At the Right to Information Commission of Sri Lanka

Asitha Abeygunawardena v. Elections Commission of Sri Lanka

RTIC Appeal/19/2017 and RTIC Appeal/31/2017 *(Heard as part of the meeting of the Commission on 31.07.2017)*

Chairperson: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena
Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran

Appellant: Mr.Asitha Abeygunawardena

Notice issued to: R.M.A.L.Rathnayake, Director-General Elections, Elections Commission of Sri Lanka

Appearance/ Represented by: R.M.A.L.Rathnayaka. Director-General Elections (Designated Officer) and M.M. Mohamed Additional Commissioner of Elections (Information Officer).

The Director-General Elections Mr. R.M.A.L.Rathnayaka who is the Designated Officer and Mr MM Mohamed, Additional Commissioner of Elections (Information Officer) were present.

The Appellant had requested two items of information namely, a letter by the Gramasevaka of Bombuwela North dated 02.11.2016 relating to the Appellant's residence and letter no PE1/64/2016 dated 30.08.2016 issued by the Election Commission. Both items of information had been refused by the Public Authority.

At the outset, the Information Officer and the Designated Officer of the concerned Public Authority explained that the refusal to provide the documents was under Section 5 (1) (f) of the Right to Information Act No 12 of 2016 (the Act).

The said Section provides an exemption to the provision of information in the following manner; (where) 'the information consist of any communication, between a professional and a public authority to whom such professional provides services, whichis not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority,'

The officials representing the Public Authority stated that, at the time of the request both documents had been communicated to the Attorney-General by the Election Commission in relation to case no SPL/918 in the Matara District Court currently in progress and instituted by the Appellant.

Further with regard to letter no PE1/64/2016 dated 30.08.2016 the Appellant had been informed by the Public Authority that this was an administrative circular contained internal directions issued to the Additional Elections Commissioner (Western Province), Deputy and Assistant Commissioners of Elections for all the districts, and Administrative Officers of Gampaha, Vavuniya and Kurunegala, and that it was not a public document.

At the hearing, the Information Officer Mr. Mohamed restated the argument in relation to letter no PE1/64/2016 dated 30.08.2016 on the basis that the document was an internal circular and that it therefore cannot be provided to the Appellant.

The Appellant stated that these were documents relating to his residence, that he was a person suffering from a disability, that his stay in Kalutara was only temporary and that he needed proof of his permanent residence as being in Matara to avail himself of certain benefits.

Interim Order

In reference to the position taken by the Public Authority, it is relevant to note that internal circulars do not come within the purview of exceptions under the Act. The mere fact that the requested document is treated as an internal circular by the Public Authority does not make it confidential or privileged information under and in terms of the Act.

Further, a document furnished by a Public Authority (handed over to that Authority by another state body) to the Office of the Attorney General for the purposes of filing in a court case does not necessarily bring the said document within the ambit of Section 5(1)(f) of the Act for the reason that Section5(1) (f) only exempts information 'which is not permitted to be disclosed under any written law' (emphasis ours). The Public Authority did not cite any relevant section of the law for

that purpose. In any event, the public interest override in Section 5 (4) of the Act applies across all exceptions detailed in Section 5 (1).

Consequently, an Order is issued directing that the letter no PE1/64/2016 dated 30.08.2016 issued by the Election Commission to its officers relating to an administrative instruction in regard to the performance of their duties be furnished to the Appellant.

Further, the Information Officer to the Public Authority Mr M.M. Mohamed raised an additional exemption before the Commission under Section 29 of the Act for the first time. This was based on the ground that the second item of information asked for, which is the letter issued to the Public Authority by the Grama Sevaka of Bombuwela North dated 02.11.2016 relating to the Appellant's residence, was supplied by a third party in confidence and could therefore not be provided to the Appellant.

In regard to the additional exemption, it must be noted that grounds for rejection of information must be specified by the Designated Officer against which an appeal lies to the RTI Commission. All reasons for refusal must be stated in the response to the Appellant by the Information Officer/ Designated Officer.

The matter will be adjourned for the purpose of further hearing at 2 00 pm on 21st August 2017. A particular focus will be to determine if the scheme and purpose of the Act permits exemptions to be placed by the Public Authority at the second stage of appeal, namely before the RTI Commission, and consequently deny the information so requested.

The Public Authority is directed to file its submissions before the Commission on the matter with particular emphasis on the question as to whether the Public Authority intends to seriously pursue the new objection that the Information Officer of the Public Authority has seen fit to raise before the Commission with regard to refusal to provide the information on grounds that the information in issue was supplied by a third party in confidence, thus attracting the provisions of Section 29 of the Act.

The hearing is to be continued at 2.00 pm on 21st August 2017.

The appeal is hereby adjourned.

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RTIC Appeal/19/2017 and RTIC Appeal/31/2017 *(Heard as part of the meeting of the Commission on 21.08.2017)*

Chairperson: Ms. Kishali Pinto-Jayawardena

Commission Members: Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Appellant: Mr. Asitha Abeygunawardena

Notice issued to: R.M.A.L. Rathnayake, Director-General Elections, Elections Commission of Sri Lanka

Appearance/ Represented by: R.M.A.L. Rathnayaka. Director-General Elections (Designated Officer)

Present at Hearing: Piyathissa Ranasinghe, Director General, Right to Information Commission

The Appellant Mr A. Abeygunawardena and Mr R. M. A. L. Rathnayaka Director-General Elections the Designated Officer of the Public Authority were present.

As decided at the previous date on which the appeal was heard the Commission considered whether the new exemption raised before the Commission stating that the information requested namely the letter by the Grama Sevaka of Bombuwela North dated 02.11.2016 relating to the Appellant's residence falls under third party information per Section 29 of the Right to Information Act. The Public Authority had not raised this exemption in their response to the Appellant's initial information request or in their response to his appeal to the Designated Officer.

The Commission, having considered the new exemption based on Section 29 raised by the Information Officer at the last hearing, decided to allow the exemption to be raised before the Commission. In arriving at this decision and allowing the exemption to be raised, the Commission took note of the Indian decision of the Delhi High Court on 30 November 2009, *Union of India Thr. Secretary v Central Information Commission*. The Court in that instance allowed the Public Authority to raise new exemptions. The relevant part of the judgment reads as follows:

> "(The) Public authority is entitled to raise any of the defences mentioned in Section 8(1) of the RTI Act before the Central Information Commission and not merely rely upon the provision referred to by the Public Information Officer or the first appellate authority to deny information. An error or mistake made by the Public Information Officer or the first appellate authority cannot be a ground to stop and prevent a public authority from raising a justiciable and valid objection to disclosure of information under Section 8(1) of the RTI Act."

The Central Information Commission of India followed this decision in *Mrrajib Kumar De v Cbdt* decided on 9 June 2016.

The Appellant in this instance raised the issue of whether the Grama Sevaka is in fact a third party as she is performing a function of an officer of the Public Authority (the Election Department). However the Commission stated that the Grama Sevaka comes under a completely separate body and not within the Public Authority in this instance. Therefore the Grama Sevaka is in fact a third party within the definition of the Act.

Interim Order:

Since the exemption raised under Section 29 (1) is allowed, the Public Authority is directed to act under and in terms of Section 29 (1) of the Act and notice the Grama Sevaka, if the said official had any objection to the residence certificate of the Appellant being disclosed, and to make representations within seven days of the notice. Further, it is specifically pointed out to the Designated Officer that in terms of Section 29 (2) (a), if the said third party does not respond within 7 days as required under the Act, the information must be disclosed.

The hearing is to be continued at 12.00 pm on 14th September 2017.

The appeal is hereby adjourned.

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