

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.: - CIC/ECOMM/A/2019/150996-BJ

Dr. Jasdeepak Singh

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO
Under Secretary
Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi – 110001

...प्रतिवादीगण /Respondent

Date of Hearing : 24.03.2020
Date of Decision : 10.04.2020

Date of RTI application	24.06.2019
CPIO's response	23.07.2019
Date of the First Appeal	09.08.2019
First Appellate Authority's response	06.09.2019
Date of diarised receipt of Appeal by the Commission	22.10.2019

ORDER

FACTS:

The Appellant vide his RTI application sought information regarding the certified copy of the dissent expressed by Mr Ashok Lavasa (Election Commissioner) over the clean chits given to four speeches of Hon'ble Prime Minister of India and one speech of Mr. Amit Shah in lieu of the complaints received by the ECI during the Lok Sabha Election campaign in 2019.

The CPIO, vide its letter dated 23.07.2019 denied disclosure of information u/s 8 (1) (g) of the RTI Act, 2005. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 06.09.2019 stated that handling MCC violations involved obtaining reports and input from field level officers. Notings prior to taking decision would contain references to reports and comments from field level officers. In similar cases, regarding reports submitted to the Commission by observers on conduct of election, the Commission vide order no

CIC/WB/A/000212 dated 15.04.2010 upheld the view that such information would be protected from disclosure u/s 8 (1) (g) of the RTI Act, 2005.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Dr. Jasdeepak Singh through TC;

Respondent: Mr. Sidhant Kumar, Advocate through TC;

The Appellant reiterated the contents of his RTI application and stated that the information sought was not furnished, till date. The Respondent, vide its letter dated 17.03.2020 had authorized Mr. Sidhant Kumar, Advocate to appear for hearing who in turn requested the Commission to hear him telephonically or video conferencing, in the light of severe restrictions imposed on public movement placed by order dated 22.03.2020 passed u/s 144 Criminal Procedure Code, 1973 due to outbreak of COVID 19 pandemic. It was argued by the Respondent that the CPIO/FAA had given a suitable reply seeking exemption from disclosure u/s 8(1)(g) of the RTI Act, 2005. While reiterating the detailed decision of the FAA, a special reference was made to the decision of CIC in its order CIC/WB/A/000212 dated 15.04.2010. It was consistently articulated that in view of the provision contained in the RTI Act, 2005, as also the confidentiality of the discussions held in the ECI, further details could not be furnished. On being queried by the Commission, if a similar reply could be provided to the Parliament, the Respondent replied in the affirmative.

The Commission was in receipt of a written submission from the Respondent dated 25.03.2020 wherein while reiterating the contents of the RTI application, reply/order of the CPIO/FAA, it was submitted that the information applied for contains extensive references to inputs received by the ECI from field officers including the identity of such officers. Any disclosure of aforesaid poses a certain risk to the safety of such officers. Secondly, the information sought for by the Appellant and the inputs relied therein is in aid of law enforcement which is confidential in nature. In any event, there is no prejudice caused neither to the Appellant nor to the public at large since all final decisions taken by the ECI based on inputs received are published in the public domain. Therefore, it was submitted that the information sought for is clearly exempt from disclosure under Section 8(1) (g) of the Act. The Respondent further relied upon the decision of the Hon'ble Supreme Court in the case of CBSE v. Aditya Bandopadhyay (2011); in Namit Sharma vs. Union of India (2013); in S. Subramaniam Balaji vs. State of T.N. (2013); in Mahinder Singh Gill v. Chief Election Commissioner (1978) and the decision of the Commission in B.S. Malik's Case (2010), etc.

The Commission referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

“(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”

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE and Anr. Vs. Aditya Bandopadhyay and Ors), wherein it was held as under:

35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. *“....Under the RTI Act “information” is defined under Section 2(f) which provides:*

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”

7. *“....the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

In this context, a reference can be made to the decision of the Hon’ble Supreme Court in the matter of Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors (Civil Appeal No. 6454 of 2011) wherein it was held as under:

“28.....the information as to the names or particulars of the examiners/coordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8 (1)(g) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer-books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-book

which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8 (1)(g) of RTI Act.”

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties and in the light of the aforesaid decisions, no further intervention of the Commission is required in the matter.

The Appeal stands disposed accordingly.

(Bimal Julka) (बिमल जुल्का)

(Chief Information Commissioner) (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

(K.L. Das) (के.एल.दास)
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दिनांक / Date: 10.04.2020