

I. G. L. Jayaweera v Department of Internal Audit, Southern Province

RTIC Appeal/84/2017 (*Heard as part of the meeting of the Commission on 30.10.2017*)

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. I. G. L. Jayaweera

Notice issued to: Designated Officer, Department of Internal Audit Southern Province

Appearance/ Represented by: Mr. I. G. L. Jayaweera

The Appellant was present and the Public Authority (PA) was absent.

The Appellant requested information by request dated 03.07.2017 of the steps/action taken by the PA subsequent to the inquiry held on 12.11.2015 for which the Appellant was called by letter No. CSS/10/01/25/EM/123 dated 04.11.2015. The letter concerns the misplacement of the file pertaining to the demolition of a building of Ambalangoda G/ Sri Dhammakusala Kanitu Viduhala without the permission of the Deputy Mayor of Ambalangoda. The Information Officer (IO) and Designated Officer (DO) had not responded to the Appellant's initial information request or appeal respectively. The Appellant then appealed to the Commission on 16.08.2017.

The Appellant, who was also the Principal of the School, stated that a building in the School was to be demolished with the intention of replacing it with a three storied building. However the building that was demolished was not the one they planned on demolishing initially. The Appellant was suspended subsequently. He also stated that it was demolished on the instructions of the Deputy Mayor, although the letter indicated that it was done without his permission.

The Commission questioned the Appellant on how the demolition of the building was related to his suspension. The Appellant stated that as the School was closed down subsequent to the demolition of the building and events which followed the said demolition, the relevant authorities stated that this was due to his mismanagement/ inefficiency in running the school and charges were brought against the Appellant by the PA.

The Appellant further stated he was falsely accused of mismanagement, in order to justify this closure of the School. He stated that an inquiry was held in relation to the demolition of the building which involved the Provincial Ministry of Education and several other Authorities, with the President having intervened as well. Notes of the inquiry were recorded in a new log book which was placed in the school after taking away the existing log book. On 21.11.2011 the old log book was brought back, the initial inquiry was held on 22.11.2011 and the School was closed on 23.11.2011, by which time, all materials on the school premises were taken away including the old and new log books. At the initial inquiry no indication that the school will have to be closed was given. The Appellant stated that the PA called him for a statement regarding this and informed him that the statement had been recorded.

Although the Chief Secretary said that he authorized an inquiry in 2015 (in relation to the file in which the inquiry details of the demolition were contained), to be conducted by the Ministry of Education, it has not yet been held. Although the Appellant had averred before the Commission that the file has been misplaced the Commission pointed out that since there is no evidence put on record by the PA that the file had been misplaced, such conclusions cannot be drawn. Consequently this amounts to a mere assumption by the Appellant.

Order

The fact that the PA failed to appear before the Commission subsequent to notice having been issued on the PA regarding the instant appeal hearing is an offence under Section 39(1) (c) of the Act.

Further the PA's statement that it has not appointed an IO and DO is a serious dereliction of its statutory obligation under and in terms of Section 23 (1) (a) of the RTI Act, No. 12 of 2016. In any

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event, Section 23 (b) of the Act stipulates that ‘Until such time that an information officer is appointed...the Head or Chief Executive Officer of the public authority shall be deemed to be the information officer of such public authority, for the purposes of this Act.’

Moreover the purported refusal of information under Section 5(1) of the RTI Act conflicts with the PA’s stance that it has not appointed an IO and DO.

The matter is re-fixed for hearing on 04th December 2017 at 11.00 am with notices to be re-sent to the Public Authority along with a warning regarding the need to comply with mandatory statutory obligations under the RTI Act.

The Appeal is hereby adjourned.
