

**G. Dileep Amuthan v. Northern Provincial Council**

*RTIC Appeal(In-Person) /21/2017 - 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 10.07.2017, 24.04.2018, 15.05.2018, 03.07.2018, 07.08.2018*

*Record of the proceedings and order to be delivered on 09<sup>th</sup> October 2018*

**Chairperson:** Mr. Mahinda Gammampila  
**Commission Members:** Ms. Kishali Pinto-Jayawardena  
Mr. S.G. Punchihewa  
Justice A.W.A Salam  
Dr. Selvy Thiruchandran

**Appellant:** Mr. G. Dileep Amuthan  
**Notice Issued to:** Secretary/ Designated Officer (DO), Chief Minister’s Ministry, Northern Provincial Council

**Appearance/ Represented by:**

Appellant - Mr. G. Dileep Amuthan  
Public Authority - V. Raveendran, Information Officer, Council Secretariat  
I. Theivendram, Designated Officer, Council Secretariat

<b>RTI Request filed on:</b>	23.02.2017
<b>IO responded on:</b>	03.30.2017
<b>First Appeal to DO filed on:</b>	07.04.2017
<b>DO responded on:</b>	08.05.2017
<b>Appeal to RTIC filed on:</b>	29.05.2017

**Brief Factual Background:**

The Appellant had in his information request requested the inquiry report on the Valvettithurai Urban Council pursuant to which the Council was dissolved. In response to his request, he was given a one-page summary of the report. The Appellant then proceeded to Appeal to the Designated Officer stating that his request had not been fulfilled. The Designated Officer

responded to his Appeal stating that providing the full report would affect the interests of the former members of the Urban Council and that since some of them were currently members of the Provincial Council, it would affect their privilege according to Section 5 (1) (k) of the RTI Act No. 12 of 2016. The Appellant then appealed to the RTI Commission of Sri Lanka seeking absolute compliance of his information request.

### **Matters arising during the hearing**

In this instance, the Appellant had requested for the release of the inquiry report on the Valvettithurai Urban Council pursuant to the findings of which the Council was dissolved. Unsatisfied with the one-page summary he received from the Information Officer (IO) and the subsequent refusal by the Designated Officer (DO) to release the full report based on the possible adverse effects of such disclosure on the interests of former members of the Council, the Appellant appealed to the Commission with the expectation of having his initial request fulfilled.

In the hearings into this matter as reflected in the Record (10.07.2017, 24.04.2018, 15.05.2018, 03.07.2018 and 07.08.2018), the Commission declined to accept the claim of the DO regarding the applicability of the exemption of privilege as provided for under Section 5 (1) (k), stating that the interpretation of the Section cannot be used as an omnibus clause for denial of each and every matter and that in any event, the application of the clause is strictly limited to the entities statutorily named as there cannot be a process of implied extension. However, it observed that the involvement of third parties (aggregating to about 10 officers and witnesses) calls for consideration of the exemption provided for under Section 5 (1) (i) of the Act. Thus, in its interim order delivered on 10.07.2017, the matter was referred back to the IO for it to be reheard with the participation of all parties involved under and in terms of Section 32(1) of the Act.

Consequent to such referral, the Public Authority informed the Commission on 23.04.2018 that it released the inquiry report to the appellant while withholding a portion of the report which consisted of the testimony of the public officer whose complaint was instrumental in the inquiry being initiated. Such information was held back due to the objections raised by the public officer concerned who claimed that she gave her testimony in confidence and feared the repercussions of such information being made public. The PA took the position that the exposure of corruption in the Urban Council which was in fact done in the public interest by the said public officer now stood to adversely affect her in the event of such full disclosure. However, the Appellant maintained that full disclosure of the report was in the interests of the public.

In a subsequent hearing held before this Commission on 15.05.2018, the PA submitted the inquiry report in its entirety for our scrutiny upon a direction being so issued. Having perused the report, it became evident that the exemption of privacy as provided for under Section 5 (1) (a) may be in issue. Accordingly, the Public Authority was further directed by the Commission on 15.05.2018 to hold a meeting between the said third party and the Appellant with the intention of reaching a consensus regarding the matter.

The said meeting took place on 23.05.2018 between the Appellant and the concerned third party in the presence of the DO, IO and the Administrative officer of the Ministry. Despite the Appellant going on record before the Commission assuring the maintenance of privacy of the third party and reiterating the same at the meeting held between both parties, the DO in his letter dated 28.05.2018 stated, the third party did not change her stance regarding the matter at the said meeting and continued to object to a full disclosure. The letter also stated that the Appellant on the other hand maintained that in the absence of a compromise; he would either request for a final order from the Commission (on which he could exercise a right of appeal) or publish the contents of the report specifically mentioning that he was denied access to it in its entirety.

Further, in his written submissions to the Commission on 31.07.2018, the appellant contended that the Secretary to the Valvettithurai Municipal Council because of the colour of her office cannot take up the defence of a third party as specified under Section 5 (1) (i) of the Act as she had acted in her official capacity and not personal capacity. He added that even if it be the case, public interest in the release of the report in its entirety would override such an exemption. The Commission however observed that being a public or government officer does not *per se* disqualify an official from being deemed a third party, but it would depend on the facts and circumstances of each case (vide Record of 07.08. 2018)

Due to the failure on the part of both parties to reach a favourable compromise, the matter was moved for a final order.

### **Order of the Commission**

The competing interests before us in this appeal are as follows. While recognizing the Appellant's right to access the full inquiry report, due regard must however be given to the applicability of exemptions provided for under Sections 5 (1) (a) and (i) namely, privacy and consent of third parties. Specifically, when Section 5 (1) (i) is read with Section 29 of the Act, although a Public Authority is compelled to deny information supplied to it on a confidential basis by a third party who refuses to consent to the release of the information (Section 29 (2) (c)), the proviso to that Section stipulates that information can be disclosed by order of the

Commission, if the 'public interest in the release of the information concerned demonstrably outweighs the private interest in non-disclosure.

In the case of *Premalal Abeysekera v. Minister of Education*, the principle was established that "where the RTI Act is concerned and where this Commission is required to assess the application of the proviso to Section 29 (2) (c) read with the general public interest override in Section 5(4) of the Act, the only factor for consideration is to determine if the public interest is in issue." Further, in assessing what amounts to 'public interest' the said case referred to, the thinking of the Supreme Court of India in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and another*, ( [2013-2-L.W. 293 (Part 4)] at 301) which stated that:

*"In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs." [State of Bihar v. Kameshwar Singh (AIR 1952 SC 252) = (1952) 62 L.W. 527].*

In the given instance, weighing these exemptions in the light of public interest is of particular interest and importance as the public officer involved was a 'whistleblower' in the Valvettiturai Urban Council or in other words, a public officer who had sought to seek accountability through the disclosure of information regarding wrongdoings or corruption in the workplaces.

Striving for accountability and transparency is an evident common ground between acts of whistleblowers and the RTI regime. Given the absence of a separate law that protects such whistleblowers, the Commission is duty bound to act cautiously when mandating the release of information that risks the protection of public officers who have acted as whistleblowers.

We reiterate that the statements made by the public officer who acted as the whistleblower in the given instance was the primary reason leading to the exposure of corruption that resulted in an inquiry which consequently resulted in the dissolution and re-election of the Urban Council. Thus, these actions in issue appear to have been in the public interest, in order to fulfill the very aims propounded in the preamble of the RTI Act which seeks to 'combat corruption and promote accountability'.

In this regard, we are constrained to point out that Sri Lanka should consider statutory measures to protect whistleblowers acting in the public interest from adverse repercussions of their actions. Failure to do so would have a chilling effect and deter public officials from exposing corruption in the future.

The need for the statutory protection of Whistleblowers is now being recognized world over, with some countries even extending the ambit of such legislation to the private sphere.

Pioneering the movement to protect whistleblowers as early as 1863 with the passing of the *False Claims Act*, the United States of America has increased the level and extent of protection over time. For instance, the *Whistleblower Protection Enhancement Act of 2007* extended the application of the law to all federal employees. More recently, in 2016, the Swedish Act on *Special Protection Against Victimisation of Workers Who are Sounding the Alarm About Serious Wrongdoings* protects employees and temporary workers who report serious wrongdoings in their employer's business from retaliation. It also deems any agreement restricting workers' whistleblowing protection to be invalid. Regionally speaking, despite concerns regarding effective enforcement of the law, India and Pakistan have passed Whistleblowers Protection Acts in 2014 and 2016 respectively.

Article 33 of the United Nations Convention Against Corruption encourages signatories to take domestic measures to incorporate in their legislations and other provisions protecting whistleblower witnesses and their families from any unwarranted treatment. As a party to the Convention, Sri Lanka too has the duty to put in place necessary protections for whistleblowers who are committed to combating corruption and promoting accountability. The Commission observes that a legislation protecting whistleblowers would perfectly complement the RTI regime which seeks to achieve the same goal. It could also resolve conflicts, such as the case in point, where RTI requests threaten to harm whistleblowers. Until such time, the Commission has the duty to exercise its discretion when values important for the functioning of a democratic society are pitted against each other.

It is moreover a relevant factor that the exemptions provided for under 5 (1) (a) and (i), namely privacy and objection of third parties bring within their ambit instances where release of information can be detrimental. As attested by the Indian Supreme Court in the case of *Central Board of Secondary Education & Anr v. Aditya Bandopadhyay & Anr.* ((2011) 8 SCC 497), the exemptions specified in Section 8 of the RTI Act, 2005 should not be considered as "a fetter on the right to information, but they should be taken as equally important provisions protecting other public interests essential for the fulfillment as preservation of democratic ideals".

Unlike in instances where values conflict with each other, the public interest that is sought to be achieved in the given instance is congruent. Acts of whistleblowing by public officials and the use of the right to information are after all, two avenues of reaching the same destination of combating corruption and promoting public accountability.

While it is conceded that the public has a right to know what transpired in the Urban Council prior to its dissolution, the Appellant has failed to prove how the omission of a portion of the report hampers such public interest especially when, given the nature of the case, the public officer concerned fears repercussions of such information being made public. Moreover, the Commission fails to see as to how much more or how differently the public interest could be

served in the full disclosure of all information in the context of the report being substantially released by the Public Authority.

Therefore, taking into full consideration the right to privacy of the public officer y concerned and giving due regard to concerns raised regarding the adverse consequences of a full disclosure in such circumstances, we find that Section 5 (1)(a) operates to block the information remaining to be released in this instance and that in any event, the proviso to Section 29 (2) (c), read with the general public interest override in Section 5(4) of the Act, would not be applicable to issue Order directing the release of the information requested.

The decision of the Public Authority (as revised in releasing the inquiry report subject to redaction of that portion of the testimony of the public officer whose complaint was instrumental in the inquiry being initiated, is affirmed. 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).