

H. M. C. A. Jayasiri v Urban Council, Seethawakapura

RTIC Appeal/105/2017 (Order adopted as part of a formal meeting of the Commission on 19.12.2017 subsequent to consideration of the matter at a sub-committee of the Commission held on 08.11.2017)

Chairman: Mr. Mahinda Gammampila

Commission Members: Ms. Kishali Pinto-Jayawardena

Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Notice issued on: Secretary, Seethawakapura Urban Council

Appearance/Present: Mr. H.M.C.A. Jayasiri

B. Dharmasiri Wijerathna, Secretary, Seethwakapura Urban Council
(Designated Officer- DO)

P. A. A. Pushparani, CMA, Seethwakapura Urban Council

N. R. Wickremasinghe Public Health Inspector, Seethwakapura Urban
Council

W. A. Shantha Silva, Public Health Inspector, Seethwakapura Urban
Council

The Appellant was present. Mr. B. Dharmasiri Wijerathna, Ms. P. A. A. Pushparani, CMA, Mr. N. R. Wickremasinghe and Mr. W. A. Shantha Silva were present on behalf of the Public Authority (PA).

The Appellant's appeal dated 05.06.2017 against the PA was considered.

At the time of the present hearing the following were the dates on which the Requests by the Appellant were sent to the PA and the corresponding dates on which the PA answered the Appellant.

1. 07.03.2017 - 22.03.2017
2. 14.03.2017- 01.06.2017
3. 25.04.2017- 01.06.2017
4. 09.05.2017- 29.06.2017
5. 12.05.2017-29.06.2017
6. 10.07.2017- 22.08.2017
7. 24.08.2017- 28.08.2017

The Appellant submitted that he maintained an animal farm since 1960 until around 1998. The Appellant states that there was a conflict between himself and the Mayor which ultimately resulted in the Appellant having to close his farm. The Appellant submitted that Public Health Inspectors were sent to inspect his farm and subsequently a case was filed against him. The Appellant had previously maintained his farm by using the waste material/food that was disposed of from nearby hospitals (namely the Awissawella base hospital) to feed the animals on his farm. However the PA had stopped this as it alleges that the remaining unconsumed/not needed food was disposed of by the Appellant in an unsanitary manner to the detriment of the environment in and around the farm. The PA had thereafter called for tenders to carry out the function of waste disposal in the area.

The Appellant had requested documents/ letters held with the PA in relation to the action taken by it in relation to the Appellant's farm, including the basis/law under which waste that can be used as animal feed was given to another person/ company to manage, and under what law the Public Health Inspectors Division of the PA operates.

The Commission having gone through the extensive submissions by the Appellant decided that the only information that can be expected to be provided by the PA and which had been requested with reasonable clarity was the basis/law under which the PA exercised its authority and implemented the new waste management system (thereby taking away the waste which was freely available for the Appellant to use as animal feed).

The PA responding to this stated that it was under and in terms of Section 119 of the Urban Councils Ordinance No. 61 of 1939 which reads

All street refuse, house refuse, night-soil, or other similar matter collected by any Urban Council under the provisions of this Part shall be the property of the Council, and the Council shall have full power to sell or dispose of all such matter.

The Commission questioned the Appellant whether the PA had provided this response previously and whether or not he was satisfied with the response. The Appellant alleged that although this may be the basic law in relation to the actions of the PA, such action cannot be taken without the permission of the Urban Council, using false documentation.

Although the Appellant's request is somewhat vague and complicated the PA stated that it provided all of the information requested to the best of its ability and that it was willing to allow the Appellant to inspect its files and to provide copies of any documents the Appellant requires. The PA had in fact asked the Appellant to come to the offices of the PA to inspect the files but the Appellant had not obliged.

The Appellant states that some of the responses by the PA were unclear. However the Commission was of the view that the PA had to the best of its ability provided the information requested especially in view of the fact that the Appellant's request to the PA was more of a grievance rather than an information request.

Order

The PA has provided the information to the best of its ability and has in fact directed the Appellant to come to its offices for an inspection of the documents subsequent to which it is amenable to providing any further information pertaining to the Appellant's request.

The PA has stated of record that the legal basis under which the PA regularized the disposal of waste by deciding to externally contract the task after calling for tenders is under and in terms of Section 119 of the Urban Council Ordinance No 61 of 1939.

The appeal is concluded.
