

L. N. Dissanayake v. The Institute of Chartered Accountants Sri Lanka (ICASL)

RTICAppeal(In-Person)/189/2018 - *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. L.N. Dissanayake
Notice Issued to: Mr. M. A. L. A. Alwis, ICASL

Appearance/ Represented by:

Appellant - Mr. L.N. Dissanayake
Public Authority - Absent

RTI Request filed on	16.11.2017
IO responded on	No response
First Appeal to DO filed on	18.01.2018
DO responded on	13.02.2018
Appeal to RTIC filed on	18.02.2018

Brief Factual Background

The Appellant by request dated 16.11.2017 had requested the

1. The relevant report of the Ethics Sub-committee

2. The report of the recommendation to the Council by the ethics Committee based on the report of the Ethics Sub-committee referred to in 1

Both reports arose out of a complaint filed by the Appellant against one Mr. L. L. S. Wickremesinghe, alleging professional misconduct on the part of the said Mr. Wickramasinghe and calling for a disciplinary inquiry on the matter. As the IO failed to respond within the time frame stipulated under the Act, the Appellant lodged an appeal with the DO on 18.01.2018.

The DO responded on 13.02.2018 refusing the information citing Section 5 (1) (a) of the Act. Dissatisfied with this response, the Appellant preferred an appeal to the Commission on 18.02.2018 stating as reasons for appeal, the fact that there is nothing personal or private in the information requested and the acts of the PA will enable further engagement in corrupt and fraudulent activity.

Matters Arising During the Hearing:

The PA was absent for the hearing.

In the written submissions of the PA dated 25.05.2018 it submits that the information was further denied due to ongoing litigation against the Applicant currently pending in the District Court of Colombo. The PA alleged that the applicant had circulated false derogatory e-mails against the PA and the case for defamation is currently at the pre-trial stage.

The PA had further submitted that confidential information of any member and its inquiries are as a practice not released to the general public unless a complaint is concluded at the Disciplinary Committee stage and is of public interest.

The Appellant submitted that the information that he had asked for related to allegations of professional misconduct alleged in respect of Mr. Lasantha Wickramasinghe. The Appellant submitted that the said Mr. Wickramasinghe attempted to bribe/ bribed persons including the Appellant directing them to send emails in an attempt to persuade persons from voting for persons contesting for the posts of President and Vice-President of the Council (i.e. Council of the Institute of Chartered Accountants of Sri Lanka/ the PA) against the said Mr.

Wickramasinghe. The Appellant submitted that at the Annual General Meeting of the PA, he had handed over items which he alleged were used to bribe him, as a complaint was lodged against the Appellant himself.

The Appellant further submitted that once the complaint was lodged against the said Mr. Wickramasinghe, an inquiry was conducted by a subcommittee of the ethics committee which forwarded the proceedings to the Ethics subcommittee which submitted its report to the Council based on which the Council of the PA made its decision. The Appellant submitted that he was then informed of the decision on 16.05.2017 and that the PA had decided that there was no *prima facie* case made out, concluding the matter.

The Appellant submitted that he is requesting the preliminary inquiry proceedings in relation to the complaint made against Mr. Wickramasinghe and the subsequent reports submitted to the Ethics Committee and by the Ethics Committee to the Council of the PA.

The Appellant also drew the attention of the Commission to the fact that the response of the PA to his appeal, on 13.02.2018 was not in conformity with the provisions of Section 31 (2) and (3) of the RTI Act.

Order:

It is noted as of record that the request for a postponement by the PA had been received by this Commission two days before the hearing of this appeal (*viz*, 28.05.2018) despite notices having reached the PA on 08.05.2018 and without any notification being sent to the Appellant by the PA. Compliance of the PA with Section 23 (1) (a) and Section 31 (2) and (3) of the Right to Information Act No. 12 of 2016 when dealing with this appeal remains to be established.

Further hearing of the appeal is fixed for 12.06.2018 at 1.00 p.m. The PA is directed to be present on that date under and in terms of Section 15 (a) of the RTI Act.

The Appeal is adjourned.

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Public Authority - Absent

Matters Arising During the Hearing:

The Appellant submitted his Written Submissions in the Appeal.

Order:

This date was fixed for the hearing of this appeal at the request of the Public Authority. However, its Designated Officer and/or Information Officer and/or any authorised representative is absent.

It is directed that the Public Authority is apprised of the fact that it is an offence under and in terms of Section 39 (1) (c) to ‘fail or refuse to appear before the Commission’ when noticed to do so.

Order is directed to be 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).

Further hearing adjourned for 31.07.2018.