

M. G. Hemapala v People's Bank

RTIC Appeal (In-Person)/239/2018 - 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 26.06.2018

Acting Chairperson: Ms Kishali Pinto-Jayawardena
Commission Members: Mr. S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. M. G. Hemapala
Notice Issued to: Ms. Samantha Senanayaka, Designated Officer (DO) Assistant General Manager – Compliance, People's Bank

Appearance/ Represented by:
Appellant - Mr. M. G. Hemapala
Mr. S. A. U. Dias
Public Authority (PA)- D. M. P. S. Dissanayaka Legal Officer
N. G. T. Kalpani Assistant Manager Compliance Department

	Request relating to the Public Administration Circular 44/90 of 1990	Request relating to the audit queries
RTI Request filed on	28.03.2017	08.12.2017
IO responded on	19.04.2017 (acknowledgment), 12.05.2017 (response)	29.12.2017
First Appeal to DO filed on	25.05.2017 and 16.07.2017	07.01.2018
DO responded on	07.07.2017	No response
Appeal to RTIC filed on	07.02.2018	07.02.2018

Brief Factual Background:

The Appellant had by request dated 28.03.2017 required the PA to answer 18 questions in relation to the Pension Policy introduced on 07.06.1996 is in accordance with the 1990 Public Administration Circular 44/90. The PA responded on 12.05.2017 stating that subsequent to for those who retired after 07.06.1996 the only relevant regulations in relation to their Pensions are found in Trust Deed No 7877. Dissatisfied with the response the Appellant on 25.05.2017 lodged an appeal with the DO to which the DO reiterated the response dated 12.05.2017. The Appellant thereafter preferred an appeal to the Commission on 07.02.2018. The Appellant had appealed the following information request in addition to this request the events which ensued in relation to that request are as follows.

The Appellant on 08.12.2017 requested the relevant audit queries, and the report issued subsequently, by the Auditor-General to the PA, in response to a letter by the Appellant to the Auditor-General (and the subsequent discussion on 18.08.2017). The PA responded on 29.12.2017 stating that since the information provided to one PA, by another PA (in this instance the Auditor General's Department) is information which is private to that PA (the

Auditor General's Department) the information cannot be provided and therefore the Appellant's request cannot be met. Dissatisfied with the response the Appellant lodged an appeal with the DO on 07.02.2018 to which the DO failed to respond.

Matters Arising During the Course of the Hearing:

The Appellant submitted that he had submitted a list of 18 questions which related to whether the Pension Policy introduced on 07.06.1996 is in accordance with the 1990 Public Administration Circular 44/90. The PA responded that it is not bound to adopt and is not governed by Public Administration Circulars. The Appellant submitted that there was a particular board paper of the bank (No 114/96) which is an indication that the Bank has complied with / taken steps to comply with PA Circular 44/90.

The PA submitted that at one point in time there was a conflict between the bank and the pensioners in relation to a pension scheme subsequent to which the matter went to arbitration.

Order:

The PA is directed to ascertain whether the Board Paper 114/96 was approved by the PA and/or the steps taken in relation to such and to revert to the Commission on the next date of hearing. The PA is further directed to ascertain the status of any ongoing litigation in relation to the pension scheme in issue in this appeal.

The Appeal is adjourned.

Next Date of Hearing: 03.07.2018

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RTIC Appeal(In-Person)/239/2018 - *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 03.07.2018

Chairperson: Mahinda Gammampila

Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: M. G. Hemapala

Notice Issued to: .Samanthi Senanayaka, DO Assistant General Manager – Compliance, People's Bank

Appearance/ Represented by:

Appellant - M. G. Hemapala

PA - Absent

Matters Arising During the Course of the Hearing:

The PA was absent. The Appellant submitted that on the previous occasion the information request in relation to the audit queries were not considered. The Appellant submitted further documentation in relation to the Appeal.

Order:

As the PA has failed to revert on the question posed to it on the last occasion of the hearing matter is to be considered on 17.07.2018.

The appeal is adjourned.

RTIC Appeal(In-Person)/239/2018 - 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 17.07.2018

Chairperson: Mahinda Gammampila

Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: M. G. Hemapala

Notice Issued to: Samantha Senanayaka, DO Assistant General Manager – Compliance, People’s Bank

Appearance/ Represented by:

Appellant - M. G. Hemapala
Public Authority - Absent

Matters Arising During the Course of the Hearing:

The PA was absent for the hearing and had requested a further date.

Order:

As the matter has already been called on two occasions previously the PA is directed to comply with the order made on 26.06.2018 and to be present before the Commission on 04.09.2018. The Appellant is not required to be present in person on the next date of hearing but may be represented.

The Appeal is adjourned.

Next Date of Hearing: 04.09.2018

RTIC Appeal(In-Person)/239/2018 - 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 04.09.2018

Chairperson: Mahinda Gammampila

Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Director-General: Piyathissa Ranasinghe

Appellant: M. G. Hemapala

Notice Issued to: Ms. Samantha Senanayaka, DO Assistant General Manager – Compliance, People’s Bank

Appearance/ Represented by:

Appellant - M. G. Hemapala
S.A. Upali Dias
Public Authority - Sandamali Nisansala, Assistant Law Officer, People's Bank
N.G.T. Kalpani, Assistant Manager Compliance Department,
People's Bank

Matters Arising During the Course of the Hearing:

Upon being queried as to the status of the direction dated 26.06.2018 made by the Commission, the Assistant Law Officer of the PA responded stating that it had submitted the Board Paper 114/96 to the General Manager (GM) of the PA to ascertain whether the same was approved by the Board of Directors of the PA or not. As a result, the GM informed the Compliance Department of the PA that he instructed the relevant officers on the day prior to the hearing at the Commission to conduct an in depth survey/analysis in order to ascertain the status of the Board paper in question.

The Assistant Law Officer of the PA further submitted that it could not locate the relevant Board paper as requested by the Appellant. For that reason, it was the Assistant Law Officer's submission that she was not in the position to confirm as to whether the Board Paper 114/96 was approved by the Board of Directors of the PA since the same was not in the custody of the Compliance/Legal Department of the PA.

Nonetheless, the Appellant submitted that the PA had sent some letters/documents (dated 1996.01.26, 1996.06.11 and 2006.11.22) to several individuals signed by the Chairman, General Manager and Deputy General Manager of the PA confirming that the said Board paper in question was in fact approved by the Board of Directors of the PA and confirmed by the Commissioner Generals of both the Department of Labour and the Department of Inland Revenue. For that reason, it was the Appellant's contention that the PA's submission that the information requested could not traced/located was unacceptable and that the Board Paper was in fact in the possession of the PA.

Order

It is noted that the Appellant by letter dated 08.12.2017 requested the relevant audit queries, and the report issued subsequently, by the Auditor-General to the PA, in response to a letter by the Appellant to the Auditor-General (and the subsequent discussion on 18.08.2017) in addition to the information related to the approval of the Board Paper 114/96 by the Board of Directors of the PA.

The attention of the PA is drawn to the fact that the response of the PA dated 29.12.2017 which states *that since the information requested was provided to the PA, by another PA (in this instance the Auditor General's Department) was information which is private to that PA (the Auditor General's Department) therefore, the information cannot be provided* is not an acceptable justification for the denial of the access to the information requested and is not a valid exemption under and in terms Section 5 of the RTI Act.

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, provided that the said information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and in the event that an exemption is found to apply whether the public interest override in Section 5 (4) would apply.

In the foregoing circumstances, the Public Authority is directed to more fully substantiate its position regarding the provisions of the information requested, namely, information relating to the Public Administration Circular 44/90 of 1990 and information relating to the audit report by the Auditor-General's Department under and in terms of the provisions of the RTI

Act, and to be present before the Commission on the next date of hearing with a comprehensive response.

The Appeal is hereby adjourned.

Next date of hearing: 23.10.2018
