

केंद्रीय सूचना आयोग
CENTRAL INFORMATION COMMISSION
बाबा गंगनाथ मार्ग
Baba Gangnath Marg
मुनिरका, नई दिल्ली- 110067
Munirka, New Delhi-110067

File no.: CIC/STAQC/A/2019/148958

In the matter of:
Venkatesh Nayak

... Appellant

VS

Central Public Information Officer
Standazdization, Testing and
Quality Certification (STQC) Directorate
Ministry of Electronics & IT
Electronics Niketan, III Floor,
6-CGO Complex, Lodi Raod, New Delhi – 110 003

...Respondent

RTI application filed on	:	24/06/2019
CPIO replied on	:	10/07/2019
First appeal filed on	:	12/07/2019
First Appellate Authority order	:	22/08/2019
Second Appeal dated	:	09/10/2019
Date of Hearing	:	28/07/2021
Date of Decision	:	28/07/2021

The following were present:

Appellant: Present over phone

Respondent: Sh. Anil Kumar, Scientist F & CPIO, present over phone

Information Sought:

The appellant has sought the following information:

1. Provide the **name and designation of the members of the STQC team** which carried out the testing of the firmware of Electronic Voting Machines (EVMs) of M3 and M2 generation and Voter Verified Paper Audit Trail (VVPAT) units manufactured by ECIL and BEL and used in 2019 Lok Sabha Elections.

2. Provide the **exact dates on which the STQC team** carried out the said testing and evaluation as stated in para 1 above.
3. Provide the **geographical locations or the premises** at which the STQC team carried out the said testing and evaluation.
4. And other related information.

Grounds for Second Appeal

The CPIO did not provide the desired information u/s 8(1)(d) of the RTI Act.

Submissions made by Appellant and Respondent during Hearing:

The appellant while explaining the contents of his RTI application which has occasioned the current appeal proceedings, made a reference to certain information obtained by him under the RTI Act containing the reports of the Technical Evaluation Committees (TEC) constituted by the Election Commission of India for the purpose of providing aid and advise to the said Commission in matters relating to Electronic Voting Machines (EVMs) and Voter Verified Paper Trail Units (VVPATs) which have a bearing on the queries contained in the instant RTI application pending before the Commission in the current appeal proceedings.

That the appellant sought leave of the bench to submit a relevant report of the TEC in support of his contention that the instant RTI application is aimed at obtaining information to ascertain the role and duties of and performance of such duties by the public authority while carrying out third party audits of the software/firmware embedded in the EVMs and VVPATs in compliance with the recommendations of the TEC.

He further submitted that he received reports of the TEC submitted to the Election Commission of India of the years 1990, 2006, 2007 and 2013 under the RTI Act, in April 2019, prior to the submission of the RTI application to the Respondent public authority which forms the subject matter of the current appeal proceedings.

He further placed before the bench, the 2013 TEC report obtained from the Election Commission of India along with scanned copies of the RTI application, the fee intimation letter issued by the CPIO of the Election Commission, the proof of fee payment and the covering note sent by the CPIO while supplying

the information under the RTI Act as evidence of the fact that the said TEC report has been obtained by this appellant legitimately following due procedures under the RTI Act.

He further stated that the observations and recommendations of the TEC in its 2013 report with regard to the necessity of ensuring transparency of the EVM Code to allay fears of possibility of tampering raised repeatedly by political parties.

The relevant paragraphs from pages 4-5 of the 2013 TEC report (corresponding to pages 15-16 of the current PDF file) were mentioned by the appellant in his submissions as follows:

“v. Transparency of EVM Code: Facility to be provided in EVM units so that Code in the EVM units can be read out by an approved external unit and the code so read may be compared with corresponding reference code to show that the code is the same as that in reference units. The scope of comparison is only to ensure that there is no Trojan or other malware for EVMs in use. Election Commission may consider the format (binary or nex any other) in which the reference code is made available and modalities of preserving the reference code include code revisions. This provision being introduced for the first time, may be done in a phased manner with due caution. Thus the Commission may initially consider undertaking this exercise in a limited scale as per mechanisms they deem fit and availability of logistics at FLC stage, and/or third party. Thereafter having gained the experience on modalities and logistics needed, and the time that will be required to set up the logistics on larger scale, later extend access to this facility.

xiii. Third party checks: While BEL and ECIL have been using robust quality Assurance practices, the Election Commission may consider introducing gradually, third party check of EVM units at all and any stage from manufacture to final use, to ensure robustness and correct functioning of EVMs, the scope of tests and their modalities can be reviewed and revised time to time. This will put to rest any concern of “insider attack” on EVMs.”

That the public interest underpinning the instant RTI application, which forms the subject matter of the current appeal proceeding, is to ascertain the role of

the respondent public authority in complying with the aforementioned recommendations of the TEC. The role of the respondent public authority with regard to third party audit of the software/firmware has already been confirmed by ECIL- one of the manufacturers of the EVMs and VVPATs in response to another RTI application filed by the applicant, a copy of which was annexed to the instant RTI application which forms the subject matter of the current proceedings.

The appellant further submitted that the respondent public authority's claim of harm likely be caused by the disclosure of the information requested in the instant RTI application to the competitive position of third parties is not tenable simply because only two companies namely, BEL and ECIL have been given the exclusive rights to manufacture and supply EVMs and VVPATs to the Election Commission of India for use during the elections to Parliament and State Legislatures. This virtually creates a situation of duopoly for the said two companies as there is no other competitor who can bid for supply of EVMs and VVPATs to the Election Commission of India. Further, the appellant also submitted that both BEL and ECIL are not in competition with each other as the Election Commission of India divides up its demand for supply of EVMs and VVPATs between the two companies based on their capacity to manufacture and deliver the said machines according to the timelines determined by the Election Commission.

In respect of the RTI application, the appellant submitted that information on points no. 1 & 2 are fit to be disclosed. In respect of points no. 4, 5, 9 and 10 he argued that the information sought are totally statistical and therefore, by no stretch of imagination it can be denied. In respect of points no. 6 and 7 he submitted that he will agree with the CIC's decision.

He drew attention of the Commission to para 10.1.6 of his second appeal in which he had relied on a decision of the previous bench of this Commission. In the matter of Sunil Kishore Ahya vs CPIO, Election Commission of India, CPIO ECIL and CPIO BEL, vide case no. CIC/ECOMM/A/2017/171660 decision dated 11.09.2018. The extract of the relevant para of the decision is as follows:

“ Since, the issues raised by the appellant are in the interest of creation of public trust in the voting system through EVMs, the CPIO is advised to place the matter before the competent authority for their perusal and necessary actions, if any.”

He relied on the above judgment to support his argument regarding larger public interest. He also submitted that the FAA in his order failed to provide a signed copy of his order.

The CPIO submitted that the overall intent is that all STQC Lab/Centres are third party independent testing/Audit organisations and provide services by levying charges against contractual requests. Hence, the ownership of details of service provided along with all artifacts generated out of this activity is with the requestor of the service. Due to the contractual terms, information is not shared. Therefore, he submits that EVM and VVPAT testing information cannot be shared with the appellant as the information sought belongs to the requestor of the service and is of “commercial confidence”, the disclosure of which would harm the competitive position of the requestor. Thus the information sought by the appellant at Sl. No. 8.2(a,b,c,d,e,f,g,h,i,j) is denied as per clause 8(1)(d) of the RTI Act.

Furthermore, during the hearing, on a query to the respondent as to why for point no. 1, the names and designations cannot be given, he submitted that they can be influenced by interested parties and therefore it is prejudicial to the interest of the nation to disclose such information under the RTI Act.

Observations:

Based on a perusal of the record, it was noted that the CPIO vide letter dated 10.07.2019 had denied the information sought u/s 8(1)(d) of the RTI Act on all the points. Further, the appellant had filed a first appeal on 12.07.2019 being dissatisfied with the CPIO’s reply. The FAA vide order dated 22.08.2019 concurred with the CPIO’s reply and held that the same is justified. The Commission observed that Sec 8(1)(d) was not amplified or justified by the respondents in their reply and the same was therefore asked during the hearing. The involvement of third party independent testing/Audit organisations and providing of services by levying charges against contractual requests seems to be an issue of commercial confidence. The appellant rightly pointed out that only ECIL and BEL are the two organisations involved in the manufacturing and supply of EVMs and VVPATs but that does not automatically mean that the testing also would be done only by them. The CPIO had categorically stated in his written submissions that the independent testing/Audit organisations provide services to them in compliance with

contractual terms and conditions. Further, the broader picture is that any kind of speculation would be prejudicial to the interest of the nation and therefore, a suitable point-wise reply in respect of each point should be given by the CPIO in the letter and spirit of the Act. The appellant's plea that the information was sought to ascertain the role and duties of and the performance of such duties by the public authority while carrying out third party audits of the software/firmware embedded in the EVMs and VVPATs in compliance with the recommendations of the TEC is irrelevant and any citizen of India in his exercise of right to information can seek information.

Further, the FAA should be careful in future and even if the same is an online order, the name and designation of the FAA should be invariably mentioned.

The Commission finds the appellant's plea in respect of points no. 4,5,9 and 10 justified as statistical information can be given and there is no exemption applicable in disclosing the numbers. As far as point no. 1 is concerned, the names and designations need not be disclosed, being personal in nature and the same may influence the process of testing of EVMs and VVPATs. Therefore, the same is considered to be information of commercial confidence of the independent testing/audit organisations and hence exempted u/s 8(1)(d) of the RTI Act.

As far as point no. 2 is concerned, the dates are eminently disclosable and can be given to the appellant. In respect of point no. 3, the geographical locations without specifying further details can be given. During the hearing, the CPIO stated that the testing was done at various locations including at BEL & ECIL. The specific locations can therefore be provided. As far as points no. 6,7 and 8 are concerned, the CPIO shall revisit the records vis-a-vis the RTI application and provide suitable replies amplifying the exemption clause applicability for those points with full justification where information is being denied and also shall examine the possibility of providing partial information on those points, where it is not covered under any exemption clause. In those circumstances, the exempted portion can be masked by following the provisions of Sec. 10 of severability.

Decision:

In view of the above observations, the CPIO shall comply with the Commission's directions as given above, within 10 days from the date of its receipt under intimation to the Commission.

The appeal is disposed of accordingly.

Vanaja N. Sarna (वनजा एन. सरना)
Information Commissioner (सूचना आयुक्त)

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A.K. Assija (ऐ.के. असीजा)
Dy. Registrar (उप-पंजीयक)
011-26182594 /
दिनांक/ Date