

The Right to Information Commission

N.P. Uduwarage
No. 12
Jubilee Road
Pinwatta
Panadura

-Appellant-

RTIC/Appeal/1617/2023

Vs.

National Gem and
Jewellery Authority
No. 12
Macksons Tower
Alfred House Garden
Colombo 03

-Public Authority-

Before : 1. Justice Upaly Abeyrathne (Rtd.) - Chairman
2. Ms. Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
3. Mr. A.M Nahiya - Commissioner

Appearance : The Appellant is present

The Public Authority is absent and unrepresented

Written submissions : The Appellant : Not submitted

The Public Authority : Not submitted

Date of Hearing : 28.03.2024

Decided on : 28.03.2024

Decision of the Commission

Brief Factual Background

By an Information Request dated 23.08.2023, the Appellant requested the below information;

“Right to Information Request - Discovery of Precious Stones from North Central Province Canal Project (NCPCP)

According to the provisions in the Right to Information Act, No 12 of 2016, as a Sri Lankan citizen, I would like to request the following information regarding the North Central Province Canal Project (NCPCP) of Mahaweli Water security Investment Program (MWSIP). I have also attached the RTI Application Form separately for your convenience.

As per section 5.1.6 (page 248) of the Environment Impact Assessment Report published by the Mahaweli Authority of Sri Lanka in June 2015, pertaining to the NCPCP, its Project Management Unit will take action to notify the National Gem and Jewellery Authority (NGJA) when precious stones are found during any stage of the construction. The open canal and hydraulic tunnel being constructed go through areas with a rich probability of discovering precious stones (e.g. Elehara). My questions are provided below:

1. Has the NGJA ever been notified by the NCPCP project or Mahaweli Authority since 2015 when precious stones were found by the contractors or any worker/employee?

2. Has the NGJA ever been notified by any construction or excavation project in Sri Lanka since 2015 when precious stones were found?

3. If the answer is 'yes' to one or both of the above questions, please provide the following details of each incident:

a. The date (at least indicative)

b. Location

d. Type of precious stone found

e. Weight or volume of the precious stones

f. Monetary value of the precious stones

g. Action taken by NGJA

4. Please provide details of the process NGJA follows when the authority is informed of the discovery of precious stones, and what actions are taken.”

Dissatisfied with the response of the Information Officer, the Appellant lodged an appeal with the Designated Officer dated 21.09.2023. The Designated Officer failed to respond within the time period stipulated in the Act, the Appellant preferred an appeal to the RTIC dated 14.12.2023.

Notices have been sent to the Appellant via email and the Public Authority via email and registered post on 26.02.2024.

Consideration

We observed that the Information Officer of the Public Authority has not responded to the said information request in terms of Section 25 of the Right to Information Act No. 12 of 2016.

Also, the Designated Officer of the said Public Authority has not responded to the appeal preferred by the said Appellant in terms of Section 31 of the said Act.

Said conduct of the Information Officer and the Designated Officer of the Public Authority is in violation of the said provisions contained in the said Act. It must be noted that the law does not condone such violations of citizen's Right to Information. Hence, they must be aware of the fact that such conduct of the Information Officer and the Designated Officer of the Public Authority give rise to initiate legal proceedings against the Public Authority and the Information Officer in terms of Section 39 of the said Act.

Accordingly, the Information Officer and the Designated Officer of the Public Authority are directed show cause why they should not be dealt with in terms of Section 39 of the said Act, on or before 30.04.2024.

We carefully considered the said information request. Requested information does not fall within the purview of Section 5 (1) of the Right to Information Act No. 12 of 2016.

According to the description given by the Appellant in his application requesting the information on 23.08.2023, we are not in a position to arrive at a decision that requested information in fact, exist within the custody, possession or control of the Public Authority. The Appellant in his information request has stated *inter alia* "as per Section 5.1.6 (page 248) of the Environment Impact Assessment Report published by the Mahaweli Authority of Sri Lanka in June 2015, pertaining to the NCPC, its Project Management Unit will take action to notify the National Gem and Jewelry Authority (NGJA) when precious stones are found during any stage of the construction."

Said passage gives the impression that the requested information necessarily does not exist within the custody, control or possession of the Public Authority. The Public Authority might hold the custody, control or possession of said information requested by the Appellant if it is provided by the Project Management Unit of the Mahaweli Authority. There is no evidence before us in order to conclude that said requirement has been fulfilled by the Project Management Unit of the Mahaweli Authority. If the answer is in the negative the Public Authority is not in a position to provide the information requested by the Appellant.

Considering the said circumstances, and also the failure of Information Officer and the Designated Officer to respond to the said Information Request and the Appeal respectively we make order that the Public Authority should respond to the said information request before 30.04.2024, with copies to the Commission.

The Commission further decides that, if the Public Authority fails to comply with the said decision of the Commission before the said date, the Information Officer and the Public Authority shall be prosecuted before the relevant Magistrate's Court under Section 39 of the Right to Information Act No.12 of 2016.

For the completeness of this decision, we place on record that, in terms of rule no. 11 of Right to Information Commission Rules of 2017, the Public Authority is not entitled to charge any fee from a citizen for the release of the information upon a decision made by this Commission.

The Director General is directed to convey the decision to the Appellant, the Information Officer and the Public Authority.

Appeal Concluded.