

G. H. M. N. Senaratne v Sri Lanka Ports Authority

RTIC Appeal (In-Person)/ 353/2018 - 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 02.10.2018

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: Mr. G. H. M. N. Senaratne
Notice Issued to: Director (Information System), Sri Lanka Ports Authority

Appearance/ Represented by:

Appellant - N. Ratnayake (Authorised Representative of the Appellant)
Public Authority - Absent

RTI Request filed on	23.01.2018 & 28.02.2018
IO responded on	26.02.2018 & 15.03.2018
First Appeal to DO filed on	19.03.2018
DO responded on	09.04.2018
Appeal to RTIC filed on	17.04.2018

Brief Background Facts

The Appellant through an information request dated 23.01.2018 addressed to the IO of the Sri Lanka Ports Authority requested the following information:

1. A copy of the Director Board Memorandum forwarded to Board of Directors on 30.11.2017 proposing to confirm the Acting Chief Engineer appointments given to both Mr. J. A. Chandraratne and Mr. M. S. A. Pathirage.
2. A copy of the letter of recommendation sent to top management recommending both Mr. J. A. Chandraratne and Mr. M. S. A. Pathirage as acting Chief Engineers.

Through letter dated 26.02.2018 the IO informed the Appellant that the request was forwarded to the Human Resources Department and the Secretary to the Board of Directors. Whilst several responses to the first question were received from the said sections of the PA, the PA requested that the Appellant clarify and rephrase the information requested by item 2. The Appellant through letter dated 28.02.2018 clarified item 2 as follows;

“The letter is generally initiated by the Director (Technical) seeking approval for the said acting appointments and sent to the Chairman (top management). On the strength of this approval the Managing Director issues or signs for the two letters of acting appointment given to the two engineers in question”

Subsequently the IO responded to the clarification through letter dated 15.03.2018 stating that the said information is not in the custody of the PA. On appeal to the DO, the DO informed the Appellant that the IO has taken steps to provide the information requested through the letters dated 23.01.2018 and 28.02.2018.

Order

This Commission places on record its strong displeasure at the failure of the Public Authority to be represented before the Commission and reiterates that the Right to Information Commission is an independent commission established under the Right to Information Act No 12 of 2016 enacted by Parliament unanimously on 04.08.2016. Under Section 15 (a) of the Act the Commission has the power to hold inquiries and to require any person to appear before it.

Further, the Commission for the purpose of performing its duties and discharging its functions under this Act and upholding the Fundamental Right to freedom of information has the power under Section 15(b) of the said Act to examine any person under oath or affirmation.

The failure to appear before the Commission when requested to do so by the Commission or the deliberate obstruction of the provision of information or intentionally providing incorrect, incomplete or inaccurate information or the destruction, invalidation, alteration or the total or partial concealment of information under the possession or the custody of the Public Authority or to which the Public Authority has access to or knowledge of, due to the exercise of his or her employment in such Public Authority is an offence in terms of Section 39(1) of the said 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.

Accordingly attention of the PA is drawn to the fact that instant failure to appear before the Commission on 02.10.2018 when noticed by the Commission to do so, can amount to an offence under the said Section 39(1) of the Act.

Due to the Public Authority's non-response the appeal is re-fixed for consideration on 21.11.2018. The PA is required to be represented by an authorised representative on this day for an in-person hearing in terms of Rule 20 published in the Gazette extraordinaire no 2004/66 on 03.02.2017.

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).

The Appeal is hereby adjourned.
