

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

In the matter of an Appeal under and in  
terms of Section 34 of the Right to  
Information Act, No. 12 of 2016 read with  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**C.A./RTI/06/2023**

1.CHEC Port City Colombo  
(Pvt) Ltd.,  
Level 30,  
One Galle Face Tower,  
No. 1A, Centre Road,  
Galle Face,  
Colombo 02.

**APPELLANT**

**Vs.**

1. M.F.A. Mansoor,  
Puwakwatta Estate,  
Kotadeniyawa.
2. Centre for Environmental  
Justice (Guarantee) Limited,  
No. 20A, Kuruppu Road,  
Colombo 08.

**APPELLANT-**

**RESPONDENTS**

3. Right to Information  
Commission of Sri Lanka,  
Rooms No. 203-204,  
Block 02, BMICH,  
Buddhaloka Mawatha,  
Colombo 07.

4. Justice Upaly Abeyrathne  
(Rtd.),  
Chairman,  
Right to Information  
Commission of Sri Lanka.
5. Justice Rohini Walgama,  
Commissioner,  
Right to Information  
Commission of Sri Lanka.
6. Ms. Kishali Pinto–  
Jayawardena,  
Commissioner,  
Right to Information  
Commission of Sri Lanka.
7. Mr. Jagath Liyanarachchi,  
Commissioner,  
Right to Information  
Commission of Sri Lanka.
8. Mr. A.M. Nahiya,  
Commissioner,  
Right to Information  
Commission of Sri Lanka.

Chairman and the  
members of the Right to  
Information Commission of  
Sri Lanka,  
Room No. 203 – 204,  
Block 02,  
BMICH,  
Buddhaloka Mawatha,  
Colombo 07.

9. M.A. Ranawaka,  
Information Officer and  
Senior Assistant Secretary  
(Admin),  
Ministry of Urban  
Development and Housing.
10. W.M. Deepthi Fernando,  
Designated Officer and  
Additional Secretary  
(Admin),  
Ministry of Urban  
Development and Housing.
- Both of  
Ministry of Urban  
Development and Housing,  
17<sup>th</sup> Floor,  
Suhurupaya,  
Battaramulla.
11. Mr. E.M.S.B. Ekanayake,  
Secretary to the President,  
Presidential Secretariat,  
Galle Face,  
Colombo 02.
12. M.M. Nayeemudeen,  
Secretary,  
Ministry of Investment  
Promotion,  
15<sup>th</sup> Floor,  
Suhurupaya,  
Battaramulla.
13. Colombo Port City  
Economic Commission,  
Unit 901, 9<sup>th</sup> Floor,  
One Galle Face Tower,  
Colombo 02.

14. Hon. Attorney – General,  
Attorney General's  
Department,  
Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**BEFORE : N. BANDULA KARUNARATHNA, J (P/CA)**  
**WICKUM A. KALUARACHCHI, J**

**COUNSEL :** Dr. Asanga Gunawansa with Dilshan Jayasooriya,  
Shenella Fonseka and Devaka Jayasooriya instructed by  
Vidanapathirana Associates for the Petitioner – Appellant.

Viran Corea with Thilini Vidanagamage instructed by  
Anuradha Weragoda for the 1<sup>st</sup> Respondent.

Himalee Kularathne with Jayani Perera for the 3<sup>rd</sup> to 8<sup>th</sup>  
Respondents.

Kanishka De Silva, D.S.G. for the 9<sup>th</sup> to 14<sup>th</sup> Respondents.

**SUPPORTED ON :** 28.11.2023

**DECIDED ON :** 10.01.2024

**ORDER REGARDING THE PRELIMINARY OBJECTION**

**WICKUM A. KALUARACHCHI, J.**

This is an appeal filed under the Right to Information Act No. 12 of 2016.  
The 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents had filed a request for information  
in terms of the Right to Information Act (hereinafter referred to as RTI Act)

requesting a copy of the Tripartite Agreement signed by the Ministry of Megapolis and Western Development, the Urban Development Authority of Sri Lanka and the appellant in connection with the development of the Colombo Port City Development Project.

The said request had been rejected by the Information Officer of the Ministry of Urban Development and Housing. The 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents filed appeals against the rejection but the said appeals too were rejected. Thereafter, the 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents filed appeals to the Right to Information Commission against the rejection. The Commission has pronounced its decision on 06.04.2023 directing to release the said Tripartite Agreement. The instant appeal has been filed by the petitioner-appellant against the decision of the Right to Information Commission pronounced in terms of Section 32(3) of the Right to Information Act.

A preliminary objection was raised on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents that the appellant is not entitled to invoke the jurisdiction of this Court in terms of Section 34 of the RTI Act, as the appellant does not fall under the ambit of the meaning of “Citizen”. All parties were allowed to file written submissions on the preliminary objection. The 1<sup>st</sup> appellant-respondent, the 2<sup>nd</sup> appellant-respondent, the 14<sup>th</sup> respondent and the appellant filed written submissions. This order has to be delivered with regard to the preliminary objection.

The basis of the preliminary objection was that according to Section 34 of the RTI Act, a Citizen or Public Authority who is aggrieved by the decision of the Commission can appeal to the Court of Appeal and the appellant does not fall under the ambit of the meaning of “Citizen” and thus the appellant is not entitled to maintain this appeal. The learned Deputy Solicitor General appearing for the 14<sup>th</sup> respondent submitted that the

Court must consider whether the appellant is a “public authority” under Section 34 read with Section 43 of the RTI Act in determining the jurisdiction of this Court. The contention of the learned Counsel for the appellant was that the appellant has no other forum to canvass its grievances thus the appellant should be allowed to maintain this appeal.

The Preamble of RTI Act reads as follows:

“Whereas the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to morefully participate in public life through combating corruption and promoting accountability and good governance.”

It is clear that the intention of RTI Act is giving the citizens right of access to information which is in the possession, custody, or control, of a public authority. Section 3 of the RTI Act clearly demonstrate the aforesaid intention as follows:

Section 3 (1) “Subject to the provisions of Section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.”

So, there are two parties; the citizens who request the information and the respective public authority who is bound to provide information. According to Section 24 of the Act, any citizen who is desirous of obtaining any information under the Act shall make a request. According to Section 24(2), where a citizen (a) wishes to make a request to a public authority or (b) has made a request to a public authority which does not comply with

the requirements of this Act, the Information Officer concerned shall take all necessary steps to assist the citizens, free of charge, to make the request in a manner that complies with this Act. Hence, it is apparent that any citizen who is desirous of obtaining any information should make a request to a “Public Authority”. In other words, the party who is bound to provide information under this Act is always a “Public Authority”.

According to Section 15(d) of the RTI Act, the Right to Information Commission have the power to direct a public authority to provide information in a particular form. The Act empowers the Commission to make a direction only to a “Public Authority” to provide information. Using the said power, the Commission, in the matter before us directed the appellant to release the Tripartite agreement because the appellant is a public authority.

Section 34(1) of the Act, where the right to appeal to the Court of Appeal is provided, reads as follows:

“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.”

According to Section 34 of the Act, if the citizen who requested the information is aggrieved by the decision of the Commission, the citizen can prefer an appeal in the Court of Appeal and if the public authority who has been directed to provide information is aggrieved by the decision of the Commission, the said public authority can prefer an appeal to the Court of Appeal. In this matter, the appellant who was directed by the Commission to provide the 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents with the Tripartite Agreement, preferred this appeal in terms of Section 34 of the RTI Act as the appellant was aggrieved by the decision of the Commission.

The preliminary objection raised on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> appellant-respondents was that the appellant does not fall under the ambit of the meaning of “Citizen”. The Act states that a citizen can request an information. The appellant is the public authority who has been directed by the Commission to provide the required information. Under Section 14 of the RTI Act, the power that the Commission has is to direct a public authority to provide information. As the Commission made a direction to provide information using the powers conferred in terms of Section 15 of the Act, it is apparent that the appellant is a public authority. Therefore, the appellant can prefer an appeal to the Court of Appeal in terms of Section 34 of the RTI Act.

Accordingly, the preliminary objection is overruled. I hold that the appellant is entitled to maintain this appeal.

**JUDGE OF THE COURT OF APPEAL**

N. Bandula Karunarathna, J (P/CA)

I agree.

**JUDGE OF THE COURT OF APPEAL**