

D.M.L. De Silva v National Insurance Trust Fund

RTICAppeal(In-Person)/305/2018- *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 16.10.2018

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

Director-General: Mr. Piyathissa Ranasinghe

Appellant: D.M.L. De Silva
Notice Issued to: Designated Officer, National Insurance Trust Fund

Appearance/ Represented by:
Appellant - Mr. Rajpal Abeyanayaka Attorney-at-Law
Public Authority - Absent

RTI Request filed on	05.01.2018
IO responded on	17.01.2018
First Appeal to DO filed on	15.02.2018
DO responded on	No Response
Appeal to RTIC filed on	16.03.2018

Matters Arising during the Hearing

The PA was absent.

The Attorney-at-law appearing on behalf of the Appellant submitted that the Appellant was the Principal Officer of Strategic Insurance Brokers (SIB), which was one of the bidders for the above mentioned programme. It was further submitted on behalf of the Appellant that the requested information had not been denied under the provisions of the Right to Information Act No. 12 of 2016 and that in any event the information does not fall under any exemption under Section 5 of the Act.

It was stated that the PA had, in its reply dated 17.01.2018, informed the Appellant that once the bids are complete, the requested information will be provided to the Appellant. However, although the

bidding process was concluded on 05.03.2018, the Appellant had not received any communication from the Public Authority thereafter. Instead, that the PA wrote to the Appellant on 07.02.2018 informing him that the Attorney General's advice has been sought on the matter.

It was further submitted on behalf of the Appellant that the PA has on two previous occasions failed to appear before the Commission. The Commission was consequently requested to deliver an *ex parte* order in favour of the Appellant. In response, the Appellant was apprised of the fact that, taking into account, the serious consequences that may follow the issuance of an *ex parte* order and in accordance with a strict observance of the principles of Natural Justice if either party/both parties to an appeal does not appear or file written representations on the dates of hearing despite being noticed on three consecutive dates, the Commission will proceed to take steps under the Act, including delivering an *ex parte* order.

The Attorney-at-Law for the Appellant submitted for the record that he is in disagreement with this procedure of the Commission vis a vis allowing the PA three chances to appear before the Commission before an *ex parte* order is issued.

Order

The attention of the PA is drawn to Section 15 (a) of the Right to Information Act No 12 of 2016 which confers on the Commission the power to hold inquiries and to require any person to appear before it. The failure of the DO or his authorized representative to appear before the Commission when requested to do so by the Commission is an offence in terms of Section 39(1)(c) of the Act and 'shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.'

The DO/IO is directed to strictly abide by the provisions of the Act as aforesaid.

As per the procedure of the Commission (ie; *W.V. D. S. Puspakumara v Valuation Department* (RTICAppeal 383/2018minute of 18.09.2018), *Suren D Perera v Zonal Education Office – Kandy* (RTICAppeal199/2018minute of 09.10.2018) & *Rajendra Wijesinghe v Agrarian Development District Office, Kalutara* (RTICAppeal39/2017 & RTICAppeal 61/2017minute of 09.10.2018), if either/both party/parties fail to appear or file written representations on the dates of hearing despite being noticed on three consecutive dates, the Commission will proceed to take steps under the Act, including delivering its decision notwithstanding the absence of either/both parties and will inform the parties to that effect.

Due to the Public Authority's absence, the appeal is re-fixed for a final date on 27.11.2018 at 2.45 p.m and the Public Authority is required to be present on this day for an in-person hearing in terms of the RTI Act and its Regulations thereof.

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).
