

**R.D.S.A. Wickremasinghe v. Lanka Mineral Sands Limited**

RTIC Appeal/1394/19- Record of Proceedings under Rule 28 and Motion for Withdrawal of an Appeal under Rule 30 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) - adopted as part of a formal meeting of the Commission on 10.03.2020

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

**Director-General:** D.G.M.V. Hapuarachchi

**Appellants:** R.D.S.A. Wickremasinghe  
**Notice Issued to:** Designated Officer, Lanka Mineral Sands Limited

<b>RTI Request filed on</b>	22.07.2018
<b>IO responded on</b>	The request was acknowledged on 31.07.2018 IO responded on 22.08.2018
<b>First Appeal to DO filed on</b>	31.08.2018
<b>DO responded on</b>	No response
<b>Appeal to RTIC filed on</b>	01.10.2018

**Brief Background Facts**

The Appellant had requested the following items of information, by an information request dated 22.07.2018:

- 1. Mr. M.M.S.K Bandara Yapa, former General Manager, LMSL was found to have caused a loss of Rs. 223,703.26 to LMSL due to him having irregularly/ illegally issued Circular No; LMS/ET –A- 49 dated 2017.05.09. Therefore, he was informed by the former Chairman/ Competent Authority, by letter dated 2017.09.15 bearing reference LMS/CA/General/2017, that the loss of 223,703.26 will be recovered from him/ payable by him in 12 installments Rs. 18,894.94. Mr. Bandara Mapa was also informed by letter dated 2017.09.22 bearing reference LMSL/CL/General/2017, addressed to him by the former Chairman/ Competant Authority, that this amount would be payable by him whether he remains in employment with LMSL or not.  
Accordingly, I would require the following information;  
b) How many installments of Rs. 18,894.04 were recovered from Mr. M.M.S.K Bandara Mapa when he was in employment with LMSL,  
c) How many installments of Rs. 18.894.94 were remitted by Mr. M.M.S.K Bandara Mapa or remitted on behalf or recovered from amounts he was due, after he left employment at LMSK,  
d) whether the opinion and or occurrence of the Hon. Attorney General had been sought and received, for the recovery of further installments to be stopped and the installments*

*already recovered and or paid by or on behalf of Mr. M. M.S.K Bandara Mapa being refunded to him,*

*e) If the opinion and or concurrence of the Hon. Attorney General had been sought and received, on that stated in (d) above, a copy of the letter sent by LMSL to the Hon. Attorney General seeking such opinion and or concurrence and a copy of the letter received from the Hon. Attorney General seeking such opinion and or concurrence and a copy of the letter received from Hon. Attorney General giving his opinion and or his concurrence,*

*f) If the opinion and or concurrence of the Hon. Attorney General had not been sought and or received, who granted the authority that the recovery of further installments from Mr. M.M.S.K Bandara Mapa be stopped and that already recovered from him/ paid by him or on his behalf, be refunded to him,*

*g) A copy of the document granting such approval of that indicated in (f) above.*

*(h) A copy of the voucher where the installments already recovered and or paid to him were refunded to Mr. Bandara Mapa.*

*i) A copy of the letter from LMSL to Mr. M.M.S.K Bandara Mapa rescinding the decisions conveyed to him by the former Chairman / Competent Authority in letters dated 2017.09.22 both bearing reference LMSL/CA/General/2017.*

2. *By letter dated 2017.11.30 bearing reference MIC/IA/12/81, Mr. K.D.N Ranjith Asoka Secretary, Ministry of Industry & Commerce infroed the Chairman, LMSL, in paragraph 1 of the letter under reference, that a sum of Rs. 45,0000/- should be recovered from Mr. M.A.I.G Jayathilake, Chief Internal Auditor, LMSL. IN response the then Chairman/ Competent Authority by letter dated 14<sup>th</sup> December 2017 also bearing reference MIC/IA/12/81, informed Mr. K.D.N Ranjith Asoka, Secretary, Ministry of Industry and Commerce, that he had placed Mr. M.A.I.G Jayathilake on “ Compulsory Leave” in order that a thorough investigation could be done, without any hindrance or obstruction from him, to ascertain the extent of the deficiencies in his work and conduct.*

*Accordingly, I would require the following information;*

*a) Whether the opinion and or concurrence of the Hon. Attorney General had been sought and received to re-instate Mr. Jayathilake in service without the investigation on his work and conduct not being completed, leave alone being started.*

*b) If the opinion, and or concurrence of the Hon. Attorney General had been sought and received on that stated in (a) above, a copy of the letter sent by LMSL seeking such opinion and or concurrence and a copy of the letter from the Hon. Attorney General giving his opinion and or granting his concurrence,*

*c) If the opinion and or concurrence of the Hon. Attorney General had not been sought and or received to re-instate Mr. M.A.I. G Jayathilake in service, who granted such authority to do so,*

*d) A copy of the document/ record granting such approval of the indicated in c) above*

*e) Whether the opinion and or concurrence of the Hon. Attorney General had been sought and received not to recover the sum of Rs. 45,000 from Mr. M.A.I. G Jayathilake as directed in the letter dated 2017.11.30 bearing reference MIC/IA/12/81, from Mr. K.D. N Ranjith Asoka, Secretary, Ministry of Inducry & Commerce to the Chairman, LMSL,*

- f) *If the opinion and or concurrence of the Hon. Attorney General had not been sought to on that stated in € above, who granted such authority to do so,*
  - g) *A copy of the document granting such approval of that indicated in (f) above.*
  - h) *A copy of the letter issued to Mr. M.A.I. G Jayathilake by LMSL re-instating him in service,*
  - i) *Why no action has been taken by LMSL to recover the Rs. 45,000/- from Mr. M.A.I.G Jayathilake as directed my Mr. K.D.N Ranjith Asoka, Secretary, Ministry of Industry & Commerce in his letter dated 2017.11.30 bearing reference MIC/IA/12/81 addressed to Chairman, LMSL.*
3. *Mr. Wasantha Kumara, Supplies Manager, LMSL was placed on Compulsory Leave by the then Chairman/ Competant Authority following it being discovered that he has misled the management of LMSL resulting t=in three (3) photocopy machines being purchased at an additional cost of Rs. 30, 667 each, resulting in a total loss of Rs. 92,001 to LMSL. An investigation on the work and conduct of Mr. Wasantha Kumara as well as that stated above in respect of the photocopy machines was in progress. Accordingly, I would require the following information.*
- a) *Whether the investigation which was in progress on the work and conduct of Mr. Wasantha Kumara was completed or completed or cancelled or suspended,*
  - b) *If the investigation was cancelled or suspended, whether the cancelled and or suspension of the investigation was done based the opinion and or concurrence of the Hon. Attorney General*
  - c) *If so, a copy of the letter seeking the opinion and or concurrence of the Hon. Attorney General and a copy of his response,*
  - d) *If the opinion and or concurrence of the Hon. Attorney General had not been sought to cancel or suspend the investigation being conducted against Mr. Wasantha Kumara , who granted such authority to do so,*
  - e) *A copy of the document granting such approval of that indicated in (d) above.*
  - f) *Whether the opinion or the concurrence of the Hon. Attorney General had been obtained to re-instate Mr. Wasantha Kumara in service without the investigation bening conducted against him being conducted,*
  - g) *If so, a copy of the letter seeking the opinion and or concurrence of the Hon. Attorney General and a copy of his response,*
  - h) *If the opinion and or concurrence of the Hon. Attorney General had not been sought to re-instate Mr. Wasantha Kumara in service prior to the investigation against him being concluded, who granted such authority to do so.*
  - i) *A copy of the document/ record granting such approval of that indicated in (h) above,*
  - j) *A copy of the letter issued to Mr. Wasantha Kumara by LMSL re-instating him in service,*
  - k) *The action LMSL has taken to recover the loss of Rs. 92,001/- caused to it by the management being misled by Mr. Wasantha Kumara and thereby purchasing the photocopy machines at a higher price.*
4. *The former Chairman/ Competent Authority had decided that comprehensive audit/ investigation being carried out on the work of Ms. Sujeewa Kariyawasa, Senior Finance Manager (Revenue and Book Keeping of LMSL as well as the manner in which she had performed her duties. As it was considered necessary that such comprehensive audit/ investigation should be done without any interference from her, she was relieved of her*

*duties by letter dated 02<sup>nd</sup> October 2017 bearing reference LMS/PF/1657 addressed to her by former chairman/ competent authority.*

*The comprehensive audit/ investigation was entrusted to a leading firm of Chartered Accountants and was in progress.*

*Accordingly, I would require the following information;*

- a) *Whether the report of the comprehensive audit/ investigation on the work of Ms. Sujeewa Kariyawasam and the manner in which she had performed her duties, was received,*
  - b) *If so, I would require a copy of such report.*
  - c) *Whether Ms. Kariyawasam was re-instated in service prior to or after the report referred to in (a) above was received,*
  - d) *Whether the report referred to in (a) above, exonerated Ms. Kariyawasam from all charges listed in letter dated 02<sup>nd</sup> October 2017 bearing reference LMS/PF/1657 addressed her to by the former Chairman/ Competent Authority,*
  - e) *If not whether the opinion or the concurrence of the Hon. Attorney General had been obtained to re-insate Ms. Kariyawasam in service despite the report received adversely on her work and the performance of her duties,*
  - f) *If so, a copy of the letter seeking the opinion or concurrence of the Hon. Attorney General and a copy of his response.*
  - g) *If the opinion and or concurrence of the Hon. Attorney General has not been sought to re-instate Ms. Kariyawasam in service who granted such authority to do so.*
  - h) *A copy of the document/ record granting such approval of that indicated in (g) above.*
  - i) *A copy of the letter issued by LMSL re-instating Ms. Sujeewa Kariyawasam in service,*
  - j) *Whether Ms.Kariyawasam being re-instated in service was done without any reference to the report on the investigation/ audit which was in progress.*
5. *By letter dated 2018.06.11 bearing reference LMSL/LE/AG/2018-04, received by me on 29.06.2018, Mr. A.D.P.I Prasanna, General Manager of Lanka Mineral Sands Limited has informed that my request, in respect of the refund to me if the balances lying to my credit and in my name at the Employee Provident Fund and Employees Trust Fund, has been referred to the Attorney General's Department.*

*Accordingly I would require the following information.*

- a) *A copy of the letter forwarded to the AG's Department.*
- b) *A copy of the "Outward Mail Register" if the letter was forwarded by post or reliable proof if the letter was "hand delivered" to establish that such a letter has in fact been forwarded to the AG's Department.*
- c) *If the letter to the AG's Department was forwarded by Registered Post, a copy of the "Registered Post Article Receipt"*

Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 31.08.2018 As the DO failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 01.10.2018

**Matters Arising During the Hearing:**

The Public Authority has written to the Appellant on 03.01.2020 and provided the information requested by the Appellant. Consequently, the Appellant informed the Commission by letter dated 04.03.2020 received by the Commission on 10.03.2020, that he wishes to withdraw the appeal as the matter has been resolved and the requested information has been provided by the Public Authority.

*“I have received the information requested for from the Public Authority – Lanka Mineral Sands Limited – other than for one item, the details of which are given in my letter dated 14<sup>th</sup> January 2020 addressed to you and copied to the Public Authority. My Counsel has advised me that the information not provided by the Public Authority is not essential at this juncture and hence as the other information requested for has been provided, kindly treat my appeal as concluded.”*

Rule 30 (1) of the Right to Information Commission Rules of 2017 (Gazette No 2004/66 published on 03.02.2017) states that

*The Appellant, while an Appeal is pending, may at any time withdraw the Appeal by forwarding to the Commission a memorandum in writing with reasons stated signed by himself / herself a copy of which is served on the other party(ies), and the Commission shall forthwith inform every other party of the withdrawal.*

Rule 30 (3) of the Right to Information Commission Rules of 2017 states that

*If the Commission is satisfied with the reasons stated for withdrawal in sub-rules (1) and (2) above, it shall allow the withdrawal of the Appeal.*

The Commission, under and in terms of Rule 30 (3) of the Right to Information Commission Rules of 2017 (Gazette No 2004/66 published on 03.02.2017), being satisfied of the reasons provided, permits the withdrawal of the Appeal.

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