

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

L.P.A. No.900 of 2011 (O&M)

Date of Decision: August 10, 2015

Block Development and Panchayat Officer

...Appellant

Versus

The State Information Commissioner and another

....Respondents

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Arvind Singh, Advocate,
for the appellant.

Mr. Naveen Kumar, Advocate,
for respondent No.2.

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SATISH KUMAR MITTAL, J.

The State Public Information Officer, Panchayat Department has filed the instant intra-court appeal under Clause X of the Letters Patent against the order dated 13.5.2011 passed by the learned Single Judge, dismissing the writ petition (CWP No.8538 of 2011) filed by the appellant challenging the order dated 17.3.2011 (Annexure P-7) passed by the State Information Commissioner, Haryana-cum-Appellate Authority under the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act'), directing the appellant to supply complete information as per RTI application dated 17.8.2010, free of cost, to respondent No.2.

We have heard the learned counsel for the parties and have gone through the impugned order as well as the order dated 17.3.2011 passed by the State Information Commissioner, Haryana-cum-Appellate

Authority.

The brief facts of the case are that respondent No.2 is a defeated candidate in the elections of Gram Panchayat Bakhtua, Tehsil Naraingarh, District Ambala, which were held on 12.6.2010. He secured 335 votes against the elected candidate Sukhbir who had secured 339 votes and was declared elected. Undisputedly, respondent No.2 accepted the result of elections and did not file any election petition against the elected candidate under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Panchayati Raj Act').

Much after the elections, respondent No.2 filed an application before the appellant seeking the following information with regard to the above-said elections:-

- (a) Full name and address of the voters who had casted their votes in the election of Gram Panchayat;
- (b) Total number of votes casted booth wise;
- (c) Total number of votes received by each contesting candidates.

The appellant supplied the requisite information at points (b) and (c) but the information at point (a) could not be supplied as the same (i.e. marked voter list used in the election) was not under his control and was sealed under Rule 73 of the Haryana Panchayati Raj Election Rules, 1994 (hereinafter referred to as 'the Rules of 1994') and lying deposited with the competent authority.

Respondent No.2 filed first appeal before the Appellate Authority under the RTI Act for non-supply of information at point (a). The said appeal was dismissed on 25.10.2010 while holding that the marked

copy of the voter list is a part of the sealed record, and as per the instructions issued by the State Election Commission, Haryana dated 25.6.2010, only the Civil Court is the competent authority to order the opening of the sealed votes and marked voters list for which respondent No.2 can file the election petition. However, it was found that the information sought by respondent No.2 regarding total votes in favour of each candidate was supplied by Block Development and Panchayat Officer.

Feeling aggrieved against the said order, respondent No.2 filed second appeal before the State Information Commission, Haryana. The appeal was allowed and the appellant was directed to supply the complete information as per RTI application dated 17.8.2010, free of cost to respondent No.2 within 15 days, while observing as under:-

“ Appeal heard. Appellant appeared and argued that the required information has not been furnished so far and he further contended that the ground for denial is unjustified.

Sh. G.S. Sharma, State Public Information Officer-cum-Block Development and Panchayat Officer, Naraingarh appeared and contended that the requested information cannot be provided as per the Rule 73 of the Haryana Panchayati Raj Election Rules, 1994.

In view of above submissions and on perusal of the record, Commission observes that the contention as raised by SPIO has no merit in view of the provisions as contained under Section 22 of the RTI Act.

It is hereby directed that State Public Information Officer-cum-Block Development and Panchayat Officer, Naraingarh shall furnish complete information as per RTI application dated 17.8.2010, free of cost, to the appellant within 15 days of the receipt of Commission's

order under intimation to the Commission.

Announced. To be communicated.”

Feeling aggrieved against the aforesaid order (totally non-speaking), the appellant filed C.W.P. No.8538 of 2011, referred to above, before this Court. The learned Single Judge vide impugned judgment has dismissed the said writ petition, while observing as under:-

“As is evident from the record that the complainant has only sought the following information through the medium of application (Annexure P-1):-

“Full name and address of the voters who had casted their votes in the election of Gram Panchayat Bakhtua held on 12.6.2010 and total number of votes casted booth-wise number of votes received by the each contesting candidates (specify of each candidates).”

7. Meaning thereby, the instant case, the information sought by the complainant, is routine and general in nature and no confidentiality is attached to it, in any manner. To my mind, unless and until, the information falls within the exemption clause of Section 8 or 24 of the Act, then the petitioner is legally bound to furnish the information to the complainant under Section 3, as per procedure contemplated under Sections 6 & 7 of the Act.

8. Moreover, proviso to Section 8 of the Act postulates that the information, which can not be denied to the Parliament or a State Legislature, shall not be denied to any person. Learned counsel for the petitioner has miserably failed to show that such information sought by the complainant, cannot be supplied to the Parliament or a State Legislature. In this manner, since, the information sought by the complainant does not fall in any exemption clause of the Act, so, to my mind, the

petitioner is legally required to furnish the indicated information to the complainant. Therefore, the contrary arguments on his behalf, are liable to be and are repelled and the impugned order (Annexure P-7) deserves to be and is hereby maintained in the obtaining circumstances of the case.

9. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is dismissed as such.”

Hence, this appeal.

Learned counsel for the appellant argued that the State Information Commissioner as well as the learned Single Judge have not properly appreciated the controversy involved in the present case in light of the various provisions of the Rules of 1994 which prohibit inspection of the ballot record without permission of the civil court or the competent authority, and reached to a wrong conclusion that the appellant under the law is required to supply the requisite information at point (a). Learned counsel referred to Rule 57 of the Rules of 1994 which provides that 'the Presiding Officer shall then make separate packets of-

- (a) the marked copy of the voters list;
- (b) the numbered ballot papers;
- (c) the cancelled ballot papers;
- (d) the cover containing the tendered ballot papers and the list of tendered ballot papers;
- (e) the list of challenged votes; and
- (f) any other papers directed by the Returning Officer (Panchayat) to be kept in a sealed packet.'

Learned counsel for the appellant further referred to Rules 72

and 73 of the Rules of 1994 relating to election papers, which read as under:-

“72. Custody of papers relating to election.- The District Election Officer (Panchayat) shall keep in custody the packets referred to in Rules 56 and 57 and all other papers relating to the election.

73. Production and inspection of election papers.- While in the custody of the District Election Officer (Panchayat)-

- (a) the packets of unused ballot papers;
- (b) the packets of used ballot papers whether valid, tendered or rejected; and
- (c) the packets of marked copies of the voter list;

shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a court or competent authority.”

(Emphasis supplied)

According to the learned counsel, in view of the above Rules, the marked copy of Voters list which was sealed at the time of declaration of result is not in possession of the appellant and as per instructions of the Government, the same is lying deposited in Government Treasury in Ambala. Those documents are not in control of the appellant and he has no access to them as opening of those documents is prohibited under the Rules of 1994 except with the permission of the civil court or competent authority. In these circumstances, the appellant could not have supplied the information to respondent No.2. He has no right to access to the information sought by respondent No.2 as under the Rules of 1994 absolute bar has been imposed on the public authority to open those sealed documents. The

powers of the Civil Court under Section 176 of the Panchayati Raj Act while hearing the election petition are much wider which, according to the learned counsel, do not vest in respondent No.1 while discharging his functions as State Information Commissioner. It has also been argued that the learned Single Judge has wrongly held that Section 22 of the RTI Act has the overriding effect on the Rules of 1994 and the provisions of secrecy made in the Rules of 1994 have to give way and the information sought with regard to point (a) is to be supplied contrary to the secrecy, which is to be maintained under the Rules of 1994.

On the other hand, learned counsel for respondent No.2 supported the impugned order passed by the learned Single Judge.

After considering the various submissions made by the learned counsel for the parties, we are of the opinion that the order dated 17.3.2011 (Annexure P-7) passed by the State Information Commissioner as well as the impugned order passed by the learned Single Judge are not sustainable. Right to seek information under the RTI Act is an important right. Equally, maintaining of secrecy of the ballot papers is also a valuable right of the voter and is necessary for proper and fair election. India is a democratic country. Holding of elections of various institutions is a regular feature. The object of various election laws and the rules framed therein, including the Representation of People's Act, 1951, is to maintain utmost secrecy and confidentiality of the ballot papers which contain the information with regard to votes polled, the votes secured by each contested candidate in a polling station. Such information is to be kept secret in order to maintain confidentiality. This is essential to protect the electorate from any reprisal or adverse consequences for voting in a particular manner or for a particular

candidate. Under Rule 72 of the Rules of 1994, it is clearly provided that the marked voters list which was sealed under Rule 57 shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a civil court or competent authority. In view of these provisions, the State Public Information Officer (appellant) is having no right to access to those documents, therefore, he is not required to supply the information sought by respondent No.2 under the RTI Act. Under this Act only that information can be supplied which is accessible and under the control of the public authority. The words 'information accessible' under the RTI Act in Section 2(j) means information which is accessible to a public authority and not information to which the public authority is denied access. If there is an absolute or complete bar on the public authority's right to access information then such information cannot be supplied. The learned Single Judge has not properly appreciated the prohibition imposed by Rule 73 of the Rules of 1994 which clearly provides that marked copy of voters list shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a civil court. The civil court or the competent authority mentioned in these rules referred to civil court or the court of competent jurisdiction under Section 176 of the Panchayati Raj Act where the election petition lies to challenge the election of the elected candidate. The Information Commissioner under the RTI Act has no power to inspect the sealed record of election papers under the Rules of 1994 as he has no right to access or control to those documents. The observation made by the learned Single Judge that Section 22 of the RTI Act has the over-riding effect upon the provisions of the Panchayati Raj Act and the Rules of 1994,

in our opinion, is not sustainable.

The Delhi High Court in Election Commission of India Versus Central Information Commission & Others, 2009(164) DLT 205 has considered the over-riding effect of Section 22 of the RTI Act where the similar contention was raised with regard to supplying certain information on EVM with regard to the votes polled, vote tally and any other information which were sealed under the Conduct of Election Rules, 1961, and those were directed to be supplied by the Central Information Commission, and has held as under:-

“25. When information is accessible to a public authority and is held or under its control, then the information must be furnished to the information seeker under the RTI Act, even if there are conditions or prohibitions under another statute already in force or under the Official Secrets Act that restricts or prohibits access to information to public. Prohibition or conditions which prevent a citizen from having access to information in view of the non obstante clause in Section 22 of the RTI Act do not apply. Restriction on rights of citizens is erased. However, when access to information by a public authority itself is prohibited or is accessible subject to conditions, then the prohibition is not obliterated and the pre-conditions are not erased. Section 22 of the RTI Act is a key which unlocks prohibitions/limitations in any prior enactment on right of a citizen to access information accessible to a public authority. It is not a key with the public authority that can be used to undo and erase prohibitions/limitations on the right of public authority to access information.

26. Interpreted in this manner there is no conflict between the provisions of the RTI Act and the REP Act

and the Election Rules framed thereunder. As per the Election Rules, once the ballot papers or control unit or EVMs is sealed, no one can have any access to the same except on an order passed by a competent court. The Election Commission does not have right to access the control unit of the EVMs, to encode or download and re-examine the data without permission of the competent court. There is a prohibition and/or restriction on the right of the public authority have access to the information. It cannot be said that information in respect of queries which can be answered only after examining and downloading the data stored in the EVMs is information accessible as it is held by or under the control of the Election Commission of India unless conditions specified in the Election Rules are satisfied. Satisfaction of the conditions for encoding and downloading of data stored in the control unit is mandatory before the said information is said to be held by or under the control of the Election Commission of India the petitioner herein.

27. Right to information is an important right. At the same time, maintaining secrecy and confidentiality of the ballot papers, etc. is also an equally valuable right. The Supreme Court has balanced the two rights when it dealt with the question of re-examination and inspection of ballot papers in its decision in Bhabhi (supra), V.S. Achuthanandan (supra) and Ram Sewak Yadav (supra). Enactment of RTI Act has not undone or negated the aforesaid principles and occasioned an absolute right to citizen of India to ask for full details of electronic data relating to ballot papers stored in the control unit of the EVMs. The Supreme Court in the aforesaid decisions has interpreted the two conflucting rights both of which are relevant to uphold democracy and Right to Freedom of

Speech and Expression.”

We are completely in agreement with the aforesaid view taken by the Delhi High Court and are of the considered opinion that only such information, which is accessible and held by or in the control of the public authority can be supplied and the other information where the public authority is prohibited to have access cannot be directed to be supplied without prior permission of the civil court or the competent authority.

In view of the aforesaid, the appeal is allowed and the impugned order dated 13.5.2011 passed by the learned Single Judge as well as the order dated 17.3.2011 (Annexure P-7) passed by the State Information Commissioner, Haryana-cum-Appellate Authority, are set aside.

(SATISH KUMAR MITTAL)
JUDGE

August 10, 2015
vkg

(HARINDER SINGH SIDHU)
JUDGE