

N. Munasinghe v. People's Bank

RTIC Appeal(In-Person) /50/2018 - 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 05.06.2018

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

Appellant: Mr N Munasinghe
Notice Issued to: Designated Officer, People's Bank

Appearance/ Represented by:

Appellant - Absent
Public Authority - Mr D P M I Dissanayake, Legal Officer, People's Bank
Ms N G T Kalpani, Assistant Manager – Compliance, People's Bank

RTI Request filed on	13.08.2017
IO responded on	22.09.2017
First Appeal to DO filed on	14.09.2017
DO responded on	No response
Appeal to RTIC filed on	13.11.2017

Brief Background Facts

The Appellant had requested the following items of information, by an information request dated 13.08.2017

1. Annual turnover of the bank for the years 2014, 2015 and 2016
2. Amount of taxes paid to the government and bonus allowances paid to the employees
3. Monthly salary allowances paid to the General Manager, Assistant General Manager, Chief Auditor, Chief Legal Officer and Chief Managing Executives respectively
4. Do the above mentioned get paid on a contract basis or as permanent staff?
5. Amount spent by the bank with regard to the Hedging Contract

The Appellant received a response from the IO by a letter dated 22.09.2017, providing information for requests 1, 2 and 4. Item 3 had been denied on the basis of private information of the above named officers, and the request made under item 5 was denied reasoning an ongoing court case with regard to the particular agreement. Dissatisfied with the IO's response the Appellant appealed to the DO on 14.09.2017 with no success. Following which the Appellant preferred an appeal to the Commission on 13.11.2017

Matters Arising During the Hearing

The Appellant was not present for the hearing.

Noting that responses for request Items 1, 2 and 4 were provided to the Appellant, the PA submitted that most salary payments pertaining to item 3 are made on contract basis and these contracts include a confidentiality clause between the bank and the relevant official. The PA further submitted that these contracts of employment do not exceed a maximum of 3 years and if the relevant information was to be disclosed, the bank could be sued in court for breach of contract. In response to the Commission's question of the exemption pleaded, the PA submitted the exemption of section 5(1)(a) and 5(1)(b). The Commission stated that Regulation 20 of the Act warrants for proactive disclosure of information and the salary scales of executive officials are to be readily available for public perusal. In responding to it, the PA submitted that the scales of salaries of such officers will be made available to the Appellant by a submission made to the Commission.

The PA also submitted that the Appellant had not provided his NIC details upon requesting for information. The Commission, in response to the submission stated that submission of a NIC number is not a requirement as long as it could be ascertained that the Appellant is a citizen of Sri Lanka. In response to this, the PA prayed to the Commission to ascertain the Appellants nationality and eligibility to request for information.

Questioning on the PA's refusal to grant information requested under item 5 of the request, the Commission stated that sub judice does not warrant for an exemption in the Act and if the PA wishes to plead for the exemption under section 5(1)(j) of the Act, It must show that there is could be an infringement according to section 5(1)(j) in disclosing requested information.

Order

The PA is directed to make submissions in providing the salary scales of executive officers as requested by the Appellant. It is to be noted that, the confidentiality of the contracted salaries are to be balanced against the disclosure of expending public funds. The PA is hereby directed to submit to the Commission's perusal the employment contracts of the officers of whose information has been requested under item 3 of the request.

The PA is further directed to make submissions justifying its reason to deny the information requested under item 5 of the request. These submissions are to be made to the Commission on or before 17.07.2017.

The Appeal is adjourned.
Next date of hearing: 17.07.2018

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RTIC Appeal(In-Person) /50/2018 - *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: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Dr Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Mr Piyathissa Ranasinghe

Appearance/ Represented by:
Appellant (for) - Sankhitha Gunaratne, Attorney-at-Law – TISL
Public Authority - W M D S Nisansala, Assistant Legal Officer, People's Bank
N G T Kalpani, Assistant Manager – Compliance, People's Bank
W T I Ambepitiya, Legal Officer, People's Bank

Matters Arising During the Hearing

The PA informed the Commission of its intention to appeal the previous order (dated 05.06.2018) of the Commission. The Commission noted that the previous order was an interim order following submissions made by counsel appearing for the Public Authority during the course of which counsel agreed to provide the salary scales and the relevant employment contracts for the Commission's perusal following discussion with the Public Authority.

Order

The Appeal is adjourned in order to enable counsel for the Public Authority to appear at the next hearing.

Next date of hearing: 28.08.2018

RTIC Appeal(In-Person) /50/2018 - *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 28.08.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Dr Selvy Thiruchandran
Justice Rohini Walgama
Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Sankhitha Gunaratne, Attorney-at-Law – TISL
Lakwijaya Bandara, Legal Officer, TISL
Public Authority - Mr D P M I Dissanayake, Legal Officer, People's Bank
N G T Kalpani, Assistant Manager – Compliance, People's Bank

Matters Arising During the Hearing

Counsel for the PA submitted that the salary scales, as requested by the Appellant had been sent to the Appellant via post on 13.08.2018. The PA, citing Section 5(1)(a) of the Act, affirmed

its position that the requested information with regard to the contractual payments could not be disclosed.

The PA reiterated its submission made on 05.06.2018 with regard to the ascertainment of the citizenship of the Appellant, as the PA had reasonable doubt of the status of the citizenship of the Appellant given that she was at present in Australia and receiving medical treatment. The Counsel for the PA further submitted that unless the Appellant was a citizen of Australia or is in possession of a comprehensive medical insurance receiving medication would be nearly impossible. In response to the submission, the representative for the Appellant submitted that the requester is a citizen of Sri Lanka and that proof of citizenship should only be requested in exceptional circumstances. The requirement to provide proof of citizenship in any other instance could create a dangerous precedent for future information requests before the Commission.

Order

A requester of information under the RTI Act, will ordinarily be required to aver citizenship at the point of requesting information. However, this too is not essential when the requester is an individual. Proof with regard to citizenship of an individual will only be required in exceptional circumstances. This position of the Commission was more fully discussed in the case of *TISL v. Prime Minister's Office/Presidential Secretariat (RTICAppeal/05/2017 & RTICAppeal/06/2017)* decided on 23.02.2018, in which it states the follows;

"It is granted that the formulation of Rules and the collaboration by this Commission with the nodal agency on the framing of Regulations gazetted by the Minister (viz; Gazette No 2004/66, 2017.02.03). were undertaken with the primary purpose of lessening burdens on information requesters given the unequal weightage of power and resources vested in the State as opposed to citizens=individuals and keeping in mind the underlying ethos of the Act being the principle of maximum disclosure as evidenced in its preamble which emphasizes the importance of the right of information in the promotion of democracy and participation in civic life."

However, it is apparent that the PA insists of the citizenship of the Appellant to be ascertained as the PA submits to having a reasonable doubt with regard to the status of citizenship of the Appellant.

The Counsel for the Appellant is directed provide proof of citizenship of the Appellant on or before 23.10.2018.

The Appeal is adjourned.

Next date of hearing: 23.10.2018

RTIC Appeal(In-Person) /50/2018 - *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 23.10.2018

Chairperson: Mr Mahinda Gammampila
Commission Members: Ms Kishali Pinto-Jayawardena
Dr Selvy Thiruchandran
Justice Rohini Walgama
Director-General: Piyathissa Ranasinghe

Appearance/ Represented by:

Appellant (for) - Lakwijaya Bandara, Legal Officer, TISL
Public Authority - Absent

Matters Arising During the Hearing

The Representative for the Appellant was present.

The PA, by their letter dated 15.10.2018 informed the Commission of their inability to attend the hearing today. The letter stated, inter alia;

“the counsels appearing on behalf of the Public Authority are in a personal difficulty to appeal before the Right to Information Commission on 23.10.2018 due to unavoidable circumstances.

Please be kindly refix the below mentioned matters for hearing on 13.11.2018 if it may please the Right to Information Commission”

The Appeal is adjourned.

Next date of hearing: 13.11.2018
