had filed written submissions in which it had claimed the third party exemption. The PA was made aware of the fact that the third party exemption would not apply and that only considerations of privacy would apply. It was noted that the PA is at liberty to call for the consent of the parties even if the exemption pleaded was privacy. The PA stated that it was not feasible to call for the consent of the 2031 persons who were paid compensation.

The PA further stated that its role was to pay the compensation once the quantum is decided by the Valuation Department and the necessary allocation is made by Cabinet. The PA further

submitted that the Cabinet provided a block amount and the breakdown was handled by the Ministry of Disaster Management. The PA also submitted that it had intended to publish the names of the persons to whom compensation was paid to along with amount paid. However, as the persons receiving compensation were against this only the list of names of persons receiving compensation was published.

The PA further submitted that subsequent to the inquiry at the HRCSL, the HRCSL recommended that a review of the valuation be allowed.

Order:

The PA is directed to allow the appellant an inspection of the files of all the persons whose property was valued. The appellant is to ascertain if any of the alleged misappropriations/miscalculations can be identified during this inspection and to revert to the Commission on the matter.

The appeal is adjourned.

Next date of hearing: 10.07.2018
