

The Right to Information Commission

W.K.S Karunaratne
153/9, ThilakMawatha,
Thanthirimulla,
Panadura

-Appellant-

RTIC App/No :-704/2021

Vs.

Litro Gas Lanka Limited
267, Union Place
Colombo 02

-Public Authority-

Before : 1. Justice UpalyAbeyrathne(Rtd.) - Chairman
2. Ms.Kishali Pinto-Jayawardena (Attorney-at-Law) - Commissioner
3. Mr Jagath LiyanaArachchi(Attorney-at-Law) - Commissioner

Appearance : The Appellant participated via Zoom Technology.
The Public Authority is represented by Ms. Mignone Wijesuriya,
Director (HR), Ms. M. Rajanayagam, Head of Legal, Mr. Ruwantha
Cooray, AAL and Mr. Rodney Vaz, AAL

Written Submission : Appellant - 18.01.2022, 15.02.2022
Public Authority - 04.01.2022, 11.01.2022, 08.02.2022

Date of Hearing : 04.01.2022, 18.01.2022, 23.02.2022, 31.05.2022, 27.07.2022

Decided on : 27.07.2022

Decision of the Commission

Factual Background

By information request dated 24.02.2021, the Appellant requested the below information from Litro Gas Lanka Limited ((LGLL);

(A) Monthly Salary and monthly allowances of top Management including;

- (1) Chairman*
- (2) Managing Director*
- (3) Finance Director*
- (4) Sales and Marketing Director*
- (5) Operations Director – Litro Gas Terminal*
- (6) Human Resources Director*
- (7) Procurement Director*
- (8) Health Safety and Environment Director*
- (9) Head of Special Projects*

(B) Amount of loans to each, amount of loan to be paid back, and the interest rate for the amount to be paid back.

The period in relation to which the information had been requested related to; ‘(A) Salary and allowances before and after increments based on performance evaluations for 2017, 2018, 2019 and 2020.’

On 04.03.2022, the Head of Legal, LGLL responded as follows;

Litro Gas Lanka Limited and Litro Gas Terminal Lanka (Private) Limited are Companies incorporated under the Companies Act No 7 of 2007. In terms of Section 3(1) of the Right to Information Act No 12 of 2016, the citizens will get the right to access information which is in the possession, custody, or control of a “Public Authority”.

The term “Public Authority” has been interpreted in Section 43 of the said Act and accordingly (sic) anybody or office created or established under the Companies Act No 7 of 2007 except to the extent specified in paragraph (e) is exempted from such definition of a Public Authority.

Please note that the said Act does not cover companies other than the public authorities expressly defined in terms of the Law referred to above.

Dissatisfied with the above response, the Appellant lodged an appeal with LGLL on 29.03.2021. LGLL responded, by letter of the Chairman of LGLL, on 31.03.2021 stating as follows;

Legal position of the said two Companies have been already informed to you by our Head of Legal-letter dated 04th March 2021.

The Appellant preferred an appeal to the Commission on 09.04.2021.

In Written Submissions dated 04.01.2022 and 11.01.2022, a preliminary objection was taken up that the LGLL does not meet the definition of a 'Public Authority' in terms of Section 43 of the Right to Information Act. While admitting that the LGLL is a 99.4% owned subsidiary company of the state-owned Sri Lanka Insurance Corporation Limited (SLIC), it was contended by the LGLL that the SLIC does not come within the meaning of 'State' or a 'Public Corporation' in terms of Section 43 (e) of the Right to Information Act.

That position was countered by the Appellant who maintained that the LGLL falls within the meaning of 'state owned' as contemplated by Section 43 (e).

By decision dated 18.01.2022, the Commission dismissed the said preliminary objection and decided that LGLL is a 'Public Authority' under Section 43 (e) of the RTI Act based on, *inter alia*, the State having a 'controlling interest' by virtue of a) the Secretary to the Treasury holding 99.97% shares of the SLIC and, in turn, the SLIC holding 99.94% shares of LGLL b) LGLL is a subsidiary of the state owned SLIC with its financial statements being consolidated in the Group financial statements of the SLIC and c) in any event, as indicated by the SLIC Annual Report for the year 2020, the LGLL has been audited by the Auditor General (<https://www.srilankainsurance.com/en/about-us/annual-reports>)

Consideration

We have carefully perused the several Written Submissions and taken into account, the submissions made by both parties at oral hearings of this appeal.

Section 32 (4) of the Right to Information Act, No 12 of 2016 stipulates that the Public Authority must discharge the burden of proof to establish that it has acted in compliance with the Act in 'processing a request.' Section 5(1) outlines the grounds under which information may be refused.

The responses of the Public Authority, respectively by the Head of Legal and by the Chairman, dated 04.03.2022 and 31.03.2021, were limited to the raising of a preliminary objection that the LGLL does not come within the definition of a 'Public Authority' in terms of Section 43 of the Right to Information Act, No 12 of 2016. That objection was dismissed by Order of the Commission dated 18.01.2022.

Consequently, the substantive question for determination before us pertains to the information asked for by the Appellant, viz: A) monthly salary and monthly allowances of top management of LGLL and B) amount of loans to each, amount of loan to be paid back, and the interest rate for the amount to be paid back, as described aforesaid in his information request dated 24.02.2021.

The Public Authority is a leading provider of domestic cooking gas to the public in Sri Lanka, functions on public funds and utilises the same for payment of salaries and emoluments of the senior management of the PA, which comprises the information requested by item A). In oral submissions made before us, Section 5 (1) (a) of the Right to Information Act, No 12 of 2016 was raised as a ground by counsel appearing for the Public Authority, to deny the release of the information.

Section 5 (1) (a) of the Act states that;

Subject to the provisions of subsection (2) a request under this Act for access to information shall be refused, where... (a) the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure;

In *Airline Pilots Guild of Sri Lanka v. Sri Lankan Airlines Ltd* (RTIC Appeal (In-Person) /99/2017, decision dated 12th June, 2018), this Commission ruled that information pertaining to salaries and other allowances and/or benefits of the senior executive management of the PA is not ‘personal information and that the details thereof must be disclosed -

‘...for the reason that this is, by its very definition, information that directly relates to the financial accountability and transparency of the Public Authority in the expenditure of public funds. This is all the more so by virtue of the pre-eminent position that it holds as the country’s national air carrier and in the context of widespread public concerns in regard to financial management of the Public Authority, which this Commission is duty bound to take cognizance of. This is quite apart from the fact that, the information in Request No 1 is anyway encompassed within the ambit of Regulation 20 (1) (ii) on proactive disclosure (Gazette No. 2004/66, 03.02.2017).’

In India, the Central Information Commission (CIC) has held that,

‘The salary paid to the public servant by the public authority is sourced from the tax paid by the people in general. The scale of salary is also fixed by the Public Authority based on certain reasonable fixation in an open exercise by Pay Revision Commissions which later would be generally approved by the Government, which is the representative of the people. Thus, the information belongs to (the) public and they have a right to access it as per (the) RTI Act. It has to be disclosed under Section 4 voluntarily by the Public Authority and if a member of public seeks it, it cannot be denied.’

Jyoti Seherawat vs Home (General) Dept., GNCTD(7 January, 2014)

The line of authorities supporting this view is *contra* the Public Authority’s citation of *Girish Ramchandra Deshpande v Central Information Commission* (Order dated 03.10.2012) during oral arguments at the hearing of this appeal.

In respect of the information asked for in item B), that too pertains to the Public Authority’s utilisation of public money in that, the Appellant has asked for the ‘amount of loans to each, amount of loan to be paid back, and the interest rate for the amount to be paid back.’ The

loans so given by the Public Authority are not through personal funds of individuals but through public funds; the public interest is attracted thereto.

The application of the public interest as a factor to determine the matter before us in respect of both items A) and B) of the information request, arises at two levels in terms of the Act. First, Section 5 (1) (a) subjects the Public Authority to a strict duty in justifying the denial of information to be limited to instances where there is an ‘unwarranted’ invasion of the privacy of the individual and that too, in the absence of a ‘larger public interest.’ These conditions are inherent in the very exemption itself.

Secondly, Section 5(4) requires that, ‘notwithstanding the provisions of Section 5 (1), a request for information shall not be refused where the public interest in disclosing the information outweighs whatever harm that may result from the disclosure thereof. We note that use of the term ‘shall’ in the legislative language signifies a mandatory duty thereof.

We are cognisant of the fact that the preamble to the Right to Information Act, No 12 of 2016 adverts to the ‘need to foster a culture of transparency and accountability in Public Authorities...’ with the objective of ‘combating corruption and promoting...good governance.’ In his appeal to this Commission dated 9th April 2021, the Appellant has referred to reports to the effect that the salaries and allowances of employees of the Public Authority have been ‘immensely increased’, violating government policies that have been imposed to protect the public money which attracts the public interest. The Appellant has specifically referred to the fact that, both the salaries and the amounts of loans taken by the employees of the Public Authority, ‘finally should be paid by the general public who consumes LP Gas...’ which is linked thereto, to the increase of the selling price of LP Gas in the market.

Accordingly in terms of Section 5(1)(a) read with Section 5(4) and given the overriding public interest that arises in regard to the manner in which public funds are utilised as aforesaid, we are of the view that disclosure of the information asked for in items A) and B) of the information request is warranted.

The Public Authority has further pleaded Section 5(1)(d) as a ground to prohibit the said release. This Section is limited in its application to information including ‘commercial confidence, trade secrets or intellectual property, protected by the Intellectual Property Act, No 36 of 2003’ the disclosure of which will harm the competitive position of a third party. The nature of the information in issue in the present appeal cannot even remotely be construed as coming within the ambit of such a restriction. As such, this Section cannot apply as a bar to restrict the grant of the information asked for by the Appellant.

We determine that the information requested by the Appellant in items A) and B) as aforesaid do not fall within the exempted information in any of the sub-sections of Section 5(1). In the foregoing, we decide that the Public Authority should release the said information requested by the Appellant before 28.09.2022.

The Commission further decides that, if the Public Authority fails to comply with the said decision of the Commission before the said date, the Information Officer and the Public Authority shall be prosecuted before the relevant Magistrate's Court under Section 39 of the Right to Information Act No. 12 of 2016.

The Director-General is directed to convey the Order to the Appellant, the Information Officer and the Public Authority.

Appeal Concluded.