

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

*In the matter of an Appeal in terms of  
Section 34(1) of the Right to Information  
Act No.12 of 2016 read with the Court of  
Appeal (Appellant Procedure Rules 1990)*

Hewa Baddage Gunaratne,  
“Saman”,  
Udapanguwa,  
Lunugala.

**Appellant-Petitioner**

**Vs.**

Court of Appeal Application  
No: **CA/RTI/01/2020**

RTIC Appeal No: **766/2018**

Right to Information Commission,  
Room No. 203, 204 BMICH,  
Buddhaloka Mawatha,  
Colombo

**Respondent-Respondent**

**BEFORE**

: D.N.Samarakoon J  
Neil Iddawala J

**COUNSEL**

: Mahinda Jayawardena with Champika  
Monarawila for the Petitioner.  
Himali Kularatne with D.R.J. Ellepola for  
the Respondent.

**Argued on** : 04.04.2023

**Written Submissions on** : 14.06.2023

**Decided on** : 28.06.2023

**Iddawala – J**

This is an appeal filed on 03.09.2020 and thereafter the amended petition was filed on 22.03.2021, under Section 34 (1) of the Right to Information Act No. 12 of 2016 (hereinafter referred to as the RTI Act) *inter alia* to set aside the order issued by the Right to Information Commission (hereinafter referred to as the RTI Commission) on 19.08.2019 and to order the issuance of information sought by the appellant-petitioner (hereinafter referred to as the appellant). The instant order by this Court is one of prominence as it deliberates the legality and veracity of solely naming the RTI Commission as a party to an appeal for a request of information under the RTI Act.

The background to this matter is as follows. The Appellant has worked as an assistant teacher of the Ministry of Education at Central College, Lunugala, Badulla and has retired on 24.10.2015.

On 13.01.2018 under S. 3 (1) of the RTI Act the Appellant has requested the Information Officer (IO) of Uva Province Department of Education (hereinafter Public Authority) to provide him information on his retirement and reimbursements of his payments under the Widows and Orphans Fund from 25.10.2015 -12.01.2018. He has requested the following documents;

1. Letters sent by the Appellant to the Uva Department of Education.
2. Letters sent by the Uva Department of Education to the Appellant.
3. Any other letters pertaining to this matter/ written to any other institutions.

Due to the absence of a response from the IO, an appeal has been made by the appellant to the Designated Officer (DO) of the Public Authority dated 07.02.2018 which was not responded.

Thereafter an appeal was made to the RTI Commission on 23.08.2018 under S. 32 of

the RTI Act. The appellant was called for an inquiry on 01.04.2019 but as the Public Authority representative was absent it was not held. The appellant has then received a letter on 22.05.2019 from Deputy Director of Education (Administration) that the appellant can obtain necessary information from Passara Zonal Education. However, the appellant claims that this was a misleading direction as he had already obtained required documents from there on a previous application. After the hearing, the Commission has decided that as Provincial Office only receives letters of retirement, the documents requested by the appellant have to be obtained through Passara Zonal Education. Upon inquiry the Commission states in their order that the letter requested by the appellant has been duly sent on 06.06.2015 to the Zonal Education and the Provincial Office only receives the letter of retirement. Further, that the appellant has received responses for both the information requests, but with a delay and ordered necessary actions against the DO responsible for the delay and to provide the appellant, information on disciplinary inquiry within 2 weeks from the date of the order.

Thereafter, the Director of Public Authority has sent a letter dated 20.08.2019 to the Commission copying the appellant stating he has taken actions regarding the Commission's order and stating that the necessary reports and annexure pertaining to it are attached. The appellant claims he never received such reports or annexure up to date. Upon informing this to the Commission, they have sent a letter dated 17.09.2019 in English to the appellant with the order of the Commission. Upon request of the appellant for a Sinhala translation, the Commission has sent it on 29.07.2020 after a delay of ten months. The appellant further claims that the Commission has ordered to provide him unwanted and unnecessary information which he has not requested throughout and it is illegal, against natural justice and has no bearing on the facts and the law.

The RTI Commission has filed their objections to this application on 05.05.2022. During oral submissions, Counsel appearing for the Commission claimed that there are two petitions filed in this matter and permission to amend the petition has not been obtained by the Courts. However, when perusing the journal entries, it is evident that on 23.10.2020 the Counsel appearing for the appellant has mentioned that she wishes to file the amended petition. The Journal Entry dated 22.03.2021 notes that an amended

petition has been filed. Thus, it is evident that the Court was well aware of the amendment to the petition and the objection based on having two petitions is jettisoned.

The key argument of the respondent is that they, the Commission, is ought to be discharged from the proceedings in an application made under S. 34 (1) of the RTI Act as the dispute is between the Public Authority and the Appellant. Section 34 of the Act is as follows;

*34.(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.*

*(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section.*

As per S. 34 (1), a party aggrieved by the decision of the Commission may appeal to the Court of Appeal within one month of the communication of that decision to the aggrieved entity. S. 34 (2) iterated the procedure of such appeal. It has mandated to follow the rules pertaining to a revisionary application filed in the Court of Appeal when appealing against such decisions of the Commission. Therefore, the Court of Appeal (Appellate Procedure) Rules of 1990 are the applicable legal provisions for this matter. Rule 3 (1) (b) of PART II explains the manner of filing a revisionary application and Rule 3 (4) stipulates the manner of supporting such an application.

It is noted by this Court that at the stage of the inquiry at the RTI Commission, the appellant is the petitioner and the Designated Officer-Uva Education Department is the respondent. However, when it proceeded to the appeal stage at this Court, the RTI Commission has been named the sole respondent. It is the view of this Court that this action cannot proceed without making the original respondent a party to the instant appeal.

Section. 11 (2) of the Act states that,

*11 (2) The Commission shall by the name assigned to it by subsection (1), be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.*

Therefore, the RTI Commission as a legal entity is equipped with *locus standi* by the Act, however one needs to identify at what instance the Commission should be made a party. This is a pertinent consideration as the consequences of being named as a party involves the allocation and use of resources and time that would otherwise be spent on furthering the democratic goals of the Commission. The *legal personality* does not infer that the Commission has to be made respondent in every appeal. In deciding whether the Commission is required to be made a party, the ‘purpose’ of the action is inherent. At this appeal the purpose of the action is to set aside the Commission’s order and ultimately to obtain information the appellant has been yearning for years. Therefore, the Public Authority, in this case the Uva Department of Education, should be the respondent of the case in addition to the Commission. The action cannot proceed without such alteration as it is a major flaw in the application.

This Court finds that making the Commission a respondent in appeals which are to obtain information from public authorities do not serve any purpose and it rather impedes the functioning of the Commission established to serve a vital democratic role by entangling it with a plethora of cases unnecessarily. Making the relevant authority a respondent will suffice at the appeal stage to satisfy the purpose of obtaining information. This does not by any means infer that the Commission is shielded from judicial accountability. The Court of Appeal is constitutionally equipped with the writ jurisdiction under Article 140 to question the functioning of the Commission. And on the other hand, the Commission is legally mandated to utilise its legal personality for purposes such as prosecutions for offences under S. 39 of the RTI Act where such power is granted under S. 39 (4). This Court further finds that the Commission can be named as a party for limited purposes such as giving notice on an application.

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 tribunal or 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 even 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.

In order to uphold the spirit of the RTI Act and to ensure fairness in the appeal process, this Court hereby directs the appellant to add the Designated Officer of the Department of Education, Uva Province (Public Authority), the sole respondent in the appeal to the RTI Commission, as a respondent of this instant appeal. Furthermore, formal notice should be issued to the added respondent- Public Authority. It is further clarified that the RTI Commission shall be named as a respondent before this Court, solely for the purpose of receiving notice pertaining to this instant appeal.

**JUDGE OF THE COURT OF APPEAL**

**D.N. Samarakoon- J**

I agree.

**JUDGE OF THE COURT OF APPEAL**