



ARUNACHAL PRADESH INFORMATION COMMISSION
ITANAGAR.

An Appeal Case U/S 19(3) of RTI Act, 2005

Case No. APIC-388/2024.

APPELLANT : Shri Kompu Dolo, C-Sector, Quarter No. 11 (type IV)
Itanagar, PO/PS Itanagar ((A.P))

RESPONDENT : The PIO, the ADC/Returning Officer, 9th Chayang Tajo,
Assembly Constituency, East Kameng District (A.P)

ORDER

This is an appeal under Section 19(3) of RTI Act, 2005 received from Shri Kompu Dolo for denial of below mentioned information by the PIO, the ADC –cum-Returning Officer, 9th Chayang Tajo, ST Assembly Constituency, East Kameng District, Arunachal Pradesh as sought for by him under section 6(1) (Form-A) of RTI Act, 2005.

Facts emerging from the appeal:

Records reveal that the appellant, vide his application dated 06-06-2024, had initially requested the o/o the PIO, the ADC–cum-Returning Officer, 9th Chayang Tajo, ST Assembly Constituency, East Kameng District for the following information/documents:

- (1) Xerox copies of used voters slips of 5 (five) Polling Stations (i.e 02-Veo, 17-Nari Camp, 25-Boker and 30 – Lochung and 37 – Jote Cheda) issued by Polling Officer to individual voters during poll day of recently concluded General Election April/2024.
- (2) Xerox Marked copies of Electoral Roll of Veo, Nari Camp, Boker, Lochung and Jote Cheda Polling Station and other related documents.
- (3) Video clip recorded during scrutiny day of nomination papers of all contested MLA candidates held on 28/03/2024 at Returning officers office room of 9th Chayang Tajo at DC's office Seppa.
- (4) Xerox copy of bank Pass Book of Shri Anil Rebe, Election Agent of Shri Hayeng Mangfi, operated at Axis Bank and used Election expanses during entire process of General Election/2024.
- (5) Xerox copy of Bank statement and Bank Pass Book, if any, used and operated by Shri Hayeng Mangfi, contested MLA candidate in any Bank and were used exclusively for Election Expenses/ 2024.
- (6) CCTV footage recorded on the scrutiny day of 28/03/2024 in the Office Room of Returning Officer of 9th Chayang Tajo at DC's office Seppa.

The appellant followed the above RTI application by another application dt.19.06.2024 to the Returning Officer, Chayang Tajo requesting for the used Form 17-A of 9/32 Kapu Dada, 9/19- Krema Pao, 9/2-Veo and 17-Nari-camp Polling station of 9th Chayang Tajo (St) Assembly Constituency.

Records further disclose that in response to the appellant's RTI application dt.19.06.2024, the PIO-cum-Dy.District Election Officer, East Kameng District, Seppa, vide letter dt.05.07.2024, intimated the appellant of the refusal of the PIO to entertain his request on the ground that under rule 93 of the Conduct of Election Rules, 1961, the documents requested shall not be opened or inspected by, or produced before any person or authority without the orders of a competent court.

Being aggrieved with the rejection of his application by the PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo, ST Assembly Constituency and the PIO-cum-Dy.District Election Officer, East Kameng District, Seppa, the appellant, vide his Memo of Appeal dt.17.08.2024, approached the PIO o/o the Chief Electoral Officer, Nirvachan Bhavan, Itanagar under section 19(1) of the RTI Act, 2005 by incorporating the following 3(three) additional points to his RTI application dt.06.06.2024:-

- (a) xerox copies of final deployment list of presiding officers and polling officers of 38 polling stations;
- (b) one full set of certified true copy of nomination papers of Shri Hayang Mangfi and
- (c) used Form 17-A of 9/32 Kapu Dada, 9/19- Krema Pao, 9/2-Veo and 17-Nari-camp Polling station of 9th Chayang Tajo (St) Assembly Constituency.

In response to the aforesaid appeal, the Joint Chief Electoral Officer by his letter dt.12.09.2024, transferred the said appeal to the DEO, East Kameng District, Seppa in terms of section 6(3) of the RTI Act, 2005.

Pursuant to the transfer of the RTI application by the o/o the CEO, Itanagar to the DEO, East Kameng, Seppa, the o/o the PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo, vide letter dt.16.10.2024 signed by the ARO, intimated the appellant that the requested documents at Sl.No.1,2,3,8 and 9 are in the strong room and reiterated the rule position as intimated earlier in this regard (i.e the provisions of rule 93 of the Conduct of Election Rules, 1961. The ARO had also pointed out that the appellant had filed an election petition in the Gauhati High Court.

Being dissatisfied with the response of the PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo and the CEO, Itanagr, the appellant filed his 2nd appeal before this Commission under section 19(3) of the RTI Act vide Memo of Appeal dt. 03.12.2024 which has been registered as APIC-388/2024.

Hearing and decision:

The appeal was, accordingly, listed for hearing on 21.02.2025 wherein both the appellant, Shri Kompu Dolo and PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo, Shri Biaro Sorum were present physically.

Heard the parties.

The PIO, reiterating the rule position as already intimated to the appellant on disclosure of certain documents, submitted that except those expressly prohibited under the Conduct of Election Rules, the appellant had been furnished with other documents such as:-

- (a) xerox copy of pass book operated by Shri Anil Rebe, the Election Agent of Shri Hayeng Mangfi;
- (b) xerox copies of final deployment list of presiding officers and polling officers of 38 polling stations and
- (c) one full set of certified true copy of nomination papers of Shri Hayang Mangfi.

In this regard, the PIO has also submitted a detailed records vide his letter dt.19.02.2024 which has been taken on record by this Commission.

The appellant, during the course of hearing, acknowledged the receipt of the above documents which he had requested in an another RTI application dt. 20.06.2024. He, however, expressed his disappointment for not being able to obtain the used Form-17A in respect of 9/32 Kapu Dada, 9/19- Krema Pao, 9/2-Veo and 17-Nari-camp Polling Stations.

This Commission, upon hearing the parties and on perusal of the provisions of rule 93 of the Conduct of Election Rules, 1961, holds that the PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo was right in refusing to furnish the aforesaid documents (Form-17A) as being in congruity with the said rule.

Rule 93 stipulates that ballot papers in physical form can not be inspected or produced before any person or authority except under the order of a competent court.

The Hon'ble Supreme Court in Ram Sewak Yadav vs Hussain K.Kidwai (1964) 6 SCR 238, interpreting rule 93, *observed that ballot papers may be inspected only under an order of a competent court/tribunal, but other documents are open for public inspection subject to certain conditions.*

The Hon'ble **High Court of Delhi** in Writ Petition (Civil) No.4715 of 2008 (**Election Commission of India vs. Central Information Commission and others**) by judgment & order dt.04.11.2009 delivered by hon'ble justice Sanjeev Khanna (now the Chief Justice of Supreme Court of India) held that "*the object and purpose behind the aforesaid rule is to maintain utmost secrecy and confidentiality of the ballot papers and the control unit which contains the information regarding the votes polled, the votes secured by each candidate in a polling station etc. Such information is kept secret to maintain confidentiality, and secure information relating to voters, pattern of voting etc. and avoid unnecessary petition based on mere apprehensions and unfounded grounds. Ensuring confidentiality and secrecy of the votes polled is sacrosanct in election by a secret ballot. This necessary to protect the electorate from any reprisal or adverse consequences for voting in a particular manner or for a party/candidate. The object is that the said material should not be accessible unless a competent court for valid reason directs disclosure or inspection.*"

The Hon'ble High Court in paragraphs 21 to 25, had also comprehensively interpreted the definitions of 'information' and 'right to information accessible under this Act' as contained in clauses (f) and (j) respectively of section 2 of the RTI Act, 2005 as under:

"21. Section 2(f) of the RTI Act defines information as material in any form accessible to a public authority under any other law i.e. an enactment other than the RTI Act. Section 2(j) defines "right to information" as "information accessible under the RTI Act which is held by or under the control of the public authority". The words "information accessible under this Act" used in Section 2(j) can cause ambiguity, if read in isolation. But on a harmonious reading of the two definition clauses, the words "accessible under this Act" have reference to Section 2(f) of the RTI Act otherwise the two definition clauses will be mutually contradictory. The term "Right to information" should be defined with reference to the term "information". The words "information accessible under this Act" in Section 2(j) will mean information which is accessible to a public authority and not information to which the public authority is denied access. The "right to information" is subject to the provisions and exemptions under the RTI Act and therefore legislature has used the words "information accessible under this Act" while defining "right to information" under Section 2(j).

22. The words "under the control of a public authority" as per their natural meaning imply right and power of the public authority to have access to the said information. Wharton's Law Lexicon (15th edition) defines the word "held" as "to have the ownership or use of: keep as one's own". In Stroud's Judicial Dictionary (4th edition) it is observed that in legal parlance the word "held" means to possess "legal title".

The words "held by" in section 2(j) in the context of the RTI Act will include not only information under the legal control of the public authority but also all information which is otherwise available with them. The public authority should have dominion over the information or semblance of the right to the material which constitutes information. The words "held by or under the control of an public authority" are to be given a broad and wide meaning but at the same time cannot include information to which access is denied to a public authority itself under any other statutory enactment. If there is a prohibition or bar under an enactment and the public authority is disabled and prevented access to material or information, the bar or prohibition is not undone or erased by the RTI Act. Similarly, if there is a pre-condition before a public authority can access information under any other enactment, the said pre-condition should be satisfied. Right to information from a public authority requires the public authority's corresponding right to access the said information. If there is an absolute or complete bar on the public authority's right to access information then such information cannot be supplied and if there is a partial bar or pre-condition, then the pre-condition should be satisfied before information is furnished.

23. Thus, to word it differently, material/details to which the public authority has access must be furnished, subject to the exemptions under the RTI Act. However, if the public authority is denied access or cannot have access to due to any limitation or restriction under a statute, the material does not constitute 'information' under the RTI Act.

Once statutory precondition for access by the public authority to material/details is satisfied, the material/details are "information" within the meaning of section 2(f) and a citizen has a right to access "information". The requirement is that the public authority should have right to access information which is "held by or under the control of any public authority".

24. Any other interpretation of the foregoing sections of the RTI Act, will lead to incongruous and unacceptable results, with a statutory protection or prohibition in another enactment being nullified by filing an application under the RTI Act. The legislature has therefore in Section 2 (f) of the RTI Act, carefully used the words "accessed by a public authority under any other law" before a right to information accrues and information is "held by or under the control of any public authority." Where a public authority is disabled till satisfaction of certain conditions or is prohibited from having access to any information, the provisions of the third enactment continue to apply and are not re-written or over-written by the RTI Act.

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."

The Hon'ble High Court of Delhi, thus, relying on the ratios of Hon'ble Supreme Court rullings in **Bhabhi vs. Sheo Govind and others (1976)1 SCC 687**, **V.S. Achutanandan Vs. P.G. Francis and another (2001) 3 SCC 81** and **Ram Sevak Yadav vs. Hussain K.Kidwai** and interpreting the definitions of 'information' and 'right to information accessible under the RTI Act, 2005' as above, set aside and quashed the CIC's order directing the Election Commission of India to disclose the confirmation of information on the EVM (date and time, votes, vote tally and other information etc.).

The Hon'ble High Court also held that in case an election petition has been filed, the competent court can always direct furnishing of information on being satisfied that the parameters specified by the Supreme Court for furnishing of information and re-examination of data stored in the EVMs are met.

During the course of hearing, this Commission was informed by both the PIO and the appellant, Shri Kompu Dolo that an Election Petition has since been filed by Shri Kompu Dolo in the Gauhati High Court. This Commission, therefore, while endorsing the decision of the PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo refusing to provide the used Form-17A in respect of 9/32 Kapu Dada, 9/19- Krema Pao, 9/2-Veo and 17-Nari-camp Polling Stations in terms of rule 93 of the Conduct of

Election Rules, 1961, suggests the appellant to make a plea, if so advised, by way of an IA in his Election Petition, before the Hon'ble Gauhati High Court, for an appropriate direction to the PIO concerned to furnish the sought for information.

This appeal is, accordingly, disposed off and closed.

Given under my hand and seal of this Commission on this 24.02.2025.

Sd/-

(S. TSERING BAPPU)

State Information Commissioner,
APIC, Itanagar.

Memo No. APIC- 387/2024/609 Dated Itanagar, the 24 February, 2025

Copy to:

1. The Chief Electoral Officer-cum- First Appellate Authority, Nirvachan Bhavan Itanagar (A.P) for information.
2. The Dy. Commissioner-cum-District Election Officer, East Kameng District, Seppa for information.
3. The PIO, the ADC-cum-Returning Officer, 9th Chayang Tajo, ST Assembly Constituency, East Kameng District(A.P for information.
4. Shri Kompu Dolo, 'C'- Sector, Itanagar, Quarter No. 11 (type IV) PO/PS Itanagar, (A.P) PIN 791111 Mobile No. 9436228017/6909738556 for information.
5. The Computer Programmer/Computer Operator for uploading on the Website of APIC, please.
6. Office copy.
7. S/Copy.

Registrar/ Deputy Registrar
APIC, Itanagar

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