

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.24856 of 2018

Dr.E.Muralidharan

... Petitioner

vs.

Election Commission of India,
Represented by its Secretary,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent to display the contesting candidates photograph, educational qualification, profession, assets, and criminal cases in addition to the existing details displayed outside the polling stations immediately after the finalization of qualified candidates of all parliamentary and legislative elections.

For Petitioner : Mr.K.Sakthivel

For Respondent : Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

सत्यमेव जयते
ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Dr.E.Muralidharan, a Consultant Environmental and Biomedical Engineer, has filed the instant writ petition for a mandamus, directing the Election Commission of India, represented by its Secretary, New Delhi, to display the contesting candidates photograph, educational qualification, profession, assets, and criminal cases in addition to the existing details displayed outside the polling stations immediately, after the finalization of qualified candidates of all parliamentary and legislative elections.

2. Supporting the prayer sought for Mr.K.Sakthivel, learned counsel for the petitioner, referred to Rule 31 of the Conduct of Election Rules 1961, which reads thus.

31. Arrangements at polling stations .-

1. Outside each polling station there shall be displayed prominently-

a. A notice specifying the polling area the electors of which are entitled to vote at the polling station and, when the polling area has more than one polling station, the particulars of the electors so entitled; and

b. A copy of the list of contesting candidates.

2. At each polling station, there shall be set up one or more voting compartments in which electors can record their votes screened from observation.

3. The returning officer shall provide at each polling station a sufficient number of ballot boxes, copies of the relevant part of the electoral roll, ballot papers, instruments for stamping the distinguishing mark on ballot papers and articles, necessary for electors to mark the ballot papers.

3. Petitioner has further submitted that earlier, the petitioner filed W.P.No.12211 of 2016, before this Court, seeking for a direction to the Election Commission of India, to display, in all the polling stations in respect of all the information of the candidates contesting in the Assembly Elections 2016, by providing the particulars of the candidates, such as, photographs, educational qualifications, profession, properties, both movable and immovable and pending criminal cases, in addition to the existing particulars, provided in public notice of the candidates and this Court, vide order dated 01.04.2016 ordered that it is for the Election Commission to consider how best to carry out the election process.

4. Petitioner has contended that pursuant to the order made in W.P.No.12211 of 2016 dated 01.04.2016, he made a representation dated 02.05.2016 to the respondent seeking for particulars.

5. Responding to the same, a reply dated 14.09.2016, was given stating that full affidavits of the candidates have been uploaded in the website of the concerned Chief Electoral Officer of the State and displayed in the notice board of the Returning Officer and that displaying information on the polling stations, would not serve any useful purpose, as the electors coming to

vote, would have already assured of their candidates and made up their minds rather than waiting to access information about candidates after reaching polling station.

6. Referring to the decision of the Hon'ble Supreme Court in Peoples Union for Civil Liberties (PUCL) Vs. Union of India (SC), reported in 2003 AIR (SC) 2363 : 2003 (4) SCC 399, Mr.K.Sakthivel, learned counsel for the petitioner, submitted that when the Hon'ble Supreme Court held that the voter's right to know about the antecedents of the candidates, contesting election to legislatures, is regarded as a part of the freedom of expression guaranteed by Article 19(1)(a) of the Constitution of India, which provides that all citizens shall have the right to freedom of speech and expression, his right has to be construed into the fundamental right, to know the relevant antecedents of the candidates contesting the election.

7. Attention of this Court was also invited to a decision of the Hon'ble Supreme Court in Krishnamoorthy Vs. Sivakumar and others reported in AIR 2015 SC 1921, wherein the Hon'ble Supreme Court ordered as hereunder.

"If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter - a little man - to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

15. The three-Judge Bench in People's Union for Civil Liberties (PUCL) (supra) posed the following questions:- "Should we not have such a situation in

selecting a candidate contesting elections? In a vibrant democracy - is it not required that a little voter should know the biodata of his/her would-be rulers, law- makers or destiny- makers of the nation?" And thereafter, "Is there any necessity of keeping in the dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape or has acquired the wealth by unjustified means? Maybe, that he is acquitted because the investigating officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them." And again "Is there any necessity of permitting candidates or their supporters to use unaccounted money during elections? If assets are declared, would it no amount to having some control on unaccounted elections expenditure?"

27. The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents of a candidate a requisite for making informed choice. It has been held by Shah, J. in People's Union of Civil Liberties (supra) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution.

31. In a constitutional democracy, we are disposed to think that any kind of criminalisation of politics is an extremely lamentable situation. It is an anathema to the sanctity of democracy. The criminalisation creates a concavity in the heart of democracy and has the potentiality to paralyse, comatose and strangulate the purity of the system. In Dinesh Trivedi V. Union of India[19], a three-Judge Bench while dealing with the cause for the malaise which seems to have stricken Indian democracy in particular and Indian society in general, one of the primary reasons was identified as criminalisation of politics."

8. Referring to a news item in Hindustan Times dated 13.07.2018, Mr.K.Sakthivel, learned counsel for the petitioner further added that State Election Commission of Maharashtra, has

made it compulsory to put up the details of the candidate's name, age, education, qualification, criminal records, assets and liabilities, outside every polling booth, but the Election Commission of India, respondent herein has refused to part with the details sought for.

9. When attention of the learned counsel for the petitioner is invited to the reply given under the Right to Information Act, 2005 reply of Mr.K.Sakthivel, learned counsel for the petitioner is that details sought for by the petitioner, would not disentitle him, to seek for a mandamus, as a public interest litigant, espousing the cause of the voters, for such information, to have a fair election and furnishing of information is necessary for democracy.

10. Heard the learned counsel for the petitioner. Mr.Niranjan Rajagopal, learned standing counsel for Election Commission of India, was put on notice.

11. Before advertng to the submissions, we deem it fit to consider the information sought for by the writ petitioner under Right to Information Act, 2005. On 29.01.2016, the petitioner, has sought for certain information from the Central Public Information Officer [CPIO], Election Commission of India, New Delhi and the same reads thus.

"Respected Sir,

Sub: Information Under RTI Act 2005 - Reg.

I am in need of the following information from our esteemed organization.

I would bring to your kind notice that now the Election Commission of India checks only the photo identities of the voters who elect the candidates but never show the face of the person getting elected.

Now the questions are -1) Will the Election Commission of India for all elections (Lok Sabha, Assembly and Corporation / Municipal) make arrangements to display (printed on flex materials) in all polling stations the following information of the candidates - Photographs, Name, Age, Sex, Educational Qualifications, Profession, Property details (Land, Buildings, Jewels, Cash, Shares / Bonds etc.) and Criminal Records (past jail sentences and details of Pending Criminal Cases)?

2) Will the above information will be displayed in the ensuing Assembly elections of 5 states - Tamil Nadu, West Bengal, Kerala, Puducherry and Assam?

I would inform you that the Election Commission of India collects all the information from the candidates. These information are very important and should be brought to the notice of the Citizen as a

Right to Information for the Voters to take an informed decision to select and elect the right candidates without any criminal records. The EC has been very hard to de-criminalize the election process. The above information will ensure the corrupt and criminal free government and greatly strengthens our democracy.

I am enclosing an IPO for Rs.10/- as fee (No.35F 26505, dated 28.9.2015)

12. On 26.02.2016, the Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, has replied as hereunder.

"Sub: Right to Information Act, 2005 - Reg.

Kindly refer to your RTI application dated 29.01.2016, received by the undersigned on 03-02-2016, on the subject cited. The Commission is not concerned with local bodies' elections (corporation / municipal). However, the information sought by you is furnished as under:-

Item No.1 & 2: The information sought under these items is not covered under the definition of 'information' under section 2(f) of the RTI Act, 2005. However, you are informed that instructions on dissemination of abstract part of affidavit (Part B of FORM 26) vide the letter No.3/ER/2013/SDR-Vol.V dated 03.03.2014. The copy of the same is available on the Commission's website http://eci.nic.in/main1/current/ImpIns2_06032014.pdf.

Regarding photographs, the Commission has already issued instructions for printing of photographs of candidate on ballot paper vide letter No.576/3/2015/SDR-Vol.II dated 21.05.2015 which is also available on Commission's website <http://eci.nic.in> and path is http://eci.nic.in/eci_main1/curent/ImpIns29052015.pdf.

If you are not satisfied with the aforesaid reply, you may file First Appeal against the same, before the First Appellate Authority within 30 days of receipt of this letter.

Details of the First Appellate Authority are given below.

Shri.K.F.Wilfred, Principal Secretary,
First Appellate Authority,
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110 001.

13. Thereafter, the petitioner has filed W.P.No.12211 of 2016, for a mandamus, directing the Election Commission of India, represented by Secretary, New Delhi, to display, in all polling stations in respect of all the information of the candidates contesting in the Assembly Elections - 2016 particularly photograph, Educational Qualifications, Profession, Properties both Movable & Immovable, and pending criminal cases in addition to the existing particulars provided in public notice of the candidates.

14. After hearing the learned counsel for the parties therein, a Hon'ble Division Bench of this Court in W.P.No.12211 of 2016 dated 01.04.2016, ordered as hereunder.

"Learned counsel for the petitioner states that the petitioner only seeks a better information about the candidates during the election process and had made a representation to the Election Commission on 21.01.2016, which stands disposed of.

2. We are of the view that it is for the Election Commission to consider how best to carry out the election process, more so when we are in the middle of the process.

3. Writ petition, accordingly, stands closed. No costs.

15. Thereafter, by referring to the order made in W.P.No.12211 of 2016 dated 01.04.2016 and the decision of the Hon'ble Supreme Court in Peoples Union for Civil Liberties (PUCL) Vs. Union of India (SC), reported in 2003 AIR (SC) 2363 : 2003 (4) SCC 399, petitioner has sent a letter dated 02.05.2016 to the Chief Election Commissioner, Election Commission of India, New Delhi. Letter dated 02.05.2016, reads thus.

"Respected Commissioner Sir,

Sub: ELECTION PETITION - HIGH COURT OF MADRAS ORDER -
Reg - Encl-1

Ref: 1) Copy of my affidavit dated 16.04.2016-Encl-2

2) Your Reply No.4/RTI/17/2016/SDR/509 dated
26.02.2016 - Encl-3

3) My RTI Application dated 29.01.2016-Encl-4

With reference to my RTI Application (ref-3), I asked the PIO, ECI will the ECI provide the following information of the candidates contesting in the ensuing Assembly elections of Tamil Nadu, Pondichery, Kerela, West Bengal and Assam - (1) Photograph, (2) Educational Qualifications (3) Profession (4) Details

of Immovable Properties and (5) Pending Criminal Cases. This is in addition to what already provided by ECI, printed in black and white as wall paper poster - (i) Name, (ii) Age & Sex, (iii) Address, (iv) Party and (v) Symbol. But the first 5 are more important than the later 5.

In fact, I wanted all these 10 parameters of the candidates must be printed in colour on flex material and placed in all the polling booths. This will be highly helpful to the undecided voters who decide the results to make better choice to select and elect the best candidate to represent them. Actually, whatever information ECI collects must be shared with the voters as their right to know this information. Further, this information will be greatly useful in eliminating the criminals from the electoral process which the ECI or Court could not do.

In fact, in PUCL Vs Union of India (AIR 2003 SC 2363) Supreme Court held that the voter right to know the antecedence of the candidates is a fundamental right as emphasized in Article 19(1)(a) of the Constitution of India - Freedom of Speech and Expression (copy enclosed-5). Unfortunately, so far this right has been denied to the voters by the ECI.

Since the PIO of ECI has filed to accept my right to provide the information about the candidates, I filed a PIL (WP No.12211 of 2016) in High Court of Madras. On 01.04.2016, the I Bench headed by the Chief Justice heard this petition and passed an order - "to consider the petitioner's plea".

I am enclosing the copy of this order along with my RTI Application, reply from PIO, ECI and the copy of my affidavit for your perusal.

Therefore, I humbly request you to do the needful and display all the information of the candidates contesting in Tamil Nadu Assembly Elections to be held on 16th May 2016."

16. Responding to the said letter dated 02.05.2016, Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, vide letter dated 14.09.2016, answered as hereunder.

Sub:- Suggestion - reg.
Sir,

I am directed to refer to your letter dated 02.05.2016, received in the Commission through CEO, Tamil Nadu in his letter dated 03.05.2016.

As regards dissemination of the information in the affidavit filed by candidates, the steps taken are as follows:

(i) Copy of the full affidavit is displayed on the notice board of the Returning Officer.

(iii) If the Assistant Returning Officers of the Constituency are headquartered in a place different from that of the Returning Officer, but within the constituency limits, copies of the affidavits are also displayed in their offices.

(v) The full Affidavits are also uploaded on the website of the concerned Chief Electoral Officer of the State.

(vii) The Commission has also directed that the abstract part of the information provided by the candidate in the Affidavit in Form 26 shall be displayed on the notice board of Returning Officer / Assistant Returning Officer, Block Level Office, Office of the Panchayat etc. Copy of the Commission's circular letter dated 1st September 2011, issued in this behalf is enclosed for your information.

Displaying information at the polling stations will not serve much useful purpose, because the electors coming for vote would have already assured their candidates and made up their minds rather than waiting to access information about candidates after reaching polling station. On the other hand, it may add to chaos in the polling station and slow down the process of poll.

17. Petitioner has sent another letter dated 21.11.2017 to the Chief Election Commissioner of India, Election Commission of India, by referring to the earlier replies.

"Respected Commissioner Sir,

Sub: ELECTION PETITION - HIGH COURT OF MADRAS ORDER -
Reg

- Ref: 1) My RTI Application dated 29.01.2016
2) Reply from CPIO, ECI No.4/RTI/17/2016/SDR/509
dated 26.02.2016
3) Copy of my affidavit dated 16.04.2016
4) My letter dated 02.05.2016 addressed to Chief
Election Commissioner enclosing the order of
High Court of Madras (WP No.12211 of 2016 dated
01.04.2016) - Encl-1
5) Reply from ECI
No.4/3/ECI/LET/FUNC/JDU/SDR/Vol.VIII/2016/1593,
dated 14.09.2016-Encl-2

With regard to my fight for electoral reforms specifically against the decimilization, I sent an RTI Application (ref-1), asked the CPIO, will the ECI provide the following information of the candidates contesting the elections (1) Photograph, (2) Educational Qualifications (3) Profession (4) Details of Immovable Properties and (5) Pending Criminal Cases (only numbers). This is in addition to what already provided by ECI, printed in black and white as wall paper poster - (i) Name, (ii) Age (iii) Sex, (iv) Address, (v) Party and (vi) Symbol. Actually photograph of the candidates were introduced in the poster and EVMS in Tamil Nadu and other 4 state assembly elections held in May 2016 after the order of Madras High Court. In fact, first 5 are very important to the voters than the later 5 provided to the voters by ECI in selecting and electing the candidates for Legislative Assemblies and Parliament.

In fact, I wanted all these 10 parameters of the candidates must be printed in colour on flex material and placed in all the polling booths. This will be highly helpful to the undecided voters who decide the results to make better choice to select and elect the best candidate to represent them. Actually, whatever information ECI collects must be shared with the voters as their right to know this information. Further, this information will be greatly useful in eliminating the criminals from the electoral process which the ECI or Courts cannot do due to Constitutional bottleneck under Article 14, If ECI provides all the above vital parameters of the candidates, people / voters will defeats the

criminals and they can never enter state legislative assemblies and the Parliament. This will greatly safeguard our democracy.

The ECI cannot proactively cannot provide these information unless it is amended that the RP Act which the parliament can never do. If there is an order from the court, the ECI can provide the candidate's information to the voters. With this view only, I filed a PIL(WP No.12211 of 2016) in High Court of Madras. On 01.04.2016, the I Bench headed by the Chief Justice heard this petition and passed an order - "to consider the petitioner's plea". Importantly the above PIL was not dismissed and the order directed the ECI to consider the petitioners plea. In violation of the order the ECI once again providing the same old and insensitive reply, specifically in last para (ref-5) Disobeying the orders of Court is contemptuous. So, if i do not get a positive reply from you, I have no other option other than approach the Court again. I would bring to your kind notice of the following reported facts:

- (1) 61 of 338 nominees of in Himachal Polls have criminal record of which 31 have very serious criminal cases - mainly murder or attempt-to-murder (The Hindu, dated 11th November 2017 - copy enclosed-3)
- (2) ADR reported that Congress and BJP in Gujarat is not only contesting for the 182 Assembly seats, both are practically neck and neck when it comes to the number of MLAs with criminal cases against them. Overall, the Gujarat Assembly has 31% of its numbers with criminal cases, of which 13% are of serious nature.
- (3) 73% of the voters of Gujarat said in a Survey they will not vote for candidates with criminal record (The Indian Express, dated 7th November 2017 - copy enclosed-4)
- (4) Most importantly, the Maharashtra State Election Commissioner made it mandatory to display the criminal records of the candidates outside the polling booths (The Times of India, dated 17th February 2017 - copy enclosed-5)

Actually, all the above information I requested are already collected by the Election Commission in the Form 26 (Rule 4A) - Part-A & Part-B. If so, what is the purpose of collecting this information? This must be pro-actively given to the voters. This

information will play a great role in totally eliminating the criminals contesting the elections. In the longer run this will pave way for the well educated, honest and patriotic people only will contest the elections. This will ultimately strengthen our democracy and improve our creditability in the World.

Therefore, I humbly request you to do the needful and order for the display of all the above information of the candidates contesting in the future Assembly and Parliament elections to be held in India.

If the Hon'ble Commissioner can bring in this great election reforms will go in to the annals of Indian Politics.

Kindly intimate me of the outcome at the earliest."

18. Petitioner seemed to have made an application dated 17.01.2018 under Right to Information Act, 2005 and the same has been received by the Commission on 19.01.2018. Responding to the above, Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, has sent a reply dated 16.02.2018, which reads thus

"Sub: Right to Information Act, 2005 - Reg.

Please refer to your RTI application dated 17.01.2018, received in the Commission on 19.01.2018 which appears to be an application under RTI Act, 2005.

2. You are informed that your letter dated 21.11.2017 regarding Election Petition - High Court of Madras Order has been received in the Commission. Your letter dated 21.11.2017 has been put-up in the relevant file and a copy of the notes portion is enclosed herewith.

3. In respect of 2 & 3, it is stated that information sought for is not covered under the definition of information u/s 2(f) of the RTI Act, 2005.

4. First Appeal, if any, may be filed within 30 days from the date of receipt of this letter.

The details of the First Appellate Authority are as under:-

Shri.K.F.Wilfred,
Sr. Principal Secretary & FAA,
Election Commission of India,
Room No.305, 3rd Floor, Nirvachan Sadan,
New Delhi - 110 001.
Email-kfwilfred@eci.gov.in"

Thereafter, instant writ petition has been filed.

19. From the above, it could be deduced that as an individual, the petitioner has sought for certain details stated supra and that the Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, has furnished reply.

20. In the first reply dated 26.02.2016, for the queries 1 and 2, in the application dated 21.01.2016, the Central Public Information Officer [CPIO], has replied that the information sought under the abovesaid items, is not covered under the definition of information under Section 2(f) of the Right to Information Act, 2005. Petitioner has also been informed that regarding dissemination of information furnished by the candidates the Commission has issued instructions on dissemination of abstract part of affidavit (Part B of FORM 26) vide the letter No.3/ER/2013/SDR-Vol.V dated 03.03.2014 and that the copy of the same is available on the Commission's website. Regarding photographs the Commission has already issued instructions for printing of photographs of the candidates on ballot paper, vide letter No.576/3/2015/SDR-Vol.II dated 21.05.2015 which is also available on the Commission's website. Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, in his reply dated 26.02.2016, has stated that if the petitioner is not satisfied with the reply, he may file First Appeal against the same with the first appellate authority within 30 days from the date of receipt of the said letter.

21. Subsequently, when the petitioner made another letter dated 02.05.2016 to the Chief Election Commission, Election Commission of India, New Delhi, same has been replied by the Under Secretary, Election Commission of India, on 14.09.2016, extracted supra.

22. Again when a further representation was made, on 16.02.2018, Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, has stated that the information sought for is not covered under the definition of Section 2(f) of the Act.

23. Right to Information Act, 2005 is an Act, to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

24. As per Section 2(f) of Right to Information Act, 2005 '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."

25. Section 6 speaks about the right of a person to seek for information.

"Request for obtaining information:- (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to-

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her;

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,-

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such

application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

26. Section 8 deals with the exemption and disclosure of information.

"8.Exemption from disclosure of information.--(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute contempt of Court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physically safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reason thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemption specified in this section shall not be disclosed;

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-Section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-Section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request made under

Section 6 shall be provided to any person making a request under that Section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act".

27. Appeal remedy is provided under Section 19 of the Right to Information Act, 2005 and it reads thus.

"Appeal.-(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days

from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,–

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including–

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

28. A perusal of the reply given by the Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, shows that on more than one occasion, petitioner has been informed of his right to file an appeal, if he was aggrieved over the decision of the information officer and the petitioner, as an individual, has not chosen to file an appeal as against the decision or order of the Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi. But claiming himself to be a

public interest litigant, and espousing the cause of the public to know about the details of the candidates, petitioner has filed the instant writ petition.

29. Election Commission of India, New Delhi, has already replied that copy of the affidavit would be displayed on the notice board of the Returning Officer, and if the Assistant Returning Officer of the Constituency are headquartered in a place different from that of the Returning Officer, but within the constituency limits, copies of the affidavits are also displayed in their offices. Besides, full Affidavits are also uploaded in the website of the concerned Chief Electoral Officer of the State. Abstract part of the information provided by the candidate in the Affidavit in Form 26 has been directed to be displayed on the notice board of Returning Officer / Assistant Returning Officer, Block Level Office, Office of the Panchayat etc.

30. What the petitioner is insisting is that it should be displayed in every polling station. For the above request, Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, in his reply dated 14.09.2016 has specifically stated that "displaying information at the polling stations will not serve much useful purpose, because the electors coming for vote would have already assured their candidates and made up their minds rather than waiting to access information about candidates after reaching polling station. Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi, has further stated that it may add to chaos in the polling station and slow down the process of poll. Under Secretary and Central Public Information Officer [CPIO], Election Commission of India, New Delhi has also stated that the information sought for does not cover under the definition under Section 2(f) of the RTI.

31. Writ petition appears to have been filed indirectly testing the correctness of the replies dated 14.09.2016 and 16.02.2018, stated supra, and the same cannot be permitted, in a public interest writ petition, by the petitioner as a Public Interest Litigant. Reply of the Election Commission of India, under Right to Information Act, 2005 cannot be sought to be nullified or set aside by the petitioner, by filing a public interest writ petition.

32. News paper report alone cannot be made as a basis for filing a writ petition. On the aspect as to whether news items published in papers can form part of the material to substantiate the averments, we deem it fit to consider few decisions.

(i) A Hon'ble Division Bench of this Court in A.S.M.Kumar v. State of Tamil Nadu reported in 2008 (5) MLJ 399, to which, one of us [Hon'ble Mr.Justice S.Manikumar], is a party, has considered the following judgments,

"8.The question of admissibility of the newspaper reports came up for consideration in Samant N.Balkrishna and another Vs.George Fernandez and other reported in 1969 (3) SCC 238 at paragraph 26, the Apex Court observed that

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

9. As regards nature and admissibility of a newspaper report, the Supreme Court in Lakmi Raj Shetty and another Vs. State of Tamil Nadu reported in 1988 (3) SCC 319, opined that

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

10.In Quamarul Islam Vs. S.K.Kanta reported in 1994 (1) SCC 452, the question as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein came up for consideration. The Apex Court at Paragraph 48 of the judgment held that,

"48.Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the

speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

11. The Supreme Court dealing with a "pro bono publico" litigation in B.P. Singhal Vs. State of Tamil Nadu and others reported in 2004 (13) SCC 673, wherein

the petitioner sought for a transfer of an investigation from Tamil Nadu State Police to the Central Bureau of Investigation, opined that:

"the petition is lacking in material particulars. All the averments made in the petition are based, by and large, on news reports and not on personal knowledge. The petition does not state that the petitioner has taken any care to verify himself the correctness of the averments made."

12. In yet another decision in *Dr. B. Singh Vs. Union of India* (UOI) and others reported in 2004 (3) SCC 363 dealing with a public interest litigation, challenging the propriety of the third respondent therein for being considered for appointment as a Judge, the Supreme Court while expressing its anguish found that:

"the petitioner has nowhere stated that he has personal knowledge of the allegations made against R3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some other paper cuttings of news items. It is too much to attribute authenticity or creditability to any information or fact merely because, it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence."

13. In matters relating to public interest litigation, the Supreme Court has time and again cautioned that the Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere

reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. Reference can be made to the recent decision of the Apex Court in Holicow Pictures Pvt., Ltd., Vs. Prem Chandra Mishra and others reported in 2008 (1) CTC 711 (Para 20)."

(ii) After considering the decisions of the Hon'ble Apex Court, at Paragraph 16, the Hon'ble Division Bench observed as follows:

"It is now well settled that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. Though the parameters of public interest litigation have been indicated by the Supreme Court in large number of cases, yet unmindful of the real intentions and objectives, the petitioner, without verifying the authenticity or otherwise of the news items, has chosen to resort to the extra ordinary jurisdiction. The Public Interest Litigation intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. Before maintaining a cause before the Court one should prove that there is concrete and credible basis, not withstanding the credentials claimed of the person moving the courts."

33. Commission has already stated that information is available in many places, such as, in the office of the Returning Officer / Assistant Returning Officer, Block Level Office, Office of the Panchayat etc., and the voter can very well have access to the information, displayed in the abovesaid places, to exercise his franchise in a free and fair manner, choosing the candidate of his choice.

34. Information about a candidate is available in many places. There is sufficient time gap between the last date for final nomination and elections. If any voter wants to know the details of a candidate and in particular, antecedents, he can very well go to any of the above said offices and read the contents of the affidavits of the candidates displayed. It cannot be said that there is no dissemination of information of the candidates to the voters and thus, there is breach of fundamental right, envisaged in Article 19(1)(a) of the

Constitution of India. What the petitioner insists is that such information should be displayed outside every polling station.

35. Election Commission of India, New Delhi has categorically stated that the affidavits of the candidates are displayed in the Panchayat Office. Judicial notice can be taken that in a country like India, where voters are many queuing up for exercising their franchise, a voter can have access to the information, well in advance, from any of the abovesaid offices and cast his vote.

36. It is the Constitutional duty of the High Court / Supreme Court, as the case may be, to supervise the authorities exercising their quasi-judicial or statutory functions, within the bounds of their jurisdiction and to compel them, wherever necessary to perform the duties enjoined on them, strictly in accordance with the statutory provisions. Object of Article 226 of the Constitution of India, is for the enforcement of an existing right and not to create a new right, which does not exist either in the statute or any executive instructions, which have the force of law. True that, Article 226 of the Constitution of India, is couched in such a comprehensive manner that it confers wide powers on the High Court to reach wherever injustice is found, but on the facts of this case, it cannot be said that no information of the candidates was disseminated and thus the voters have been deprived of their right under Article 19(1)(a) of the Constitution of India and thus, there is injustice. Needless to state that power under Article 226 of the Constitution of India, has to be exercised within its constitutional objectives and not to arrogate itself, by issuing directions to the Election Commission of India, New Delhi, to display the information of all the candidates, in the polling stations, which the Election Commission of India, has declined for the reasons stated supra.

37. Prima facie, we are of the view that by not displaying the details of the candidates outside the polling stations, Election Commission of India, New Delhi, cannot be said to have infringed the fundamental right under Article 19(1)(a) of the Constitution of India, giving rise to maintain a Public Interest Litigation. It is the perception of the petitioner, that if the Election Commission of India, displays the details of the candidates outside the polling stations, then the voters could exercise their franchise, in a free and democratic manner, but the Election Commission of India, has already taken a decision to disseminate information, in public places. Under the guise of judicial review, there cannot be judicial activism, crossing the limits and try to take over the functions of another organ of the State and it can be resorted to only in exceptional cases. Reference can be made to a decision of the Hon'ble

Supreme Court in Divisional Manager, Aravali Golf Club vs Chander Hass & Another, reported in AIR 2008 SCW 406.

38. At this juncture, it is also useful to consider as to when a mandamus can be issued.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In Raisa Begum v. State of U.P., reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person

claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in

the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider

pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

39. A writ of Mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

40. Law does not contemplate that information should be displayed in every polling station. Election Commission of India, New Delhi, has directed dissemination of information about the candidates in public places, so as to enable the voters to get information about the candidates. When the petitioner filed W.P.No.12211 of 2016, a Hon'ble Division Bench ordered that it is for the Election Commission to consider how best to carry out the election process. It is the specific view of the Election Commission, that if information such as Photographs, Name, Age, Sex, Educational Qualifications, Profession, Property details (Land, Buildings, Jewels, Cash, Shares / Bonds etc.) and Criminal Records (past jail sentences and details of Pending Criminal Cases) are displayed at the polling stations, it would add, chaos in the polling stations and slow down the process of polling.

41. Prima facie, the Election Commission of India, cannot be said to have done against public interest. In the light of the above decisions and discussions, we find no merit in the writ petition for issuance of any mandamus. Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ars

To

The Secretary,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

+2cc to M/S.K.Sakthivel, Advocate Sr.65551
+1cc to M/S.G.R.Associates, Advocate Sr.65558
+1cc to the Government Pleader Sr.65647

WP.No.24856 of 2018

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srg 16/10/2018



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