

**K. Prasanna Kumar v Ministry of Hill Country, New Villages, Infrastructure and Community Development**

RTIC Appeal (In-Person Hearing)/[1554]/[2019]- Order adopted as part of the formal meeting of the Commission on 27/08/2019.

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).

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

**Appellant:** K. Prasanna Kumar  
**Notice issued to:** Designated Officer, Ministry of Hill Country, New Villages, Infrastructure and Community Development

**Appearance/ Represented by:**  
Appellant – K. Prasanna Kumar  
PA – Mrs. T.K. Thuraichamy, Additional Secretary, D. P. M. C. H. Dharmaraja, PMA

<b>RTI Request filed on</b>	30/04/2019
<b>IO responded on</b>	22/06/2019
<b>First Appeal to DO filed on</b>	26/06/2019
<b>DO responded on</b>	No response
<b>Appeal to RTIC filed on</b>	31/07/2019

**Brief Factual Background:**

The Appellant by information request dated 30/04/2019 requested the following information.

1. *From the years 2010-2015, in the Kandy, Nuwera Eliya, Kegalle, Badulla, Ratnapura districts, details of the livestock and chickens given to families of the plantation workers and the details of its expenses, details of loans given to encourage self-employment*
2. *After 2005, details of the following in the estate areas;*
  - i. *Number of Prajashakthi centres*
  - ii. *expenses for building it*
  - iii. *the amount allocated to obtain things needed for it*
  - iv. *the number/details of labourers required for its functioning*
  - v. *details of the monthly allowance given to those who work there*
  - vi. *The details of the Prajashakthi centres that are presently in use*
  - vii. *the plans that are completed by these centres*
3. *Details of the upstairs line housing schemes*

- i. the total number of upstairs line housing schemes*
  - ii. the total number of beneficiaries*
  - iii. the expenses of building it*
  - iv. the details of land permits allocated for this housing plan*
  - v. the reason why this housing scheme was left without being implemented/completed*
4. *Details of the Early Childhood Development Project being carried out by World Bank for children of plantation workers*
- i. Details of the funds allocated for this plan by the Plantation Human Development Trust*
  - ii. Certified copies of documents regarding the distribution of funds*
  - iii. the plans carried out using those funds*
  - iv. the expenses for the above programmes*
  - v. the programmes that need to be carried out for the completion of this project*

The IO on 22/06/2019 responded stating that with regard to Item 1 and 2, there are no details in this Ministry because this was established in the year 2015. Concerning Item 3, this Ministry constructs only individual housing units for estate community. Information requested in Item 4 was annexed to the response. Dissatisfied with the response the Appellant lodged an appeal with the DO on 26/06/2019. As the DO too failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 31/07/2019.

**Matters Arising During the Course of the Hearing:**

Regarding Item 1, the PA stated that its Ministry was established only in 2015, therefore the information prior to that was not within its “possession, custody or control”. The Appellant responded saying that information requested concerned organizations which existed many years prior, such as Prajashakthi, Plantation Human Development Trust and Saumyamoorthi Thondaman Foundation, even if the Ministry was established only in 2015. The Commission observed, that the establishment of the Ministry was likely to have been a mere name change, whereas the relevant files and records would have been transferred to the PA when established in 2015, since it concerned the same subject matter. Furthermore, the Commission observed that the PA had a duty to transfer the information request to the relevant PA if the information was not in its possession. The Appellant further stated that the PA had made a complaint to the FCID regarding the Saumyamoorthi Thondaman Foundation and therefore it should be in possession of relevant information. The PA stated that according to the Gazette notification and a letter by the Prime Minister the Saumyamoorthi Thondaman Foundation is not within its purview. The Appellant stated that Prajashakthi Centres and Saumyamoorthi Thondaman Foundation have been included as part of the institutions under the Ministry’s purview in the 2018 Annual Performance Report of the Ministry of Hill Country, New Villages, Infrastructure and Community Development. The PA stated that the Saumyamoorthi Thondaman Foundation was not included, in the subjects and institutions listed under it..

**Order:**

The PA is directed to clarify the list of Ministries under its purview, together with any official documents and the Annual Performance Report in order to determine if information requested in Items 1-3 are within its “possession, custody and control”.

The Appeal is adjourned.

Next date of hearing: 3<sup>rd</sup> December 2019

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RTIC Appeal (In-Person)/[1554]/[2019]- Order adopted as part of the formal meeting of the Commission on 03/12/2019.

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).

**Chairperson:** Mr. Mahinda Gammampila  
**Commission Member:** Ms. Kishali Pinto-Jayawardena  
**Commission Member:** Mr. S.G. Punchihewa  
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**Appellant:** K. Prasanna Kumar  
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**Appearance/ Represented by:**  
Appellant – K. Prasanna Kumar  
PA – Absent

**Matters Arising During the Course of the Hearing:**

Due to the absence without a prior notice to the hearing the Commission decided to send a warning letter to the PA.

**Order:**

The Commission observes that the PA has failed to adhere by the sec 15(1) (a) of the Right to Information Act, No. 12 of 2016,

Sec 15(1) (a)

*For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power-*

*(a) to hold inquiries and require any person to appear before it;*

The PA has failed to appear before the Commission which constitutes an offence under Section 39(c) of the Act,

Section 39(c) of the Act states that,

*Every person who-*

*(c).fails or refuses to appear before the Commission when requested to do so by the Commission;  
Commits an offence under this 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.*

As such the Commission directs the PA to be present at the next hearing for the consideration of the Appeal

The Appeal is adjourned.

Next date of hearing: 24<sup>th</sup> of March 2020

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RTIC Appeal (Documentary)/[1554]/[2019]- Order adopted as part of the formal meeting of the Commission on 09/06/2020.

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).

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

**Appellant:** K. Prasanna Kumar  
**Notice issued to:** Designated Officer, Ministry of Hill Country, New Villages, Infrastructure and Community Development

**Matters Arising During the Course of the Hearing:**

In view of the prevailing situation in the country due to the threat posed by COVID 19, and as such in order to minimise interaction between persons, the appeals scheduled for in-person hearings in terms of Rule 20 of the Commission's Rules on Fees and Appeal Procedures of the RTI Commission's Appeal (Gazette No. 2004/66, 03.02.2017) will be considered as documentary proceedings under Rule 19 in the first instance. As such this appeal is considered by the Commission based on the documents present on file to date and the parties are notified of the directions below. This is subject to change at a later point.

On consideration of the facts the Commission observed that no written submission or response was received from the PA.

**Order:**

The Commission would like to draw the PA's attention to below mentioned Section. Section 3 (1) of the Act states that,

*Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.*

When the public authority considers that the requested information to be in possession, custody or control, citizens have the right to access information from the Public Authority. This appeal will be heard as an In-Person inquiry on 06.10.2020

Order is conveyed to both parties in terms of rule 27(3) of the Commission's Rules on Fees and Appeal Procedure (Gazette No 2004 /66, 03/02 2017).

The Appeal is adjourned.

Next date 06.10.2020

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RTIC Appeal (Documentary)/[1554]/[2019]- Order adopted as part of the formal meeting of the Commission on 06.10.2020.

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).

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

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No documents or submissions have been received by the Commission from the PA in response to the above Order dated 09.06.2020

**Order:**

The Commission notes that the PA has not responded to the notices issued by the Commission or complied with the Order dated 09.06.2020, where the attention of the PA was drawn to Section 3 (1) of the Act,

*“Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.*

*When the public authority considers that the requested information to be in possession, custody or control, citizens have the right to access information from the Public Authority.”*

The attention of the Public Authority is drawn to the fact that it is under an obligation to provide the information in its possession, custody and control under and in terms of Section 3 of the Act unless the PA is of the view that it is exempted under Section 5 of the Act.

Accordingly the PA is directed to release the information requested by the Appellant or, if the Public Authority is unable to provide the information due to said information falling under an exemption laid down in Section 5 of the Act, to deny the same indicating the exact exemption relied upon.

This matter is re-fixed for an In – Person hearing on 19.01.2021, during which the attendance of both parties is required.

Order is conveyed to both parties in terms of rule 27(3) of the Commission’s Rules on Fees and Appeal Procedure (Gazette No 2004 /66, 03/02 2017).

***The Appeal is adjourned.***

**Final Date of Hearing: 19.01.2021**