

G. Dileep Amuthan v. Ministry of Defence

RTICAppeal(In-Person)/70/2018 - 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 23.03.2018

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. G. Dileep Amuthan
Notice Issued to: Designated Officer, Ministry of Defence

Appearance/ Represented by:

Appellant - Mr. G. Dileep Amuthan
Public Authority - Upali Weerasinghe, Legal Advisor, Ministry of Defence
Major Gunawardena, Legal Advisor, Ministry of Defence
A.M.S.B. Atapattu, Information Officer, Sri Lanka Army (SLA)

RTI Request filed on	28.09.2017
IO responded on	16.10.2017 (requesting copy of NIC)
First Appeal to DO filed on	22.10.2017
DO responded on	23.11.2017
Appeal to RTIC filed on	04.12.2017

Brief Background Facts

The Appellant had requested the following three items of information, by an information request dated 28.09.2017.

- I.
 1. A comprehensive list of the shops, canteens, outlets and/or restaurants catering *inter alia* to members of the public maintained by and/ or under which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and / or Sri Lanka Air Force;
 2. A comprehensive list of all business enterprises other than those in point 1 above catering *inter alia* to members of the public maintained by and/ or under or which are responsible to the Sri Lanka Army and/or Sri Lanka Navy and/ or Sri Lanka Air Force;

- II.
 1. Relevant rules, procedures, guidelines and /or policies pertaining to the Army Directorate of Welfare;
 2. Annual Statements of accounts reflecting total income, total expenditure and other details for the Army Welfare Society Fund of the Sri Lanka Army for the last ten years, i.e. 2006 to 2016;
 3. Audit procedures pertaining to the Army Welfare Society Fund and all relevant audit documents for the last ten years, i.e. 2006 to 2016;
 4. A comprehensive list of the shops, canteens, outlets and / or restaurants catering *inter alia* to members of the public maintained by and / or under or which are responsible to the Directorate of Welfare;
 5. A comprehensive list of all business enterprises other than those in point 4 above catering *inter alia* to members of the public maintained by and/or under or which are responsible to the Army;
 6. Total number of army personnel working at and/ or assigned to and/ or posted to the establishments listed in question 4 and 5 above;
 7. Annual audited statement of accounts for each hotel under the Laya chain of hotels i.e. Laya Beach, Laya Leisure, Laya Safari, and Laya Waves from 2009 to 2016;
 8. Annual statements of accounts of ThalSevana hotel for the years 2010 to date;
 9. A comprehensive list of beneficiaries benefiting from the Legal Aid Fund maintained under the Directorate of Welfare and a comprehensive list of payments made thereunder;

- III. Concerning the allegations of Sri Lankan peacekeepers deployed to Haiti being perpetrators of sexual abuse of Haitian citizens in 2007.
 - Names of peacekeeping officers, including names of senior and high ranking officers who were repatriated from Haiti following the allegations of involvement in a sex ring while engaging in UN peacekeeping activities in Haiti in 2007;
 - Findings of the Court of Inquiry in the form of reports or investigative notations on activities concerning Sri Lankan peacekeepers deployed to Haiti

and the events concerning the sex ring which unfolded in Haiti while the Sri Lankan peacekeepers were engaged in peacekeeping operations;

- A list of allegations made by citizens of Haiti against the peacekeepers deployed from Sri Lanka including the nature of their crimes, names of victims of such crimes and/ or any other relevant information regarding the allegations made against the peacekeepers deployed from Sri Lanka;
- Details of disciplinary action taken against the 11 soldiers, one Lieutenant Colonel and two Majors including the following:
 - Whether or not these persons were brought before a General Court Martial or submitted to any form of Court Martial process;
 - Findings of the General Court Martial and/ or any other Court Martial process;
 - Names and ranks of the officers who presided at the General Court Martial and/ or other Court Martial process;
 - List of the allegations and/ or crimes tried by the General Court Martial and / or other Court Martial process;
 - Disciplinary measures (including inter alia reprimanding, suspension, dismissal) taken against persons accused of committing/ being involved in the alleged crimes in Haiti;
 - Disciplinary and/ or penal action taken against the commander of the contingent;
 - Information on institution of prosecution off persons found to be guilty of committing the alleged crimes in Haiti including case numbers of such criminal action filed before the Courts in Sri Lanka;

He received a response on 16.10. 2017 requesting a copy of his National Identity Card (NIC) attested by the Grama Sevaka and Divisional Secretary. He was informed that this request was made on behalf of Sri Lanka Army. The Appellant stated that he had already mentioned his NIC number in his information request and that requesting a copy of said NIC seemed to be a delaying tactic or form of intimidation and appealed to the Designated Officer (DO) on 22. 10.2017. The DO responded stating that a copy of the NIC was needed to assess citizenship of the Appellant. The response was sent by the Additional Secretary (Parliamentary Affairs and Policies) on the letterhead of the Ministry of Defence. Dissatisfied with this response, the Appellant appealed to the Commission on 04.12.2017.

Matters Arising During the Hearing

Mr Weerasinghe, Legal Officer of the Ministry of Defence confirmed that the Public Authority (PA) had requested a copy of the Appellant's NIC upon receipt of the instant information request. The PA was informed that when an Appellant fills in the RTI Form 01 (information request

form), he/she is only requested to state whether he/she is a citizen. The PA may question further only if there are objective grounds to doubt the citizenship of the Appellant. The Commission queried as to what doubt the PA had regarding the Appellant's citizenship especially when the Appellant had already noted down his NIC number in his original information request. This question was answered by the Public Authority to the effect that the said query had been posed by the earlier Information Officer and assured that the practice of routinely asking Appellants to produce identity cards will not be repeated in the future.

With regard to the merits of the information request in Item I and II, the PA was notified by the Commission that as the details should be available in the annual reports of the concerned parties in response to which, the PA submitted that it had informed the Sri Lankan Army (SLA) regarding the same and that it was in a position to provide whatever documents were in its custody.. With regard to the information requested in Item III, the Information Officer (IO) of the SLA stated that this relates to internal disciplinary procedures of the SLA in regard to charges leveled against peacekeepers deployed from Sri Lanka and submitted that there were many allegations made against the SLA in international fora by interested parties and therefore it was hesitant to provide the information.

When queried by the Commission as to what specific exemption in Section 5(1) of the RTI Act was being cited by the SLA to decline the requested information with regard to item III, the IO reiterated that the incidents relating to the allegations had taken place in 2007, and that it was 2018 now, and therefore republishing details about this issue would tarnish the name of the SLA in the international fora and could be used for propaganda purposes by interested parties. He further submitted that roughly about 100 peacekeepers amounting to the whole contingent had been sent back but only 3 had been involved and that one officer was called back due to the rules of command responsibility being breached and therefore, the number of those who were recalled did not necessarily correspond to those who had allegations against them. He further submitted that the actions taken by the SLA with regard to these allegations were already in the public domain..

The IO also submitted that the Court of Inquiry had all details of the incidents but that revealing details about the court of inquiry would involve privacy concerns infringing Section 5(1)(a) of the Act and also that it would impact on the image of the country. Upon further questioning by the Commission about the propriety of the claim that the findings of a court of inquiry should not be made publicly available, he submitted that the SLA could accede to the direction of the Commission and provide a summary of the same.

Order

It must be reiterated that the Appellant is only required to note whether he/she is a citizen or not in the form RTI 01 as provided in the Regulations published in Gazette No.2004/66 dated 03.02.2017. The PA cannot keep questioning further without a substantial reason for belief that

the Appellant is not a citizen. Further, requesting for proof of citizenship can only be on objective grounds, for example when a request is made from abroad then there might be a reason to doubt the citizenship of the requestor.

As observed by this Commission in *TISL v. Prime Minister's Office/Presidential Secretariat* (RTICAppeal/05/2017 & RTICAppeal/06/201, RTIC Minutes of 23.02.), requesters should be asked for proof of citizenship only in the 'rarest of cases' (*Shri K. Balakrishna Pillai v. National Human Rights Commission* (No; CIC/OK/C/2008/00016, Minutes of the Central Information Commission of India, 26th May 2008), and only where there is a *bona fide* doubt on the part of the PA as to whether the information requester is a citizen.

In the instant matter, the Appellant has already mentioned his NIC number in his information request; therefore it is not appropriate for the PA to further request copies of his NIC and /or Passport. The RTI Act No.12 of 2016 is very clear, that an information request can only be declined by citing one of the exemptions in Section 5(1)(a) of the Act; it cannot be blocked through circuitous means. The Commission will therefore note as of record that this was a previous procedural policy at the PA which is now obsolete.

With regard to the substantive information request, it is difficult to uphold the argument by the Public Authority (SLA) that where there have been allegations against the Sri Lankan peacekeepers and there had been an inquiry on the said issue which has been concluded, that the SLA cannot provide the details of the inquiry to the public. To do so, is for the Public Authority (SLA) to claim a privilege especially for itself. Such privileges are not provided for in the RTI Act.

Further, in assessing the public interest in such matters, it is a relevant consideration that if there has been a process of inquiry, it is in the Public Authority (SLA)'s benefit to establish what concrete action it has taken regarding allegations made thereto. The Public Authority (SLA) is directed to prepare a thorough summary of the findings of the court of inquiry for submission to this Commission. Upon perusal thereof and if assessed as being required for the purpose, this Commission may call upon the Public Authority (SLA) to furnish the report of the court of inquiry for the Commission's examination in order to ascertain if the summary correctly reflects the contents of the substantive report.

Further, the PA is directed to call for the information requested in Item I of the information request from the Sri Lankan Airforce and Sri Lankan Navy.

The Appeal is adjourned.

Next date of hearing: 15/05/2018

RTICAppeal(In-Person)/70/2018 - 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 15.05.2018

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. G. Dileep Amuthan
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Public Authority - Upali Weerasinghe, Legal Advisor, Ministry of Defence
A.M.S.B. Atapattu, Information Officer, Sri Lanka Army (SLA)
Captain W.H.S. Soysa, Subject Officer, Sri Lanka Army (SLA)

Matters Arising During the Hearing

Upon the items of information requested being considered in detail, in terms of Item II (1), the Public Authority (SLA) was informed by the Commission that policy guidelines were documents that should be proactively posted online in terms of the RTI Act. The SLA clarified that certain policy statements were up on their website; <http://www.army.lk/welfare>.

With regard to Item II (2), the SLA was informed by the Commission that these were public documents that should be freely available to the public. Stating of record that the apprehension was that providing the details in the information request could be used for negative purposes by certain interested parties overseas, the SLA agreed to submit the documents for the Commission's perusal after which the Commission could decide on whether the said documents should be provided to the Appellant.

With regard to Item II (8), the SLA submitted that ThalSevana had not been maintained as a business venture till 2011 so the expenses had not been audited before, but from 2011, SLA had been running it as a hotel. The SLA submitted that they would provide the audit reports relating to the period from 2011 onwards to the Commission. It agreed to do the same with regard to Item II (7). With regard to Item II (4) the SLA submitted that it had restaurants/canteens by the roadside in almost each camp which members of the public are also permitted to use and that this would therefore involve a substantial amount of information. The SLA agreed to provide the said details to the Commission, bifurcated if necessary by those canteens being maintained internally by the Army which the public is also permitted to use and those canteens explicitly run as a

public undertaking. It agreed to do the same with regard to Item II (5) and (6). The SLA further agreed to provide the details requested in Item II (9) for the Commission's perusal and subsequent decision.

In respect of Item I, where information had been requested about the enterprises run by the Sri Lankan Navy and the Sri Lankan Airforce, the PA explained that it had requested the said details from the Navy and the Air Force and that both had agreed to provide the information but had requested for more time to collect the information.

With regard to Item III, the SLA submitted the advice it had received from the AG's Department which stated that the exemption provided for in Section 5 (1) (b) (ii) would apply to the requested information.

The SLA further submitted that it had already prepared a summary of the findings of the Court of Inquiry as directed by the Commission at the last hearing but due to the advice received from the AG's Department, it is compelled to refrain from submitting the same at the present hearing.

Order

As agreed before us, the Public Authority (SLA) is directed to provide to the Commission the information in Items I and II which are public documents and not subject to any exemptions. Where it is so relevant, the requested information in regard to the relevant hospitality ventures under the management of the Army may be provided from the date that the same were converted as public/business ventures.

In respect of the information requested in Item II (4) the Public Authority (SLA) may provide the information bifurcated if necessary by those canteens being maintained internally by the Army which the public is also permitted to use and those canteens explicitly run as a public undertaking. In respect of the information requested in item II (9), this is directed to be submitted for our perusal consequent to which a decision will be made regarding public release of the same.

With regard to Item III and the exemption in Section 5 (1) (b) (ii) pleaded by the Public Authority (SLA) (as per the advice of the Department of the Attorney General), the attention of the Public Authority is drawn to the said Section which states that information can be declined where it;

*“would be or is likely to be seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations under international law, where such information was **given by or obtained in confidence;**” (emphasis ours)*

It is important to note that the reliance on an international agreement to deny information pertains strictly to instances where the requested information was given or obtained in confidence and further, where provision of the same is assessed as being ‘*seriously prejudicial to Sri Lanka's relations with any State, or in relation to international agreements or obligations*

under international law. As such it is manifest that this exemption cannot be applied in a vague or generalized manner as to include all information relating to any international agreement.

The Public Authority is directed to clarify as to first, what international agreement or obligation under international law is at issue here; secondly, the precise terms of the serious prejudice that can be caused thereby; and thirdly, what information was given or obtained in confidence. This is in order for the Commission to assess the legitimacy of the applicability of the exemption that is cited in the first instance, as well as the relevance of the public interest override contained in Section 5(4) of the Act which states that;

(4) Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

It is of further note that such an assessment is called for in accordance with the powers accorded to this Commission in the exercise of its statutory duties and functions in terms of Section 15 of the RTI Act, and that failure to abide by the same may constitute a breach of the statutory duties and functions given the scope and content of the preamble to the Act which emphasizes *'a need to foster a culture of transparency and accountability in Public Authorities by giving effect to the right of access to information.'*

If it so desires, the SLA may submit written submissions addressing the above specific issues (with copy to the Appellant) on or before June 26th, 2018:

The PA (Ministry of Defence) is directed to provide the information agreed upon as aforesaid in respect of Items I and II at the next date of hearing.

The Appeal is adjourned.

Next date of hearing: 03/07/2018.
