

**H.K.R.N. Indrajith v Grand Oriental Hotel**

(Previously, vs. Bank of Ceylon/ Grand Oriental Hotel/ Ministry of Public Enterprises)

RTIC Appeal (In-Person Hearing)/ [1149/2019] - Order adopted as part of the formal meeting of the Commission on 09.02.2021.

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 Member:** Ms. Kishali Pinto-Jayawardena  
**Commission Member:** Mr. S.G. Punchihewa  
**Commission Member:** Justice Rohini Walgama

**Appearance/Representation:**

Bank of Ceylon (BOC):- J. K. D. Dharmapala, Information Officer/Assistant General Manager; A.K.T.S. Gnanarathna, Chief Manager, CFO's Office  
Grand Oriental Hotel (GOH):- Charith Attygala, Human Resources Manager  
Appellant:- H.K.R.N. Indrajith; Yasas de Silva, Attorney – at- Law

**Information Requested:**

- 1. A copy of the disciplinary inquiry conducted against Mr. H.K.R.N. Indrajith (Electrician) from 30.05.2017 to 06.11.2017*
- 2. A copy of the disciplinary inquiry conducted against Mr. H.K.R.N. Indrajith (Electrician) from 31.12.2017 to 08.05.2018*

**Matters Arising at the Hearing on 09.02.2021:**

It was commonly agreed between the parties that the Bank of Ceylon was covered under the definition of a 'Public Authority' under Section 43 of the Act. The Bank of Ceylon submitted that the Grand Oriental Hotel which was its subsidiary, is a separate PA of itself, as it is a separate legal entity with its own Board of Management. The representative of GOH present at the hearing agreed with the same. The Commission discharged the BOC from the proceedings in this Appeal in view of the above.

Upon inquiring whether the inquiry reports were final or preliminary and whether the inquiry was ongoing or concluded, it was confirmed by the parties that the reports requested were of concluded final inquiries. The representative of the GOH, while acceding that it was the relevant PA in this matter, submitted that there is an ongoing Labour Tribunal proceeding involving the same subject matter of the inquiry reports requested by the Appellant in the information request.

The Appellant, responding to the submissions of the PA, stated that although there is an ongoing Labour Tribunal matter, the GOH has not pleaded the inquiry reports in question before the Labour Tribunal.

**Order made on 09.02.2021:**

The Commission takes note of the proceedings in this Appeal. The Bank of Ceylon is discharged from this Appeal as it is not the relevant PA, and the parties are so in agreement.

The attention of the Appellant is drawn to the fact that when the requested information is directly related and/or forms the crux of another inquiry or proceeding before a Court of law or Tribunal, the Commission has not directed the release of information, keeping in line with Section 5 (1) (j) of the Act. Information can be released only if the requested information does not directly relate to the ongoing proceedings.

The parties are directed to file Written Submissions in this regard before the next date of hearing.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

***Appeal Adjourned***

**Date of next hearing: - 11.05.2021 at 1 p.m.**

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RTIC Appeal (In – Person) – Minute adopted subsequent to the hearing which took place as part of the formal meeting of the Commission on **29.06.2021**

**Chairman:** Mr. Mahinda Gammampila  
**Commission Member:** Ms.Kishali Pinto-Jayawardena  
**Commission Member:** Mr. S. G. Punchchihewa

**Director-General:** D G M V Hapuarachchi

**Appellant:** H.K.N. Indrajith  
**Notice issued to:** Grand Oriental Hotel

**Matters Arising at the Hearing:**

Due to the extreme emergency situation arisen in the Colombo District due to resurgence of the COVID-19 pandemic and given the instructions by the Government to minimise personal interactions, the in-person hearing of this appeal under Rule 20 of the Right to Information Rules of 2017 (Fees and Appeal Procedure, Gazette No. 2004/66, 03.02.2017) is unable to be held as scheduled as aforesaid.

**Order:**

Accordingly, this Appeal will be taken up for hearing on 2021.07.27 at 9.45 a.m. in regard to which formal notices of the RTI Commission will be sent to both parties in due course.

***Appeal adjourned.***

**Next Date of Hearing: 2021.07.27 at 9.45 a.m.**

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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RTIC Appeal (In - Person) **1149/2019** - Order adopted as part of the formal meeting of the Commission on **27.07.2021**

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 Member:** Ms. Kishali Pinto-Jayawardena  
**Commission Member:** Mr. S.G. Punchihewa  
**Commission Member:** Dr. Selvy Thiruchandran  
**Commission Member:** Justice Rohini Walgama

**Director General:** D.G.M.V. Hapuaarachchi

**Appellant:** H. K. R. N. Indrajith  
**Notice issued to:** Designated Officer, Grand Oriental Hotel

**Appearance / Representation:**

**Appellant:** In – Person  
**Public Authority (PA):** Charith Athugala (Manager – Human Resources)

**Matters Arising at the Hearing:**

The PA submitted that there was an ongoing Labour Tribunal matter on the identical subject matter of the RTI request of the Appellant. It was brought to the PA's attention by the Commission that it is insufficient to state that there is an ongoing Labour Tribunal matter, but that the PA must plead the relevant documentation and details before the Commission on how the release of the information impedes upon / jeopardizes the proceedings before the Labour Tribunal. Although it was in agreement between the parties at the previous hearing of this Appeal in February that the formal inquiry has been concluded, the PA had not substantiated how the release of the information would impact the ongoing Labour Tribunal proceedings, to date. While the PA had not filed any submissions in writing before the Commission in the interim period, the PA also did not substantiate its position at the hearing.

The Appellant, responding to the above submissions by the PA, stated that it has been four years since an inquiry report was made against him, and his employment terminated. According to the Appellant, although no finding was made against him nor any charges against him proven, his employment had been terminated. He has been unable to have any meaningful recourse, despite filing action against the PA before the Labour Tribunal, as the inquiry report has not been made available to him. The Appellant further stated that the Labour Tribunal matter has been adjourned for final hearing on 20.08.2021, before which he needs to receive the said inquiry reports requested in this Appeal. The Appellant stated that the inordinate delay he had faced in the course of this matter with the PA, since the first information request made in 2019, has resulted in injustice to him.

The PA, responding to this submission, stated that the inquiry report was made after a domestic (internal) hearing, and that it is a management report, and that the PA had no obligation to release the same.

It was pointed out by the Commission, that it is in alignment with fundamental employment norms, principles of natural justice and fairness, that if a report has been made adversely to an employee, that he should be given a copy of such report. The PA's use of the term "management report" is an arbitrarily conceived terminology that can be used to deprive the employee of his due rights.

**Order:**

In view of the foregoing facts and legal issues arising in this Appeal, the Commission orders the release of the information, viz.,

- 1. A copy of the disciplinary inquiry conducted against Mr. H.K.R.N. Indrajith (Electrician) from 30.05.2017 to 06.11.2017*
- 2. A copy of the disciplinary inquiry conducted against Mr. H.K.R.N. Indrajith (Electrician) from 31.12.2017 to 08.05.2018*

This decision is handed down by the Commission in consideration of employment and labour law norms, and in the interests of equity and fairness, that a concluded, final inquiry report against an employee should be made available to him. The exemption pleaded by the PA, that there is an ongoing labour tribunal proceeding, has not been adequately substantiated by establishing a nexus between the release of the information and a corresponding impact on the ongoing proceedings, as required in terms of section 5 (1) (j) of the RTI Act,

*"5 (1) (j) the disclosure of such information would be in **contempt** of court or **prejudicial to the maintenance of the authority and impartiality of the judiciary**"*  
(Emphasis added)

The Appellant is reminded that there was a legal issue regarding the correct PA in terms of Section 43 of the RTI Act, in relation to the facts of this Appeal, which had to be adjudicated prior to arriving at the substance of this Appeal. Hence, while taking into account the Appellant's submissions regarding the delay in handing down the decision of the Commission, the Appellant is reminded that it is incumbent on the Commission to duly consider the legal contestations arising in an Appeal, no matter how pressing the urgency may be to one party, and that this must be so done in fairness to all parties to this Appeal.

The PA is directed to release the inquiry report either directly to the Appellant, or with copy to this Commission. If the Appellant is not in receipt of the said information ordered to be released within two weeks of the date of this Order, he may inform the Commission of the same in writing.

The PA is reminded that the failure to comply with the Order of the Commission is a punishable offense in terms of the RTI Act. Section 39 (1) (e) states that,

*Every person who...fails or refuses to comply with or give effect to a decision of the Commission... commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees*

*or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.*

Accordingly non-compliance with an order of the Commission in an offence under and in terms of the Act can result in a prosecution in terms of Section 39 (4) of the Act. Section 39 (4) states as follows:

*A prosecution under this Act shall be instituted by the Commission.*

Alternatively, the PA can appeal from a decision of the RTI Commission in terms of Section 34 of the RTI Act,

*34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority.*

*(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section.*

### ***Appeal Concluded.***

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).