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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 17.12.2019

+ W.P.(C) 2679/2019 and CM APPL. NO. 12383/2019

ELECTION COMMISSION OF INDIA Petitioner
Through Mr.Sidhant Kumar, Adv.

versus

CENTRAL INFORMATION
COMMISSION & ANR Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioner seeking to impugn the order of the CIC dated 12.02.2019.
2. I may note that despite service, none is appearing for the respondents.
3. On 20.04.2018, respondent No.2 moved an application under the RTI Act, 2005 seeking information. The relevant information sought was as follows:-

“Information Sought:

In the sequence of above provisions being the model or material of electronic voting machines under Section 6 (1) make available electronic voting machine. For which, according to the rules, I am ready to pay the actual cost of a EVM Machine. (See Rule 4 (C))”

4. The CPIO on 02.05.2018 sent a communication to respondent No.2 stating that an electronic voting machine cannot be given to any person or a citizen because it is not covered under the term “model” and “material”. The appellate authority also upheld the aforesaid order.

5. The CIC overruled the order of the CPIO and the appellate authority stating that Electronic Voting Machine (EVM) is an information under the RTI Act. Relevant portion of the impugned order reads as follows:

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

6. I have heard learned counsel for the petitioner.

7. Section 2(f) and 2(i) of the RTI Act read as follows:-

“2. Definitions:

xxx

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

xxx

(i): "Record" includes:

- (a) Any document, manuscript and file;
- (b) Any microfilm, microfiche and facsimile copy of a document;
- (c) Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) Any other material produced by a computer or any other device."

Section 3 of the Act reads as follows:-

"3. Right to Information- Subject to the provisions of this Act, all Indian citizens shall have the Right to Information."

8. Hence, from the above provisions it is manifest that all citizens have been given a right to information. Information is defined under Section 2(f) of the RTI Act. It is clear from a reading of Section 2(f) that it deals with records, document, memo, etc. The respondent seeks the entire EVM that is used by the petitioner for conducting elections. Can such a request be termed to be a request under section 2(f) of the Act?

9. In my opinion, the attempt of the petitioner to only rely upon the word 'models' used in section 2(f) of the Act and to claim that an EVM be provide to him is a misplaced act. A model usually represents a three dimensional representation of a thing or proposed structure, typically on a smaller scale than the original. The shorter Oxford English Dictionary, 5th Edition defines the model as follows:-

"Draw a plan of; produce a preliminary version of. Also, give an outline or synopsis of.; Frame a model or miniature replica of."

10. Clearly, an EVM which is sought for by this RTI application is not miniature/replica and hence cannot said to be a model. It cannot be termed to be information within the meaning of Section 2(f) of the Act.

11. Reference may be had to the judgment of the Supreme Court in the case of ***Central Board of Secondary Education & Anr. v. Aditya Bandhopadhyay & Ors., (2011) 8 SCC 497***. The Court held as follows:-

“13. Chapter II of the Act containing Sections 3 to 11 deals with the right to information and obligations of public authorities. Section 3 provides for the right to information and reads thus: “*Subject to the provisions of this Act, all citizens shall have the right to information.*” This section makes it clear that the RTI Act gives a right to a citizen to only access information, but not to seek any consequential relief based on such information.”

12. It is manifest that Section 3 of the RTI Act gives a citizen only the right to access information and not any other consequential relief.

13. Clearly, the aforesaid application seeking an EVM is actually an application for supply of a product and not any information. It is beyond the scope of the RTI Act. In my opinion, the impugned order of CIC suffers from manifest error. The same is *set aside*.

14. The petition stands disposed of. Pending application also stands disposed of.

JAYANT NATH, J

DECEMBER 17, 2019

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