

Shermal Hemaka Jayasuriya v National Olympic Committee of Sri Lanka

RTIC Appeal (In-Person Hearing)/ [1013/2019]- (*Order adopted as part of a formal meeting of the Commission on 06.08.2019*)

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)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Appellant: Shermal Hemaka Jayasuriya
Notice issued to: Designated Officer, National Olympic Committee of Sri Lanka

Appearance/ Represented by:

Appellant - Shermal Hemaka Jayasuriya
PA - Maxwell de Silva- Secretary General, National Olympic Committee
Shanaka Cooray- Attorney-at-Law
M.M. Wijayasena, Additional Secretary, Ministry of Provincial Councils, Local Government and Sports

RTI Request filed on	13.08.2018
IO responded on	No response
First Appeal to DO filed on	29.08.2018
DO responded on	No response
Appeal to RTIC filed on	20.09.2018

Brief Factual Background:

The Appellant by request dated 13.08.2018 had requested the following,

1. List of athletes sent for accreditation for Asian Games 2018 in Indonesia
2. Correspondence made to Asian Games 2018 organizing committees to include Savini Disanka Jayasuriya as a member of the Sri Lanka Tennis team to Asian Games 2018 on or after 06 August 2018
3. Correspondence received for Asian Games 2018 organizing committees to include Savini Disanka Jayasuriya as a member of the Sri Lanka Tennis team to Asian Games 2018 on or after 06 August 2018

4. List of athletes included for Asian Games 2018 after 30 June 2018
5. Final list of athletes for Asian Games 2018

As the Information Officer (IO) failed to respond within the time period stipulated under the Act, the Appellant on 29.09.2018 lodged an appeal with the Designated Officer (DO). As the DO failed to respond within the time period stipulated under the Act, the Appellant preferred an appeal to the Commission on 20.09.2018.

Matters Arising During the Course of the Hearing:

Notices were sent for this matter to be considered for hearing on 23.04.2019. Prior to the date of the hearing, the Public Authority (PA) had, by letter dated 09.04.2019, informed the Commission that the National Olympic Committee is not a government entity and is an autonomous organization with its own legal status. However, this matter was not heard on 23.04.2019 due to the unforeseen security situation prevalent in the country. Thereafter, the appeal was re-fixed for hearing on 06.08.2019.

On 06.08.2019 the Public Authority and the Appellant were both present. As the Appellant had lodged a similar appeal in RTIC 745/2018 both matters were considered together.

Counsel for the National Olympic Committee (hereinafter NOC) took up the preliminary objection that it is not governed by the Right to Information Act No. 12 of 2016 (hereinafter RTI Act) as the NOC does not come within the definition of a Public Authority. He contended that the NOC is a private entity governed by a Constitution which is subject to the International Olympic Charter. He stated that NOC consists of members of National Association of Sports (e.g- SLTA, Badminton Federation etc). He further stated that members of NOC are associations and are not members of the public.

The Counsel for NOC submitted that section 43 (g) defines a 'Public Authority' to be:

“(g) a private entity or organisation which is carrying out a statutory or public function or service, under a contract, a partnership, an agreement or a license from the government or its agencies or from a local body, but only to the extent of activities covered by that statutory or public function or service”

Accordingly, the counsel for NOC stated that as it does not have a contract or partnership with the government, it does not come within the purview of section 43 (g) of the RTI Act.

It was contended on behalf of NOC that as a body set up under its own Constitution, it is not governed by the Sports Law No. 25 of 1973 (hereinafter Sports Law). It was stated that the Constitution of the National Olympic Committee states that it is an organization belonging to the Olympic movement. According to the Counsel representing NOC, the function/ role of NOC is to coordinate between national sporting bodies/ associations and the International Olympic Committee in the event of international sporting games.

Responding to the sources of funding received by the National Olympic Committee, the Counsel for NOC stated that part of its funding is received nationally while part is received from the International Olympic Committee as well. However, he submitted that NOC does not fall within the definition of section 43(i) of the Act which states that “non-governmental organisations that

are substantially funded by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organisation, rendering a service to the public in so far as the information sought relates to the service that is rendered to the public,” constitutes a Public Authority. Counsel for NOC submitted that since NOC is not providing a ‘service to the public’ and is merely liaising between the International Olympic Committee and local sporting bodies, it does not come within this definition. He further submitted that the duty and service of NOC is not to the public but rather to the International Olympic Committee. The Counsel for NOC submitted that it is not the body that engages in selecting sportsmen/sportswomen to participate in international sporting games. He submitted that NOC is of the view that this function is carried out by the National Selection Committee.

Responding to the query on the composition of the National Selection Committee, the Appellant stated that according to the Sports Law, the President and Secretary of NOC are included in the National Selection Committee. Furthermore, three other members are selected at the discretion of the Minister. The Ministry confirmed that the National Selection Committee consists of the President and Secretary of the NOC.

It was noted that the presence of the National Selection Commission is required to ascertain the relevant Public Authority that is in the possession, custody or control of the information sought by the Appellant.

It was brought to the notice of the Commission that the ex-officio member of the National Selection Committee, Mr. Maxwell De Silva, was present before the Commission. As the Secretary-General of the National Olympic Committee that sits on the National Selection Committee, he was instructed to take notice of the next date of the hearing.

Order:

The submissions made on behalf NOC and its preliminary objections on the applicability of the RTI Act are noted by the Commission.

Mr. Maxwell De Silva, the Secretary- General of the National Olympic Committee, is directed to take notice on behalf of the National Selection Committee (NSC) of the direction that the NSC is required to be represented before the Commission on the next date of hearing.

Next date- November 19, 2019.
