

J P Darshana v. Central Bank of Sri Lanka (CBSL)

RTIC Appeal(In-Person) /98/2018 - 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 07.08.2018

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

Director-General: Piyathissa Ranasinghe

Appellant: Mr J B Darshana
Notice Issued to: Designated Officer, CBSL

Appearance/ Represented by:

Appellant - A N D Gunarathna (wife of Appellant)
C J Dheerasinghe, AAL
Public Authority - D G S Mahendra
K G P Sirikumara, Additional Director, CBSL
S H Gunawardena, Director – Communications, CBSL
D D N Wilathunga, SAD/Legal, CBSL
A A S N Wickremasinghe, DD/Legal, CBSL
P V L Nandasiri, Director – Legal, CBSL

RTI Request filed on	24.10.2017
IO responded on	15.11.2017
First Appeal to DO filed on	15.11.2017
DO responded on	24.11.2017
Appeal to RTIC filed on	14.12.2017

Brief Background Facts

The Appellant had requested the following items of information with regard to a number of bank transactions and bank related documents (transactions and documents annexed to the Appeal made to the Commission on 14.12.2017) relating to the following bank account, by an information request dated 24.10.2017

Bank and Branch : Commercial Bank, Panadura
Account Holder : Simarko Construction
Account Number : 1410030475
Type of Account : Current Account

1. Details of persons who processed the transactions mentioned in the annexure
2. Names of the two Partners who authorized the transactions
3. The Bank Branch in which the transactions had been taken place
4. Details of persons who entered in the transaction details to the banking data system

The IO, by letter dated 15.11.2017 responded to the Appellant stating that the information requested was not in the possession of the PA. The letter further stated that a copy of the Appellant's letter dated 18.08.2017, addressed to the Department of Banking Supervision relating to the incident above mentioned had been referred to the Executive Officer of Commercial Bank of Ceylon PLC along with the original information request. Dissatisfied with the IO's response, the Appellant appealed to the DO on 15.11.2017. The Director of Communication (on behalf of the IO), by letter dated 24.11.2017 replying to the letter dated 15.11.2017, stated that the PA received the above mentioned letter on 16.11.2017 and a reply to it had been sent to the Appellant. Dissatisfied with the PA's response, the Appellant preferred an appeal to the Commission on 14.12.2017.

Matters Arising During the Hearing:

The Appellant Submitted that Simarko Construction was a partnership and a current account for this business was maintained in the Panadura Branch of Commercial Bank of Ceylon PLC under the same name. The Appellant further submitted that the main partner and one other partner were mandated to enable transactions from the current account at any given time.

The Appellant being a partner of the above submitted that upon examining the monthly bank statements it was discovered that the funds of the aforementioned bank account had been

misappropriated and transfers had been taken place to other bank accounts, unauthorized by the partners.

Following the line of events, the Appellant submitted that she/he requested the bank to suspend all transactions via the current account and requested the details of persons responsible for enabling the above mentioned fraudulent transactions. Despite the Appellant having made multiple requests, Commercial Bank of Ceylon PLC failed to provide a satisfactory response. Following this, the Appellant submitted that he made a request in writing to the Department of Banking Supervision of CBSL requesting the PA to take necessary action to provide the requested information to the Appellant.

The Commission queried the PA on its position with respect to the present matter to which the PA submitted that when a dispute arises between a commercial bank and its customers the PA requires the bank to resolve the matter amongst the parties and to thereafter submit a status report stating the action taken by the commercial bank. The PA further submitted that it was not in a position to conduct an investigation as it was not mandated by statute to do so and the PA was not in possession of the requested information. Having written to Commercial Bank PLC, the bank responded stating that the requested information could not be released as it relates to an ongoing case.

In response, the Appellant submitted that Commercial Bank of Ceylon PLC is under the supervision of the CBSL, which places the PA in a position to inquire in to the matter and to direct Commercial Bank of Ceylon PLC to provide the requested information to the Appellant. The Appellant further submitted that ongoing litigation has no direct bearing on the requested information as it did not contain matters pertaining to the aforesaid transactions.

The Commission queried from the PA as to the role played by the PA in its supervisory capacity and the course of action taken with regard to complaints made against commercial banks in order to protect the general public.

The PA reiterated its position to state that the information requested is not in the possession, custody or control of the PA as stipulated by Section 3 of the Right to Information Act No. 12 of 2016. The PA further raised a procedural objection stating that the Appellant did not appeal to the DO prior to preferring an appeal to the Commission as the IO responded to the Appellant on the same day in which the Appellant preferred an Appeal to the DO (15.11.2017).

Order:

In order for an appeal to be considered by the Commission, the Appellant is required to follow the procedure laid down in Section 32 of the Act.

Section 32 of the Act read as follows;

“32. (1) Any citizen aggrieved by:–

(a) the decision made in respect of an appeal under section 31(1), may within two months of the communication of such decision; or

(b) the failure to obtain a decision on any appeal made within the time specified for giving the same under section 31(3), may within two months of the expiry of the period so specified,

may appeal against that decision or the failure, to the Commission and the Commission may within thirty days of the receipt of such appeal affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action.”

Accordingly, the appeal made by the Appellant on 15.11.2017 could be considered as an appeal made to the DO.

The PA's response in reiterating the Bank's position is could not be considered to be adequate response as the CBSL is the supervisory authority for commercial banks in Sri Lanka. The PA is directed to clarify the above matters with regard to information required and the ongoing legal proceedings and submit its position with regard to the provision of the information on or before 04.09.2018.

The Appeal is adjourned.

Next date of hearing: 04.09.2018
