

T Rusiripala v People's Bank

RTIC Appeal (In-Person Hearing)/774/2018- Order adopted as part of the formal meeting of the Commission on 30.04.2019.

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. SelvyThiruchandran
Commission Member: Justice RohiniWalgama

Appellant: T Rusiripala

Notice issued to: Designated Officer, People's Bank

Appearance/ Represented by:

Appellant - Mr T Rusiripala
PA - Ms Manoli Jinadasa, Attorney-at-Law for PA
Ms W T I Ambepitiya, Legal Officer – Compliance, People's Bank

RTI Request filed on	19.06.2018
IO responded on	20.06.2018
First Appeal to DO filed on	13.07.2018
DO responded on	17.07.2018
Appeal to RTIC filed on	05.10.2018

Brief Factual Background:

The Appellant by information request dated 19.06.2018 requested for the following item of information

- 1. Total expenditure incurred from 2015 to the end of June 2018 for and in connection with Banks digitalization (IT) project with a breakup for hardware, software system installation & testing, consultants fees, reimbursement, part payments in advance made during this period.*
- 2. The particulars of salaries, wages, ex-gratia, payment, bonus (including performance bonus) expenditure incurred by the bank for overseas trips and details of all other perks provided by the bank –*

vehicle allowance, special allowance, entertainment expenses, travelling grants incurred by the bank on account of contract employees from 2000 to 2018 June with details of positions held by each Contract Employee during the period including the particulars of any change in positions, grades or level of employment in respect of each employee separately.

The IO on 20.06.2018 responded rejecting the provision of information under section 5(1)(a), (d) and (f) of the RTI Act. Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 13.07.2018. The DO responded on 17.07.2018 rejecting the provision of information under section 5(1)(a), (d) and (f) of the RTI Act, affirming the IO's decision. Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 05.10.2018.

Matters Arising During the Course of the Hearing:

The PA submitted that the requested information is commercially vital information for the continuation of the digitization process which is ongoing, and the Bank is bound by contract to a third party in this regard. The PA further submitted that there is no larger public interest in the information requested.

The Appellant in his response submitted that the contract referred to by the PA has come to and that the PA cannot call upon the requester to cite reasons for requesting information under the RTI Act.

The PA further submitted that the Bank is not a monopoly and are competing with 24 other banks, which places the Bank at a competitive disadvantage when such information is made available in the public domain.

Order:

Parties are directed to tender in Written Submissions on or before 01.04.2019. The PA is also directed to submit to the perusal of the Commission, contract details with regard to the Digitization Project.

The Appeal is adjourned.

Next date of hearing: 02.07.2019

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RTIC Appeal (In-Person Hearing)/774/2018- Order adopted as part of the formal meeting of the Commission on 02.07.2019.

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).

Commission Members: Ms.Kishali Pinto-Jayawardena
: Mr. S.G. Punchihewa
: Dr. SelvyThiruchandran

Appellant: T Rusiripala

Notice issued to: Designated Officer, People's Bank

Appearance/ Represented by:

Appellant - Mr T Rusiripala
PA - Ms Manoli Jinadasa, Attorney-at-Law for PA
Mr Lasantha Thiranagama, Attorney-at-Law for PA
Ms N G T Kalpani, Assistant Manager – Compliance, People's Bank
Ms W T I Ambepitiya, Legal Officer – Compliance, People's Bank

Matters Arising During the Course of the Hearing:

Regarding item No 2) of the information request which was taken up first, the Appellant had, in his written submission, addressed the Bank's denial to provide information based on the contention that the nature of the information being requested by the Appellant amounted to 'Private Information' as encompassed by Section 5(1)(a) of the RTI Act.

The Commission inquired from the Appellant regarding the position taken by him in relation to the refusal by the PA to provide salary particulars of its top management in the context of a previous ruling by this Commission in *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd.* (RTIC Appeal (in-person)99/2017, RTIC Minutes of 13.11.2017, 08.01.2018, 06.02.2018, 23.03.2018, 24.04.2018 and 09.05.2018) where the salary particulars of the senior executive officials were released by the Sri Lankan Airlines pursuant to a Commission Order

In this appeal, Counsel for the PA strongly contended however that the facts here were wholly different from the previous ruling in that the PA (the Peoples Bank) was in competition with other banks in the domestic sphere unlike Sri Lankan Airlines which was the national carrier and had a monopoly in that regard. The Peoples Bank urged that it was facing intense commercial competition and that disclosure of payments of top executive officers, as opposed to the salaries of mid-level officers, would impact the PA negatively, violating Section 5 (1)(c) of the RTI Act.

Responding to this contention, the Appellant referred to *Rajaratne v Air Lanka Ltd [1987] 2 Sri LR 128*, where Atukorale J held that:

"The juristic veil of corporate personality donned by the company for certain purposes cannot, for the purpose of application and enforcement of

Fundamental Rights enshrined in Part III of the Constitution, be permitted to conceal the reality behind it which is the Government. The brooding presence of the government behind the operations of the company is quite manifest ... the cumulative effect of all the above factors would render Sri Lanka an agent or organ of the government.”

The Commission highlighted the inapplicability of the above citation to the matter at hand as that case related to bringing the national carrier within the jurisdictional competence of the Supreme Court for the purposes of fundamental rights litigation whereas the matter before the Commission is limited to the applicability or not of Section 5(1)(d) of the RTI Act in the context of the information request made by the Appellant. The Appellant further contended that as much as the PA was a competitive entity, the Sri Lankan Airlines, being the only national air carrier, was in competition with foreign air carriers and that therefore, the competitive element was even higher in that case.

Furthermore, the Appellant submitted that the salary of permanent low level employees have been decided by circular and collective agreements and that equity demanded disclosure of the salaries etc. of higher level employees on contract as well. In response Counsel for the PA submitted that general employees salary information may be provided to the Appellant as such employees are not in a competitive environment, but that the PA is relying on Section 5(1)(d) in order to withhold such information where middle management and where higher grades of employees are concerned. Counsel for the PA further stated that the bank’s bargaining power in recruiting high grade employees is undermined if their salaries are disclosed in public. In addition to the privacy concerns associated with the disclosure of salaries of high grade employees, the PA contends that their commercial competition will be significantly affected.

The Appellant stated that when the bank was deemed bankrupt it was decided that specialist from outside should be recruited on a contract basis to People’s Bank at an executive level. These contract employees who were hired for shorter periods of time continued for years and were subsequently absorbed into the main cadre. Responding to the Appellant’s submission, counsel for the PA contended that the Appellant had not requested information on the manner of recruitment, but had confined himself requesting only for the salary particulars of the PA’s contract employees from the year 2000 - (June) 2018.

With regard to the Appellant’s request for information in regard to expenditure incurred in respect of the installation and testing of software and hardware from 2015 to the end of June 2018 for and in connection with Banks digitalization (IT) project with a breakup for hardware, software system installation & testing, consultants fees, reimbursement, part payments in advance made during this period, it was clarified by the Commission that what has been requested is a breakdown of the costs as per each category rather than minute

particular details of payments within each category. In response, Counsel for the PA undertook to consult with the PA and respond on the same.

Order:

Where item 1) of this information request is concerned, the Appellant has requested the total expenditure in the installation and testing of software and hardware as per each category listed therein. On the facts as presented before us, the provision of this information does not appear to be precluded by any of the exemptions contained in Section 5(1) of the RTI Act. In fact, the public interest in disclosing this information is demonstrably high as the matter involves the expenditure of public funds.

The PA is directed to revert on the total expenditure details in relation to the digitization of the PA by breakdown as per each category as requested by the Appellant on the next date on which this Commission's ruling on item 2) of the said information request will also be considered in the wake of the submissions made by both parties.

Appellant is directed to provide a copy of his Written Submissions to the Public Authority which may respond if needed on any date before the next hearing, with a copy also to the Appellant.

The Appeal is adjourned.

Next date of hearing: 26.11.2019
