

Chamara Sampath v Parliament of Sri Lanka

RTIC Appeal (In-Person Hearing)/719/2018- Order adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on 12.02.2019

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

Director-General: Mr. Piyathissa Ranasinghe

Appellant: Chamara Sampath

Notice issued to: Designated Officer, Parliament of Sri Lanka

Appearance/ Represented by:

Appellant – Chamara Sampath
PA - Tikiri K Jayathilake, Assistant Secretary General
P K D S W Wijegunathilake

RTI Request filed on	21.06.2018
IO responded on	21.08.2018
First Appeal to DO filed on	30.08.2018
DO responded on	07.09.2018
Appeal to RTIC filed on	11.09.2018

Brief Factual Background:

The Appellant, by an information request dated 21.06.2018, requested for the following item of information

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1. *The Number of Members of Parliament (MPs) who have handed over their respective Declarations of Assets and Liabilities in 2018*
2. *The list of names of MPs who have handed over their Declarations from 2010 to date”*

The IO on 21.08.2018 responded stating that in order to obtain details in relation to Declaration of Assets of Members of Parliament a request has to made to the Speaker in terms of the Declaration of Assets and Liabilities Law No 01 of 1975. Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 30.08.2018. The DO responded on 07.09.2018 reiterating the IO’s decision and further stating that in terms of Section 11 of the Assets and Liabilities Law No. 01 of 1975, when in conflict with any other given law this Act would prevail over the other law. Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 11.09.2018

Matters Arising During the Course of the Hearing:

The Appellant submitted that his request was with regard to statistical data and not the contents of the Assets Declaration of respective Ministers, and therefore took up the position that the information ought to be provided in terms of the RTI Act.

In response, the PA referring to its written submission to the Commission dated 05.02.2019 and submitted that the requested information falls within the ambit of the Declaration of Assets and Liabilities Law No 01 of 1975, and any request in relation to it is to be made to the Speaker in terms of the Act. The PA further submitted that the requested information or the manner in which it is requested may in some ways infringe the privileges of Parliament and the Appellant, if he wished to pursue the request should follow the procedure already laid down in terms of the Declaration of Assets and Liabilities Law.

In response the Appellant submitted that the release of statistical data could not affect the status quo of the Parliament or affect any particular assemblies. The refusal, if any should be justified in terms of the RTI Act. In response the PA submitted that the administration of the Parliament is not in a position to “give directions to the Speaker” and therefore, refused to deny the requested information citing exemptions under and in terms of the RTI Act, as it denied the applicability of the RTI Act in the present context.

Order:

If a PA is to deny the provision of information requested under the RTI Act, it may justify its decision to do so in line with the provisions set out in the Act, in relation to any of the exemptions cited under Section 5.

In order to provide or deny an information request of an Appellant, it must be first ascertained if the information is in fact in the possession, custody or control as set out in section 3(1) of the RTI Act. The PA is hereby directed to file further written submissions, with a copy to the Appellant stating its position with regard to Section 3(1) of the Act and, based on the PA’s justification, if qualified to provide information, the reasons for refusal of providing the same in terms of Section 5 of the Act.

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 adjourned

Next date of hearing: 21.05.2019



RTIC Appeal (**In-Person Hearing**)/719/2018- **Order** adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on 21.05.2019

Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Appellant: Chamara Sampath

Notice issued to: Designated Officer, Parliament of Sri Lanka

Appearance/ Represented by:

Appellant – Absent

PA - Tikiri K Jayathilake, Assistant Secretary General
P K D S W Wijegunathilake

Matters Arising During the Course of the Hearing:

The Appellant is absent. Written submissions of the PA dated 21.05.2019 were accepted of record. In view of its Written Submissions to the Commission, the PA submitted that the information requested is not in the possession, custody or control of the PA in terms of Section 3(1) of the Act.

Order:

The Appellant, is directed to tender written submissions in response to the PA's written submissions within 2 weeks of receipt of this order.

The Appeal is adjourned.

RTIC Appeal (by Documentary Proceedings)/719/2018- Order adopted subsequent to the hearing/ consideration at a part of the formal meeting of the Commission on 25.06.2019

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: Chamara Sampath

Notice issued to: Designated Officer, Parliament of Sri Lanka

Matters Arising During the Course of the Hearing:

The PA had raised two legal contentions in its submissions made to substantiate its position that the information requested is not in the possession, custody or control of the PA. namely;

1. Limitations on the Applicability of the RTI Act in this particular request
2. Distinction between the functioning of the Offices of the Speaker and Secretary General

Limitations on the Applicability of the RTI Act in this particular request

Section 11 of the Declaration of Assets and Liabilities Law No. 01 of 1975 and Section 4 of the Right to Information Act contain similar provisions, which stipulate that the provisions of the Acts prevail over other written law whenever the provisions of that particular Act is inconsistent with the other written law.

As the preamble of the law specifies, The Declaration of Assets and Liabilities Law No: 01 of 1975 is the Principal Law which sets out it is mandatory for certain specified categories of persons to make periodic declarations of their assets and liabilities in and outside Sri Lanka, making it a special law applies only to an identified category of persons.

Accordingly, in accordance with the rules of interpretations, the rule of implied exception contained in the maxim "*generally specialibus non derogant*" lays down the principle that the provisions of a general statute must yield to those of a special one. Therefore, the special obligation to maintain secrecy in terms of Section 8(1) of the Declaration of Assets and Liabilities Act supersedes the general obligations imposed by the RTI Act on Public Authorities.

The 19th Amendment to the Constitution Introduced Article 14A which recognizes guarantees the right of every citizens to obtain Information held by the Public Authorities under and in terms of the Right to Information Act. No 12 of 2016 (RTI Act) which was enacted to enforce the said Fundamental Right. The Preamble of the RTI Act indicates the direct link between the Article 14A of the Constitution and the Act. Therefore, it is evident that the provisions of this Act cannot be or should not be read and interpreted in isolation and should be considered with reference to the Article 14A of the Constitution. Article 14A (2) sets out the limitations and restrictions on the applicability of the Act

Furthermore, Article 16(1) of the Constitution states "*All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the with the preceding provisions of this Chapter*" which makes the provisions of Article 14A as well as the Right to Information Act subject to the provisions of Article 16.

The Declaration of Assets and Liabilities Law was passed in 1975 and even though Provisions of Assets and Liabilities Act maybe in conflict with the Provisions of the Article 14A of the Constitution and the Right to Information Act, in consideration of the above facts, the provisions of Assets and Liabilities prevail in terms of the Article 16 of the Constitution.

In terms of Article 14A (2) of the Constitution a citizen's right of access of information can be restricted for the protection of Parliamentary privileges. Section 3(2) of the Right to Information Act, has elaborated and expanded this restriction and provides that the provisions of the Act shall not be in derogation of the powers, privileges and practices of Parliament.

Parliament (Powers and Privileges) Act is linked with Article 67 of the Constitution which specified that, "*the privileges, Immunities and powers of Parliament and of Its Members may be determined and regulated by Parliament by law and until so determined and regulated, the provisions of the Parliament*

(Powers and Privileges) Act shall mutatis mutandis apply” Thus, the provisions of the Act is vested with a Constitutional guarantee.

The above mentioned along with the Parliamentary conventions and practices does not empower the Secretary General to release the requested information. The Appellant has no impediment to obtain the requested information by forwarding a formal request to the Speaker in terms of the Declaration of Assets and Liabilities Law.

Distinction between the functioning of the Offices of the Speaker and Secretary General

The Speaker of Parliament is the Parliament's representative, spokesperson and the ultimate authority of the House. The Speaker ranks third in the order of precedence following Prime Minister and President He derives his powers from the Constitution, Standing Orders, Parliament (Powers and Privileges) Act, and the conventions and practices of Parliament. The Speaker who is the guardian and custodian of Parliament in regard to the powers and Privileges of the House is answerable to Parliament and is expected to protect all the Members of Parliament.

In terms of Article 64 of the Constitution, Parliament shall elect the Speaker in keeping with the Standing Order 4, which specifies the procedure to elect him through a secret ballot. He is vested with the residuary powers under Standing Order 143, which states. *“Every matter not specifically provided for in these Standing Orders and every question relating to the detailed working of these Standing Orders shall be regulated in such manner as the Speaker may deem appropriate and direct, from time to time.”*

The Speaker is responsible for protecting and maintaining the dignity of Parliament and the Members of Parliament.

The Secretary-General (SGP), who is the head of the permanent official staff of Parliament, is appointed by the President on the approval of the Constitutional Council in terms of Article 41C(1) and Article 65 of the Constitution. In fact, the burden of efficient and proper working of the House largely rests on the shoulders of the Secretary-General. The position of the Secretary-General of Parliament is a constitutionally protected unique one and he is not the Secretary to the Speaker.

Standing Order No. 10 provides for the duties of the Secretary-General of Parliament. Accordingly, the Secretary-General shall keep the minutes of the proceedings of Parliament and of Committees of the whole Parliament and prepare an Order Book showing all business appointed for any future day and any notice of questions or motions which have been set down for a future day, whether for a day named or not. He shall be responsible for the safe custody of minutes, records, Bills and other documents laid before Parliament. The Secretary-General shall be responsible for ensuring the administrative and resource support for committees.

The SGP is not in a position to issue directions to the Hon. Speaker and the Parliament Secretariat is required to act according to the Hon. Speaker's directions in carrying out the functions of Parliament. Hence, if the Speaker gives a direction to release any information, which is in his control, it is mandatory for the Parliament Secretariat to execute such a direction. Yet the Speaker and the Secretary-General of Parliament discharge their duties in their offices independently and separately.

The facts arisen with regard to the Determination of the Supreme Court on the Bill titled “Divineguma” in 2012, further led to the discussion on the importance of recognizing the distinct nature of the two

offices. Delivering a Ruling on the matter on 09th October 2012, the Speaker of Parliament laid down position of the Parliament on the above matter as follows.

“The Speaker derives his power in Parliament from Article 64(1) of the Constitution. He is elected by the Hon. Members of Parliament. In the order of precedence, the Speaker holds a prime position after the President and the Prime Minister which reflects the stature accorded to Parliament and the Speaker. The Secretary General of Parliament is appointed by the President in terms of Article 65(1) of the Constitution and holds office during a period of good behaviour. Two offices are incomparable in power, authority and status to be equated for the purpose of receiving notice. On the other hand, the Secretary General of Parliament has limited powers under Standing Order No. 9 and is no substitute for the Speaker. No Speaker has delegated power vested by the Constitution exclusively with the Speaker to the Secretary-General of Parliament. This is not possible in terms Of the Constitution. The Speaker is a creature of Parliament and presides at the sittings of Parliament. A Speaker according to Erskine May “is the representative of the House itself in its powers, proceedings and dignity. There is no provision for the Secretary General of Parliament to accept any notice on behalf of the Speaker in any Article, law, rule or regulation. If the Secretary-General of Parliament is to be substituted for the Speaker; the Constitution will have to be amended accordingly, which is a matter for the legislature. I make a decision on this 9th day of October 2012 that in terms of Article 121(1) of the Constitution a copy of a reference made by the President or petition by a Citizen to the Supreme Court shall at the same time be delivered to the Speaker and not to the Secretary-General of Parliament. Such a delivery to the Secretary-General of Parliament shall not be treated by Parliament as due compliance with the terms of Article 121(1) of the Constriction. I direct the Secretary-General of Parliament to send a cop y of this decision to His Excellency the President and to the Honourable Judges of the Supreme Court. ”

Section 4 (b) of Declaration of Assets and Liabilities specifies that the declaration of assets and liabilities by all the Members of Parliament other than the Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers shall be made to the Speaker. Accordingly, considering the above facts and the Ruling of the Speaker the Secretary General does not possess the authority under any law to release the information in the possession, custody and control of the Speaker.

Order:

The contentions of the Public Authority are noted as of record. The Appellant is directed to file a response to the same on or before 10.09.2019

Appeal adjourned for further hearing on 10.09.2019
