

**K.U Dhammika v Ocean View Development Company (PVT) Ltd**

RTIC Appeal (**In-Person Hearing**)/ [862]/ [2019] - **Order** adopted as part of the formal meeting of the Commission on [26.03.2019]

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:** K.U. Dhammika

**Notice issued to:** General Manager, Designated Officer (DO), Ocean View Development Company (PVT) Ltd

**Appearance/ Represented by:**  
Appellant - K.U. Dhammika  
PA - Absent

<b>RTI Request filed on</b>	28.09.2018
<b>IO responded on</b>	05.10.2018(Acknowledgement) 15.10.2018 (Response)
<b>First Appeal to DO filed on</b>	31.10.2018
<b>DO responded on</b>	06.11.2018
<b>Appeal to RTIC filed on</b>	16.11.2018

**Brief Factual Background:**

The Appellant had by request dated 28.09.2018 requested following information,

1. Do you admit that the regulatory mechanisms for implementing development programs under 6.5 is mentioned in the Financial Management and Financial Control Regulations of Ocean View Development?
  - (i) If the answer is yes, do you admit that it is necessary to follow the regulatory methods from 1-5 in 6.5?

2. Do you agree that the manner Tender Boards are to be held is clearly stated in the Financial Management and Financial Control Regulations?
  - (i) Do you agree that the manner the Tender Boards are to be established clearly in those regulations under 7.1.1.?
  - (ii) Do you agree that the Board of Directors act as Tender Boards in a project that exceeds 12 million and that Tender Boards should maintain Reports of all meetings?
  - (iii) If the answer is Yes, as the transaction in question is of 100 million value did the Board of Directors act as a Tender Board?
  - (iv) If the answer is yes, has the Board of Directors maintained the reports of all the meetings according to the Financial Management and Financial Control Regulations?
  - (v) If the answer is No, do you agree that the Financial Management and Financial Control Regulations are being violated by the Board of Directors?
3. Do you agree that the financial year is stated as commencing from 1<sup>st</sup> of January and ends in 31<sup>st</sup> of December in Number 2 of Financial Management and Financial Control Regulations?
  - (i) Do you agree that an estimation of capital and recurrent expenditure is to be made 4 months before the financial year?
  - (ii) Do you agree that such estimation should be presented to the Board of Directors before 31<sup>st</sup> of October?
  - (iii) Has the permission being obtained for the estimation of the land transaction which is of 100 million value for the year 2017?
  - (iv) If the answer is No, was the permission from the Board of Directors obtained as per 2.2 of the Financial Management and Financial Control Regulations
  - (v) Will the reasons for such an urgent transaction of land or the reasons for determining that the company would receive a huge profit from purchasing the paddy lands?
  - (vi) Does the company have assets to invest 100 million?
1. Has a feasibility study done computing the percentage of profits being received for this investment?
4. Has the permission from National Housing Development Authority which is the parent authority of ocean View Development Pvt Ltd being obtained?
  - (i) If the answer is No, what is the reason?
  - (ii) Has the secretary or Sajith Premadasa, Minister of housing and construction being notified that the company is investing the money?
5. Do you agree that the Financial Management and Financial Control Regulations are being approved by the Board of Directors?
6. If the answer is yes, do you agree that the written prices should be called from suppliers when purchasing items which is between Rs. 100,000 and 300,000?
  - (i) Do you agree that items and services exceeding Rs. 12,000,000 should be purchased after calling Tenders?
  - (ii) Do you agree that purchasing of lands and houses is subject to the approval of Board of Directors and that purchasing could be made by obtaining approval

from a committee appointed by a chairman/Managing Director in which accountant/ deputy general manager is a member?

7. Paragraph 22 of Financial Management and Financial Control Regulations states “when the government issues orders through a gazette paper relating to the Financial Management and Financial Control Regulations, such orders surpass Financial Management and Financial Control Regulations”. Do you agree with that?
  - (i) If the answer is yes, do you agree that it is not possible to work contrary to the establishment code, Monetary Law Act, Procurement Law and the 19<sup>th</sup> amendment to the constitution?
  - (ii) If the answer is No, do you agree that all the above laws and Financial Management and Financial Control Regulations violate the constitution?
8. Is there an agreement to purchase lot 4 and 5 of Ambagahawaththa, Ambagahakumbura land for 100 million?
  - (i) If the answer is yes, provide a copy of the agreement that was registered?
  - (ii) Can you Provide a copy of the plan No. 13407 belong to Mr. Gamini B. Dodanwala
  - (iii) How much was paid as an advance by the company to the owner?
  - (iv) Can you Provide copies of the papers and decisions of the board of directors relating to the obtaining of approval for that?
9. Can you provide copies of the recommendation of the committee when purchasing the land under Financial Management and Financial Control Regulations 6:2:7?
  - (i) Have tenders being called for the purchase of the land under 6:3:4 Financial Management and Financial Control Regulations?
  - (ii) Copies of the newspaper and internet advertisements of calling tenders
10. Has a report being called from government chief valuer regarding this land transaction which is of 10 corers?
11. If the answer is yes can you provide a copy of the report
12. Has a report from a private valuation author being obtained for the value of the land?
13. If the answer is Yes, can you provide a copy of the report
14. Has a pedigree for 30 years being obtained under the regular procedure for the purchase of the land?
15. If the answer is Yes, can you provide a copy of the report
16. Can you provide a certificate from a lawyer that the land is suitable for purchase?
17. Has a compliance certificate being obtained as the land is subdivided by a 2<sup>nd</sup> survey?
  - (i) If the answer is yes, can you provide a copy of the compliance certificate?
18. Do you agree that the land is stated as a paddy land in legal document up to 2016?
  - (i) Has permission being obtained from relevant authorities to fill the paddy land?
  - (ii) Has permission to fill the paddy land being obtained from Land Reclamation and Development Corporation?
  - (iii) Do you agree that Technical Officer, Mr.Guththila has presented a letter of the company to Land Reclamation and Development Corporation?
  - (iv) As the urban development authority is having the power to approve development projects and to subdivide a land that exceeds 40 perches, has an application for a License being presented to the urban development authority?

The Information Officer (IO) on 05.10.2018 responded stating that the information request was not clear and to requested the Appellant to send a precise and clear request. Dissatisfied with the response of the IO the Appellant lodged an appeal with the DO on 31.10.2018. The DO responded on 06.11.2018 reiterating the response of the IO. Dissatisfied with the response of the DO the Appellant preferred an appeal to the Commission on 16.11.2018.

**Matters Arising During the Course of the Hearing:**

The Public Authority was not present.

Upon being queried, the Appellant explained the background on which the information request is based on.

**Order:**

Notices directed to be sent to the Information Officer (IO)/ Designated Officer (DO) required to be present under and in terms of Section 15 (a) of the RTI Act.

The attention of both parties is drawn to the fact that in conformity with the Commission's practices, if either party/both parties to an Appeal does not appear or file written representations on the dates of hearing despite being noticed, either/both party/parties will be reminded that it is an offence to fail to appear in terms of Section 39 (1) (c) of the Act. If such failure is manifested on three consecutive dates, the Commission will proceed to take steps under the Act, including delivering its decision notwithstanding the absence of either/both parties and will inform the parties thereof.

The matter is re-fixed for hearing on 23.04.2019

The Appeal is adjourned.

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