

H. B. S. Perera v Irrigation Department

RTICAppeal(In-Person)/44/2018 - 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) – heard as part of a formal meeting of the Commission on 30.05.2018

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. H. B. S. Perera
Notice Issued to: Director-General Irrigation Department

Appearance/ Represented by:

Appellant - Mr. H. B. S. Perera
Public Authority - N. A. Subasena

RTI Request filed on	17.05.2017 (The Appellant has submitted another information request on 01.08.2017)
IO responded on	12.06.2017
First Appeal to DO filed on	23.06.2017, and 14.09.2017
DO responded on	No response
Appeal to RTIC filed on	13.11.2017

Brief Factual Background:

The Appellant by request dated 17.05.2017 requested certified copies of the following.

1. Letters dated 05.03.2013 and 06.02.2013 by the Director Irrigation (Engineering Materials) to the Director-General Irrigation, regarding the Appellant.
2. Letter No. 6150-1119 (ii) dated 19.03.2013 by the Acting Director Irrigation (Western and Sabaragamuwa Provinces), who appointed an investigation committee in relation to the weak constructions of the Wellawa Business, to the Director-General Irrigation
3. The report of the Director Irrigation (Engineering Materials) submitted to the Director-General Irrigation on a dated subsequent to 22.02.2013, after inquiring into the concrete construction of the Wellawa Business
4. Inquiry report of the inquiry CFD/B/04/2013 against the Appellant and submitted to the Director-General Irrigation by the inquiry officer

The IO responding on 12.06.2017 stated that the information requested cannot be provided since the documents and the file maintained by the Confidential Section () on the disciplinary inquiry against the Appellant had been submitted to the Public Service Commission (PSC). The Appellant dissatisfied with this response submitted an appeal to the DO on 23.06.2017 and on the non-receipt of any response made further appeals on 01.08.2017 and 14.09.2017. The Appellant in his reasons for appeal to the DO submits while the information requested by item No. 4 could have been submitted to the PSC, the information requested by item Nos. 1, 2 and 3 have to be in the custody of the Director-General of the PA. As the DO failed to respond to any of these appeals the Appellant preferred an appeal to the Commission on 13.11.2017.

Matters Arising During the Course of the Hearing:

This matter was initially considered as a documentary proceeding on 29.03.2018 and was converted to an in-person hearing at the said meeting.

The Appellant submitted that he had been requesting these documents, sent by his superior since 17.05.2017. The PA had refused the information on the basis that a disciplinary inquiry was being conducted and that the documents were confidential. The Appellant submitted that this is the fifth year of his interdiction and that the interdiction was subsequent to him pointing out serious irregularities with regards to quality control by the PA which culminated in the publishing of several articles in the media regarding the same.

With regard to the 5 documents requested by the Appellant which include three letters and two reports (one concerning the concrete construction of the Wellawa business and the other in relation to the inquiry against the Appellant himself), it was queried from the PA why they could not provide the three letters (i.e. items one and two) to which the PA responded stating that the documents were confidential.

The Appellant submitted that the allegation against him was that he had used a jeep belonging to the PA while its meter was broken. The Appellant submitted that although the inquiry was complete an order had not been issue. The Appellant further submitted that the appeal he made subsequent to the inquiry had not been sent to the PSC.

The Commission noted that there seemed to be no reason as to why the documents should be withheld since the inquiry was completed and an order has been pending for a significant period of time. The PA was queried as to the relationship between the four letters and the inquiry to which the PA responded stating that the letters have been submitted by the PA for the purposes of the inquiry.

The Appellant further submitted that the IO P. P. K. Abeygunawardena has denied an information request dated 13.10.2017 on 22.11.2017. However the Appellant submits that he never submitted an information request date 13.10.2017. The IO in this response has referred to the register postal article number 4684. On perusing the papers submitted by the Appellant this response appeared to be in reference to the Appeal made to the DO on 14.09.2017. It appeared that the same officer of the PA had responded to the information request as well as the appeal to the DO. It was queried from the PA as to whom the DO was to which the PA responded that one I B S Amarasuriya was the DO.

The PA was further faulted on its failure to refer in its response to the date of the request it is refusing and the details of the DO to whom an appeal will lie from the decision of the IO (letter dated 12.06.2017) although the IO by letter dated 26.02.2018 (sent subsequent to the appeal was made to the Commission) directs the Appellant to appeal to the DO.

Order:

The PA has failed comply with the procedures in responding to information requests and appeals to the DO under and in terms of the Act. The PA has failed to cite the specific subsection under which the information is denied as required under Section 25 (1) of the Act. The absence of any indication as to which information request the PA is responding to and the failure to inform the Appellant of the name and designation of the DO when refusing the information request has caused serious confusion and cast doubt on the extent to which the PA has complied with the Act. Further the failure of the DO to respond to the appeal made on 14.09.2017 within the time frame stipulated under the Act is in violation of Section 31(2) and 31(3) of the Act.

Further the fact that the IO has responded to both the information request and the appeal to the DO is in violation of the Act since the Act envisages the IO and DO exercising their decision making powers separately and independently.

The PA is directed to submit all documents relevant to the information request before the Commission on the next date of hearing for the perusal of the Commission. With regard to the 4th item (i.e. the inquiry report) the PA is directed to inquire from the PSC as to the status of the file and to inform the Commission of the response. The PA is further directed to obtain the file from the PA and to submit it for perusal by the Commission.

The Appeal is fixed for further hearing on 19.06.2018 at 1.00 p.m.

The Appeal is adjourned.
