

MEGHALAYA INFORMATION COMMISSION, SHILLONG

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No. MIC/Appeal/67/2009/43,

Shri John F.Kharshiing, Dum Dum, Nongthymmai, Shillong - Appellant

-Vrs-

1. Shri P.Naik, IAS, C.E.O., (DAA)
2. Shri S.Kharlyngdoh, MCS, Jt. C.E.O., (PIO) } - Respondents

ORDER

14-9-2009: The Respondent-PIO is present in the Commission today, the appellant is however absent.

The Respondent-PIO filed documents to justify the delay in furnishing the partial information to the appellant.

The appellant in this case is Shri John F. Kharshiing of Dum Dum, Nongthymmai, Shillong. He is one of the candidates in the just concluded M.P. Election to the Lok Sabha – 2009 from 1-Shillong Parliamentary Constituency. The case of the appellant is that he filed an R.T.I. application before Respondent No.2, Shri S.Kharlyngdoh, MCS, Joint C.E.O., Meghalaya on 5-6-2009 who is the P.I.O., of the Election Department, Govt. of Meghalaya requesting the following information viz:

(1) Zerox copy of Form -17 A (Voters Registers) utilized during the Lok Sabha, M.P., Election – 2009 for 96 Polling Stations in Jaintia Hills District as per list attached in Annexures.

(2) List of Polling Agents of contesting candidates for the 1-Shillong Parliamentary Constituency during the M.P., Election – 2009.

The P.I.O., vide letter No. EL/87/2006/459 dated 15th July, 2009 furnished partial information to the appellant, providing him with information relating to list of Polling Agents appointed by the contesting candidates in respect of 1-Shillong Parliamentary Constituency for the Lok Sabha Election – 2009. He however, he denied the information relating to Form – 17 A (Voters Registers) claiming that the Election Commission of India vide letter No. 30/MEG/2009/4043 dated 6th July, 2009 had informed him that under Rule 93 of the Conduct of Election Rules, 1961, Form – 17 A cannot be opened except under the order of a competent Court.

Failing to receive the full information from the P.I.O., the appellant has approached the First Appellate Authority, Shri P.Naik, IAS, Chief Electoral Officer, Govt. of Meghalaya, vide his appeal dated 20th July, 2009. The First Appellate Authority vide order No. EL/87/2006/471 dated 28-7-2009 upheld the decision of the P.I.O.

Not satisfied with the decision of the First Appellate Authority, the appellant has approached this Commission with the Second Appeal under R.T.I. dated 11-8-2009 challenging the decision of the P.I.O. and the First Appellate Authority which contravened the provision of Section 22 of the R.T.I. Act.

The public authority have been asked by this Commission vide its Orders dated 18-8-2009 to furnish their written statement on denial of information which has not been exempted under the R.T.I. Act, but also in contravention of the provision of Section 22 of the Act. The P.I.O. has also been asked to show cause why penalty @ Rs.250/- per day should not be imposed upon him for the delay of 10 days in providing even the partial information to the appellant.

In response to the Commission's Order, the Respondent-PIO submitted that as the Joint Chief Electoral Officer, he functions under the control, superintendence and discipline of the Election Commission of India. In the instant case, the views and clearance of the Election Commission of India was sought with regard to providing the information to the appellant. However, the Election Commission of India has not given him the clearance in view of the provisions of Rule 93 of the Conduct of Election Rules 1961. Hence, he could not furnish the information relating to Form - 17 A (Voters Registers) as requested by the appellant. He further explained that the delay in furnishing part of information was due to the fact that he was sick from 4th July 2009 to 14th July, 2009 and had availed leave on medical ground for 11 days. Since he was not function officially as P.I.O. during those days he could not furnish the partial reply to the appellant.

The issues before the Commission for decision are, therefore, as follows:

(1) Whether information relating to Form – 17 A (Voters Registers) of the M.P., Lok Sabha Election should be furnished to the appellant as requested by him?

(2) Whether the P.I.O. is liable for penalty? if so, the amount thereof?

Regarding issue No.(1), the P.I.O. did not deny the existence of information and also the fact that he holds it. His only ground for denial of the information is the existence of Rule 93 of the Conduct of Election Rules 1961, which clearly states that Form -17 A cannot be opened except under the Order of a competent Court and also the fact that the Election Commission of India vide letter No. 30/MEG/2009/4043 dated 6th July, 2009 reiterated the operation of the said Rule.

The information contained in Form – 17 A (Voters Registers) of the M.P. Lok Sabha Election does not form part of the exemptions specified under section 8 and 9 of the R.T.I. Act and prima facie, the information cannot be denied to the appellant. The Law makers in their wisdom recognized

the possibility of existence of provisions in other laws or rules framed under them including the 'Official Secrets Act, 1923,' which may hinder smooth operation of the R.T.I. Act, 2005 and therefore, mandated section 22 of the Act which states that;

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (A of 1923), and any other law for the time being in force or any instrument having effect by virtue of any law other than this Act".

A plain reading of the above provision of the Law gives a clear indication of the intention of the Law givers that in the event of any other Law including the Official Secrets Act, or Rules, or Orders, or procedures standing on the way of operation of the R.T.I. Act, 2005, the R.T.I. Act shall have over-riding effect.

The election process is a public process with over-riding public interests. Therefore, any activities under taken under that process lies within the public domain. The information which has been denied viz., Form -17 A (Voters Registers) is part of the electoral process. The Form contains an information on the names and signatures of the citizens who cast their votes during the concerned election. This Form has been mandated by the Election Commission of India with a view to ensure transparency and integrity of the electoral process. Withholding information of the same from the public and more so from the candidate who contested the election can only be viewed as an act of obsolescence under the R.T.I. regime. Hence, existence of such rules as quoted by the Respondent-PIO and confirmed by the First Appellate Authority, cannot be a valid ground for denial of information to the appellant.

In view of the above, the Commission hereby decided that the information sought by the appellant viz., Zerox copy of Form -17 A (Voters Registers) utilized during Lok Sabha Elections – 2009 for 96 Polling Stations in Jaintia Hills District as per list furnished by him shall be furnished to the appellant in full within 20 days from the date of this Order, with intimation to this Commission.

Regarding issue No.2, the original R.T.I. application was received by the P.I.O. from the appellant on 5-6-2009. Partial information was furnished to the appellant only on 15-7-2009 i.e, after a period of 40 days. Apparently there was a delay of 10 days in furnishing partial information to the appellant. The P.I.O. vide his show cause submitted that he had applied for Earned Leave on medical ground for 11 days from 4th July, 2009 to 14th July, 2009 to the Govt. of Meghalaya and therefore he was not performing his official duties during that period which accounts for delay of 10 days in furnishing the partial information to the appellant. Immediately on resuming his duties on 15th July, 2009 he had furnished

the information whatever he could and hence the delay of 10 days is not deliberate or intentional but due to unavoidable circumstances.

The Commission accepted the show cause of the P.I.O. and do not hold him liable for any penalty for above delay.

Case disposed off.

(G.P.Wahlang)

Chief Information Commissioner,
Meghalaya, Shillong.

Memo. No. MIC/Appeal/67/2009/43-A Dated Shillong, the 14th September, 2009
Copy forwarded to:-

- (1) Shri P.Naik, IAS, Chief Electoral Officer, Meghalaya, Shillong (DAA).
- (2) Shri S.Kharlyngdoh, MCS, Joint Electoral Officer, Meghalaya, Shillong (PIO).
- (3) Shri John F.Kharshiing, Dum Dum, Nongthymmai, Shillong – 793014, Phone – 94361-02663.

(P.T.Rani,)

Under Secretary,
Meghalaya Information Commission,
Shillong.