

**Jamaldeen Sarjoon v. Presidential Secretariat**

RTIC Appeal/60/2017 (*Heard as part of the meeting of the Commission on 16.10.2017*)

**Chairperson:** Mr. Mahinda Gammampila

**Commission Members:** Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellant:** Mr. Jamaldeen Sarjoon

**Notice issued to:** Secretary to H.E. the President (Designated Officer)

**Appearance/ Represented by:** Mr. Jamaldeen Sarjoon

Mr. A.L. Aazath - Attorney at Law (accompanying Appellant)

Mrs. Luckshmi Jayawickrema, Additional Secretary,  
Presidential Secretariat

Mrs. Jayawickrema, Additional Secretary (Legal) of the Public Authority (PA), sought permission from the RTI Commission to represent the Secretary to H.E. the President since he was engaged elsewhere. Permission was granted.

In this instance, the Appellant had sent a request under and in terms of the RTI Act to the Presidential Secretariat on 15.02.2017 requesting the release of the Presidential Report of Inquiry into the death of Former Leader of the Sri Lanka Muslim Congress Mr. M.H.M. Ashraff in the year 2000. President Chandrika Kumaratunga (at that time), had established a Commission headed by (former) Justice L.K.G. Weerasekera to inquire into the circumstances of Mr. Ashraff's death.

The Information Officer (IO) informed him through letter dated 02.03.2017 that they had called for the file from the Department of National Archives where it had been sent by the Public Authority in 2007. The National Archives had forwarded the file relating to the appointment of the Commission to the Public Authority but the inquiry report was not in the said file. Thereafter, the IO informed the Appellant by letter dated 20.03.2017 that they could not provide the information.

The Appellant then filed an appeal with the DO on 30.03.2017. The DO by letter dated 25.04.2017, rejected his request informing him that the information requested could not be found. The Appellant then appealed to the RTI Commission on 09.06.2017. The Appellant stated that he and many others have been asking for this Report for a long time as the inquiry was of importance to the Muslim community and the country as a whole. The Appellant stated that he wanted to know if the Report had been actually submitted by Justice Weerasekera to the President at that time as publicly claimed and if so, as to how such a Report could have gone missing?

**At the RTI Commission of Sri Lanka**

Responding from the Public Authority, Mrs. Jayawickrema stated that the Information Officer (IO) had made all possible effort to trace the said inquiry report. The IO had brought down the file relating to the said incident from the archives and examined it, but did not find the report in the file. Therefore, the Public Authority had been unable to comply with the Appellant's request.

Further, the Written Submissions of the Public Authority dated 11.10.2017 and addressed to the RTI Commission stated that according to Section 7 (3) (a) of the RTI Act, No. 12 of 2016 concerning the preservation of records, in the case of those records already in existence on the date of coming into operation of the Act, the said records must be preserved for a period of not less than 10 years from the coming into operation of the Act. In this instance, the information asked for was more than 16 years old. The Public Authority was unable to provide the same.

**Order**

On the facts as presented before us, examination of the relevant file now in the custody of the National Archives appears to be imperative. Purportedly the report is now missing in that file. Consequently, it has become necessary to add the National Archives as a party to this matter. Section 11 of the National Archives Law No. 48 of 1973 (as amended) states that,

*'It shall be the duty of the Secretary of any Commission of Inquiry appointed under the Commissions of Inquiry Act or any Committee of Inquiry appointed by a Minister to deposit all records relating to such Commission or Committee, as the case may be, at the National Archives within three months of the rendering of the final report of such Commission or Committee.'*

According to Paragraph 2 of the Regulations framed under Section 16 (d) of the National Archives Law pertaining to public access to public archives and gazetted on 5<sup>th</sup> December 1978,

*'Public Archives accrued to the National Archives from any public office Named in the Second Schedule to the Law or in terms of Section 10, 11, or 18 of the Law shall be closed for public inspection until the lapse of 30 years after their creation, or until the lapse of such time that they have been closed for public inspection by the public office creating such records.'*

It is therefore necessary to ascertain the exact state of compliance of the relevant Public Authorities in regard to the applicable law and the regulations.

Notice is directed to be sent to the National Archives to be present at the next date of hearing. The National Archives is directed to bring the said file in issue to be examined before the Commission at the next hearing.

The Appeal is adjourned.

Next date of hearing is November 20th, 2017.

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**At the RTI Commission of Sri Lanka**

RTIC Appeal/60/2017 (*Heard as part of the meeting of the Commission on 20.11.2017*)

**Chairperson:** Mr. Mahinda Gammampila

**Commission Members:** Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

**Appellant:** Mr. Jamaldeen Sarjoon

**Notice issued to:** Secretary to H.E. the President (Designated Officer)

**Appearance/ Represented by:** Mr. Jamaldeen Sarjoon

Mr. A.U.L.M. Haaris

Ms. Luckshmi Jayawickrema, Additional Secretary, (Legal)  
Presidential Secretariat

Dr. N.T. Rupesinghe, Director – General, Department of  
National Archives

Ms. Dilini Liyanage, Assistant Director, Department of  
National Archives

The Department of National Archives was present at the hearing subsequent to being noticed by the Commission. The Director – General of the National Archives, Dr. Nadeera Rupesinghe informed the Commission that she had procured the files relating to the Report of the Commission of Inquiry on Mr. M.H.M. Ashraff's death for the perusal of the Commission. The file containing the papers relating to the Commission of Inquiry had been sent to the Department of National Archives on 24. 01. 2002 by the Secretary of the Commission Mr. G.K.G.Perera, in accordance with the requirement in Section 11 of the National Archives Law No. 48 of 1973 (as amended).

Section 11 states as follows;

*'It shall be the duty of the Secretary of any Commission of Inquiry appointed under the Commissions of Inquiry Act or any Committee of Inquiry appointed by a Minister to deposit all records relating to such Commission or Committee, as the case may be, at the National Archives within three months of the rendering of the final report of such Commission or Committee.'*

However, the said file did not contain a copy of the relevant Commission of Inquiry report.

In addition, the Department of National Archives had received from the Presidential Secretariat, a file containing all official documents of former President Chandrika Bandaranaike Kumaratunga (hereafter referred to as the 2007 file) on 18.05.2007. This file included documents relating to the Report but not the actual Report itself. The Department of National Archives had maintained an accession file where it listed the documents that was received by the Department from the Presidential Secretariat.

Representing the Public Authority (PA) cited in the Appeal, Mrs. Luckshmi Jayawickrema stated that it has been mentioned in the records of the PA that the particular file relating to the

### ***At the RTI Commission of Sri Lanka***

Commission of Inquiry had been sent on 12.01.2007 by the PA to the National Archives. The PA does not keep copies of the file but only records the file number.

On examination of the 2007 file consequent to this appeal being listed for hearing before the RTI Commission, the Director –General of National Archives pointed out that it had been discovered that the file only contained 3 pages of the Report (page 69, 70 and 71) which related to concluding recommendations of the Commission of Inquiry Report relating to compensation to be paid to certain individuals.

The 2007 file which formed part of the former President's papers, also contained the following documents:

1. Letter dated 13.08.2002 signed by then President to the then Commander of the Airforce which indicated that the following two Reports were annexed
  - (a) Report of the Presidential Commission of Inquiry into Mr. M.H.M.Ashraff's death
  - (b) Report of the Presidential Commission of Inquiry on the attack that took place at the Air Force Base and Bandaranaike International Airport.
2. Another letter dated 13.08.2002 signed by then President to the then Minister of Defence Mr. Thilak Marapana attaching the Commission of Inquiry Report and requesting him to initiate follow up action in pursuance of the findings

The then President had noted in the letter to the Minister of Defence that she would be taking action to publish the Report of the Commission of Inquiry as a Sessional Paper.

During the proceedings, the Director – General of the National Archives brought a substantial Minute on the Report in the 2007 file to the attention of the Commission. The Minute in the file (which had been maintained by the Presidential Secretariat) dated 12.08.2002 and made by Additional Secretary, CPA, Presidential Secretariat, noted the following:

1. The above Report was handed over to Her Excellency on 01.08.2002. The findings of the Report indicate that the crash was not a result of any wilful act. It was not due to any explosion or any explosive device. The crash was a result of act or acts of omission, lack of due diligence and duty of care amounting to negligence by the service crew. Crew identified as (names).
2. A Copy of the Report has been sent to Mrs. Manel Abeyrathne to be handed over to the HP (indecipherable). (Minute made in September 2002)
3. Extract of Pages, 69, 70 and 71 and recommendation of a sum of Rupees 8 million to be provided as compensation to certain parties.

The Director- General submitted that the Department of National Archives is not empowered to provide copies of the documents in issue to the public under the National Archives Law.

The Director – General of National Archives further informed the Commission that the documents listed in the file handed over to the Department by the Secretary to the Commission on 24.01. 2002 were stored in boxes in the National Archives. There were 64 documents running to over 300 pages, which were not described, that were stored in the said boxes.

### **Order**

This Commission notes the submission of the Director – General of the Department that these are confidential records which officers of the Department themselves are not allowed to look

**At the RTI Commission of Sri Lanka**

at in terms of the law and in regard to which, ordinarily, the Department would seek formal permission from the Presidential Secretariat and the Secretary of the Commission of Inquiry to examine the said records or to make the same available to a member of the public.

Section 4 of the RTI Act, No.12 of 2016 states,

*“The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.”*

In this regard, it is clear that the RTI Act prevails over and above the clauses relating to confidentiality in the National Archives Law and related Regulations.

It is a pertinent factor that the absence of the Report of the Commission of Inquiry in regard to this matter is of considerable public interest. Further, this Commission is not apprised of an exception to the release of information that has been raised by the relevant Public Authority in this matter in terms of Section 5 of the RTI Act. The reason put forward by the Public Authority regarding its inability to provide the requested information to the Appellant by letter dated 20.03.2017 as well as through its Written Submissions to this Commission dated 18.08.2017 is limited to the response that the information could not be provided as it could not be found.

Accordingly and in the light of the overriding public interest in this matter pertaining to a request for information relating to a Report of a statutory inquiry body established under the Commissions of Inquiry Act, No 17 of 1948 (as amended), this Commission orders the release of the documents as detailed hereinafter;

- a) A copy of the substantial Minute dated 12.08.2002 made by the Additional Secretary, CPA, Presidential Secretariat, summarising the findings of the Commission of Inquiry in this case, as marked in the file that was sent to the Department by the Presidential Secretariat on 18.05.2007;
- b) A copy of the 3 pages of the Commission Report which is the subject of this information request, relating to recommendations in regard to the payment of compensation to certain persons that was contained in the aforesaid file.

The Department of the National Archives is the custodian of ‘all records’ of Commissions of Inquiry under the Act of 1948 (as amended) read with Section 11 of the National Archives Law No. 48 of 1973 (as amended). The Report of such a Commission would constitute a primary ‘record’ under and in terms of the said law. Hence the Department may properly call upon the depositing body or individual (effectively the Secretary of such a Commission or Committee in terms of the relevant statutory provision) to ensure that the Report of the Commission or Committee is sent to the Department in accordance with the law. If there was non-compliance with that request, an official notation of the same by the Department would have been useful in clarifying details as to the whereabouts of a particular Report.

The observance of a similar due diligence requirement by the Public Authority, the Presidential Secretariat in forwarding the relevant files of former President Chandrika Kumaratunga to the Department of the National Archives in 2007 would have been helpful. Indeed, as has become apparent in proceedings before this Commission, the very date/s of the forwarding and receipt of the said files by the two state entities are at odds with each other. The Public Authority has

***At the RTI Commission of Sri Lanka***

stated on record before us that the file was handed over on 12.01.2007 while the Department of the National Archives has affirmed during this hearing that it was received by the said Department on 18.05.2007. There is therefore, a clearly discernible lack of clarity in regard to this matter.

In the circumstances, the Department is directed to ascertain from the Secretary of the Commission of Inquiry as to whether the Report of the said Commission was handed over to the Department by him along with the rest of the papers contained in the file on 24.01. 2002 and is also directed to check the contents of the relevant boxes where the original documents were stored and to ascertain if the Commission of Inquiry Report is contained in those papers.

A further order is issued to release the 'list of documents' that were contained in the file sent by the Secretary to the said Commission of Inquiry to the Department of National Archives on 24.01.2002.

Next date of hearing: 16/01/2018.

The Appeal is adjourned.

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