

**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 Court of Appeal (Appellate
Procedure) Rules, 1990, in relation to the
Decision of the Right to Information
Commission as dated 14.12.2022.

Case No. CA/RTI/0004/2023

RTIC Appeal No.703/2022

RTIC Appeal No.707/2022

RTIC Appeal No.708/2022

Sri Lanka Telecom PLC,
Lotus Road,
Colombo 01.

PUBLIC AUTHORITY - PETITIONER

Vs.

1. Right to Information Commission,
Room No.203-204,
BMIC,
Buddhaloka Mawatha,
Colombo 07.

RESPONDENT

2. G. Surendran,
No. 39/2,
Edmonton Road,
Kirillapone,
Colombo 6.

APPELLANT-RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Kaushalya Nawarathna, P.C. with Prabudda Hettiarachchi instructed by Halidja Begum for the Petitioner.

T. Sivanandarajah for the Appellant-Respondent.

Himali Kularathne with Aruni Senarathna for the 1st Respondent.

Written Submissions: By the Petitioner – 03.06.2025
By the Respondents – Not filed.

Argument On: 09.05.2025

Judgment On: **03.07.2025.**

Dr. Sumudu Premachandra J.

1] This appeal was argued together with RTI-0002/2023 and RTI -0003/2023; however, parties have asked for separate judgments for all three appeals.

2] In this appeal, the Petitioner seeks that RTIC Appeals Nos. 703/2022, 707/2022, and 708/2022 be set aside. The Petitioner also seeks interim reliefs, costs and any other relief the Court deems appropriate.

3] The Petitioner, is a public listed company incorporated under the Companies Act No. 7 of 2007 and listed under the rules of the Colombo Stock Exchange (CSE), challenges an amalgamated decision of the Right to Information (RTI) Commission dated 14 December 2022 regarding the above mentioned RTIC Appeals No. 703/2022, 707/2022, and 708/2022.

4] It is to be noted that the original information request, dated 14 December 2021, sought detailed data concerning the selection process for the General Manager position in Data Centre and Cloud Services, including names of candidates, panel members, expert assessors, scoring details, and reasons for selecting a particular candidate.

5] Precisely, the Appellant-Respondent by Information Request dated 14.12.2021 requested the following information under the provisions of the Right to Information Act No.12 of 2016;

Names of all contestants applied for the GM/Data Centre & Cloud Services position for which the applications were called as per Acting CEO circular 2/2018 (issued on November 5th, 2018)

- Names of all panellists who interviewed the contestants
- Names of panellists who are the experts or have Domain knowledge in the Data Centre and Cloud Services Area
- Name of the officer who prepared the job description for GM/DC & CS
- Marks given at the first round and second round for interviews for the GM/DC & CS position by all the panellists for all contestants
- The reasons why Mr.K.K.A.K. Kapurubandara was selected as GM/DC & CS

6] The said request was denied by the Petitioner's information officer on 28th December 2021 under Section 5(1)(a) and (g) of the RTI Act, and his decision was upheld by the designated officer on 31 January 2022. Feeling aggrieved, the Appellant Respondent appealed to the RTI Commission, and the RTI Commission directed the disclosure of the revised information. This appeal brings the said decision.

7] The main argument of the Learned President's Counsel for the Petitioner is that this decision adversely affects its interests and those of third parties, particularly regarding privacy and reputational harm. The Petitioner says that the revised information requests included sensitive details such as candidate names, interview scores, and selection justifications—information the Petitioner believes is exempt from disclosure under the Act. The petitioner also claims that the decision fails to strike a balance between transparency and the protection of constitutionally guaranteed rights of third parties.

8] The Appellant Respondent raises several objections, asserting that the Petitioner's application is fundamentally flawed, based on false and forged facts, and constitutes an abuse of court process. It is argued that the application lacks a valid affidavit, fails to comply with the Court of Appeal rules, and is both legally misconceived and inadmissible. The Appellant Respondent claims the Petitioner

is not entitled to any relief sought and has not disclosed material facts, making the application frivolous and vexatious.

9] In the objection, the Appellant Respondent states that he served the Petitioner for over 31 years and retired as Deputy General Manager. He emphasizes that the Petitioner is majority-owned by the Sri Lankan Government and thus qualifies as a public authority under the RTI Act. He maintains that the information he requested falls within the scope of the Act and is not exempt under Sections 5(1)(a) or (g). He contends that the RTI Commission correctly determined on 14 December 2022 that the requested information must be released and that the Petitioner's refusal lacked legal basis.

10] The basic argument of the Petitioner is that the RTI Commission failed to properly consider the sensitive nature of the information sought, as it pertains solely to disqualified candidates and does not contribute to ensuring the integrity or fairness of the final selection process. The Petitioner further contends that disclosure of such personal data offers no public benefit, serves private interests, and risks violating the privacy and reputational rights of the individuals involved, contrary to Article 14A (2) of the Constitution and Sections 5(1)(a) and (g) of the RTI Act.

11] I now consider the merits of this appeal. The Petitioner seeks protection under section 5(1)(a) and section 5(1)(g) of the Right to Information Act, No. 12 of 2016. Those sections are reproduced below for clarity;

“5(1) (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;”

“5(1) (g) the information is required to be kept confidential by reason of the existence of a fiduciary relationship;”

12] It should be noted that the Appellant Respondent sought information with regard to selection process of selection process for the General Manager position in Data Centre and Cloud Services. This court is of the view that the Petitioner, as the Public Authority, is liable to disclose the election process which is paid by Public funds.

13] In Kerala High Court, in the case of **Canara Bank vs The Central Information Commission And** ... on 11 July, 2007 (Equivalent citations: AIR2007KER225, AIR 2007 KERALA 225, 2007 (5) ALL LJ NOC 916, 2007 (6) ABR (NOC) 1034 (KER), 2008 (1) AJHAR (NOC) 147 (KER), 2007 AIHC NOC 551,

(2007) 3 KER LT 550, (2007) 58 ALLINDCAS 667 (KER)) S. Siri Jagan, J. has considered on the footing of posting and the fiduciary relationship as;

“The information relating to posting, transfer and promotion of clerical staff of a bank do not pertain to any fiduciary relationship of the bank with the its employees within the above meanings. That information involved herein cannot be said to be held in trust by the Bank on behalf of its employees and therefore cannot be exempted under this Sub-section...

...Therefore, the information requested for by the 2nd respondent enumerated above cannot be denied to the second respondent relying on Section 8(1)(e). Further, this information has necessarily to be divulged if we are to have an informed citizenry and transparency of information which are vital to the functioning of the Bank and to contain corruption so as to hold the Bank which is an instrumentality of the State, accountable to the people, which are the avowed objects of the Act, as proclaimed in the preamble to the Act. (Paragraph 7)”

14]In **Treesa Irish vs The Central Public Information Officer** on 30 August, 2010, (<https://indiankanoon.org/doc/1118506/>) again S. Siri Jagan J held a request made in relation to disclose the marking and answer papers of an examination and concluded the function of the Commission as quasi-judicial authority ;

“The Central Information Commission is an independent statutory, quasi-judicial authority, whose interest is not common with the other respondents ... (paragraph 7)

There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if no public interest is involved. Of course, in a case of personal information, if it has no relationship with any public activity or interest, the information officer has discretion to refuse to disclose the same, if the larger public interest does not justify disclosure of such information. **But on the ground of lack of public interest involved alone, the public information officer cannot refuse to disclose the information, without a finding first that the information is personal information having no relationship to any public activity or interest.** I am at a loss to understand how disclosure of the valued answer paper would compromise the fairness and impartiality of the selection process. **If at all, it would only enhance the fairness and impartiality of the selection process by holding out to the candidates that anybody can ascertain the fairness and impartiality by examining the valued answer papers.** In fact, an ideal situation would be to furnish a copy of the answer paper along with the mark lists of the candidates so that they can satisfy themselves that the answer papers have

been valued properly and they secured the marks they deserved for the answers written by them. Therefore, the reason given in Ext P3, by the 1st respondent, is patently unsustainable. (Paragraph 23)”

15] Further, in Calcutta High Court in the case of **University Of Calcutta & Ors vs Pritam Rooj** on 5 February, 2009, Equivalent citations: AIR 2009 CALCUTTA 97, 2009 (3) ALL LJ NOC 553, (2009) 1 CAL HN 795, (2009) 1 CALLT 562, (2009) 1 ESC 679, (2009) 1 CAL LJ 659, 2010 (78) ALR SOC 31 (CAL), 2009 (3) ALJ (NOC) 553 (CAL.), 2009 (3) AKAR (NOC) 424 (CAL.) 2009 (3) ABR (NOC) 616 (CAL.), 2009 (3) ABR (NOC) 616 (CAL.), Dipankar Datta, J held the same view as;

“There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if no public interest is involved. Of course in a case of personal information, if it has no relationship with any public activity or interest, the information officer has discretion to refuse to disclose the same, if the larger public interest does not justify disclosure of such information. But on the ground of lack of public interest involved alone, the public information officer cannot refuse to disclose the information, without a finding first that the information is personal information having no relationship to any public activity or interest. I am at a loss to understand how disclosure of the valued answer paper would compromise the fairness and impartiality of the selection process. If at all, it would only enhance the fairness and impartiality of the selection process by holding out to the candidates that anybody can ascertain the fairness and impartiality by examining the valued answer papers. In fact, an ideal situation would be to furnish a copy of the answer paper along with the mark lists of the candidates so that they can satisfy themselves that the answer papers have been valued properly and they secured the marks they deserved for the answers written by them. Therefore, the reason given in Ext P3, by the 1st respondent, is patently unsustainable. (para 23)

*The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, **disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.** The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest (para 66)” [Emphasis is added]*

16] Supreme Court of India in the decision of **State of Rajasthan V Raj Narain**, AIR 1975 SC 865. His Lordship Justice K.K. Mathew held in paragraph 74 openness of the dealings of a Public Authority is as follows;

*"In a government of responsibility like ours, where **all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public Act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the freedom of speech, though not Absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security**, see New York Times Co.V United States (1971) 29 Law Ed. 822 = 403 U.S. 713. **To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired.** It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. **The responsibility of officials to explain and justify their acts is the chief safeguard against oppression and corruption.**" [Emphasis is added]*

17] In the case of **S.P. Gupta V Union of India**, 1981 (Supp) SCC 87 (para 65), the Supreme Court stressed the need for openness in the government's dealings in the following words:

*"65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is a common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but **should also exercise sound judgment on the conduct of the government and the merits of public policies**, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government **where there is full access to information in regard to the functioning of the government.**" [Emphasis is added]*

18] The above Indian Judgments are so persuasive in arriving at the conclusion of this matter. Further, it should be noted that the RTI Commission has been persuaded by its previous decisions to disclose the facts.(Vide C.S. Karunaratna vs Construction Industry Development Authority RTIC Appeal 1732/2019,

G.G.C. Keerthirathna vs. Department of Examination RTIC Appeal (In-Person Hearing) 987/2019, O.W.K. Gnanadasa v. Bank of Ceylon RTIC Appeal (In-Person Hearing) 131/2017, T.P. Wickrama Arachchi v. Department of Examination RTIC Appeal (In-Person Hearing) 1170/2019), the RTI Commission has released information of a similar nature, considering the duty incumbent on the Public Authority in the wider public interest to maintain transparency and accountability in its recruitment procedures and practices in line with the preamble of the RTI Act. This Court takes the view that the RTI Commission, as a quasi-judicial authority, should maintain uniformity in its decisions in similar cases. Thus, the RTI Commission does not have sinister intentions in allowing the disclosure as prayed for by the Appellant-Respondent.

19] In view of the above circumstances, we see no merit in this appeal. Thus, the appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL