

R.D.S.A. Wickramasuriya v Lanka Mineral Sands Limited

RTIC Appeal (In-Person Hearing) 1394/19- Order adopted as part of the formal meeting of the Commission on 29.10.2019

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: R.D.S.A. Wickramasuriya

Notice issued to: Designated Officer, Lanka Mineral Sands Limited

Appearance/ Represented by:

Appellant - R.D.S.A. Wickramasuriya
PA - Dilini De Silva (Legal Assistant)
M.D. Cooray (Legal Officer)
Chithra Jayamaha (Acting Admin Officer)

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

Brief Factual Background:

The Appellant had by request dated 22.07.2018 requested for the following information.

- 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/ Competent 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 informed 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 14th 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 Industry & 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 being 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 02nd 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 02nd 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-instate 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"*

The IO on 22.08.2018 responded stating that,

"1. හිටපු සාමාන්‍යාධිකාරී එම්.එම්.එස්.කේ බණ්ඩාර මාපා මහතාගේ වැටුපෙන් කපා ඇති මුදල නිත්‍යානුකූල ආකාරයෙන් සිදු කර නොමැති බැවින් එම තත්වය විධිමත් කිරීමට කටයුතු කර ඇත. [Steps has been taken to regularize the situation in relation to deduction of the salary of former General Manager M.M.S.K .Bandara Mapa]

2. ප්රධාන අභ්යන්තර විගණක එම්.ඒ.අයි ජයතිලක මහතා සම්බන්ධයෙන් මූලික විමර්ශනයක් සිදු කිරීමට කර්මාන්ත හා වාණිජ කටයුතු අමාත්‍යාංශයේ අතිරේක ලේකම් විතරපාල මහතා පත් කර ඇති අතර ඊට අදාල ඉදිරි කටයුතු සිදු කරමින් පවතී. [Additional Secretary to the Ministry of Industry and , Mr. Chthrapala has been appointed to carry out a preliminary inquiry regarding the Chief Internal Auditor M.A.I. Jayatilleke.]

3. සැපයුම් කළමනාකාර වසන්ත දිසානායක මහතා විසින් කරනු ලබා ඇති බව වාර්තා වූ අක්රමිකතා සම්බන්ධයෙන් මූලික විමර්ශනය සිදු කර අවසන් වී ඇත.[The preliminary investigation into the alleged irregularities has been completed by the Supply Manager Wasantha Dissanayake.]

4. නියෝජ්ය මූල්‍ය කළමනාකාර (ආදායම් හා පොත් තැබීම) මහත්මිය මේ වන විට නියමිත රාජකාරියේ ඵලදායී ලෙස සේවයේ යොදවා ඇත. [The Deputy

Finance Manager (Revenue and Bookkeeping) has been effectively employed in her present duties.]

5. සේවක අර්ථසාධක අරමුදල් සහ සේවක භාරකාර අරමුදල් ලබාගැනීම සම්බන්ධයෙන් කරනු ලැබූ ඉල්ලීම සම්බන්ධයෙන් නීතිපති උපදෙස් ලබාගෙන ඇති අතර ඒ බව දැනටමත් ඔබ වෙත ලියාපදිංචි තැපෑලෙන් දැනුවත් කර ඇත.
[We have consulted the advice of the Attorney General Department on the request for EPF and ETF and the same has been already informed you by registered post.]

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 Course of the Hearing:

The Public Authority (PA) submitted written submissions dated 28.10.2019 before the Commission and a copy of the same was given to the Appellant upon his submission that he had not received a copy of the same.

The Appellant submitted that he made the initial information request on 22.07.2018 even though the request was acknowledged on 31.07.2018 by Ashoka Weerasinghe, the Information Officer and did not receive any information. He further added that subsequent to his next letter dated 08.08.2018, he received a response informing that information will be given within the next 21 days. Nevertheless, the Appellant alleged that the information which was provided on 22.08.2018 is completely irrelevant and was not what he had requested for.

The Public Authority submitted that the Appellant was also an employee of Lanka Mineral Sands Limited as an adviser to then Chairman and whilst the Chairman was dismissed, the three advisers to the chairman also resigned.

Further, the PA submitted that the Appellant requested for his Employees' Provident Fund ["EPF"] and Employees' Trust Fund ["ETF"] entitlements but as there was no response from the PA the Appellant sought redress from the Commissioner of Labour.

The Appellant submitted that the PA sought legal advice from the Attorney General's Department in relation to his request to release his statutory entitlements, namely, the EPF and ETF. In response the Attorney General's Department advised the PA not to release the same and emphasized that if the Labour Commissioner makes a decision to the contrary, such decision will override the advice of the Attorney General's Department. However, the Appellant submitted that the Labour Commissioner made his decision in favour of him.

The Appellant further submitted that some employees were re-instated in their respective designations and that he wished to know whether the PA sought the opinion/concurrence of the Attorney General's Department in relation to the same.

In response, the PA made following submissions,

1. The Lanka Mineral Sands Limited is a fully state owned company. In 2005 the President appointed a competent authority however it was later on decided that instead of a competent authority that a Director Board must be implemented;
2. The Appellant was appointed by Maithree Gunapala a member of the Competent Authority as an advisor. However this appointment is contrary to the procedure set forth;
3. When the Competent Authority Mr. Maithree Gunarathna was dismissed he filed a Fundamental Rights case challenging his dismissal in the Supreme Court of Sri Lanka. This case also discussed the appointment of the advisors including the Appellant;
4. Therefore when the Appellant requested for EPF/ETF since his appointment is being disputed in the Supreme Court the management decided to seek the Attorney General's Department advice on the matter. Thereby the Attorney General's Department

advised not to release his EPF/ETF until the Supreme Court makes a decision on the matter and;

5. The newly appointed management made a lot of changes within the company. It acted upon the Corporate Code of Conduct and as the previous administration has acted against the Corporate Code of Conduct the newly appointed management re-instated most of the employees back. As these matters could be decided from an administrative point of view the PA did not seek the Attorney General's Department opinion on such matters. These were matters that arise on day-to-day administrative course.

Order

The attention of the both the parties were drawn to the fact that the function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the Right to Information Act No. 12 of 2016 (RTI Act) and further, and in the event that the information does fall within the purview of an exemption is Section 5 (1), based on whether the public override in Section 5 (4) is found to apply and thus the Commission does not have the power to go into matters such as disciplinary hearings, Fundamental Rights cases but to see whether a Public Authority has possession, custody or control of the information which is requested and whether it could be granted.

The Commission observes that an extensive list of information has been requested and thereby requested the Appellant to specify as to which information items he had received responses for and for which he is yet to receive a response from the PA.

The Appellant to inform the Commission within four weeks of the receipt of this Order as to which items yet remain re which he seeks information.

Based on this clarification by the Appellant, this Appeal to be listed on the Agenda of the Commission on 10.03.2020 for further steps to be taken.

Order is conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

The Appeal is adjourned.
