

Kalmunai Forum v Ministry of Home Affairs

RTIC Appeal (In-Person Hearing)/[1190]/[2019]- Order adopted as part of the formal meeting of the Commission on 30/07/2019.

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

Appellant: Kalmunai Forum
Notice issued to: Designated Officer, Ministry of Home Affairs

RTI Request filed on	25/10/2018
IO responded on	No response
First Appeal to DO filed on	26/11/2018
DO responded on	13/12/2018 (acknowledgement)
Appeal to RTIC filed on	14/01/2019

Brief Factual Background:

The Appellant by information request dated 25/10/2018 requested the following.

- 1. Give a copy of the gazette notification establishing the Kalmunai North Divisional Secretariat*
- 2. Give a copy of the gazette notification establishing the Kalmunai Tamil Division of the Divisional Secretariat*

3. *The Secretariat situated at the Kalmunai Bank of Ceylon Road, is it a sub Divisional Secretariat or a Divisional Secretariat?*
4. *Has permission been granted for a government organization which is a sub divisional secretariat to function without using the word sub, but as a divisional secretariat, and join any further word, and display a name board and use it in letter heads, stamp seals/pad etc?*
5. *If yes, to question 4, give copies of documents granting permission*
6. *If no, to question 4, give copies of letters of warning/advice given by you regarding the name by which the said Divisional Secretariat has to function, the display board, letter heads, and stamps seals/pad and by what name the official functions have to be carried out...*

As the IO failed to respond within the time period stipulated under the Act the Appellant on 26/11/2018 lodged an appeal with the DO. As the DO too failed to respond within the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 14/01/2019.

Matters Arising During the Course of the Hearing:

The PA stated that the information requested had been provided to the Appellant. The Appellant, responded that the information to 5 items were given, however the 6th item was not responded to. The Appellant highlighted that the Ministry of Home Affairs clarified that the exact name to be used is Sub Divisional Secretariat Kalmunai, but in all formal documents the terms Kalmunai North, Kalmunai Tamil, Kalmunai TD are used. Further, in their letterheads, up to February this year, they have used the term, Kalmunai Tamil Division and after February, the term Kalmunai North. The Appellant emphasized that there was no gazette notification to this effect. The Appellant objected stating that the particular officers of the particular state entity were using different terminology to refer to this Divisional Secretariat.

The PA stated that in July 1993, at a Cabinet decision, it was decided to upgrade 28 Sub Divisional Secretariats as Divisional Secretariats including the Kalmunai North Sub Division. The PA further added that by way of a discussion on 04/04/2019 between Kalmunai North DS, Ampara GA, Ministry Secretary and the Home Affairs Divisional Head of Department,

instructions were given to use the correct terminology of Kalmunai North Sub Divisional Secretariat and Kalmunai North Sub Divisional Secretariat, Assistant Divisional Secretariat.

The relevant excerpt from the minutes have been replicated (subject to translation) as follows.

“It was shown that Kalmunai North in practical usage has been identified and treated as a separate Divisional Secretariat, and upon extensive discussion in relation to this matter, the Secretary has indicated that the usage of “Kalmunai North Sub Divisional Secretariat” to identify the Division is more appropriate in all future related matters. Further the Secretary mentioned that both the Divisional Secretariat and the Assistant Divisional Secretariat must mutually join together in conducting official duties.

Here, the Divisional Secretariat, Mr T.J. Athisayaraj expressed to the Secretary that such joint ventures would cause disputes and clashes between the Divisional Secretariat and the Assistant Divisional Secretariat and further expressed that he is not duly respected in the Kalmunai Divisional Secretariat.

Here, the Divisional Secretariat of Kalmunai, Mr M.M. Nazeer stated that since Mr T.J. Athisayaraj had taken up office as the Assistant Divisional Secretariat of Kalmunai North the person could not be accepted as the Assistant Divisional Secretariat of Kalmunai. Furthermore, as he (Mr. TJ Athisayaraaj) had used the Tamil Official Seal to indicate the Divisional Secretariat of Kalmunai, thus the Divisional Secretariat of Kalmunai, Mr M.M. Nazeer establishes that the said seal cannot be accepted as valid.”

With regard to the Appellant’s objection that the state entities were using different terminology to refer to this Divisional Secretariat instead of following the instructions provided to them, the Commission clearly expressed that the mandate of the RTI Act is to provide information, whereas for purposes of enforcement, it may be necessary to approach a court of law.

Order:

The Commission upholds the decision of the PA.

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).

The Appeal is concluded.
