

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

In the matter of an application under and in terms of Section 34 of the Right to Information Act No. 12 of 2016 read together with Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Case No: RTI/04/2022**

The Institute of Chartered Accountants of Sri Lanka,  
No. 30A, Malalasekara Mawatha,  
Colombo 07.

**Petitioner**

**Vs.**

1. Lionel Dissanayake,  
No.3/211, 3<sup>rd</sup> Lane,  
Colombo Road, Bandiyamulla,  
Gampaha.
2. Right to Information Commission,  
Room No.203-204, BMICH,  
Buddhaloka Mawatha,  
Colombo 07.
3. Rt. Justice Upali Abeyratne  
Chairperson,  
Right to Information Commission.
4. Kishali Pinto Jayawardena  
Commissioner,  
Right to Information Commission.
5. Rt. Justice Rohini Walgama  
Commissioner,  
Right to Information Commission.

6. Jagath Liyana Arachchi  
Commissioner,  
Right to Information Commission.

7. S.R.W.M.R.P. Sathkumara  
Acting Director General,  
Right to Information Commission.

All of Room No.203-204, BMICH,  
Buddhaloka Mawatha,  
Colombo 07.

### **Respondents**

**Before:** **R. Gurusinghe J.**  
**&**  
**M.C.B.S. Morais J.**

**Counsel:** Kushan De Alwis, PC with Hiran Jayasuriya and M. Kurukulasuriya for the Petitioner instructed by Sanath Wijewardena.  
Harith De Mel with Udeni Gallage for the 1<sup>st</sup> Respondent instructed by Piumi Samarasinghe.  
Himalee Kularathna with Nuwanthika Rathnayaka for the 2<sup>nd</sup>- 7<sup>th</sup> Respondents.

**Written Submissions:** By the Petitioner – on 20.01.2025  
By the 1<sup>st</sup> Respondent on 20.01.2025

**Argued on:** 20.11.2024

**Decided On:** **06.03.2025**

## **JUDGMENT**

**M.C.B.S. Morais J.**

This is a matter of an application made under and in terms of section 34 of the Right to Information Act No. 12 of 2016 read together with Article 136 of the Constitution of Democratic Socialist Republic of Sri Lanka.

The Institute of Chartered Accountants of Sri Lanka (ICASL) (herein after sometimes will be referred as the Petitioner) seeks to set aside the decision made by the Right to Information (RTI) Commission of Sri Lanka (hereinafter will be referred as the 2<sup>nd</sup> Respondent) dated 9<sup>th</sup> of February 2022 in the Appeal Inquiry RTI/Appeal/600/2021. Accordingly, the Petitioner has prayed for the following,

- I. Issue notice of the above-styled Application on the 1<sup>st</sup> to 7<sup>th</sup> Respondents above-named;
- II. Exercise the Revisionary powers vested in Your Lordship's Court and set aside the said Decision made by the 2<sup>nd</sup> Respondent and/or the 3<sup>rd</sup> to 6<sup>th</sup> Respondents,
- III. Grant an Interim Order staying the operation of the said Decision made by the Respondent and/or the 3<sup>rd</sup> to 6<sup>th</sup> Respondents pending the hearing and/or determination of the above-styled Application;
- IV. Grant an Interim Order restraining the 2<sup>nd</sup> Respondent and/or the 3<sup>rd</sup> to 6<sup>th</sup> Respondents from taking any steps under Section 39 of the Right to Information Act pursuant to the said Decision, pending the hearing and/or determination of the above-styled Application;
- V. Direct the 2<sup>nd</sup> Respondent to produce the entire case record/file pertaining to the Appeal bearing No. RTIC/Appeal/600/2021;
- VI. Grant costs; and
- VII. Grant such other and further relief as to Your Lordships Court may seem meet.

Mr. Lionel Dissanayake (hereinafter sometimes will be referred as the 1<sup>st</sup> Respondent) is a member of the Institute of Chartered Accountants of Sri Lanka (ICASL). The 1<sup>st</sup> Respondent had made a request seeking information under section 24(1) of the RTI Act No.12 of 2016,

from the Petitioner by the email dated 16<sup>th</sup> of January 2020. The information sought was related to a complaint received by the Ethics Committee of the Petitioner alleging Fraud and misappropriation of Rs.20.7 million occurred in the Petitioner Institution. This was supposedly reported on page 41 of the Abacus Magazine published by ICASL. Accordingly, the 1<sup>st</sup> Respondent has requested for the following Information.

- “1. The name of the institute concerned*
- 2. The Name of the person who had lodged the complaint*
- 3. The Names of the Ethics Committee members who have arrived at this decision.*
- 4. Has the Council followed (Sec. 17) rules as to the inquiries by disciplinary Committees.”*

The Information Officer of the Petitioner has acknowledged the request for the information by the letter dated 23<sup>rd</sup> of January, and rejected the request for information by letter dated 6<sup>th</sup> of February 2020, on the ground that the information sought are “personal information” which falls within the scope of section 5(1)(a) of the RTI Act. Thereafter, on the 10<sup>th</sup> of February 2020, the 1<sup>st</sup> Respondent appealed to the Designated Officer of the Petitioner Institution in terms of section 31 of the Right to Information Act. However, it is the 1<sup>st</sup> Respondent’s contention that no valid response was received. Therefore, the 1<sup>st</sup> Respondent has made an appeal in terms of section 32 of the RTI Act to the 2<sup>nd</sup> Respondent on the 2<sup>nd</sup> of April 2020. The Designated Officer of the Petitioner Institution by the email dated 15<sup>th</sup> of April 2020 has released the Information to the 1<sup>st</sup> Respondent regarding the items (1) and (4) of the requested items, but has refused to provide information for items (2) and (3) on the same ground of “personal information” which falls within the scope of section 5(1)(a) of the Right to Information Act.

The Appeal bearing No. RTIC/Appeal/600/2021 was heard by the 2<sup>nd</sup> Respondent and the decision was entered by 3<sup>rd</sup> - 6<sup>th</sup> Respondents on 9<sup>th</sup> of February 2022 in terms of Right to Information Act No. 12 of 2016. The decision entered, contains the following important aspects.

- “ 1. the PA has failed to adhere to the mandatory timelines laid down for responses of the PA in relation to information requests as contained in Sections 31 (2) and 31 (3) of the Right to Information Act No. 12 of 2016*
- 2. It is evident to the Commission that there is no impediment to releasing the information.”*

Accordingly, the Petitioner was directed to release the information requested by the 1<sup>st</sup> Respondent within two weeks from the receipt of the decision. Being aggrieved by the decision dated 9<sup>th</sup> of February 2022, the Petitioner has made an application by way of revision under section 34 of the RTI Act. The Petitioner contends that the request for information is not genuine as the information sought was information already known to the 1<sup>st</sup> Respondent, as he is one of the signatories to the complaint made on 6<sup>th</sup> of June 2019 regarding the financial fraud within ICASL. Further, the Petitioner claims that a fair hearing was not provided.

However, it is the contention of the 1<sup>st</sup> Respondent that the Petitioner has committed an offence under section 39(e) of the Right to Information Act by not adhering to the order of the Right to Information Commission as the information sought by the 1<sup>st</sup> Respondent has not been disclosed to date.

The section 32 of the Right to Information Act reads as follows;

*“(1) Any citizen aggrieved by:—*

*(a) the decision made in respect of an appeal under section 31(1), may within two months of the communication of such decision; or*

*(b) the failure to obtain a decision on any appeal made within the time specified for giving the same under section 31(3), may within two months of the expiry of the period so specified,*

*may appeal against that decision or the failure, to the Commission and the Commission may within thirty days of the receipt of such appeal affirm, vary or reverse the decision appealed against and forward the request back to the information officer concerned for necessary action.”*

According to section 32 of the RTI Act, any decision made in respect of an appeal under section 31 of the Act shall be appealed to the commission within two months of such decision being communicated to the Party. In respect of the appeal, the commission within 30 days of such appeal may decide on it. It is the Petitioner's view that the appeal made by the 1<sup>st</sup> Respondent to the commission was made on the 2<sup>nd</sup> of April 2020, however, the decision was delivered by the commission on the 9<sup>th</sup> of February 2022, which is more than a year later. Therefore, the Petitioner contends that the decisions made were not in line with the provisions of law.

In *Sri Lanka General Workers Union V. Samaranayake* [1996] 2 Sri LR 268 at 276 Justice Mark Fernando stated,

*“.....terms and conditions relating to the preferring of an appeal have been held to be directory, in the absence of compelling language.....”*

Accordingly, the provisions of laws in the absence of a compelling language are held to be directory. Further, section 32 of the RTI Act does not provide for a mandatory provision as the word “may” is used, however, these provisions can only be interpreted by considering the facts of the case as a whole.

*N.S. Bindra Interpretation of Statutes, 13th edition (2023)*, page 456 states as follows,

*“There is no fixed rule that will give an exact answer to the question of mandatory and directory provisions. The various special rules deduced from the authorities offer no more than a clue or guide to the character of a statutory provision. As a matter of fact, some of the rules are so weighed with exceptions that it is difficult to fix their value. Each individual case has to be decided on the basis of its facts. A realistic approach to the problem is to utilise the recognised aids to construction with a view to ascertaining the actual legislative intent. One of such sources is the purpose of the statute, that is, the purpose with which the law was made. No statutory provisions are intended by the legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed, the court must judicially determine them. In doing so they must necessarily consider the importance of the literal and punctilious observance of the provision in question to the object the legislature had in view. If it is essential it is mandatory, and a departure from it is*

*fatal to any proceeding to execute the statute or to obtain the benefit of it. The difference between mandatory and directory statutes is one of effect only.”*

Accordingly, the preamble to the RTI Act aims to foster a culture of transparency and accountability in public authorities, promote a society where citizens can more fully participate in public life, combat corruption, and enhance good governance. Hence, the provisions of the Act should be interpreted, considering the objectives of the legislature. Therefore, by considering the purpose of the Act, it is noted that the time bar under section 32 is not mandatory but directory. Therefore, I do not find this to be a valid ground to object the decision of the commission.

Section 31 of the Right to Information Act reads as follows,

*“31. (2) The designated officer shall issue a receipt on the acceptance of the appeal, to the citizen making the appeal, and in any case within three working days.*

*(3) The decision on any appeal preferred under subsection (1), shall be made by the designated officer within three weeks of the receipt of the appeal and shall include the reasons for the said decision including specific grounds for the same. ”*

According to section 31(2) of the Act, when an appeal is made under section 31(1), the designated officer is required to issue a receipt on the acceptance of the appeal within three working days, and the decision on the appeal shall be made within three weeks of the receipt issued and shall also include the reasons for the decisions as well as the specific grounds.

The initial letter to access the information regarding the four items set above was sent by the 1<sup>st</sup> Respondent on 31<sup>st</sup> of December 2019 while the letter of acknowledgement was issued to the 1<sup>st</sup> Respondent on 23<sup>rd</sup> of January 2020. The 1<sup>st</sup> Respondent contends that the rejection letter was only shared by registered post on the 12<sup>th</sup> of February 2020, therefore has not complied with the 14 days requirement under section 25(2) of the RTI Act.

Meanwhile, the appeal against the rejection of information was made by the 1<sup>st</sup> Respondent to the designated officer of the ICASL on the 10<sup>th</sup> of February 2020. Accordingly, the reply for the appeal was made to the 1<sup>st</sup> Respondent on 15<sup>th</sup> of April 2020, where the Petitioner has

disclosed information concerning item (1) and (4) and the item (2) and (3) has not been disclosed on the basis that it is related to personal information exempted under section 5(1) of the RTI Act. However, it should be noted that Petitioner has not abided by section 31 of RTI Act as the designated officer has not issued a receipt on the acceptance of the appeal and the decision regarding the appeal was not communicated to the 1<sup>st</sup> Respondent within three weeks as prescribed under section 31(3). Moreover, the decision of the appeal was only communicated to the 1<sup>st</sup> Respondent on 15<sup>th</sup> of April 2020, which is more than two months as oppose to the three week period prescribed under section 31(3). Therefore, it is apparent that the Petitioner himself has not adhered to the time restrictions in the Act and therefore now cannot challenge the decision of the commission on the same ground as the Petitioner has not come to this court with “clean hands”.

In the case of ***Chamara Samapath V. SL Parliament (2021)*** RTIC Appeal No.719/2018, Sampath B Abayakoon, J held;

*“I am of the view that providing the list of names of the Members of Parliament who have tendered their declaration of assets and liabilities as required by law is not disclosing the information they have provided in the declarations. I find that the argument advanced on that basis had also been an attempt to frustrate the purposes of the RTI Act.*

*Members of Parliament are persons who are elected by the people and maintained by the people. They are expected to abide by the laws of the country at all time and provide examples for others to follow.....*

*..... It is therefore important for the public to know whether the relevant authorities have acted as required by law or not. The only way to obtain that information would be by seeking the list of the name of the Members of Parliament who have provided their declarations under the RTI Act.”*

Item (2) requests the information regarding the person who lodged the complaint. As for the Petitioner, the 1<sup>st</sup> Respondent is one of the complainants who made the complaint on the 6<sup>th</sup> of June 2019, regarding the financial statement fraud in ICASL. Hence, revealing the names of the complainants in this matter would not infringe upon their privacy or privileges in any way.



The Petitioner being a Public Authority is required to maintain transparency as it is the right of each and every individual to know about the adjudicating body that would be dealing with their complaints. Accordingly, the request made by the 1<sup>st</sup> Respondent in terms of item (3) is an essential element in exercising his right to a fair hearing by knowing the members of the ethics committee who investigated the complaints, and it cannot be denied. Further, the process of knowing the members of the ethics committee shall ensure transparency in handling complaints, which is crucial for maintaining accountability and trust in the system.

Therefore, I do not agree with the stand taken up by the Petitioner, that the information requested would violate the rights and privileges of the Members of the Ethics Committee who considered the complaint. I find that under no circumstances, providing such a list who considered the complaint of the 1<sup>st</sup> Respondent would have an adverse effect to the relevant members of the ethics committee or to the functioning of the Petitioner.

Therefore, I find no basis to disagree with the determination of the Commission. For the reasons set out above, I find no merit in the grounds of appeal urged by the Petitioner.

The order delivered by the Right to Information Commission of Sri Lanka on the 9<sup>th</sup> of February 2022 in the Appeal Inquiry RTI/Appeal/600/2021 is affirmed.

This appeal is dismissed.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**