

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an appeal under and in terms of Section 34 of the Right to Information Act No. 12 of 2016 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/RTI/0004/2021

RTIC Appeal No.719/2018

Chamara Sampath,
“Sathuta”,
Pannala,
Yatigaloluwa.

APPELLANT

Vs.

Neil Iddawala,
Designated Officer,
Chief of Staff and Deputy Secretary-
General,
Sri Lanka Parliament,
Sri Jayewardenapura,
Kotte.

RESPONDENT

AND NOW BETWEEN

1. K. A. Rohanadeera,
Designated Officer,
Chief of Staff and Deputy
Secretary-General,
Sri Lanka Parliament,
Sri Jayewardenapura,
Kotte.
2. Dhammika Dassanayake,
Secretary-General of Parliament,
Office of the Secretary-General of
Parliament,
Sri Jayewardenapura,
Kotte.

RESPONDENT-APPELLANT-

PETITIONERS

Vs.

Chamara Sampath,
“Sathuta”,
Pannala,
Yatigaloluwa.

APPELLANT-RESPONDENT

AND

1. Mr. Mahinda Gammanpila
Chairman
2. Ms. Kishali Pinto-Jayawardena
Member
3. Mr. S. G. Punchihewa
Member
4. Dr. Selvy Thiruchandran
Member
5. Retired Justice Rohini Walgama
Member
Right to Information Commission
of Sri Lanka,
Room No. 203-204, Block 2,
BMICH,
Buddhaloka Mawatha,
Colombo 07.

ADDED-RESPONDENTS

- 1A. Retired Justice Upali Abeyaratne,
Chairman

SUBSTITUTED-ADDED-1ST

RESPONDENT

3A.Dr. Athulasiri Kumara
Samarakoon,

Member

SUBSTITUTED-ADDED-3RD

RESPONDENT

4A.Mr. Jagath Bandara
Liyanaarachchi,

Member

SUBSTITUTED-ADDED-4TH

RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Mahen Gopellawa SDSG with Avanthi Perera DSG
for the Appellant-Petitioner.

: Thishya Weerragoda with S. Wimalaratne instructed
by Niluka Dissanayake for the Appellant-Respondent.

: Himali Kularatne with Jayani Ellepola for the Added-
Respondents.

Argued on : 18-01-2023

Written Submissions : 13-01-2023 (By the respondent-appellant-petitioners)

: 18-01-2023 (By the Appellant-Respondent)

: 19-01-2023 (By the Added-Respondents)

Decided on : 28-02-2023

Sampath B Abayakoon, J.

This is an appeal by the respondent-appellant-petitioners (hereinafter referred to as the appellants) in terms of section 34 of the Right to Information Act No.12 of 2016 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, on being aggrieved by the order dated 02-02-2021 pronounced by the Right to Information Commission.

At the hearing of this appeal, all parties agreed for the pronouncement of the judgement in this matter based on written submissions by the parties, as all the matters that need consideration in this appeal are matters of law. Hence, all the parties were allowed to tender their respective written submissions for the consideration of the Court.

The order under appeal is an order pronounced by the Right to Information Commission (hereinafter referred to as the Commission) in terms of section 32 of the Right to Information Act No.12 of 2016 (The RTI Act) in pursuant to an appeal preferred by the appellant-respondent (hereinafter referred to as the respondent) challenging the refusal by the Designated Officer of the Parliament of Sri Lanka to issue him with the information requested by him from the Information Officer of the Parliament.

The respondent by his letter dated 21-06-2018 had requested the following information from the Information Officer of the Parliament.

1. The list of names of members of Parliament who have handed over their respective declarations of assets and liabilities in 2018.
2. The list of names of MPs who have handed over their declarations from 2010 up to the date of his request.

The Information Officer by his letter dated 21-08-2018 has refused the request on the basis that he has to make an application in terms of the Declaration of the Assets and Liabilities Act of Act No.1 of 1975 to the Speaker of Parliament, which is a separate Act that governs the declarations of the Members of Parliament. The Designated Officer too has held the same view in rejecting the appeal preferred by the respondent to him in that regard, in terms of section 31 of the RTI Act.

The respondent being aggrieved by the decision of the Designated Officer has appealed to the Commission in terms of section 32 of the RTI Act, challenging the decision. After hearing the parties, the Commission, by the order appealed against, has reversed the decision of the Designated Officer and had ordered that the information requested by the respondent shall be released to him.

The Grounds of Appeal

In their petition of appeal, the appellants have urged the following grounds of appeal for the consideration of the Court.

1. The said Order is wrong and contrary to law.
2. The Commission erred in law by concluding that the Parliament of Sri Lanka is the relevant Public Authority in the case of the information requested by the respondent.
3. The Commission erred in law and fact by failing to appreciate that even the Leader of the House and the Leader of the Opposition have separate Information Officers and Designated Officers.
4. The Commission erred in law and fact by failing to appreciate that it is the Speaker of Parliament who has 'possession, custody, or control' of the information requested by the respondent.
5. The Commission erred in law when it held that the Parliament has institutional possession, custody and control of the information requested.

6. The Commission erred in law by concluding that there is no impediment for the Secretary General of Parliament to release the requested information.
7. The Commission erred in law in failing to appreciate that the DALL is a special law which regulates all aspects relating to Declarations of Assets and Liabilities in Sri Lanka.
8. The Commission erred in law in failing to appreciate that the DALL will prevail over the provisions of the Right to Information Act No. 12 of 2016, which is a general law, in accordance with the well-established maxim "*Generalia Specialibus Non Derogat.*"
9. The Commission erred in law in failing to appreciate that the Declaration of Assets and Liabilities Law No.1 of 1975 specifically prohibits the disclosure of a declaration of assets and liabilities except in the manner set out under the said Law.
10. The Commission erred in law in failing to appreciate that a person can only obtain information pertaining to the Declarations of Assets and Liabilities if such person makes an application to the appropriate authority in accordance with section 5 (3) of the DALL and not under the Right to Information Act.
11. The Commission erred in law in failing to consider section 11 of the Declaration of Assets and Liabilities Law No.1 of 1975 which provides that where the provisions of the DALL are in conflict or inconsistent with the provisions of any other law, the provisions of the DALL shall prevail.
12. The Commission erred in law in failing to give effect to section 8 (1) of the DALL which mandates the Speaker and any person authorized by the Speaker to have access to any papers and records in the course of their official duties, to maintain secrecy with regard to any declaration of assets and liabilities received under the DALL.
13. The Commission erred in law in failing to appreciate that in terms of 8 (3) of the DALL, the Speaker and any person authorized by him is

precluded from producing the declaration of assets and liabilities or any document connected therewith or from or divulging or communicating any matter or thing in relation thereto to any Court including the Right to Information Commission, except in proceedings instituted under the DALL or the Bribery Act, The Exchange Control Act, The Inland Revenue Act and The Customs Ordinance.

14. The Commission erred in law in failing to appreciate that the Declaration of Assets and Liabilities of the Members of Parliament constitute personal information, the disclosure of which would lead to an unwarranted invasion of privacy.
15. The Commission erred in law when it failed to appreciate that the disclosure of information pertaining to the Declaration of Assets and Liabilities of the Members of Parliament under the Right to Information Act would constitute a breach of the powers and privileges of Parliament.

Although the appellants have taken up 15 grounds of appeal, I will now proceed to consider the said grounds of appeal together as they are interrelated.

In this matter, the respondent has presented his request for the required information to the Information Officer of the Sri Lanka Parliament by his letter dated 21-06-2018 (document marked P-3 with the appeal). It is clear from the letter of refusal by the Information Officer and also by the determination of the Designated Officer (documents marked P-4 and P-6 with this appeal) that their refusal to provide the information requested had been on the basis that the sole authority with regard to the declaration of assets and liabilities by the members of Parliament is the Speaker of the Parliament in terms of Declaration of Assets and Liabilities Law No.1 of 1975 as amended by Amendment Act No.74 of 1988.

It has been determined that the Right to Information Act has no application in this instance since section 11 of the Declaration of Assets and Liabilities Law has provided that where the provisions of the said law are in conflict or

inconsistent with the provisions of any other law, the provisions of this law shall prevail. Hence, the request has been denied on the basis that the respondent should make his request to the Speaker of the Parliament and not to the Information Officer of the Parliament.

In their submissions before the Commission, the appellants have strenuously contended that the Office of the Speaker of the Parliament and the Office of the Secretary General of the Parliament under which the Information Officer and the Designated Officer function are two separate and distinct institutions, in order to justify the decisions made by the Information Officer and the Designated Officer. It had been their stand that the information requested by the respondent is in the possession, custody or control of the Speaker of the Parliament and the Secretary General of the Parliament is in no position to interfere with the functions of the Speaker.

It has also been urged that disclosure of any information on the assets and liabilities of the parliamentarians under the Right to Information Act would constitute a breach of the powers and privileges of the Parliament.

The Commission, after well considering the arguments presented on behalf of the appellants as well as the respondent had determined that the public authority in terms of the RTI Act being the Parliament of Sri Lanka and only one Information Officer and a Designated Officer have been appointed in relation to the said public authority, it is the duty of the Secretary General of the Parliament to provide the information requested by the respondent.

It has been determined that although the Speaker of Parliament is a separate institution within the Parliament of Sri Lanka, as the Chief Executive Officer of the Parliament, it is the duty of the Secretary General to provide the information requested, which would not amount to any breach of the privileges of the Members of the Parliament. It has also been determined that secrecy and the confidentiality of the declaration of assets and liabilities by the Members of the Parliament would not be violated in terms of the Declaration of Assets and

Liabilities law as what the respondent requesting is not the details of the declarations tendered, but only a list of the Members of the Parliament who filed their declarations of assets and liabilities in accordance with the law.

The Commission has well discussed the reasons for their determination by considering the relevant laws as well as legal precedence set by way of judgements pronounced by our Superior Courts as well as Indian Courts under similar circumstances.

Consideration of the Grounds of Appeal

For the purposes of determining this appeal, I find that it becomes necessary to consider the relevant provisions of the Declaration of Assets and Liabilities Law No.1 of 1975 as amended, since both the Information Officer and the Designated Officer have taken cover of the said Law to refuse the request made by the respondent.

Towards this, I find it necessary to draw my attention to the purpose of enacting the Declaration of Assets and Liabilities Law in 1975 and the Right to Information Act No.12 of 2016 in the year 2016.

The preamble of the Declaration of Assets and Liabilities Law No.1 of 1975 reads as follows;

A LAW TO COMPEL CERTAIN SPECIFIED CATEGORIES OF PERSONS TO MAKE PERIODIC DECLARATIONS OF THEIR ASSETS AND LIABILITIES IN AND OUTSIDE SRI LANKA; TO PROVIDE FOR REFERENCE TO BE MADE TO SUCH DECLARATIONS BY APPROPRIATE AUTHORITIES AND FOR INVESTIGATIONS TO BE CONDUCTED UPON THE RECEIPT OF ANY COMMUNICATION AGAINST A PERSON TO WHOM THIS LAW APPLIES; TO PROVIDE FOR PENALTIES FOR NON-DECLARATION OF ASSETS AND LIABILITIES AND OR FALSE DECLARATIONS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

The preamble of the RTI Act which was enacted more than 40 years after the Declaration of Assets and Liabilities Law came into being, reads as follows.

AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

It is clear if one looks at the Declaration of Assets and Liabilities Law, the purpose of enacting the same had been to combat corruption in public life by compelling the persons to whom the Law shall apply to declare their assets and liabilities periodically.

In terms of section 4 (b) of the Law, the Members of the Parliament who do not fall into the category mentioned in section 4 (a) shall make their declaration of assets and liabilities to the Speaker of the Parliament.

It needs to be noted that if any person who is required by law to provide his or her declaration of assets and liabilities, fails, makes any false statement, fails without reasonable cause to give additional information as required by Bribery Commissioner or contravenes any provision of this law shall be guilty of an offence, and upon conviction before a Magistrate, liable to a fine not exceeding Rs.1000/- or imprisonment of either description for a term not exceeding one year or both such fine and imprisonment.

It is abundantly clear that by enacting RTI Act No.12 of 2016, the intention of the legislature had been to give effect more robustly to the provisions of the Constitution by fostering a culture of transparency and accountability in public authorities and institutions by giving effect to the right of access to information in combatting corruption and promoting accountability and good governance.

It needs to be reminded that it is for the very purpose that the legislature by its wisdom has enacted and introduced Article 14A by the 19th Amendment to the Constitution of the Republic, where right to access to information has been enshrined as a fundamental right.

I am of the view that when interpreting the provisions of the RTI Act, it is in this spirit of the intentions of the legislature, the relevant Act or Acts should be interpreted by the relevant authority and not to take cover in order to avoid providing the information asked for, unless such information can be denied in terms of section 5 of the RTI Act.

Even in instances where the RTI Act provides for the denial of access to information, it has been stated that if the public interest in disclosing the information outweighs the harm that would result in its disclosure, such information should be released.

The relevant section 5 (4) of the RTI Act reads as follows.

5 (4). Notwithstanding the provision of (1), a request for information shall not be refused where the public interest in disclosing the information outweigh the harm that would result from its disclosure.

As determined correctly by the Commission, I find no basis for the argument that since section 11 of the Declaration of Assets and Liabilities Law provides that the provisions of that law, when in conflict or inconsistent with the provisions of any other law, the provisions of the Declaration of Assets and Liabilities Law shall prevail and hence, the provisions of RTI Act have no application.

Section 11 of the Declaration of Assets and Liabilities Law reads as follows.

11. Where the provisions of this law are in conflict or inconsistent with the provisions of any other law, the provisions of this law shall prevail.

On the contrary, the relevant provision of the RTI Act which is section 4 of the Act reads as follows.

4. 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 law shall prevail.

It is abundantly clear from the language used in the RTI Act that the intention of the legislature in enacting the section 4 of the RTI Act had been to allow the provisions of the Act to prevail over any other written law in the event of any inconsistency or conflict between the Acts.

As considered by the Commission, in the Indian case of **M.R. Misra Vs. The Supreme Court of India (CIC/SM/A/2011/000237/Secretary General)** dealing specifically with laws that are in conflict with the Right to Information Act of India, it has been stated that,

“Where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a non-obstante clause in section 22 of the RTI Act was a conscious choice of Parliament to safeguard the citizen’s fundamental right to information... If the PIO has received a request for information under RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with section 8 and 9 of the RTI Act only.”

Referring to statutes where there can be two possible interpretations, **N.S. Bindra** in his book **Interpretation of Statutes, 12th Edition at page 346** states that,

“Whenever the language of the legislature admits of two constructions and if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Again, out of the two interpretations, that which ends in the furtherance of the object of the statute should be preferred to the one that would frustrate it. (S.N. Roy Vs. Geetha Mazumdar 1978 BLJ 182) Courts have settled that in the course of interpretation, if the Court is faced alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion which the working of the system.”

It is my considered view that the provisions of the RTI Act shall prevail over the provisions of the Declaration of Assets and Liabilities Law when it comes to providing information as required by the RTI, subjected to the limitation imposed in terms of section 5 of the RTI Act.

I am of the view that it is not open to any Information Officer or a Designated Officer of a public authority to deny information to frustrate the very intention of the legislature when the RTI Act was enacted in order to expand the scope of combatting corruption, promoting accountability and good governance.

I am in no position to agree with the stand taken up by the appellants before the Commission that, if provided, the information requested would violate the rights and privileges of the Members of Parliament.

It appears that the above argument has been advanced on the basis of the section 8 of the Declaration of Assets and Liabilities Law, where preservation of secrecy and the oath of secrecy of the declaration of assets and liabilities has been ensured.

As determined rightly by the Commission, I am of the view that providing the list of names of the Members of Parliament who have tendered their declaration of assets and liabilities as required by law is not disclosing the information they have provided in the declarations. I find that the argument advanced on that basis had also been an attempt to frustrate the purposes of the RTI Act.

Members of Parliament are persons who are elected by the people and maintained by the people. They are expected to abide by the laws of the country at all time and provide examples for others to follow. Under the provisions of the Declaration of Assets and Liabilities Law, any person who comes under the provisions of the Law, fails to provide the relevant declaration of assets and liabilities as required, would be committing an offence punishable with a fine or imprisonment of either description or both such fine and imprisonment.

It is therefore important for the public to know whether the relevant authorities have acted as required by law or not. The only way to obtain that information would be by seeking the list of the name of the Members of Parliament who have provided their declarations under the RTI Act.

I find that under no circumstances, providing such a list would amount to providing the details of the assets and liabilities of each Member of Parliament.

The Commission has well considered the contention that the declaration of assets and liabilities made by the Parliamentarians has to be provided to the Speaker of the Parliament and not to the Secretary General, hence the Secretary General is not in a position to issue directions to the Speaker, and also the position that the Speaker of the Parliament and the Secretary General of the Parliament are two distinct positions.

There cannot be any argument that the Parliament of Sri Lanka as a public authority is an institution that comes under the purview of the RTI Act. That is the very reason why the said public authority has named an Information Officer as well as a Designated Officer. If the Office of the Speaker of the Parliament is a separate public authority, there should have been a separate Information

Officer and a Designated Officer under the provisions of the RTI Act, where no such appointments have been made. For all intended purposes, the Secretary General of the Parliament is its Chief Executive Officer which is a position protected by the Constitution. Although the Speaker of Parliament holds a position above the Secretary General of the Parliament, both are positions created within the Parliament of Sri Lanka and in accordance with the Constitution.

As determined quite correctly by the Commission, the two positions should function in conjunction with each other for the smooth functioning of the Parliament of Sri Lanka, and in achieving the objectives of a Parliament in a country.

Therefore, I am of the view that the Secretary General of the Parliament cannot claim that he is independent and separate from the Office of the Speaker of the Parliament, and hence, there cannot be any fictional arguments in that regard.

Under the circumstances, I find no basis to disagree with the determination of the Commission that as a public authority, it is the Sri Lanka Parliament that is in possession, custody or control of the information requested as envisaged in section 3 (1) of the RTI Act. I am of the view that even if the declaration of assets and liabilities by the Members of Parliament who are required to provide that information should be with the Speaker of Parliament, there cannot be any impediment to the Secretary General of the Parliament as the Chief Executive Officer of the institution to inquire into and provide a list of the names as requested by the respondent in terms of RTI Act, which in any way would not amount to encroaching into the powers of the Speaker of the Parliament in my view.

I find no basis for the submission that the Secretary General is not expected to go on a voyage of discovery to provide the information required either, as the respondent has requested an information available well within the parliament of Sri Lanka.

In accordance with the Regulation No 04 (08) of the regulations formulated under the Right to Information Act No 12 of 2016 and published in Government Gazette No-2004/66 dated 3rd February 2013 any public authority is required to utilize its resources with a reasonable effort to provide the information available with it. The relevant regulation, which is self-explanatory, reads thus;

Regulation No 04-

(8) A public authority shall not be required to collect information to respond to a request on the ground that it does not hold the information where, with a reasonable effort the information may be produced from the records held by the public authority, using the resources which is normally available to the public authority, or again with a reasonable effort, the information may be complied from different records held by the authority.

For the reasons set out above, I find no merit in any of the grounds of appeal urged by the appellant.

The appeal therefore is dismissed. The Order dated 02-02-2021 of the Right to Information Commission of Sri Lanka is affirmed.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal