

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

*In the matter of an appeal and/or revision,  
under and in terms of Section 34(1) of the  
Right to Information Act no.12 of 2016 read  
with inter-alia the Court of Appeal Appellate  
Procedure Rules 1990.*

Sri Lanka Telecom PLC,  
Lotus Road,  
Colombo 01.

**Public Authority-Petitioner**

**Vs.**

**CA Appeal/Application  
No. CA/RTI/05/2022**

1. I.P.Ediribandu,  
No.66, Kapruk Sewana,  
Delduwa, Wadduwa.

**Appellant-Respondent**

**And Now Between**

1. Right to Information Commission  
Room no.203-204, Block 2,  
BMICH,  
Buddhaloka Mawatha,  
Colombo 07.
2. Director General  
Room No/203-204, Block 2,  
BMICH,  
Buddhaloka Mawatha,  
Colombo 07.

**Intervenient Petitioners**

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**Vs**

Sri Lanka Telecom PLC,  
Lotus Road,  
Colombo 01.

**Public Authority-Petitioner-Respondent**

I.P. Ediribandu,  
No.66, Kapruk Sewana,  
Delduwa, Wadduwa

**BEFORE**

: D.N.Samarakoon J  
Neil Iddawala J

**COUNSEL**

: Himali Kularathne for the intervenient  
petitioners.  
Rajeev Amarasuriya with Dulanga  
Nanayakkara and Yohani Yoharajah for the  
Public Authority Petitioner-Respondents.

**Argued on**

: 11.10.2023

**Decided on**

: 02.11.2023

**Iddawala – J**

**Background**

The instant order pertains to an application for intervention filed by the RTI Commission (hereinafter the Commission) in CA Appeal Application No. CA/RTI/5/2022. It was filed by the Public Authority-Petitioner (hereinafter referred to as the petitioner) against an

order of the Commission dated 08.04.22 which ordered the petitioner to disclose information requested by the Appellant-Respondent (hereinafter referred to as the respondent) in respect of the RTIC Appeal Application bearing no.72/2021.

After the issuance of notices, the appeal was fixed for argument on 02.08.2023. On the said date, Counsel appearing on behalf of the Commission expressed the Commission's intentions to intervene in the appeal. It is noteworthy that until this instant, the Commission was not named a party to CA Appeal Application No. CA/RTI/5/2022.

Consequently, the Court allowed the submission of the application to intervene and gave one week to file the intervention application and similarly allowed the petitioner to file objections to such action. Thereafter, the petitioner filed objections and the matter was fixed for an inquiry on 11.10.2023.

The learned counsel for the Commission (hereinafter referred to as the intervenient petitioners) has sought, inter alia, the following reliefs in terms of the application to intervene:

1. The intervenient petitioner has prayed to add the intervenient petitioners as respondents to the present application.
2. The intervenient petitioner has prayed to tender a Statement of Objection as a reply to the application of the petitioner.

The intervenient petitioners averred many reasons why their intervention is seminal to this present application. As such, one of the main averments was that the Commission must safeguard the intended objectives of the Right to Information Act No. 12 of 2016 (hereinafter referred to as the Act), in the interest of the public. Furthermore, it was averred that it is the intervenient petitioners' undertaking to ensure just implementation of the law by safeguarding its primary objectives. In furtherance of such purpose, the intervenient petitioners argue that there lies an incumbent duty upon the Commission to assist this Court in the appeal process to ensure the due administration of justice. The intervenient petitioners claim that in the absence of either party during proceedings, a proper narrative of the transpired legal proceedings could be provided by the Commission and such assistance is imperative to this present application to ensure the sustenance of the spirit of the law and thereby, good governance and inclusive

development in the country. The Counsel for the intervenient petitioners has drawn attention to the Preamble of the Act to stress the role of the Commission and has further elaborated upon, as reiterated above, the need to intervene in instances where either party is not represented or absent to disclose the material facts of the case before the court.

However, the petitioner has vehemently objected to this application of intervention on the basis that once the Commission delivers its decision (which in this case was the delivery of the decision of RTIC Appeal Application bearing no.72/2021 on 22.06.2023), it is considered *functus officio*. This means that the jurisdiction of the Commission over the matter is exhausted. This Court relies on a recent judgment issued by this Court which addressed a similar issue to further buttress petitioner's argument. As such, reference was made to **Hewa Baddage Gunaratne Vs. The RTI Commission** CA/RTI/01/2020, CA minute 28.06.2023 where the following was held:

*“Another justification for this view of the Court is that, in general, a tribunal or commission that decides disputes between two parties would not be made a party in a higher appeal forum or court. The purpose of an appeal is to review the decisions made by the lower tribunal or commission, and the parties involved in the original dispute are typically the ones who bring the appeal and are considered the parties in the higher appeal forum or court. The commission itself would not typically be directly involved as a party in the appeal process. When a commission or tribunal delivers its order, it is considered functus officio, meaning its jurisdiction over the matter is exhausted. If an appeal is available against the commission's order, the aggrieved party may initiate the appeal process in the higher court or forum according to the proper procedure. In this scenario, the RTI Commission is not typically required to defend its own determination before the Court of Appeal or it is not so required by the RTI Act. The appeal process focuses on reviewing the decision made by the RTI Commission based on the evidence and material that was presented to them during the proceedings before the commission. This examination involves the scrutiny of the acts of the Public Authority, or the lack thereof, in determining whether the rights provided under the applicable law have been protected by the Public Authority and to make a direction accordingly.”*

**Analysis: Principle of Functus Officio**

In line with the reasoning of **Hewa Baddage Gunaratne Vs. The RTI Commission** (Supra), this Court is of the view that the Commission, after declaring its decision, is not required to defend its decision as the role of the Commission terminates or is otherwise exhausted upon the communication of its decision to the parties. Therefore, it is not required by the Commission to intervene and be made a party to a dispute that is clearly between two other parties. Hence, this application does not, as highlighted by the Counsel for the petitioner, constitute a performance of any functions or duties of the Commission as it is not required by the Commission to operate in such capacity.

However, even though the role of the Commission is terminated upon the communication of its decision to the parties, the Commission may still exercise its jurisdiction to ensure that the parties adhere to the decision made by the Commission under Section 39 of the Act. Therefore, concerning effectuating the decisions made by the Commission, the Commission may operate in its legal personality to prosecute a party who disobeys the Commission's decisions. Nevertheless, this power and authority, cannot be to defend or justify a decision delivered by the Commission while it is being reviewed by a higher court as in the instant case.

At this juncture, it is noteworthy that the Commission has, on a previous occasion, contradicted its position on this very issue before this Court. For example, in the case of **People's Bank vs. Ceylon Bank Employees Union** RTI 01/2018, CA- journal minute dated 21.11.2019 the Commission was made as a party (2<sup>nd</sup> Respondent) by the petitioners. However, the Commission applied to the Court, asserting that it should not be made a party to such an appeal, stating that the dispute is only between the appellants and the 1<sup>st</sup> respondent. This application was allowed by his Lordship Justice Arjuna Obeysekera, and the Commission was discharged. The similar objection was made by the Commission in subsequent appeals (e.g. RTI-05-2021). Contrastingly, in the instant application, the Commission has applied with an application with an opposing stance, which has left this Court perplexed.

**Analysis: Interpretation of the RTI Act****Overview**

The Right to Information was introduced as a fundamental right of the citizens of Sri Lanka, by the 19<sup>th</sup> Amendment to the Constitution. It is a constitutionally guaranteed right under Article 14A of the Constitution, embedded in the fundamental rights chapter of the Constitution. The right to information is a fundamental right of all citizens of Sri Lanka, as people are entitled to transparency, accountability, and good governance in a country. However, it has to be borne in mind that, although the right to information is recognized as a fundamental right by the Constitution and constitutionally guaranteed, it is not an absolute right. Article 14 (2) of the Constitution stipulates the following:

*“No restrictions shall be placed on the right declared and recognized by this Article, other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court, protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence or for maintaining the authority and impartiality of the judiciary.”*

The Constitution itself has recognized instances of derogation as expounded in Section 5 of the Act:

*“(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 [...]; (b) disclosure of such information– (i) would undermine the defence of the State or its territorial integrity or national security; (ii) would be or is likely to be seriously prejudicial to Sri Lanka’s relations with any State, or in relation to international agreements or obligations under international law, where such information was given by or obtained in confidence; (c) the disclosure of such information would cause serious prejudice to the economy*

*of Sri Lanka by disclosing prematurely decisions to change or continue government economic or financial policies relating to- (i) exchange rates or the control of overseas exchange transactions; (ii) the regulation of banking or credit; (iii) taxation; (iv) the stability, control and adjustment of prices of goods and services, rents and other costs and rates of wages, salaries and other income; or (v) the entering into of overseas trade agreements; (d) information, including commercial confidence, trade secrets or intellectual property, protected under the Intellectual Property Act, No. 36 of 2003, the disclosure of which would harm the competitive position of a third party,...; (e) the information could lead to the disclosure of any medical records relating to any person, unless such person has consented in writing to such disclosure; (f) the information consist of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority; (g) the information is required to be kept confidential by reason of the existence of a fiduciary relationship; (h) the disclosure of such information would- (i) cause grave prejudice to the prevention or detection of any crime or the apprehension or prosecution of offenders; or (ii) expose the identity of a confidential source of information in relation to law enforcement or national security, to be ascertained; (i) subject to the provisions of section 29(2)(c), the information has been supplied in confidence to the public authority...; (j) the disclosure of such information would be in contempt of court...; (k) the disclosure of such information would infringe the privileges of Parliament or of a Provincial Council as provided by Law; (l) disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution; (m) the information is of a cabinet memorandum in relation to which a decision has not been taken; or (n) the information relates to an election conducted by the Commissioner of Elections which is required by the relevant election laws to be kept confidential.”*

The Act has provided an exhaustive list of instances where the right to information can be forgone. It further affirms the fact that the right to information is not absolute. It is

pertinent to highlight that the RTI law expects independent, transparent, impartial, and unbiased decisions from all the officers who hold custody of information. This, however, does not mean that access to information can be granted without imposing any limitations. Hence, there has to be an equilibrium between the two possible courses of action.

Accordingly, the equilibrium between granting access to information and denying access to information has to be maintained to safeguard the constitutionally guaranteed rights of the citizens while upholding the spirit of the RTI Act. Therefore, the Information Officer at the primary stage, the Designated Officer at the secondary stage, and the RTI Commission at the tertiary stage are required to maintain a balance between the rights of the public as well as the incentives of the Act. To strike such a balance, if at any stage, access to information is denied, it is the duty of the Commission, the Information Officer, and the Designated Officer to state the reasons why access to information has been denied during the respective stage. A decision, at any of the stages, cannot be biased towards any of the parties involved in the dispute, as the bedrock of the RTI law is impartiality and transparency.

Having thus laid out the framework within which the Act was construed, this Court will now consider the various submissions made by the parties.

### **Submissions by the parties**

In analyzing the submissions made by the two parties, it is observed that the Counsel for the intervenient petitioners have averred several reasons for their application to intervene. One of the major reasons for intervention was to assist this Court in the appeal process. However, it is the opinion of this Court that as the Commission is required to state reasons for its decisions (as per Section 32 of the Act) the Commission is not called upon a second time to defend its reasoning. Hence, the Commission is not required to justify its reasoning a second time during the appeal process (they may be called upon to do so during a Writ application, a point which will be discussed later in this Order). In any event, this Court is empowered to call any records or documents from the Commission, if necessary, as per Article 145 of the Constitution, hence the



Commission is not required to be made a party to the dispute in order to assist the Court by providing necessary records or documents as averred by the Commission.

Moreover, the counsel for the intervenient petitioners has stated, that the Commission seeks to intervene in the appeal process to ensure that, in the event of either party being absent or unrepresented, the material facts of the case will be duly disclosed to the court. In this regard, this Court is of the view that even if a party is absent or unrepresented in the appeal process, the Commission is not expected to safeguard the rights of such party, nor does this Court expect the Commission to defend the rights of one party. This is in consideration of the fact that the Act expects the Commission to maintain impartiality when the dispute is concerned. Further to this point, it would be pertinent to add that the purpose of an appeal is to have an impartial and objective review of the Commission's decision. Allowing the Commission to be a party could introduce bias or a conflict of interest, making it challenging to ensure a fair and independent review. Therefore, to ensure a seamless and unbiased review of the Commission's decision by this Court as a higher forum tasked with providing an objective review, the Commission is not required to be made a party to the appeal.

Moreover, the interpretation of the applicable provisions of the Act does not envision the involvement of the Commission during the appeal process before this Court. According to Section 34(1) of the Act, any party aggrieved by the decision of the Commission may appeal to the Court of Appeal. Section 34 (1) stipulates that: *“(1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority.”*

Thus, according to the procedure laid down in the Act, any party aggrieved by the Commission's decision may make an appeal application to this Court. That is to say, either the aggrieved Public Authority or the Appellant who requested the information may appeal to the Court of Appeal. However, this process as envisioned under Section 34 of the Act does not require the Commission to be made a party to the dispute.

It is further noted by this Court that Section 11 of the Act has awarded the Commission a legal personality *“that can sue and be sued in its corporate name”*. However, this does

not imply that it is mandatory to make the Commission a party to every appeal filed against its order. Therefore, since an appeal filed under Section 34(1) of the Act does not require or provide for the active participation of the Commission in an appeal process, the Commission is not required to intervene in an appeal process. Moreover, if such an application is allowed, it will subvert the general practice concerning appeal mechanisms established under other areas of law such as Tax appeals and similar appeals where neither the Tax Appeal Commission nor the such authority is named as a party.

Consequently, this Court opines that, as per the prevailing legal framework, there exists no mandate necessitating the Commission to be added as a party to the appellate proceedings. Instead, the Commission may be added as a party for the sole purpose of receiving notice of said appeal, without entitlement or obligation for active participation in the appellate process, which is not mandatory.

At this juncture, this Court takes note of the nature of the application itself to decide that the intervention of the Commission in this appeal process is unnecessary. In order to elaborate this point, one could refer to the distinction between an appeal process and the process involved in a writ application.

An appeal is a legal process where a higher court reviews a decision made by a lower court or judicial body. This process is governed by statutes or laws that outline the procedures for challenging a decision. In an appeal, the parties involved in the original case (e.g., plaintiff and defendant) are typically the parties in the appeal. The higher court reviews the case based on errors in law, procedure, or application of facts. Writ jurisdiction, on the other hand, involves the ability of a higher court to issue writs, such as mandamus, certiorari, habeas corpus, quo warranto, or prohibition. The purpose of a writ is to ensure that justice is served and that the lower authority acts within the bounds of its jurisdiction and follows the correct legal procedures.

The appeal primarily involves the parties from the original case. However, in writ jurisdiction, the judicial institution becomes a party to the application, as the writ is directly addressed to the institution or the individual exercising authority, seeking to correct any procedural mistake or jurisdictional error. Further, in response to an appeal,

the lower court, as well as the appellant (the party responding to the appeal), can file their respective briefs with the higher court. These briefs allow the lower court to explain and defend their decision, providing additional rationale, legal interpretations, and factual context for the conclusions reached in the original case. The higher court, during the appeal process, considers these briefs, reviews the lower court's decision and assesses the arguments presented by both parties. The purpose of this review is to ensure that the lower court applied the law correctly, followed proper legal procedures, and arrived at a just and sound conclusion based on the evidence and law presented during the original case.

Having thus set out the distinct qualities of an appeal process when compared to a writ application it is the considered view of this Court that in the case of the former, the judicial institution that made the impugned decision may not necessarily be a party to the appeal. Therefore, considering the duty of a judicial institution to remain impartial upon delivering a decision and the duty to allow a higher forum to objectively review such decision, it is further affirmed that the Commission is not required to defend or justify its own decision consequent to such decision being appealed in a higher forum.

It is further observed by this Court that making the Commission a party to this appeal process would lead to lax efficiency and failure to streamline the appeal process. It would lead to inefficiencies, increased legal costs, and delays in the resolution of the case. The focus should remain on the legal issues and arguments presented by the original parties, without involving additional entities. Moreover, this would result in an additional financial burden on the Commission and the parties. The responsibility for defending the Commission's decision rests with the parties involved in the original appeal to the Commission. Allowing the Commission to be a party would shift this burden and responsibility, disrupting the natural allocation of roles in the legal process.

Furthermore, this Court takes note of the adversarial system followed in Sri Lanka. The spirit of such a legal system lies in providing the parties involved in a dispute with a platform to present their respective arguments before an impartial judicial institution. Therefore, making the Commission a party would disrupt this adversarial system as the Commission's role is to render a decision based on the arguments/documents presented

by the actual parties to the case. In summary, maintaining a clear separation between the parties to the original case and the Commission in the appeal process helps uphold the adversarial system, preserves the hierarchical structure of the judiciary, ensures an objective review, promotes efficiency, and allocates responsibilities appropriately.

**Conclusion**

In conclusion, this Court finds that in appeals filed under Section 34(1) of the Act, naming the Commission as a respondent is not mandatory. Even if any party chooses to involve the Commission as a party, it should be limited to providing notice of such an appeal. The law does not mandate or grant the Commission the right to be added as a party to file objections and defend its own decision.

Therefore, in the present application, where the Commission seeks to intervene and be added as a party to file objections, it is the considered view of this Court that such an application cannot be allowed.

Intervention application is dismissed.

**Judge of the Court of Appeal**

**D.N. Samarakoon-J**

I Agree

**Judge of the Court of Appeal**