Chamara Sampath v Parliament of Sri Lanka

RTIC Appeal (Documentary/In-Person Hearing) 719/2018 – Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 adopted on 15.12.2020 subsequent to the hearing/ consideration at formal meetings of the Commission on 12.02.2019, 21.05.2019, 25.06.2019, 10.09.2019, 08.10.2019, 22.10.2019,05.11.2019, 03.12.2019 and 14.01.2020.

Chairperson: Mr. Mahinda Gammampila
Commissioner: Ms. Kishali Pinto-Jayawardena
Commissioner: Mr. S.G. Punchihewa
Commissioner: Justice RohiniWalgama

Director General: D.G.M.V.Hapuarachchi

Appellant: Chamara Sampath
Notice issued to: Designated Officer, Parliament of Sri Lanka

Appearance/ Represented by:
Appellant: Chamara Sampath, Journalist
Tharindu Jayawardene, Journalist

PA: Tikiri K Jayathilake, Assistant Secretary General
P K D S W Wijegunawardena, Deputy Principal Officer

RTI Request filed on	21.06.2018
IO responded on	21.08.2018
First Appeal to DO filed on	30.08.2018
DO responded on	07.09.2018
Appeal to RTIC filed on	11.09.2018

FINAL ORDER DELIVERED ON 2ND FEBRUARY 2021

BRIEF FACTUAL BACKGROUND

The Appellant, by an information request dated 21.06.2018, requested for the following items of information: -

1. *The list of names of Members of Parliament (MPs) who have handed over their respective Declarations of Assets and Liabilities in 2018*
2. *The list of names of MPs who have handed over their Declarations from 2010 to date*

The IO on 21.08.2018 responded stating that in order to obtain details in relation to Declarations of Assets and Liabilities of Members of Parliament, a request has to be made to the Speaker of Parliament in terms of the Declaration of Assets and Liabilities Law No 01 of 1975.

Dissatisfied with the response of the IO and on the basis that the Appellant is not requesting the contents of the Declarations of Assets and Liabilities but a list of names of the MPs who

have submitted their Declarations of Assets and Liabilities, the Appellant filed an appeal with the DO on 30.08.2018. The DO responded on 07.09.2018 stating that,

a) except in the limited instances laid down in the Declaration of Assets and Liabilities Law(DALL) No. 01 of 1975, in all other instances the confidentiality of the Declarations of Assets and Liabilities must be protected,
b) in any event the relevant authority in relation to the Declarations of Assets and Liabilities of Members of Parliament is the Hon. Speaker and as such any query *vis-à-vis* the same must be directed to the Speaker
c) And in terms of Section 11 of the Declaration of Assets and Liabilities Law(DALL) No. 01 of 1975, when in conflict with any other given law, the DALL would prevail over such conflicting law.

Dissatisfied with the response of the DO, the Appellant preferred an appeal to the Commission on 11.09.2018.

MATTERS ARISING DURING THE HEARING

PRELIMINARY QUESTION: SUBMISSIONS OF PARTIES

Is the Public Authority (Sri Lanka Parliament) in "Possession, Custody or Control" of the Information Requested as Envisaged in Section 3 (1) of the Act?

The DO, whose decision was in issue in the instant appeal before this Commission, primarily based his stand that he could not release the requested information due to the fact that the Declarations of Assets and Liabilities made by Parliamentarians are with the Speaker and not the Secretary General, and that the Secretary General is not in a position to "issue directions" to the Speaker and that the Speaker of Parliament and the Secretary General of Parliament are distinct positions.

<u>The Constitution, Standing Orders and the Speaker's Ruling on the *Divineguma* Bill</u>

In its Written Submissions dated 21.05.2019, the PA drew the attention of the Commission to the Constitutional provisions, Standing Orders and the Speaker's Ruling on the *Divineguma* Bill to make the following arguments (*Vide* paragraphs 15 – 26 of the Written Submissions).

> *"The Speaker of Parliament is the Parliament's representative, spokesperson and the ultimate authority of the House. The Speaker ranks third in the order of precedence following Prime Minister and President He derives his powers from the Constitution, Standing Orders, Parliament (Powers and Privileges) Act, and the conventions and practices of Parliament. The Speaker who is the guardian and custodian of Parliament in regard to the powers and privileges of the House is answerable to Parliament and is expected to protect all the Members of Parliament.*
>
> *In terms of Article 64 of the Constitution, Parliament shall elect the Speaker in keeping with the Standing Order 4, which specifies the procedure to elect him through a secret ballot. He is vested with the residuary powers under Standing Order 143, which states,"every matter not specifically provided for in these Standing Orders and every question relating to the detailed working of these Standing Orders shall be regulated in such manner as the Speaker may deem appropriate and direct, from time to time."*

> *The Speaker is responsible for protecting and maintaining the dignity of Parliament and the Members of Parliament.*
>
> *The Secretary General (Secretary General), who is the head of the permanent official staff of Parliament, is appointed by the President on the approval of the Constitutional Council in terms of Article 41C(1) and Article 65 of the Constitution. In fact, the burden of efficient and proper working of the House largely rests on the shoulders of the Secretary General. The position of the Secretary General of Parliament is a constitutionally protected unique one and he is not the Secretary to the Speaker.*
>
> *Standing Order No. 10 provides for the duties of the Secretary General of Parliament. Accordingly, the Secretary General shall keep the minutes of the proceedings of Parliament and of Committees of the whole Parliament and prepare an Order Book showing all business appointed for any future day and any notice of questions or motions which have been set down for a future day, whether for a day named or not. He shall be responsible for the safe custody of minutes, records, Bills and other documents laid before Parliament. The Secretary General shall be responsible for ensuring the administrative and resource support for committees"*

In advancing this argument, the DO of the Public Authority (Sri Lanka Parliament) referenced the Determination of the Supreme Court in regard to the Bill titled "*Divineguma*" in 2012, contending as follows;

> *'The facts risen with regard to the Determination of the Supreme Court on the Bill titled "Divineguma" in 2012, further led to the discussion on the importance of recognizing the distinct nature of the two offices. Delivering a Ruling on the matter on 09th October 2012, the Speaker of Parliament laid down the position of the Parliament on the above matter as follows.*
>
> > *"The Speaker derives his power in Parliament from Article 64(1) of the Constitution. He is elected by the Hon. Members of Parliament. In the order of precedence, the Speaker holds a prime position after the President and the Prime Minister which reflects the stature accorded to Parliament and the Speaker. The Secretary General of Parliament is appointed by the President in terms of Article 65(1) of the Constitution and holds office during a period of good behaviour. Two offices are incomparable in power, authority and status to be equated for the purpose of receiving notice. 0n the other hand, the Secretary General of Parliament has limited powers under Standing Order No. 9 and is no substitute for the Speaker. No Speaker has delegated power vested by the Constitution exclusively with the Speaker to the Secretary General of Parliament. This is not possible in terms of the Constitution.*
> >
> > *The Speaker is a creature of Parliament and presides at the sittings of Parliament. A Speaker according to Erskine May "is the representative of the House itself in its powers, proceedings and dignity." There is no provision for the Secretary General of Parliament to accept any notice on behalf of the Speaker in any Article, law, rule or regulation. If the Secretary General of Parliament is to be substituted for the Speaker; the Constitution will have to be amended accordingly, which is a matter for the legislature. I make a*

> *decision on this 9th day of October 2012 that in terms of Article 121(1) of the Constitution, a copy of a reference made by the President or petition by a Citizen to the Supreme Court shall at the same time be delivered to the Speaker and not to the Secretary General of Parliament. Such a delivery to the Secretary General of Parliament shall not be treated by Parliament as due compliance with the terms of Article 121(1) of the Constitution. I direct the Secretary General of Parliament to send a copy of this decision to His Excellency the President and to the Honourable Judges of the Supreme Court. ""*

The PA further argued (*vide* paragraph 23 of the Written Submissions dated 21.02.2019) that one of the reasons among the 14 reasons stated in the Order Paper containing the Motion for the removal of Hon. (Dr.) S.A. Bandaranayake from the office of the Chief Justice was the violation of Article 121 (1).

At the outset however, it must be noted by this Commission that the position taken up by the Public Authority is at divergence with the Determination of the Supreme Court in the aforesaid *Divineguma* Bill (Special Determination on the Bill titled "*Divineguma*"(SC.SD 01/2012 – 03/2012).

As will be dealt with in detail in the succeeding paragraphs of this Order, the Court declined to hold with a preliminary objection that two Petitions challenging the Bill, SC.SD 02/2012 and SC.SD 03/2012, must be dismissed *in limine* for non-compliance with *inter alia* the stipulation in Article 121 (1) to the effect that that a copy of the Petition must be delivered to the Speaker. The objection was based on the fact that such delivery had instead been made to the Secretary General of Parliament. The Supreme Court ruled that delivery to the Secretary General instead of the Speaker is sufficient compliance of Article 121 (1) of the Constitution.

Following these submissions, the PA took up the position that (*vide* paragraph 21),

> *"The Secretary General is not in a position to issue directions to the Hon. Speaker and the Parliament Secretariat is required to act according to the Hon. Speaker's directions in carrying out the functions of Parliament. Hence, if the Speaker gives a direction to release any information, which is in his control, it is mandatory for the Parliament Secretariat to execute such a direction.* ***Yet the Speaker and the Secretary General of Parliament discharge their duties in their offices independently and separately****."*(Emphasis ours)

Further that in terms of the Declaration of Assets and Liabilities Law No. 1 of 1975 (hereinafter, sometimes, "DALL")

> *"Section 4 (b) of Declaration of Assets and Liabilities specifies that the Declaration of Assets and Liabilities by all the Members of Parliament other than the Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers shall be made to the Speaker.*
>
> *Accordingly, considering the above facts and the Ruling of the Speaker the Secretary General does not possess the authority under any law to release the information in the possession, custody and control of the Speaker."*

Drawing on this argument, the PA further stated that though the Secretary General is aware of the place where such Declarations are kept in custody, the 'control' over the same is in the hands of the Speaker (Minute of the Record of Proceedings 08.10.2019). Further, in its oral submissions before this Commission, the PA emphasized that the administration of

Parliament is not in a position to "give directions to the Speaker" (Minute of the Record of Proceedings 12.02.2019).

Moreover, in the context of the nomination of the Deputy Secretary General by Parliament as the Designated Officer of the Parliament (Minute of the Record of Proceedings before the Commission, 10.09.2019), it was the contention of the PA that under the DALL, the Speaker was the custodian of the impugned information, and as such, a formal request must be made to the Speaker instead of the Secretary General.

It was asserted that in any event, the Office of the Secretary General is not obligated under any written law to maintain records or registries of MPs who have declared their assets. The PA, while maintaining that the Speaker and the Secretary General are two distinct and independent bodies, further submitted that the Speaker is better equipped to protect the rights and privileges of Members of Parliamentarians.

The PA further reiterated that there is constitutional recognition of the posts of Speaker and the Secretary General, and furthermore, that there is a separate Act which governs the staff of the Secretary General. It was further submitted on behalf of the Secretary General that he sees no impediment to the appointment of an IO and DO by the Speaker himself in view of the fact that the Leader of the House and the Leader of the Opposition have appointed separate IOs and DOs for their respective offices (Minute of the Record of Proceedings 05.11.2019).

The PA also reiterated that, under and in terms of Sections 3(2) read with 5(1)(k) and Section 5 (1)(a) of the RTI Act, the information cannot be provided as it would impact Parliamentary Privileges and the privacy of the Members of Parliament concerned (Minute of the Record of Proceedings 22.10.2019).

In response, the Appellant's representative submitted that, while the contention of the PA that the two posts in issue are distinct cannot be accepted, even so and if this was the position of the PA, the Secretary General was under an obligation to forward the information request to the Speaker in terms of Regulation 4 (6) of the RTI Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).However in the instant case, this had not happened,thus indicating that these were merely evasive tactics adopted by the PA as a ruse to deny the information asked for, which was of public importance.It was also noted that the PA in this instance (and/or the Honorable Speaker, if the distinction of the two posts is to be accepted), could provide the information requested with a "reasonable effort"as stipulated in Regulation No 4 (7) of the RTI Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017), given the nature of the information requested (Minute of the Record of Proceedings 08.10.2019)

<u>Correspondence between the Commission, Secretary General and Speaker</u>

Consequent to the Ruling of the RTI Commission of 08.10.2018 being discussed with the Speaker, at a meeting held between the Office of the Secretary General and the Speaker, the Speaker requested the RTIC to directly communicate with him regarding the aforesaid.

Thereafter, the Commission directed that the Order be forwarded to the Speaker (through the Office of the Secretary General) for his perusal, upon the request of the Office of the Secretary General (Minute of the Record of Proceedings 22.10.2019). At the proceedings of the Commission on 05.11.2019, the Appellant submitted that he had met with the Speaker and the Secretary General and that he had provided the previous Order of the Commission.

The Appellant submitted that the Speaker had maintained that the Speaker and Secretary Generalare the same PA to which the Secretary General had responded by saying that they are separate offices. He further contended that the attention of the Speaker had been drawn to the fact that the information request in issue had merely asked for a list of names to which the Speaker said that this can be provided and had asked the Secretary General to provide the same.

The Secretary General had however stated that the information cannot be provided. It was submitted on behalf of the Secretary General that the statements by the Appellant cannot be relied on and as of now, his instructions are that the Secretary General will revert subsequent to obtaining legal advice. It was further submitted that on 04.04.2019,that the PA wrote to the Attorney-General asking for advise, and had a consultation with the Attorney General regarding the appeal. The PA submitted that it had queried from the Attorney General as to whether the PA can release a list of names of the MPs who have submitted their Assets.

The response of the Attorney-General's Department dated 27.11.2019, was received on 03.12.2019, which was to the effect that the Secretary General is not the relevant officer but the Speaker.This is on the basis that in terms of the DALL, Declarations of Assets and Liabilities have to be submitted to the Speaker and not the Secretary General.

On consideration of the same,it was noted by the Commission that there had been no intimation in the correspondence that the Attorney General had been apprised of the fact the Speaker does not have a separate IO and DO functioning under him. The Office of the Secretary General was provided with two weeks' time to apprise the Attorney-General's Department of the fact that the Speaker has not appointed a separate IO and DO and in this context to obtain advise once again on the matter regarding the provision of the information requested (Minute of the Record of Proceedings 05.11.2019).

At the proceedings of the Commission on 14.01.2020, the PA submitted that subsequent to the last hearing it had written to the Attorney-General's Department on 13.12.2019 querying whether the Speaker can provide the requested information. The Attorney-General's Department had responded on 19.12.2019 stating that it cannot advice on the same as there is a related matter pending before the Court of Appeal. The PA further reiterated the contents of letter dated 27.11.2019 by the Attorney-General wherein it was stated that in terms of Section 4 (b) of DALL read with Section 43 of RTI Act, the citizen is enabled to approach the Speaker to obtain information relating to Declarations of Assets and Liabilities of parliamentarians, that the functions of the Secretary General and Speaker are distinct and that accordingly, a proper request has not been made in law to the Speaker in terms of the RTI Act and DALL read together.

Upon the Commission calling for and perusing the said letters between the Public Authority and the Attorney General in order to ascertain the nature of the correspondence, it transpired that the second letter requesting for advice dated 13.12.2019 contains the intimation of the Attorney General stating that the matter is *sub judice* and an opinion cannot be provided (Minute of the Record of Proceedings 14.01.2020).

On the same day, the Commission noted that *Presidential Secretariat v TISL* (CA/RTI/01/2019) was pending before the Court of Appeal in appeal from the Commission's Order in *TISL v Presidential Secretariat* (RTIC Appeal 06/2017, Order dated 04.12.2018) and was due to be argued on 20.02.2020.

The PA submitted that it would be better if the matter is postponed until a determination in that Appeal is made, in which event the PA may follow the precedent set by the Court of

Appeal regarding the information requested. The Commission noted that while it is not barred from making an Order in the present case, however, in view of the fact that the appeal to the Court of Appeal contains disputed substantive questions of the applicability of Section 4 of the RTI Act *vis a vis* the Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended), this appeal may be adjourned until after the date of conclusion of that Appeal. The Appellant requested that the Order be delivered irrespective of the pending Appeal in the Court of Appeal. Following further deliberations, it was agreed by parties that a reasonable time may be given for the matter in the Court of Appeal to be concluded (Minute of the Record of Proceedings 14.01.2020).

QUESTIONS OF LAW: SUBMISSIONS OF PARTIES

The primary contention of the PA is that the governing statute on the subject of Declarations of Assets and Liabilities of Parliamentarians is the Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended) (*vide* Written Submissions of the PA dated 05.02.2019). Section 2 (1) (a) states;

> *"2 (1) The provisions of this Law shall apply to every person belonging to any one of the following classes or descriptions of persons—*
> *(a) Members of Parliament…"*

The DALL contains therein a unique procedure for the submission of Declarations of Assets and Liabilities, and identifies a responsible authority to preside over the subject, *viz.*, in this case of Members of Parliament, the Speaker of Parliament. Sections 4 (3) and 5 (b) of the DALL read together stipulate the procedure for obtaining information.

Sections 4 (a) and 4 (b) state that,

> *"The Declaration of Assets and Liabilities shall be made in the following manner;*
> *(a) to the President*
> *(i) by the Speaker of Parliament,*
> *(ii) by Ministers of the Cabinet of Ministers, other Ministers and Deputy Ministers,*
> *(iii) by Judges and other public officers appointed by the President;*
> (b) *to the Speaker of Parliament, by all other Members of Parliament not referred to in paragraph (a)"*

Section 5 (3) states that,

> *"Any person shall on payment of a prescribed fee to the appropriate authority have the right to call for and refer to any Declaration of Assets and Liabilities and on payment of a further fee to be prescribed shall have the right to obtain that Declaration."*

The PA has raised several arguments stemming from its postulation of the DALL as the governing statute on the subject of Declarations of Assets and Liabilities of Parliamentarians.

The PA's contention is that the DALL supersedes the RTI regime. Although both the DALL and the RTI Act contain similar overriding provisions *vis-à-vis* conflicting clauses in other

laws in Section 11 and Section 4 respectively, the PA's position is that the DALL ought to prevail over the RTI regime. This is mainly due to two reasons. The PA has characterized the DALL as a special law, and the RTI regime (together with the Act and Regulations), as the general law. According to the PA, the DALL stipulates that "it is mandatory for certain specified categories of persons to make periodic Declarations of their Assets and Liabilities in and outside Sir Lanka, making it a special law applies [*sic*] only to an identified category of persons" (*vide* Written Submissions of the PA dated 21.05.2019). In addition, the DALL specifies a distinct procedure and recognizes a responsible authority, as opposed to the general procedure contained in the RTI regime for the release of information. Moreover, the PA's contention is that the DALL militates against provisions in the RTI Act and Regulations, in that the former specifies limitations on the usage of the information obtained.

In its Written Submissions dated 05.02.2019, the PA has cited Sections 7 (4), 8(1) and 8 (3) of the DALL to contend that, respectively, it is an offence for 'any person' to make public, the contents of such Declarations and that the Law compels secrecy to be preserved regarding the same, except in specified legal proceedings thereto. The PA has hence submitted that in view of the specific regime set out in the DALL, the maxim of interpretation, "*generalia specialibus non derogant"* must apply and that provisions of a general law must yield to those of a special one.

The PA has also proceeded to cite Article 16 (1) of the Constitution to bolster its argument that the DALL ought to prevail over RTI laws. Article 16 (1) states that, "*All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter"*.

In counter-response to the objections raised by the PA in relation to the DALL, the Appellant submitted that the DALL makes no provision for the release of the information requested in the immediate instance (*vide* Written Submissions (undated) submitted by the Appellant in response to the submissions of the PA) The information requested is of a list of names (not the contents of the Declarations of Assets and Liabilities), and the DALL does not provide for the release of such a list (Minute of the Record of Proceedings 12.02.2019). Therefore, the Appellant's position is that it is the RTI Act that must apply to his information request, and that the refusal of information must be under and in terms of Section 5(1) of the RTI Act, and that the PA has failed to make reference to a specified exemption under Section 5 (1), and where it has in fact referenced, has not substantiated the same.

The Appellant has also stated that the PA had frequently changed its position in its submissions before the Commission (*vide* Written Submissions (undated) submitted by the Appellant in response to the submissions of the PA).

On the matter of the applicability of the substantive exemptions under and in terms of Section 5(1) of the RTI Act, in pleading that that the information requested is exempted by virtue of Parliamentary Privilege in its submissions before the Commission (*Vide* Written Submissions dated 21.05.2019; Minute of the Record of Proceedings 12.02.2019 and 22.10.2019), the PA submitted that the Right to Information introduced to the Constitution through Article 14A is subject to the limitations set out in Article 14A (2), specifically, that of Parliamentary Privilege. The PA also cited Section 3 (2) of the RTI Act, which provides that the provisions of the Act shall not be in derogation of the powers, privileges, and practices of Parliament. The PA further cited the Parliament (Powers and Privileges) Act, and has argued that Article 67 of the Constitution vests this Law with constitutional protection. Article 67 states that, *"the privileges, immunities and powers of Parliament and of its Members may be determined*

and regulated by Parliament by law and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act shall mutatis mutandis apply."

The PA also simultaneously raised the argument that Parliamentary Privilege would dictate that it is under the DALL that a request of this nature must be made, *to wit*, "the above mentioned provisions along with the Parliamentary conventions and practices does [*sic*] not empower the Secretary General to release the requested information.The Appellant has no impediment to obtain the requested information by forwarding a formal request to the Speaker in terms of the Declaration of Assets and Liabilities Law"(*Vide* Written Submissions dated 21.05.2019).

The Appellant, in counter-response, submitted that although the PA has repeatedly raised the objection of Parliamentary Privilege preventing the PA from releasing the requested information, it has at no point demonstrated a discernible nexus between the requested information and the precise manner in which its release would violate any parliamentary privilege (*Vide* Minute of the Record of Proceedings 22.10.2019, *Vide* Written Submissions (undated) submitted by the Appellant in response to the submissions of the PA). The Appellant has also submitted that the release of a list of names could not affect the *status quo* of Parliament or any of the particular assemblies (*Vide* Minute of the Record of Proceedings 12.02.2019). The PA, in response, submitted that its objection on the ground of Parliamentary Privilege must be read generally and holistically (*Vide* Minute of the Record of Proceedings 22.10.2019).

In the submissions made by the Appellant on 05.11.2019, it was argued on behalf of the Appellant that the legislative intent behind the inclusion of Parliamentary Privilege in Section 3 (2) of the RTI Act was not to deny information on the basis of Parliamentary Privilege *per se* but rather to remove any impediments to Parliament calling forth information, *to wit*, "the Parliamentary debate dated 24.06.2016 (*vide* pages 1663-1664) indicate that the intention behind including (Section 3 (2)) at the debate stage was so that Parliament will not be prevented from calling for any report from a PA due to the PA relying on Section 5 of the RTI Act" (*Vide* Minute of the Record of Proceedings 05.11.2019).

The PA also reiterated that, apart from pleading the applicability of Sections 3(2) read with 5(1)(k) and Section 5 (1)(a) of the RTI Act, the information cannot be provided as it would be an unwarranted invasion of the privacy rights of parliamentarians in terms of Section 5 (1)(a) with no corresponding public interest factor. The Appellant contended that he was merely asking for a list of names of parliamentarians who had submitted Declarations of Assets and Liabilities and as such, no privacy concerns arose.

FINAL ORDER

Upon consideration of the aforesaid matters, the Right to Information Commission enters into Final Order in this Appeal.

QUESTION 1: ***Is the Secretary General of Parliament in "Possession, Custody or Control" of the Information Requested as Envisaged in Section 3 (1) of the Act in view of the Distinction drawn by the PA between the Offices of the Speaker and the Secretary General?***

In summary, the DO argued that the Speaker and the Secretary General are separate and distinct positions within the PA (Parliament of Sri Lanka) and that, though the Secretary General may have 'knowledge' of where the Declarations of Assets and Liabilities of Parliamentarians deposited with the Speaker under Section 4(b) of the Declarations of Assets and Liabilities Act (1975), that 'knowledge' does not constitute 'possession', 'custody' or 'control' under Section 3 (1) of the RTI Act. It was argued that such 'possession', 'custody' or 'control' lies with the Speaker and not the Secretary General of Parliament. In view of the aforesaid, it is necessary to examine the Constitutional provisions, Standing Orders, and relevant authorities on the posts of the Speaker and Secretary General, in order to ascertain whether the two posts are in fact distinct and separate.

Chapter X of the Constitution establishes the Legislature. Article 62 (1) states that,

> *"There shall be a Parliament which shall consist of two hundred and twenty-five Members elected in accordance with the provisions of the Constitution."*

The election of the Speaker is provided for in Article 64 of the Constitution. Standing Order 4 specifies the procedure to elect the Speaker through a secret ballot. It is evident from the procedure set out that the Secretary General of Parliament plays a role in the process.

The post of the Secretary General is established in terms of Article 65 which states as follows,

> *(1) There shall be a Secretary General of Parliament who shall, subject to the provisions of Article 41A, be appointed by the President and who shall hold office during good behaviour.*
>
> *(2) The salary of the Secretary General shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.*
>
> ***(3) The members of the staff of the Secretary General shall be appointed by him with the approval of the Speaker.***
>
> *(4) The salaries of the members of the staff of the Secretary General shall be charged on the Consolidated Fund.*
>
> *(5) The office of the Secretary General shall become vacant –*
>
> *(a) upon his death;*
> *(b) on his resignation in writing addressed to the President;*
> *(c) on his attaining the age of sixty years, unless Parliament otherwise provides by law;*
> *(d) on his removal by the President on account of ill health or physical or mental infirmity; or*
> *(e) on his removal by the President upon an address of Parliament.*
>
> *(6) Whenever the Secretary General is unable to discharge the functions of his office, the President may appoint a person to act in the place of the Secretary General.*(Emphasis ours)

Standing Order No. 10 states as follows,

> ***(1) The Secretary General shall keep the minutes of the proceedings of Parliament and of Committees of the whole Parliament. The minutes shall record the names of Members attending, and all decisions of Parliament.***
>
> *(2) In the case of any division of Parliament or of a Committee of the whole Parliament the minutes shall include the numbers voting for and against the question. Where the division takes place under Standing Order 47(2)(b) and (c), the number and names of the Members so voting and the number and names of those declining to vote shall be included in the minutes. The minutes shall not require confirmation, but errors if any in the minutes may be corrected, on a motion made, with the leave of Parliament.*
>
> *(3) The Secretary General shall prepare from day to day and keep on the Table of Parliament and in the Library an Order Book showing all business appointed for any future day and any notice of questions or motions which have been set down for a future day, whether for a day named or not. Business may be set down for any particular day and a note to that effect made in the Order Book.*
>
> *(4) The Secretary General shall be responsible for the safe custody of minutes, records, Bills and other documents laid before Parliament which shall be open to inspection by Members of Parliament and by other persons under such arrangements as may be sanctioned by the Speaker.*
>
> *(5) The Secretary General shall be responsible for ensuring the administrative and resource support for committees.*(Emphasis ours)

In the Supreme Court Special Determination on the Bill titled *"Divineguma"*(SC.SD 01/2012 – 03/2012) a preliminary objection was raised that two Petitions challenging the Bill, SC.SD 02/2012 and SC.SD 03/2012, must be dismissed *in limine* for non-compliance with *inter alia* the stipulation in Article 121 (1) providing that a copy of the Petition must be delivered to Speaker. Article 121 (1) provides that,

> *"The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made, or such petition shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament and* ***a copy thereof shall at the same time be delivered to the Speaker.*** *In this paragraph "citizen" includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens."* (Emphasis ours)

Such delivery was made to the Secretary General of Parliament instead. The Court overruled the preliminary objection raised, and stated that delivery to the Secretary General instead of the Speaker is sufficient compliance for the purposes of Article 121 (1) of the Constitution. Ruling on the matter, the Court held that,

> *"The objective and the purpose therefore is to ensure that Parliamentary proceedings in respect of the Bill in question are suspended during the pendency of the inquiry*

> *before the Supreme Court. Whilst, that process of sending the Petition filed in the Supreme Court within the specified period to the Hon. Speaker is mandatory,* ***it cannot be said that the documents being sent to the Secretary General of the Parliament within the stipulated time frame is not in compliance with Article 121 (1) of the Constitution.****"* (at pages 15-16 of the Judgment) (Emphasis ours)

As such, the stand of the Respondent Public Authority in citing the position of the Speaker on the "*Divineguma*" Bill is inapplicable in this instance, given that this Commission must look to any guidance in that regard to the thinking of the Supreme Court, as illustrated above.

Further,the website of the Parliament describes the Secretary General thus; (https://www.parliament.lk/en/component/organisation/dept/departments?depart=1&id=1&Itemid=107),

> *"The Secretary General of Parliament is the Chief Executive Officer of the Parliament and is appointed by the President with the concurrence of the Parliamentary Council. The Office of the Secretary General of Parliament is a constitutionally protected post.* ***One of the main functions of the Secretary General of Parliament is to advice the Speaker and other Presiding Officers on matters relating to Parliamentary procedure, constitutionality of Bills, Standing Orders, privileges and any other matters concerning the functioning of the Parliament.*** *The Secretary General of Parliament is assisted by the Deputy Secretary General of Parliament and the Assistant Secretary General of Parliament in carrying out his/her responsibilities. The Secretary General is also the Chief Administrator and Accounting Officer of the Parliament.* ***The staff of the Secretary General of Parliament is appointed by the Secretary General with the approval of the Speaker.*** *The Secretary General or his/her nominee functions as Secretary to all Committees established by the Parliament."*(Emphasis ours)

In deciding this question as to the 'independent' functioning of the Secretary General or Parliament as contrasted to the Speaker, within the Public Authority (Sri Lanka Parliament) in so far as the RTI regime is concerned, comparative law may also be looked to, for illustration therein. In *Central Public Information Officer, Supreme Court v Subhash Chandra Agrawal* [Civil Appeal No. 10044 of 2010 with Civil Appeal No. 10045 of 2010 and Civil Appeal No. 2683 of 2010], the Supreme Court of India decided on whether the Chief Justice of India and the Supreme Court are two different public authorities, taking into account the definition of a "Public Authority" in Section 2 (h) of the Indian Act, together with Constitutional provisions, to determine that the Supreme Court was an "authority or body or institution of self-government" as envisaged under Section 2 (h) of the Indian Act,

> *"The Supreme Court of India, which is a public authority, would necessarily include the office of the Chief Justice of India and the judges in view of Article 124 of the Constitution. The office of the Chief Justice or for that matter the judges is not separate from the Supreme Court, and is part and parcel of the Supreme Court as a body, authority and institution.* ***The Chief Justice and the Supreme Court are not two distinct and separate public authorities, albeit the latter is a public authority and the Chief Justice and the judges together form and constitute the public authority, that is, the Supreme Court of India. The interpretation to Section 2(h) cannot be made in derogation of the Constitution. To hold to the contrary would***

> ***imply that the Chief Justice of India and the Supreme Court of India are two distinct and separate public authorities, and each would have their CPIOs and in terms of sub-section (3) to Section 6 of the RTI Act an application made to the CPIO of the Supreme Court or the Chief Justice would have to be transferred to the other when information is held or the subject matter is more closely connected with the functions of the other. This would lead to anomalies and difficulties as the institution, authority or body is one. The Chief Justice of India is the head of the institution and neither he nor his office is a separate public authority.****"*(*Vide* paragraph 14 at page 9) (Emphasis ours)

Appointment of the Information Officer and Designated Officer

Section 43 of the RTI Act defines "Public Authority" in the following manner;

> *"public authority" means –*
> *(a) a Ministry of the Government;*
> *(b) any body or office created or established by or under the Constitution, any written law, other than the Companies Act No. 7 of 2007, except to the extent specified in paragraph (e), or a statute of a Provincial Council;*
> *(c) a Government Department;*
> *(d) a public corporation; ....."*

Section 23 (1) (a) of the RTI Act states that;

> *"Every public authority shall for the purpose of giving effect to the provisions of this Act, appoint, within three months of the date of coming into operation of this Act, one or more officers as information officers of such public authority and a designated officer to hear appeals."*

The Public Authority to whom the Appellant filed the Information Request is the Parliament of Sri Lanka. The Parliament has appointed the Assistant Secretary General as its Information Officer and the Chief of Staff/Deputy Secretary General as its Designated Officer(https://www.parliament.lk/en/get-involved/right-to-information).It is then evident that the Parliament is the Public Authority for the purposes of the RTI Act, and that a distinction within its departments cannot be maintained, in view of the fact that the Information and Designated Officers are responsible for the information sought with regard to the Public Authority, *viz.*, the Parliament.

Although their specific functions and duties are distinctly spelled out, (as would be the case with any institution's internal departments), the two posts perform their functions in conjunction to ensure that the overarching institution, that is, the Parliament, is run smoothly. In fact, as we have found, the two posts are often cross referenced with regard to their appointment, duties, and functions, reinstating the fact that the two Offices are very much part of the same institution, carrying out their duties in conjunction with one another. The Commission is therefore of the view that the position of the PA that the offices of the Speaker and the Secretary General are independent and separate is not tenable, and an institutional distinction between the two cannot be maintained, either in terms of the law or in fact. It is clear therefore that artificial lines cannot be drawn between the post of the Secretary General

of Parliament, from which the Information Officer and Designated Officer has been nominated by the Parliament itself as the Public Authority, and the post of the Speaker.

The (interim) Order of the Commission in this Appeal, (dated 10.09.2019 as contained in the Record of Proceedings) is reiterated;

> *"Moreover, in terms of the RTI Act under which this Commission operates, the Public Authority in question (the Parliament of Sri Lanka) has nominated the Office of the Secretary General as the relevant officer/s possessing authority respectively as Information Officer and Designated Officer. The Office of the Speaker is not the named Office from which these officers are drawn.*
>
> *In view of the submission of the Secretary General that the two Offices (viz., the Office of the Secretary General and the Office of the Speaker) are wholly distinct in the parliamentary structure and that the requested information is not in the possession, custody and control of the Secretary General in terms of Section 3 of the RTI Act, a question arises as to whom the Appellant and other like-minded citizens can go to, in order to obtain this information which is undoubtedly of crucial importance to the democratic process?"* (Minute of the Record of Proceedings 10.09.2019)

We hold that, in full consideration of the constitutional positions of the Speaker and Secretary General derived through the Parliament and the respective duties and functions in that regard, it is the Parliament which is the overarching institution for the purposes of the RTI Act and further, that the posts of the Speaker and the Secretary General of Parliament are inextricably interlinked and intertwined therein.

Further, the Appellant has requested a "List" of names of Members of Parliament which, as the executing or administrative arm of the Sri Lanka Parliament, is indisputably within the administrative functions of the Secretary General of Parliament (DO). The further submission of the DO/IO was that it is not obligated under any written law to maintain records or registries of Members of Parliament in this manner. However, Regulation No 4(7)of the RTI Regulations gazetted on February 3rd 2017 (Gazette No 2004/66) calls upon a Public Authority to give information which may be, with a 'reasonable effort', be produced from information held within one of the three limbs contemplated in Section 3(1) of the RTI Act, namely, 'possession', 'custody' or 'control'. Thus, although the PA might not have a "list", it is manifest that it can nonetheless collate such a list with the information within its reach or 'awareness', based on its own submissions.

The PA is reminded that the object of the RTI regime is to facilitate the disclosure of information, and that the Act (particularly Sections 23 (3), 27(2), together with the Regulations and Rules of the Commission (particularly Regulation 4(7)) contains various stipulations to ensure that technical objections do not obstruct the larger objects of the law. This is in line with RTI regimes world-over, where disclosure is the rule, and exempting information, the exception. This onus becomes heightened where there is an overriding public interest in the disclosure of information as detailed in Section 5 (4) of the Act.

"Institutional Possession"

The PA, in *TISL v Presidential Secretariat*[(RTIC Appeal 06/2017), Order dated 04.12.2018] drew a distinction between the Presidential Secretariat and the President with whom the Declarations of Assetsand Liabilities are deposited, in terms of the DALL.

Having considered the institutional receipt of the Declarations of Assets and Liabilities, as opposed to an individual receiving the Declarations, the Commission ruled that the Presidential Secretariat had sufficient possession, custody and control over the Declarations. The Commission ruled that institutional possession (emphasis ours) of the impugned information is adequate compliance with Section 3 (1) of the Act,

> *"Taking the scheme of the DALL simpliciter, it is manifest that Declarations of Assets and Liabilities may indeed be provided to certain individuals, officers and even ordinary citizens upon the payment of a fee. If so, to whom is entrusted these duties of making available such Declarations of Assets and Liabilities upon such a request under this Law if not, the responsible officers of the Public Authority under the direction of its head, namely the DO?*
>
> ***If so, should not the same officers (logically) be considered as having 'possession, custody and control' of the same under and in terms of Section 3 of the RTI Act? For the purposes of the instant component of this appeal (namely the Declaration of Assets and Liabilities of the Prime Minister), we therefore come to a finding that such Declaration is retained with the Public Authority named in this appeal, namely the Presidential Secretariat and the DO named in the appeal thereof. This, in our view, amounts to institutional possession of the information asked for, satisfying 'possession, custody or control' of the requested information as envisaged by Section 3 of the RTI Act.***
>
> *All powers, duties and responsibilities of the President prescribed in the Constitution and other relevant laws are vested on the President in his official capacity as President as opposed to his individual/private capacity as Maithripala Sirisena. Therefore, even in the given instance, when a Declaration of Assets and Liabilities is made to the President, it is declared to him entirely in his official capacity because he holds the office of the President, which is to say that* ***when the individual Maithripala Sirisena ceases to be the President of Sri Lanka, he cannot take with him the Declarations so made.***
>
> *Thus, as far as the possession, custody or control of such Declarations is concerned, these would be with the office of the President, regardless of the individual who holds that office.* ***As stated in its official website, the Presidential Secretariat "provides the administrative and institutional framework for the exercise of the duties, responsibilities and powers vested in the President." Therefore, any document given to the President in his official capacity ought to be in the lawful possession, custody and control of the Presidential Secretariat which is the physical embodiment of the office of the President, thus buttressing the institutional possession of the same.****"* (*Vide* pages 11-12) (Emphasis ours)

Section 3 (1) of the RTIAct; viz., ''Possession,' 'Custody' or 'Control'

Section 3 (1) of the RTI Act states that;

> *"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."*

As is evident, the operational terms here are, 'possession', 'custody' or 'control.' Comparative law is indicative of the expansive manner in which these terms have been considered within the Right to Information regimes in other countries. The comparable section in the Indian RTI Act is Section 2 (j),

> *""Right to information" means the right to* ***information accessible under this Act which is held by or under the control of any public authority*** *and includes the right to--*
>
> *(i) inspection of work, documents, records;*
> *(ii) taking notes, extracts or certified copies of documents or records;*
> *(iii) taking certified samples of material;*
> *(iv) obtaininginformation in the form of diskettes, floppies"*(Emphasis ours)

The Central Information Commission (CIC) of India has interpreted "under the control of any public authority" widely, and in at least two ways that are relevant in the current instance. Firstly, the information accessible under Section 2 (j) of the Indian Act extends to information held by any other authority (including private entities) which can be accessed by the PA under a law in force at the time. Information in private hands which can be accessed by the PA under a law in force at the time can be considered information "held by or under the control" of the PA. In *Jain v Securities and ExchangeBoard* (4th December, 2009), the Central Information Commission (CIC) held that,

> *"4. The Appellate Authority might well have been right but meanwhile other developments have taken place about disclosure of information through a public authority to an RTI-applicant which may have been held in private hands. In its decision dated 25.09.2009 in Poorna Prajna Public School Vs. Central Information Commission in W.P. (C) No.7265 of 2007,* ***the Delhi High Court has held that provision for access to information held in private hands by a public authority on the request of an RTI applicant (Section 2(f)) was encompassed in the ambit of Right to Information as spelt-out in Section 2(j) of the RTI Act. It follows from it that the public authority which functions under a statute which enables such public authority to access information in the hands of any private entity, is obliged to access that information under the other statute and provide it to an RTI-applicant.*** *The Court order reads as follows:-*
>
> > ***"……The term, held by the or under the control of the "public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body.....****""* (Emphasis ours)

Secondly, the CIC has also interpreted "control" in such a manner that the information need not be created or prepared by the PA or be an outcome of the activities of the PA, as long as it is held by or in the control of the PA. In *Mr. K D Khera vs Government of National Capital City of Delhi* (2 June, 2011), the CIC held that,

> *"……Section 3 of the RTI Act mandates that all citizens shall have the right to information. Section 2(j) of the RTI Act defines "right to information" to mean the right to information accessible under the RTI Act which is held by or under the control of any public authority.* ***In view of the same, as long as the information sought is held by or under the control of a public authority, the information sought must be provided*** *(unless it is exempted under Sections 8 and 9 of the RTI Act);* ***it is irrelevant whether such information was created and prepared or is an outcome of the activity of the public authority.*** *"*(Emphasis ours)

Both interpretations of "under the control of the PA" extend the ambit of institutional control wielded by the PA to documents that can be accessed by the PA under a law in force at the time – even from a private entity, as well as to documents that were not necessarily prepared by the PA but are under its control.

It is moreover relevant to note that the three limbs in Section 3 (1) of the Sri Lankan Act, i.e., "possession, custody or control" are to be read disjunctively and not conjunctively as is clearly the legislative intent thereto, by the use of 'or' It is sufficient that one of the three are satisfied, to infer or impute access to the information by the PA as envisaged under Section 3 (1) and/or the three terms are read cumulatively in the context of a particular factual circumstance.

For the purposes of this Appeal, we state this to underscore the fact that the legislative intent of Parliament in bringing in the three limbs of Section 3 (1) using the disjunctive 'or' in that connection was to emphasize an expansive reading of Section 3(1) to underscore the retention of information at an institutional level, and not merely at an individual level (*viz.*, a particular officer or post in that Public Authority). To suggest otherwise would mean to accept that Public Authorities can deny information by claiming that it is under the custodianship of a different branch, division, agency or individual under its own aegis. Thus, for the purposes of this instant appeal, the Parliament cannot refute that it has institutional possession, custody or control over the List of MPs who submit Declarations vested with the Offices in Parliament, *viz.*, that of the Speaker/Secretary General of Parliament. To hold otherwise on the part of this Commission would be to defeat the very purposes of the RTI Act and indeed, the objectives with which it was established.

To summarize, the Commission is of the view that it is the Parliament that corresponds to the definition of a "Public Authority" within the RTI Act, and the administrative and/or internal divisions or units within the Parliament are immaterial as far the RTI regime is concerned. As is amply evidenced through the Constitutional provisions, Standing Orders, and definitions furnished by the website of the Parliament itself, the posts of the Speaker and the Office of the Secretary General are interlinked and intertwined. As stated aforesaid, we find that, contrary to the contentions of the Respondent Public Authority, the Determination of the Supreme Court lends a supportive stance to the position that an institutional distinction between the two Offices in question cannot be maintained in fact or in law.

In view of the above, the Commission overrules the preliminary objection that the distinctiveness of the offices of the Speaker and the Secretary General of Parliament precludes the Secretary General from having possession, custody or control as envisaged under Section 3 (1) of the RTI Act, and finds that the threshold requirement of the PA being in possession, custody or control of the requested information is satisfied to the extent that the

Secretary General holds institutional possession, custody or control over the impugned information, *viz.*,

1. *The list of names of Members of Parliament (MPs) who have handed over their respective Declarations of Assets and Liabilities in 2018*
2. *The list of names of Members of Parliament who have handed over their Declarations from 2010 to date*

QUESTION 2: ***The Applicability of the DALL and RTI Act***

This Commission has on previous occasion exhaustively considered and ruled on the matter of the overlap between the provisions of the DALL and the RTI Act, in its Order dated 04.12.2018 in *Transparency International Sri Lanka v. Presidential Secretariat*[RTIC Appeal/06/2017, Order dated 04.12.2018]. In that matter, the relevant PA and Appellant raised arguments in similar vein to the instant appeal.

The Commission entered into a considered decision on different aspects, including the applicability of the maxim, "*generalia specialibus non derogant",* especially where the provisions of secrecy in the DALL militate against the principle of public disclosure enshrined in the RTI Laws, the applicability of Section 5 (1) (a), and the unified purpose, i.e., transparency and accountability in public officials pursued by both the DALL and the RTI Act, *albeit* differing in terms of procedure.

> *"Even so, this Commission is obliged to apply the principles of the RTI Act and that Act alone in deciding appeals before us. Even though accountability of public officials is a common objective of both the DALL and the RTI Act, the two laws approach that common objective in vastly different ways, including, but not limited to the maximum disclosure principle embodied in the RTI Act and the ability to disseminate the information so obtained without hindrance. While the familiar maxim of generaliaspecialibus non derogant stipulates that a later general law cannot override a previous special law, this is however not an absolute. In Commissioner of Inland Revenue v. The Woodland (K. V. Ceylon) Rubber & Tea Company Ltd. (S.C. 3/66-Income Tax Case Stated, BRA/333) it was cautioned that "the rule generaliaspecialibus non derogant is only a presumption and cannot be elevated to a rule of law, because no Parliament (of Ceylon) can bind a future Parliament." Indeed, there are additional exceptional circumstances during which a subsequent general law could override a previous special law as was made clear in Ceylon Coconut Producers Co-operative Union v. C. Jayakody (S. C. 14 of 1960-Labour Tribunal Case No. 2/1915);*
>
> > *"the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one,* ***or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act.****"*

Ajoy Kumar Banerjee v. Union of India (1984 3 SCC 127, 153) is also relevant on this point, holding that; "a prior special law would yield to a later general law, if either of the two following conditions is satisfied: (i) The two are inconsistent with each other. (ii) There is some express reference in the later to the earlier enactment. If either of these two conditions is fulfilled, the later law, even though general, would prevail."

This position is further buttressed by another principle of interpretation: leges posteriors priores contrarias abrogant, which states that when a new law conflicts with an old one on the same or similar subject matter, the later law takes precedence and the conflicting parts of the earlier law becomes inoperable. As stated in Ranawanagedara Mudiyanse v. Municipal Council Kandy (7 NLR 167) (quoting 1 L. R. Q. B., 1892, 658, Churchwardens of West Ham v. Fourth City Mutual Building Society):

> *"The test of whether there has been a repeal by implication is this: are the provisions of the later Act so inconsistent or repugnant to the provisions of the earlier Act that the two cannot stand together? In which case, leges posteriors contrariasabrogant."*

The India CIC case of Mr. M. R. Misra v. the Supreme Court of India, (CIC/SM/A/2011/000237/Secretary General) specifically dealt with laws that conflict with the RTI Act in that country:

> *"Where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a non-obstante clause in Section 22 of the RTI Act was a conscious choice of Parliament to safeguard the citizens' fundamental right to information…If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only.."*

Given the above, the Commission envisaged two scenarios:

> *1. An earlier law/ rule whose provisions pertain to furnishing of information and is consistent with the RTI Act: Since there is no inconsistency between the law/ rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/ rule or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only;*
>
> *2. An earlier law/ rule whose provisions pertain to furnishing of information but is inconsistent with the RTI Act: Where there is inconsistency between the law/ rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/ rule and the PIO would be required to furnish the information as per the RTI Act only."*

We find these sentiments to be entirely applicable in the context of Sri Lanka's RTI Act. Otherwise, as this Commission observed during the course of the hearing of this appeal, (Minute of the Record 31/10/2018), allowing the existing range of special laws to supersede provisions of the RTI Act would ultimately render the RTI Act futile. This is a consideration that must anxiously weigh with us.

It is therefore our view that the spirit and letter of the RTI Act brought into Sri Lanka's statute books in 2016 with the modern objective of 'combating corruption and promoting accountability and good governance' (vide preamble to the RTI Act) cannot effectively operate if Section 8(1) of the DALL continues to be concurrently valid. It was precisely to address this situation that Section 4 of the RTI Act provides that; "The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail." This, we find, falls within the four corners of the caution that, the generalia maxim will not apply if there is "...something in the nature of the general one making it unlikely that an exception was intended as regards the special Act." (Ceylon Coconut Producers Co-operative Union v. C. Jayakody, supra)

Applying Section 4 to its fullest extent is important because of what the RTI Act undertakes to achieve through fostering 'a culture of transparency and accountability' (Vide preamble to the Act). If Parliament had intended to keep asset Declarations out of the purview of the RTI regime, it could have explicitly mentioned it or included the same as an exemption under Section 5 of the RTI Act. That was not evidenced. In such circumstances, the Commission is duty bound to take into due account, the legislative intention in that regard.

We do not accept the argument advanced on behalf of the Respondents that existing law would suffice to curb corruption and the unexplained acquisition of wealth of elected public officials through scrutiny of Declarations of Assets and Liabilities and that the provisions of the RTI Act need not therefore be used for this purpose. Existing laws, such as the DALL, would only come into play only upon complaints being received on corrupt acts of individuals or when the same is discovered inadvertently. As practice indicates, this occurs only in selected instances. In contrast, the RTI Act enables a powerful check to be exercised on even potential corruption as this would deter those otherwise enticed to amass public wealth for themselves." (Emphasis ours)

The contention of the PA, that Article 16 (1) of the Constitution ("*All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter")* is applicable on the facts of this appeal is also untenable as clearly, Article 16(1) relates to 'enacted law' as at the point of the enactment of the 1978 Constitution, which does not apply to the RTI Act, No 16 of 2016

Further, it is of special consideration to this Commission that the information requested by the Appellant in the immediate Appeal is qualitatively different to that which was in question in *Transparency International Sri Lanka v. Presidential Secretariat*[RTIC Appeal/06/2017, Order dated 04.12.2018]. Here, the Appellant has requested a "list of names" as opposed to the contents of the Declarations of Assets and Liabilities made by the MPs.

The PA has simultaneously taken up the contradictory positions that the governing statute over the subject matter of the requests is the DALL, while at the same time stating that the DALL makes no provision for the maintaining of a "list of names". The Appellant's position is that the information requested is a list of names and does not therefore fall under the DALL, but under the RTI regime. We find this to be a more acceptable stance. The nature of the information envisaged to be requested under the DALL and the present information request, which relates to a List of Names in essential form cannot be considered *in parimateria* and a basic distinction arises between the DALL and RTI regimes in this regard.

QUESTION 3: ***Applicability of Section 5 (1) (a)***

The information requested in the instant Appeal is namely,

a) The list of names of Members of Parliament (MPs) who have handed over their respective Declarations of Assets and Liabilities in 2018 and
b) The list of names of MPs who have handed over their Declarations from 2010 to date

If the PA's contention that the information is of a personal nature is to prevail, it would in essence be to deem the fact of whether or not an MP has submitted his Declaration of Assets and Liabilities, as personal information prohibited from release by Section 5(1)(a). This cannot be so as firstly an MP is taking on a public role and as such has accepted a higher level of public scrutiny which was recognized by this Commission in *TISL v Presidential Secretariat* [RTIC Appeal 06/2017,Order dated 04.12.2018].

The disclosure of the requested information would only result in the Appellant (and subsequently the public at large, as information released under the RTI Act becomes public information) obtaining the names of the MPs who have disclosed their Declarations of Assets and Liabilities. As such, the requested information would provide crucial insight into the compliance with the DALL by Members of Parliament who hold elected office and are financed by public funds. As such there is overriding public interest in the disclosure of the information as *per* Section 5(4) of the Act. In *TISL v Presidential Secretariat* [RTIC Appeal 06/2017; Order dated 04.12.2018] this Commission stated as follows, where the Declarations of Assets and Liabilities of the Prime Minister *per se* was in issue,

> *"The fact that stringent duties of transparency in regard to Declarations of Assets applies without exception to elected public officials (politicians) is a standard commonly accepted for long elsewhere as evidenced very well in a 2002 judgment of the Supreme Court of India (Union of India (UOI) v. Respondent: Association for Democratic Reforms and Another; with People's Union for Civil Liberties (PUCL) and Another v. Union of India (UOI) and Another, Decision: 2 May, 2002, 2002 AIR 2112; 2002 (3) SCR 294)."*

Given that this appeal concerns information which will indicate compliance with the DALL the aforesaid reasoning is more so of relevance. Moreover, in examining the applicability of Section 5 (1) (a) in*TISL v Presidential Secretariat* [RTIC Appeal 06/2017, Order dated 04.12.2018], the Commission ruled that the exemption must yield to an overarching public interest most evident in a matter such as the Declarations of Assets and Liabilities of elected representatives of the people;

> *"In instances where Section 5(1)(a) is urged to deny information, it is an important factor that this Section contains the public interest embedded within the exemption itself. We find that, on a consideration of Section 5(1)(a) itself, that the public interest in this matter outweighs the claim of unwarranted invasion into the privacy of an individual. In any event, we find that Section 5(4) containing the general public interest override will apply to support the release of the information requested."*

In view of the foregoing facts and positions of law, and taking into account the clear thinking of the Commission in *TISL v Presidential Secretariat* [RTIC Appeal 06/2017, Order dated 04.12.2018], this Commission holds that Section 5(1)(a) does not apply to deny the release of the information in the first instance and that, in any event, Section 5(4) operates as a public interest override to enable such release.

QUESTION 4: ***The Applicability of the Exemption of Parliamentary Privilege***

The second substantive objection raised by the Public Authority relates to Section 5(1)(k) which exempts information where,

> *'the disclosure of such information would infringe the privileges of Parliament or of a Provincial Council as provided by Law'*

The objection raised on the ground is captured in paragraphs 12-14 of the PA's Written Submissions dated 21.05.2019;

> *"12. In terms of Article 14A (2) of the Constitution a citizen's right of access of information can be restricted for the protection of Parliamentary privileges.*
>
> *13. Section 3(2) of the Right to Information Act, has elaborated and expanded this restriction and provides that the provisions of the Act shall not be in derogation of the powers, privileges and practices of Parliament.*
>
> *14. Parliament (Powers and Privileges) Act is linked with Article 67 of the Constitution which specified that,*
>
> > *"The privileges, immunities and powers of Parliament and of its Members may be determined and regulated by law and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall, mutatis mutandis, apply" "*

The Order of the Commission dated 22.10.2020 is reiterated wherein we noted that the objection raised in relation to Section 5(1)(k) which exempts information where, 'the disclosure of such information would infringe the privileges of Parliament or of a Provincial Council as provided by Law,' and pleadings in the Written Submissions of the PA do not indicate the 'privilege' that is so violated.

Referring to the definition in Erskine May's Treatise, *The Law, Privileges, Proceedings and Usage of Parliament* (1844) the Commission was of the view that it is not discernible as to what 'peculiar right' of Parliamentarians is violated by the release of the information

requested as the privileges thereto are conferred for the conducting of the special business of the House and related to conduct therein(Order dated 22.10.2019). The privileges thereto are conferred for the conducting of the special business of the House and related to conduct therein. The nexus between this and disclosure of statistics of the nature that the Appellant has requested is demonstrably unclear. Neither was the Public Authority amenable to explaining further as to how and the manner in which the violation of a privilege is attracted therein.

This view stands as of date as the PA has failed to substantiate the applicability of the exemption on the facts of this Appeal. In any event the overriding public interest under Section 5 (4) of the Act would apply for similar reasons as stated before under Section 5 (1) (a).

CONCLUSION

In view of the foregoing factual and legal positions and in recapitulation of the same, we reiterate the following;

Matters in Common Agreement

1. It was the common ground of both parties to this Appeal that Declarations of Assets and Liabilities are forwarded by Members of Parliament in terms of Section 4(b) of the Declaration of Assets and Liabilities Law (1975) to the Speaker of Parliament.
2. It was also commonly agreed that, the Secretary General of Parliament is the administrative arm of the Public Authority (Sri Lanka Parliament) as borne out by the relevant Standing Orders of Parliament.
3. Further, it was of consensus that what the Appellant had asked for, was a List of Names of MPswho have submitted their Declarations of Assets and Liabilities from 2010 to date, and in the year 2018.

Matters in Dispute and Summary of Rulings thereto

4. Threshold Question of Applicability of Section 3(1) of the RTI Act

i. Section 3(1) of the RTI Act specifies that information must be released by a Public Authority if the said information is in its 'possession', 'custody' or 'control,' subject however to the exemptions detailed in Section 5(1).

ii. The threshold question for determination in this Appeal is limited to whether the Secretary General of Parliament, from which post, the Parliament has seen fit to appoint the Designated Officer (DO) and Information Officer (IO) in accordance with Section 23 of the RTI Act, has institutional'possession', 'custody or 'control'over the LIST of Names (emphasis ours) of Declarations of Assets and Liabilities supplied by Members of Parliament for a particular year/years as specified in the information request.

iii. We hold that Section 3(1) applies to the institutional entity which is the Sri Lanka Parliament, that it is the Parliament which is the Public Authority, that the question of 'possession, custody or control' arises *vis-à-vis* that body rather than

different departments or posts within the body, and it is indisputable that Parliament, as the Public Authority for all intents and purposes under this Act, does indeed have institutional 'possession, custody and control' of the List of Names of MPs who submit Declarations of Assets and Liabilities of Members of Parliament as contemplated by Section 3(1) of the Act.

iv. We are fortified in this ruling by the reasoning of the Supreme Court in the aforesaid "*Divineguma*" Bill (Special Determination on the Bill titled *"Divineguma"*(SC.SD 01/2012 – 03/2012) where the Court declined to hold with a preliminary objection that two Petitions challenging the Bill, SC.SD 02/2012 and SC.SD 03/2012 must be dismissed *in limine* for non-compliance with *inter alia* the stipulation in Article 121 (1) to the effect that that a copy of the Petition must be delivered to the Speaker. The objection was based on the fact that such delivery had instead been made to the Secretary General of Parliament. The Supreme Court ruled that deliveryto the Secretary General instead of the Speaker is sufficient compliance for the purposes of Article 121 (1) of the Constitution.

v. Thus, it is our view that the Secretary General of Parliament (DO) is not called upon to await directions from the Speaker to provide the information requested and thatthe contention of the IO/DO that they can only 'execute' a direction given by the Speaker has no relevance to the matter in issue.

vi. Further, the Respondent DO and IO argued in hearings before this Commission that they had no 'control' over the Declarations as they are by law, (Declaration of Assets and Liabilities Law, 1975) handed by MPs to the Speaker of Parliament, even though they are 'aware' of the place where the Declarations are kept. We hold that, 'awareness' speaks to the fact of 'institutional possession' and/or 'institutional custody' and/or 'institutional control' of the said information. In any event, as aforesaid, the Secretary General of Parliament has accepted that it is the administrative agency of Parliament and as such, it is axiomatic that the LIST OF NAMES of Parliamentarians who have filed Declarations of Assets and Liabilities for the relevant years, (i.e. the information asked for by the Appellant) is within its 'institutional' possession, custody and control.

vii. This Commission emphasizes that it is a primary statutory duty of the Public Authority under Section 23 of the RTI Act, as buttressed by Article 14A of the Constitution, (brought in by the 19th Amendment and retained in the 20th Amendment), to bring itself to conform to the RTI Act in the administrative arrangements that it makes thereto.We are constrained to point to a distinctadministrative anomaly arising thereto in the fulfillment of that statutory duty.

viii. Presently, the Public Authority (Sri Lanka Parliament) has nominated the Information and Designated Officers from the staff of the Secretary General and/or the Secretary General,but with the result that the said DO/IO contend that they do not have 'custody, possession and control' over information that is by law, given to the Speaker of Parliament. The Commission expended much effort to rectify this administrative anomaly, as detailed in the Matters Arising under this Appeal but with little success.

ix. Consequently, what results is a manifest absurdity in fact as the Appellant is left with no remedy with either the DO/IO of Parliament (Secretary General of Parliament) or the Speaker, to whom an identical request in issue in this Appeal was submitted by the Appellant, as submitted by him during the hearing of this Appeal, but was not responded to on the basis that the Speaker is not the IO/DO of Parliament.

x. Moreover, the submission of the Respondent DO/IO that they are not obligated under any written law, to maintain records or registries of Members of Parliament who submit Declarations of Assets and Liabilities is rebutted by Regulation No 4 (7) of the RTI Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017), which states that a Public Authority is called upon to give information which may be, with a 'reasonable effort', be produced from information held within one of the three limbs contemplated in Section 3(1) of the RTI Act, namely, 'possession', 'custody' or 'control', which, we hold, has been satisfied in the circumstances of this appeal;

Substantive Objections raised by the Public Authority

5. Where the substantive objections raised by the Public Authority are concerned, we reiterate our position in *TISL v Presidential Secretariat* (RTIC Appeal 06/2017; Order dated 04.12.2018) that the Declaration of Assets and Liabilities Law No. 1 of 1975 (DALL) is subordinate to the RTI Act No. 12 of 2016 given Section 4 of the Act and that the principle of *generaliaspecialibus non derogant* is not applicable in this regard.

6. The 'confidentiality' of the information requested has been strongly contended by the DO of the Public Authority to be in issue if the information is released. This contention is untenable, in our view, as what has been requested is the List of Names of MPs who have submitted the Declarations of Assets and Liabilities to the named authority under the relevant law, which is a statutory duty. Further, it has been our decided view in *TISL v Presidential Secretariat*(RTIC Appeal 06/2017, Order dated 04.12.2018) that the release of the Declaration of Assets and Liabilities of the elected representative in issue, (the Prime Minister), subject to the redaction under Section 6 of the RTI Act of the private details of any other person related to the said elected representative, would not attract privacy/confidentiality concerns under Section 5 (1)(a) of the RTI Act.

7. We also hold that neither Section 3(2) nor Section 5(1)(k) which states that information which infringes the 'privileges of Parliament,' applies as exemptions to prevent the information in issue being released under the RTI Act. The ground of parliamentary privilege, it is held, is inapplicable in the first instance in regard to the release of the LIST of Names of MPs who have submitted their Declarations of Assets and Liabilities to the Speaker in terms of the Declaration of Assets and Liabilities Law (1975).

8. Further, it is manifest that the information requested is of high public importance and public interest given the need for accountability and transparency of elected representatives. The submission of Declarations of Assets and Liabilities by parliamentarians to the Speaker of the Parliament is a legal duty specially secured by the Declarations of Assets and Liabilities Law (1975). As such, this information request relates to the carrying out of a legal duty by elected representatives. We record our considerable puzzlement as to why such a high degree of secrecy needs to be maintained about this data.

9. As a body established under and in terms of the RTI Act to 'foster a culture of transparency and accountability in public authorities' which includes the Parliament of Sri Lanka, this Commission is cognizant of its public duty regarding the same.That duty is rendered all the more imperative in that the information requested by the Appellant, *viz.*, a List of parliamentarians who have adhered to the law, cannot be called for and obtained under the Declarations of Assets and Liabilities Law (1975) in any event, unlike the said Declarations themselves.

10. Thus and without prejudice to this Commission's afore declared position that the RTI Act overrides the Declarations of Assets and Liabilities Law (1975) by virtue of Section 4 of the RTI Act, we opine that if the argument of the Public Authority that the Appellant may apply for and obtain the instant information using procedures stipulated in that Law rather than using the RTI Act,despite the fact that the said Law does not allow for such information be either asked for or given, is taken at face value, the Appellant would be effectively left without a remedy. This would be a comprehensive rebuttal of the information regime that the RTI Act, No. 12 of 2016 seeks to establish. Thus, we hold that Section 5(4) of the RTI Act pertaining to the public interest secured by the release of the information, which this Commission is duty bound to uphold, prevails over the objections raised by the respondent Public Authority, including *interalia* Sections 3(2), and 5(1) (a) and (k).

Accordingly, the decision of the Designated Officer is reversed in this Appeal and the information requested by the Appellant is directed to be released. It is further noted that the considerable period of time taken in issuing this ruling was owing to a decision taken upon the consensus of parties in the hearing of the Appeal, that time may be taken to allow an appeal being heard by the Court of Appeal upon the Office of the President contesting an earlier decision of this Commission ordering release of the Declaration of Assets and Liabilities of the Prime Minister (CA/RTI/01/2019) to be concluded. However, as close to two years and three months have lapsed since the Appellant lodged this Appeal to the Commission, this Order is issued hereto.

This Appeal is concluded.

Order is hereby conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

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