

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/2018/623983

Razaak K Haidar

... अपीलकर्ता/Appellant

VERSUS
बनाम

CPIO, Election Commission of
India, New Delhi.

...प्रतिवादीगण /Respondents

Relevant dates emerging from the appeal:

RTI : 20.04.2018	FA : 24.05.2018	SA : 21.06.2018
CPIO : 02.05.2018	FAO : 18.06.2018	Hearing : 11.02.2019

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), Election Commission of India (ECI), New Delhi, seeking an Electronic Voting Machine (EVM).

2. The appellant filed a second appeal before the Commission on the grounds that the respondent has wrongly denied the information. He contended that as per

Section 2(f) and 2(i) of the RTI Act, the definition of ‘information’ and ‘record’ includes model or any sample. Hence, an EVM qualifies as ‘information’ and should be provided to him under Section 6(1) of the RTI Act. The appellant requested the Commission to direct the CPIO to provide the desired information to him, free of cost, to take necessary action against the CPIO and to impose penalty upon him under Section 20 of the RTI Act. In addition to the above, the appellant also requested for compensation.

Hearing:

3. The appellant Razaak K Haidar attended the hearing through video-conferencing. The respondent Shri Soumyajit Ghosh, Under Secretary, Election Commission of India, New Delhi, was present in person.

4. The appellant submitted that the respondent has wrongly denied the information under Section 6(1) of the RTI Act. He contended that as per Section 2(f) and 2(i) of the RTI Act, the definition of ‘information’ and ‘record’ includes model or any sample. Hence, an EVM qualifies as ‘information’ and should be provided to him under Section 6(1) of the RTI Act. He further stated that he is ready to pay the necessary cost for the machine, as applicable.

5. The respondent reiterated that an EVM did not qualify as ‘information’ under Section 2(f) of the RTI Act. He, however, admitted that due to oversight, the CPIO vide reply dated 02.05.2018 inadvertently quoted Section 6(1) of the RTI Act while denying the appellant’s request for an EVM in the RTI application. The respondent tendered his unconditional apology for this lapse and requested the Commission to condone the same. He also admitted that model/samples of the

EVM are available with the ECI, but the same are only kept for training purpose by the ECI, and not saleable to the general public. The respondent further stated that the software installed in the machines is an intellectual property of a third party, the disclosure of which would harm the competitive position of the third party concerned. Hence, the said information is exempted from disclosure under Section 8(1)(d) of the RTI Act.

Decision:

6. The Commission notes that the definition of information under Section 2(f) of the RTI Act is as follows:

“Section 2(f)- “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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.”

7. Thus, the EVM which is available with the respondent in a material form and also as samples, as admitted by the respondent during the hearing, is an information under the RTI Act. The Commission also notes that as per the respondent, the software installed in the EVM is an intellectual property of a third party, the disclosure of which would harm the competitive position of the third party concerned. However, the respondent had denied the information sought for, erroneously, under Section 6(1) of the RTI Act. The Commission, therefore, directs the respondent to provide an appropriate reply, as per the provisions of the RTI

Act, to the appellant within four weeks from the date of receipt of a copy of this order under intimation to the Commission.

8. With the above observations, the appeal is disposed of.
9. Copy of the decision be provided free of cost to the parties.

Sd/-

Sudhir Bhargava (सुधीर भार्गव)
Chief Information Commissioner (मुख्य सूचना आयुक्त)
दिनांक / Date 12.02.2019

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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Addresses of the parties:

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Ashoka Road, New Delhi- 110001.
2. Shri Razaak K. Haidar,