

Voice Against Corruption v CEB

RTICAppeal(In-Person)/242 /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 19.06.2018

Chairperson: Mr. Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Dr. Selvy Thiruchandran
Justice Rohini Walgama

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Voice Against Corruption
Notice Issued to: Chairman Ceylon Electricity Board

Appearance/ Represented by:

Appellant - Mr. Wasantha Samarasinghe Convener Voice Against Corruption
Mr. E. G. S. Rodrigo
Mr. J. N. Perera

Public Authority - Hemantha Ranasinghe Deputy General Manager CEB

RTI Request filed on	16.10.2017
IO responded on	26.10.2017 (forwarded to IO)
First Appeal to DO filed on	21.11.2017
DO responded on	29.11.2017
Appeal to RTIC filed on	02.03.2018

Brief Factual Background:

The Appellant Organization requested the following information on 16.10.2017;

1. Whether approval has been sought, from the Board of Directors of Lanka Transformers Ltd. represented by the Chairman of CEB, for the sale or transfer or assignment of the shares owned by the CEB in LTL Projects Ltd.? (If yes a copy of the report of the Board of Directors (of Lanka Transformers Ltd.)
2. During the relevant time period since you were both the Chairman of Lanka Transformers Ltd. and the CEB, the decision taken by the Board of Directors to Sell/ Reassign (අත්සතු

කිරීමට) shares of LTL Projects Ltd., was the Board of Directors of CEB informed of the said decision and was full approval obtained? Was this decision communicated to the Treasury through the relevant Ministry (රේඛීය අමාත්‍යාංශය)? If yes show the relevant documentation/ written information

3. For Assignment or Sale was full approval granted by the Board of Directors of the CEB?
4. Before such Sale or Reassignment was there a reevaluation / reassessment of the Assets and Liabilities of the Company?
5. For the purposes of the sale was proper procedure followed and a due diligence report obtained? Relevant details?
6. According to the report what is the value assigned to each share of LTL Projects Ltd.?
7. In relation to the sale of the shares was the proper procedure followed which includes publishing an advertisement through accepted printed media? (around 2005)
8. Prior to the sale or assignment of the shares were tenders called for? If so the prices quoted?
9. Who were the shares assigned to? Who were they received by? If not was it through a trust?
10. For the 63% Shareholding by the CEB what amount was obtained by the Board? Details of the proceeds from the assigning of shares.

On 26.10.2017 the information request was forwarded to the IO. However no response was received. Thereafter, the Appellant Organization appealed to the DO on 21.11.2017 to which the DO responded on 29.11.2017 stating that certain items of information concern decisions taken over 10 years ago. With regard to certain other items of information the PA has contacted LTL Holdings Ltd. to which LTL Ltd. has responded on 15.11.2017 which the PA annexed in its response to the Appellant. According to this letter the PA has directed the Appellant to directly contact LTL Ltd. The PA has further stated that in any event the PA will peruse through its documentation concerning the period (2004/2005) and attempt to provide the Appellant with the requested information within a few days. As there was no response subsequently the Appellant organization preferred an appeal to the Commission on 02.03.2018.

Matters Arising During the Course of the Hearing:

The Appellant Union referred to its statement in the Appeal to the Commission that 75% of the members are Citizens of Sri Lanka. Further, the Appellant Union submitted as of record that it is a registered body with more than three-fourths of its membership being citizens of Sri Lanka, and therefore that it falls within the definition of citizen in Section 43 of the RTI Act.

The Appellants submitted that LTL Projects Ltd. is a subsidiary of LTL Holdings Ltd. (previously known as Lanka Transformers Ltd.) in which the CEB has a shareholding of 63%. The Appellant submits that LTL Projects Ltd. was registered on 07.05.1998 under N(NPS)21196 with a capital of Rs.300 000 and owned 100% by LTL Holdings Ltd. Accordingly the PA has a 63% shareholding in LTL Projects Ltd. The Appellant submitted that this is reflected in the annual reports of the PA up until 2004. However in the Annual report of 2005 the status of LTL Projects Ltd. as a subsidiary of LTL Holdings Ltd. is not mentioned. The Appellant submitted that this indicates in or about 2005 LTL Projects. Ltd. has been transferred/sold. As the PA has been established by

an Act of Parliament the sale/reallocation/reassignment of any property owned by the PA has to be done subsequent to the approval of the Treasury and the relevant Ministry. When queries were posed to the Department of Public Enterprises Division of the General Treasury and the Ministry of Power and Renewable Energy they both responded in the negative. The Appellant submitted letters dated 11.09.2017 and 25.09.2017(PE/RTI/Info/2017/016) from the Department of Public Enterprises Division of the General Treasury and the Ministry respectively both stating that their respective records do not reflect any approval being sought or given.

The response of the ministry further states that further it does not have in its custody any indication that approval has been obtained for the sale of 63% of the shares from the Treasury.

Thus the Appellant Organisation alleges that LTL Projects Ltd., which was as demonstrated fully owned by LTL Holdings Ltd. a state controlled company had in effect, without proper approval been reassigned or sold. The Appellant submitted that as such through this information request to the PA sought to ascertain whether the proper process had been followed in allocating the shares.

The officer representing the PA submitted that to his understanding LTL Projects Ltd. was not directly related to the PA but rather was a subsidiary of LTL Holdings Ltd. and that therefore LTL Holdings Ltd. should be questioned directly in this regard. It was pointed out that the PA cannot argue that it is unaware of the status of LTL Projects Ltd. as its parent company was LTL Holdings Ltd. which comes within the control of the PA. The PA submitted that there is no Board decision in relation to the matter in issue.

The PA was queried as to whether this means that it was not put before the Board to which the PA responded stating that it cannot provide a categorical response to such. The PA further submitted that there may be a Board decision in 2005 by the PA. It was queried from the PA that if that was the case whether the documentation was not in the records of the PA. The PA responded stating that in the documents it is not in the minutes of the Board meetings.

Order:

The PA is directed to query from LTL Holdings Ltd. whether it has in its custody supporting documentation to show that approval has been granted and further to peruse through its own records to show if there is any evidence of such since the PA is not able to provide a definite response.

Further the CEO of LTL Holdings is directed to appear before the Commission on 07.08.2018 at 1.30 p.m. as LTL Holdings Ltd. is a PA covered under Section 43 of the Act. In terms of the definition of part (e) of "Public Authority," a 'company incorporated under the Companies Act,

No. 7 of 2007, in which the State, or a public corporation or the State and a public corporation together hold twenty five *per centum* or more of the shares or otherwise has controlling interest;' falls within the definition of a PA. As such LTL Holdings Ltd. by virtue of 63% of its shares being owned by the PA (CEB) falls within the purview of the Act.

The appeal is adjourned.
