

कार्यालय : मुख्य निर्वाचन अधिकारी, उत्तराखण्ड

विश्वकर्मा भवन, प्रथम तल, सचिवालय परिसर 4-सुभाष रोड़, देहरादून- 248001

Email id- ceo_uttaranchal@eci.gov.in

फोन न० (0135) - 2713551

फैक्स न० (0135) -2713724.

संख्या- 600 / XXV- 53(P-14)/2021 देहरादून : दिनांक 19 अप्रैल, 2022

सेवा में,

**Shri Samir Sardana,
D-113, Sector 4,
Defence Colony, Dehradun**

विषय- सूचना के अधिकार अधिनियम-2005 के तहत सूचना के सम्बन्ध में।
महोदय

उपरोक्त विषयक आपके अनुरोध पत्र के क्रम में इस कार्यालय के पत्र संख्या-565 दिनांक 12.04.2023 एवं पत्र संख्या-573 दिनांक 13.04.2023 का सन्दर्भ ग्रहण करने का कष्ट करें। उक्त सम्बन्ध में आपके ईमेल दिनांक 13.04.2023 के क्रम में अवगत कराना है कि स्वतः स्फूर्त प्रकटन हेतु सूचनायें मुख्य निर्वाचन अधिकारी, कार्यालय की वेबसाईट <https://ceo.uk.gov.in> एवं eci.gov.in पर भी उपलब्ध है।

अतः आप उक्त जानकारी से यदि असंतुष्ट हो तो आदेश प्राप्ति की तिथि से 30 दिनों के अन्दर विभाग के अपीलीय अधिकारी जिनका पता निम्नवत है अपील दायर कर सकते हैं:-

संलग्न-यथोपरि।

अपीलीय अधिकारी का पता
सहायक मुख्य निर्वाचन अधिकारी,
विश्वकर्मा भवन, प्रथम तल,
सचिवालय परिसर 4-सुभाष रोड़,
देहरादून-248001

भवदीय,

B. Sawat

(बसन्त सिंह रावत)

अनुभाग अधिकारी एवं
लोक सूचना अधिकारी।



CEO Uttarakhand <election09@gmail.com>

Payment

2 messages

CEO Uttarakhand <election09@gmail.com>
To: samthedivine@gmail.com

13 April 2023 at 13:16

Respected sir,

plz find the attachment,

o/o ceouk

 **573.PDF**
134K

sam thedivine <samthedivine@gmail.com>
To: election09@gmail.com

13 April 2023 at 13:21

SIR

THANK YOU FOR YOUR PROMPT RESPONSE.WHAT ABOUT THE FOLLOWING INFORMATION ? WHEN WILL YOU PROVIDE THE SAME.KINDLY PROVIDE THE REPLY IN A DAY AS IN THE RTI ACT,THERE IS NO CONCEPT OF PARTIAL REPLY OR PARTIAL FEES. KINDLY REPLY ASAP

Section 4

- PIO to provide the election affidavits and expenses, of all the winning candidates,in the last Lok Sabha and State Polls
- PIO to provide the aggregate assets,liabilities,age,Educational Qualifications of all the winning candidates,in the last Lok Sabha and State Polls
- PIO to provide the election affidavits and expenses, of all the winning candidates,in the last Panchayat Polls
- PIO to provide the aggregate assets,liabilities,age,Educational Qualifications of all the winning candidates,in the last Panchayat Polls

Inspection

- PiO to allow the applicant to inspect the election affidavits of the candidates,in the last Lok Sabha and State Polls,for the Top 2 candidates by vote number for each seat
- PiO to allow the applicant to inspect the election affidavits of the candidates,in the last Panchayat Polls,for the Top 2 candidates by vote number for each seat

Voter Deletions

- PIO to state the number of names DELETED from the voter lists,in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists,by Sex,Age,Religion and Caste,in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists,in the last Panchayat Polls
- PIO to state the number of names DELETED from the voter lists,by Sex,Age,Religion and Caste,in the last Panchayat Polls

Antecedents

- PIO to state the names of the candidates with criminal antecedents (with addresses and parties), in the last 2 Lok and Rajya Sabha Polls

AUDIT

- PIO TO STATE IF ANY IT AUDIT HAS BEEN DONE, OF THE VOTER LIST, AND VOTER I CARD SYSTEM, IN THE LAST 5 YEARS
- PIO TO STATE THE YEAR OF THE SAID AUDIT, NAME OF AUDITOR AND PROVIDE A COPY OF AUDIT REPORT

AUDIT REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES, WHICH DID NOT SUBMIT THEIR AUDIT REPORTS AND ANNUAL ACCOUNTS, FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE AUDIT REPORTS AND ANNUAL ACCOUNTS, SUBMITTED TO THE CEC UTTARAKHAND BY REGISTERED POLITICAL PARTIES

CONTRIBUTION REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES, WHICH DID NOT SUBMIT THEIR CONTRIBUTION REPORTS, FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE CONTRIBUTION REPORTS, SUBMITTED TO THE CEC UTTARAKHAND BY POLITICAL PARTIES

SAMIR SARDANA

[Quoted text hidden]

कार्यालय : मुख्य निर्वाचन अधिकारी, उत्तराखण्ड

विश्वकर्मा भवन, प्रथम तल, सचिवालय परिसर 4-सुभाष रोड़, देहरादून- 248001

Email id- ceo_uttaranchal@eci.gov.in

फोन न० (0135) - 2713551

फैक्स न० (0135) -2713724.

संख्या- 573/XXV- 53(P-14)/2021 देहरादून : दिनांक 13 अप्रैल, 2022

अतिरिक्त शुल्क: के लिए सूचना का प्रपत्र

सेवा में,

Shri Samir Sardana,
D-113, Sector 4,
Defence Colony, Dehradun ,

विषय-

अतिरिक्त शुल्क जमा करने के सम्बन्ध में।

महोदय,

उपरोक्त विषयक अपने अनुरोध पत्र दिनांक 3.04.2023 का सन्दर्भ ग्रहण करें। आपके द्वारा मांगी गयी सूचना सामग्री को एकत्रित करने और इच्छित रूप में उपलब्ध करने पर सरकार द्वारा निम्नलिखित दरों के आधार पर रू० 244.00(रू० दो सौ चवालीस) अतिरिक्त शुल्क देय होता है

विषय वस्तु	बिन्दु संख्या	सामग्री या व्यय की मद	दर	कुल धनराशि
Vote results	बिन्दु संख्या-1	सम्बन्धित सूचना इस कार्यालय में धारित नहीं है।		
Registered Unrecognised political Parties	बिन्दु संख्या-2	106	रू० 2.00 प्रति पेज	212
Delimitation	बिन्दु संख्या-1	9	रू० 2.00 प्रति पेज	18
EVM	बिन्दु संख्या-1	7	रू० 2.00 प्रति पेज	14

अतः उक्त धनराशि की यथाशीघ्र पोस्टल आर्डर अथवा बैंकर्स चेक अथवा बैंक ड्राफ्ट जो लोक सूचना अधिकारी, कार्यालय मुख्य निर्वाचन अधिकारी, उत्तराखण्ड के नाम बना हो प्रेषित करें।

मांगी गयी सूचना को उपलब्ध कराने सम्बन्धी कार्यवाही उक्त अतिरिक्त शुल्क जमा करने के बाद ही प्रारम्भ होगी। इस पत्र की तिथि से अतिरिक्त शुल्क प्राप्त होने की तिथि तक का समय सूचना उपलब्ध कराने के लिए निर्धारित 30 दिनों में नहीं गिना जायेगा।

भवदीय,

B. S. Rawat

(बसन्त सिंह रावत)

अनुभाग अधिकारी एवं
लोक सूचना अधिकारी।

कार्यालय : मुख्य निर्वाचन अधिकारी, उत्तराखण्ड
विश्वकर्मा भवन, प्रथम तल, सुभाष रोड़, सचिवालय परिसर, देहरादून- 248001

By Email

फोन नं० (0135) - 2713551

फैक्स नं० (0135) - 2713724

संख्या: 662 /XXV-12(14)/2018

देहरादून : दिनांक 04 मई, 2023

सेवा में,

Shri Samir Sardana,
D-13, [Sector 4] Defence Colony,
Dehradun] Uttarakhand

विषय:- सूचना के अधिकार के अन्तर्गत प्रस्तुत प्रथम अपील पर सुनवाई के संबंध में।
महोदय,

उपरोक्त विषयक सूचना के अधिकार अधिनियम के अन्तर्गत अपने अपीलीय ई-मेल संदेश दिनांक 23 अप्रैल 2023 का सन्दर्भ ग्रहण करने का कष्ट करें। इस कार्यालय के लोक सूचना अधिकारी के पत्र संख्या-600 दिनांक 19 अप्रैल 2023, (स्वतः स्फूर्त प्रकटन हेतु वेबसाइट की सूचना) पत्र संख्या-573 दिनांक 13 अप्रैल 2023 (सूचनाओं/सामग्री को एकत्रित करने हेतु अतिरिक्त शुल्क की मांग) तथा पत्र संख्या-565 दिनांक 11 अप्रैल 2023 (अन्य लोक सूचना अधिकारियों को सूचना उपलब्ध कराने हेतु अनुरोध पत्र का हस्तान्तरण) के द्वारा आपको आपके अनुरोध पत्र दिनांक 03-04-2023 के सम्बन्ध में पत्र प्रेषित किये गये हैं।

2- उक्त सम्बन्ध में उक्त अपील पर सुनवाई हेतु दिनांक 10 मई 2023 की तिथि समय-02:30 बजे अपराह्न निर्धारित की गयी है।

अतः अनुरोध है कि उक्त नियत दिनांक व समय पर कार्यालय मुख्य निर्वाचन, अधिकारी, उत्तराखण्ड, विश्वकर्मा भवन, प्रथम तल, सचिवालय परिसर, 04-सुभाष रोड़, देहरादून में सुनवाई के दौरान उपस्थित होने का कष्ट करें। साथ ही यह भी अनुरोध करना है कि यदि आप सहमत हों तो उक्त नियत तिथि से पूर्व किसी भी कार्यदिवस/कार्यालय समय में कार्यालय में आकर भी जानकारी प्राप्त कर सकते हैं।

भवदीय,

(मस्तू दास)

सहायक मुख्य निर्वाचन अधिकारी,
उत्तराखण्ड।

पृ०संख्या-662/XXV-12(14)/2018 तददिनांकित।

प्रतिलिपि- 1-अनुभाग अधिकारी/लोक सूचना अधिकारी, को इस निर्देश के साथ प्रेषित कि वह निर्धारित तिथि व समय पर अपील की सुनवाई हेतु उपस्थित होते हुए उक्तानुसार विभागीय पक्ष प्रस्तुत करने का कष्ट करें।

2-समस्त अपीलीय अधिकारी/उप जिला निर्वाचन अधिकारी, उत्तराखण्ड को उक्त अपीलार्थी के ईमेल संदेश दिनांक 23.4.2023 की प्रति अपील की सुनवाई हेतु प्रेषित। उक्त के अतिरिक्त अपीलार्थी द्वारा अपने उक्त अपील के सम्बन्ध में ई-मेल दिनांक 03 मई 2023, 30.4.2023 की प्रतियां आवश्यक कार्यवाही हेतु प्रेषित की जा रही हैं।
संलग्नक-यथोपरि।

(मस्तू दास)

सहायक मुख्य निर्वाचन अधिकारी,
उत्तराखण्ड।

mail. 15:23 PM

Email

CEO UTTARAKHAND

CEO UTTARAKHAND Signed 1st Appeal u/s 19(1) of the RTI Act,2005 (ILLEGAL FEE DEMAND AND NON-REPLY TO SOME INFORMATION REQUIREMENTS)

From : samthedivine@gmail.com

Sun, Apr 23, 2023 05:45 AM

Subject : CEO UTTARAKHAND Signed 1st Appeal u/s 19(1) of the RTI Act,2005 (ILLEGAL FEE DEMAND AND NON-REPLY TO SOME INFORMATION REQUIREMENTS)

To : CEO UTTARAKHAND <ceo_uttaranchal@eci.gov.in>

THE FAA

Office of the Chief Electoral Officer, Uttarakhand,

Vishwakarama Bhawan, first Floor

Secretariate Campus, 04-Shubhash Road

Dehradun - 248001

S.O/PIO
M/S
24/4/2023
A R O II
P S
P I O
S O
A C C E D

Subject - CEO UTTARAKHAND Signed 1st Appeal u/s 19(1) of the RTI Act,2005 (ILLEGAL FEE DEMAND AND NON-REPLY TO SOME INFORMATION REQUIREMENTS)

Dear Sir,

1.Context

1.1.This is the 1st Appeal u/s 19(1) of the RTI Act,2005, w.r.t THE ILLEGAL ILLEGAL FEE DEMAND AND NON-REPLY TO SOME INFORMATION REQUIREMENTS 4,AS UNDER:

- PIO REPLY **REF.NO.** 429/ 25-10/2023,dated 18th April,2023,asking for a fees of Rs 2348
- PIO REPLY **REF.NO.** 39/3050/2021,dated 18th April 2023,signed by RK Verma as transfer letter
- PIO REPLY **REF.NO.** 03/2022 dated 20th April, signed by Zila Nirvachan Adhikari, Pancharsthani Xhunavalya Tehri,asking for a fees of Rs 7200
- PIO REPLY **REF.NO.** 573//XXV-53(P-14)/2021, dated 13th April, signed by BS RAWAT ,askng for a fees of Rs 244

1.2.The information sought by the Applicant is DETAILED IN THE 2RTI APPLICATIONS SENT

Section 4

- PIO to provide the election affidavits and expenses, of all the winning candidates,in the last Lok Sabha and State Polls
- PIO to provide the aggregate assets,liabilities,age,Educational Qualifications of all the winning candidates,in the last Lok Sabha and State Polls
- PIO to provide the election affidavits and expenses, of all the winning candidates,in the last Panchayat Polls

- PIO to provide the aggregate assets, liabilities, age, Educational Qualifications of all the winning candidates, in the last Panchayat Polls

Inspection

- PIO to allow the applicant to inspect the election affidavits of the candidates, in the last Lok Sabha and State Polls, for the Top 2 candidates by vote number for each seat
- PIO to allow the applicant to inspect the election affidavits of the candidates, in the last Panchayat Polls, for the Top 2 candidates by vote number for each seat

Vote results

- PIO to provide the FINAL VOTING RESULTS, by Sex, Age, Religion and Caste, in the last Lok Sabha and State Polls, for the Top 2 candidates by vote number for each seat
- PIO to provide the FINAL VOTING RESULTS, by Sex, Age, Religion and Caste, in the last Panchayat Polls, for the Top 2 candidates by vote number for each seat

Voter Deletions

- PIO to state the number of names DELETED from the voter lists, in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists, by Sex, Age, Religion and Caste, in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists, in the last Panchayat Polls
- PIO to state the number of names DELETED from the voter lists, by Sex, Age, Religion and Caste, in the last Panchayat Polls

Registered Unrecognised Political Parties

- PIO to state the names of the Registered Unrecognised Political Parties in the last 3 Lok Sabha and State Polls (who contested the polls)
- PIO to state the names of the Registered Unrecognised Political Parties in the state of Uttarakhand
- PIO to state the number of votes of EACH the Registered Unrecognised Political Parties in EACH of the last 3 Lok Sabha and State Polls

Delimitation

- PIO to state the number of orders and order ref number of the Orders of the Delimitation Commission for the state of Uttarakhand and provide copies of the same

Antecedents

- PIO to state the names of the candidates with criminal antecedents (with addresses and parties), in the last 2 Lok and Rajya Sabha Polls

EVM

- PIO to state the number of EVM, which malfunctioned in the last Lok Sabha and Rajya Sabha Polls
- PIO to state if any IT or other TECHNICAL AUDIT OF THE EVM HAS BEEN DONE/SPONSORED BY CEC UTTARAKHAND, IN THE LAST 5 YEARS
- PIO TO STATE THE YEAR OF THE SAID AUDIT, NAME OF AUDITOR AND PROVIDE A COPY OF AUDIT REPORT

AUDIT

- PIO TO STATE IF ANY IT AUDIT HAS BEEN DONE, OF THE VOTER LIST, AND VOTER I CARD SYSTEM, IN THE LAST 5 YEARS
- PIO TO STATE THE YEAR OF THE SAID AUDIT, NAME OF AUDITOR AND PROVIDE A COPY OF AUDIT REPORT

AUDIT REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES,WHICH DID NOT SUBMIT THEIR AUDIT REPORTS AND ANNUAL ACCOUNTS,FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE AUDIT REPORTS AND ANNUAL ACCOUNTS,SUBMITTED TO THE CEC UTTARAKHAND BY REGISTERED POLITICAL PARTIES

CONTRIBUTION REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES,WHICH DID NOT SUBMIT THEIR CONTRIBUTION REPORTS ,FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE CONTRIBUTION REPORTS,SUBMITTED TO THE CEC UTTARAKHAND BY POLITICAL PARTIES

3.FAA Hearing

3.1.The Appellant **demand a FAA Hearing Notice and the presence of the Appellant in the FAA Hearing OR A TELEPHONIC HEARING**

- It is **proposed that 1 FAA hearing be used to make submission and arguments** – except the case referred to in Para 3.4.

CIC Case law - Illegality of FAA Order and process - wherein Appellant had specifically asked for Hearing.

In CIC order **CIC/SM/A/2013/000312 dated 18-7-2012, CIC held,as under:**

- During the hearing, among other submissions, the Appellant specifically wanted us to take note of the fact that the **Appellate Authority had not given him any opportunity of hearing even after he expressly requested for that** Although the Right to Information (RTI) Act or the rules made thereunder do not prescribe in detail the procedure to be followed by the Appellate Authority in dealing with first appeals, by convention, the Appellate Authority should give an opportunity of hearing to any Appellant if the Appellant expressly wants to be heard. **Therefore, we would like the Appellate Authority to bear this in mind and, wherever any such request is made, to afford an opportunity of hearing to that Appellant.** Subsequently this ruling was followed in another second appeal CIC/SM/A/2013/001324RM

This was also held in the case of the Appellant in CIC Case reference **File no.: CIC/MMTCL/C/2019/643215,in the case of Samir Sardana vs. CPIO - MMTCL**

The above ratio was also held **in the case** of the Appellant in CIC Case reference **File no.: CIC/ STCIL/ C/ 2019/ 645981,in the case of Samir Sardana vs. CPIO – STCIL,wherein the CIC stated as under:**

The above ratio was also held **in the case** of the Appellant in CIC Case reference **File no.: CIC/ STCIL/C/ 2019/645952 ,in the case of Samir Sardana vs. CPIO – STCIL**

The above ratio was also held **in the case** of the Appellant in CIC Case reference **File no.: CIC/ STCIL/C/ 2019/ 646473, in the case of Samir Sardana vs. CPIO – STCIL**

3.2.THE FAA MIGHT NOTE THAT BASIC NORMS OF NATURAL JUSTICE , WILL BE VIOLATED BY NOT PROVIDING A HEARING,TO THE APPELLANT

- **The Constitution Bench of the Supreme Court in S N Mukherjee v Union of India¹⁰³ observed:**
 - **The object underlying the rules of natural justice —is to prevent miscarriage of justice|| and secure —fair play in action. As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that**

the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules.

- (Emphasis supplied) The requirement to record reasons is a principle of natural justice and a check against the arbitrary exercise of power by judicial and quasi-judicial bodies. In making a determination under clause (j) of clause (1) of Section 8 in a given case, it would not be satisfactory if an Information Officer were merely to record (1990) 4 SCC 495

3.3. NOT HAVING A FAA HEARING (BY TELE OR VC OR IN PERSON) MEANS THAT THE APPELLANT WILL HAVE NO RESPONSE FROM THE PIO ON THE GROUNDS OF APPEAL RAISED BY THE APPELLANT – WHICH IS AKIN TO HAVING NO SAY OF THE PIO ON THE APPEAL MADE BY THE APPELLANT

IN THE NORMAL COURSE, THE PIO makes a SAY OF THE PIO, which responds to each illegality, detailed in Para 8, of the 1st Appeal of the FAA, and places it on record, sends a copy to the appellant, and the appellant is given only 1 chance to respond, to the said Say of the PIO. This will satisfy the test, of the "Right to Cross examination and the Right to all the information relevant to a hearing".

The Supreme Court, in Para 47 of `Kranti Associates (P) Ltd. & Ors. v. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496], summarised the principles of natural justice, in a quasi judicial proceeding, as under:

- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers.

The Principles of "Transparency and recording of reasons" requires that the PIO submits a Say of the PIO to the FAA and the Appellant - as it would place it on record and have absolute evidentiary value in any judicial proceeding. It also lends to transparency and brings reason to the judgment as postulated by the SC in the same judgment (stated above) and encapsulated below:

- (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

United Nations Declaration of Basic Equality of arms

Allowing for a situation wherein the Appeal of the Appellant has been seen and analysed by the PIO, and the FAA of REC - BUT the appellant has not read, seen or heard, the RIPOSTE OR POSIT OF THE PIO of REC, on each GROUND OF APPEAL is a violation of the United Nations Declaration of Basic Equality of arms, as under:

- Equality of arms, which must be observed throughout the trial process, means that both parties are treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in an equal position to make their case.
 - It means that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage vis-à-vis the opposing party.

3. This has been **held to be the law in past HC and CIC case laws** – and THE FAA IS NOTE THE SAME

CIC Case law No.1 - Illegality of FAA Order and process

The CIC has held in the following case.as under :

File No.CIC/SA/A/2014/000254

Appellant/Complainant : Mr. R.K.Jain

Respondent : Department of Legal Affairs, Government of India

Date of hearing : 24112014

Date of decision : 05122014

- The Commission also notes that the way the first appeal was conducted by the FAA is wrong and illegal for want of compliance with the principles of natural justice and violation of Section 19(6) of the RTI Act, wherein time limit is prescribed as 45 days. FAA went on hearing without issuing hearing notice to the appellant and concluded that no further hearing was necessary, which reflects illegal and unreasonable handling of the first appeal, driving the appellant to Second appeal, thereby creating confusion besides increasing the workload.

- o The Commission, therefore, takes this opportunity to caution the First Appellate Authority not to repeat illegal practice of not hearing the appellant, not persuing natural justice, not having the time limit provided under the RTI Act.

- The Commission cited the decision of Supreme Court in its Civil Appeal No.9095/2012 Manohar Vs. State of Maharashtra, stated in para 23: ...Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature....

- CIC also recommended action against the officer for this 'illegal' order

CIC Case law No.2 - Illegality of FAA Order and process - wherein Appellant had specifically asked for Hearing.

In CIC order CIC/SM/A/2013/000312 dated 18-7-2012, CIC held, as under:

- During the hearing, among other submissions, the Appellant specifically wanted us to take note of the fact that the Appellate Authority had not given him any opportunity of hearing even after he expressly requested for that. Although the Right to Information (RTI) Act or the rules made there under do not prescribe in detail the procedure to be followed by the Appellate Authority in dealing with first appeals, by convention, the Appellate Authority should give an opportunity of hearing to any Appellant if the Appellant expressly wants to be heard. Therefore, we would like the Appellate Authority to bear this in mind and, wherever any such request is made, to afford an opportunity of hearing to that Appellant. Subsequently this ruling was followed in another second appeal

CIC/SM/A/2013/001324RM

CIC Case law No.3 - Illegality of FAA Order and process - Speaking Order and Hearing Process

Vide order dated 21 December 2012, under File No.CIC/SM/A/2012/000784 & 786, the then Hon'ble Chief Information Commissioner, Mr. Satyananda Mishra has noted as under :

- "Para 9 of Order - We would like the Appellate Authority to be more careful in future in dealing with appeals filed before her. It is not enough to reproduce the contents of the RTI application and the reply of the CPIO; the Appellate Authority must pass a speaking order justifying her decision in each case. Wherever the Appellant wants personal hearing, he should be given that opportunity. In the present two cases, the Appellate Authority has not acquitted herself justifiably."

CIC Case law No.4 - Illegality of FAA Order and process - Transparency.

Order of the Hon'ble CIC under File No.CIC/SM/A/2011/901365, dated 9 July 2012, which shas noted as under :

- "Para 6 of Order - It must be remembered that the transparency demanded under the Right to Information (RTI) Act of all public authorities would also extend to the CPIO, the Appellate Authority and the Central Information Commission in equal measure. The

records generated by these authorities while dealing with any RTI application or appeal will have to be readily available in the public domain without any hindrance."

CIC Case law No.5 - Illegality of FAA Order and process - Transparency.

DOPT OM No.1/3/2008-IR dated 25 April 2008, of the Department of Personnel and Training, Government of India (Guide for the First Appellate Authorities) Which states as under :

Disposal of Appeal

- **Para 38. Deciding appeals under the RTI Act is a quasi-judicial function. It is therefore necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.**

3.5.The Appellant also demands an Original Copy of the Say of the PIO, w.r.t this 1st Appeal - 5 days before the date of the hearing

- **If it cannot be sent for any reason – then the Say of the PIO should be handed over to the Appellant on the date of the FAA Hearing – before the commencement of the FAA Hearing**

3.6.If the Appellant cannot attend the FAA Hearing – id.est., the 1st Hearing – the Appellant will send the Written Representation and the FAA can send the Say of the PIO

- **In this event the FAA needs to conduct a 2nd Hearing for Arguments – wherein again the Appellant will submit the Riposte to the Say of the PIO – which will need to be receipted by the FAA**

4.Section 7(6) of the RTI Act,2005 - Information to be provided free of cost

4.1.Since the PIO made a DEEMED REJECTION OF THE INFORMATION SOUGHT (Refer Para 2.1. above) - it is submitted that the PIO has to provide the above information, free of cost u/s 7(6) of the RTI Act,2005 and the spirit of the RTI Act,2005.

- **The Applicant will need to verify the copies taken with the originals and each page needs to have a stamp as "Certified True Copy" - as per the RTI Act,2005**
- **The certified copies handed over to the Applicant should have a covering letter stating the specifics of the copies given and the basis of the fees**

5,Violation of Duties of a PIO

5.1.Section 7 explains the duties of CPIO under RTI Act, it says:

Subject to the proviso of sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, **either provide** the information on payment of such fee, as may be prescribed or **reject the request for any of the reasons specified in sections 8 and 9.**

6.The Facts of the Case

6.1.It is posited that all the information sought by the Applicant in THE RTI Application , CAN BE OBTAINED BY the PIO OF THE ELECTION AUTHORITY,UTTARAKHAND

7.Criticality of the Information sought

7.1. The Information is sought, as a matter of paramount public and national interest. The purpose of the application, is to introduce transparency in the operations of ELECTION AUTHORITY, UTTARAKHAND , AND THE CANDIDATES

8. Grounds of the 1st Appeal

8.1. The actions of the PIO are **patently and blatantly illegal and malafide, with intent to cheat and defraud the Appellant (also refer to Para 2, Para 4 and Para 5 above), besides reflecting the animus and bias, against the Appellant.**

8.2. The SEVEN (7) Grounds of Appeal, are given below:

- **Ground of Appeal No.1 – The PIO HAS MADE NO REPLY TO SOME REQUIREMENTS**
- **Ground of Appeal No.2- PIO HAS NOT ALLOWED INSPECTIONS**
- **Ground of Appeal No.3- PIO HAS ASKED FOR A FEE OF RS 10000, FOR INFORMATION , WHICH SHOULD BE IN THE PUBLIC DOMAIN, U/S 4 OF THE RTI ACT AND , WHICH IS DISCLOSED ON LINE BY OTHER STATES**
- **Ground of Appeal No.4- PIO HAS MADE A PATENTLY ILLEGAL DEMAND FOR FEES**
- **Ground of Appeal No.5- PIO HAS MADE A LINK TO HIS PORTAL IN THE PIO REPLY , W.O STATING WHAT INFORMATION IS AVAILABLE THERE**
- **Ground of Appeal No.6 – ELECTION AUTHORITY, UTTARAKHAND is not exempted from standards of oversight, transparency and accountability**
- **Ground of Appeal No 7.- PIO does not have the ken to execute a Rights based welfare enactment**

8.2.1. Ground of Appeal No.1 – – The PIO HAS MADE NO REPLY TO SOME REQUIREMENTS

8.2.1.1. – – The PIO HAS MADE NO REPLY TO SOME REQUIREMENTS, AS UNDER :

Inspection

- PiO to allow the applicant to inspect the election affidavits of the candidates, in the last Lok Sabha and State Polls, for the Top 2 candidates by vote number for each seat
- PiO to allow the applicant to inspect the election affidavits of the candidates, in the last Panchayat Polls, for the Top 2 candidates by vote number for each seat

Vote results

- PIO to provide the FINAL VOTING RESULTS, by Sex, Age, Religion and Caste, in the last Lok Sabha and State Polls, for the Top 2 candidates by vote number for each seat
- PIO to provide the FINAL VOTING RESULTS, by Sex, Age, Religion and Caste, in the last Panchayat Polls, for the Top 2 candidates by vote number for each seat

Voter Deletions

- PIO to state the number of names DELETED from the voter lists, in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists, by Sex, Age, Religion and Caste, in the last Lok Sabha and State Polls
- PIO to state the number of names DELETED from the voter lists, in the last Panchayat Polls

- PIO to state the number of names DELETED from the voter lists, by Sex, Age, Religion and Caste, in the last Panchayat Polls

Antecedents

- PIO to state the names of the candidates with criminal antecedents (with addresses and parties), in the last 2 Lok and Rajya Sabha Polls

EVM

- PIO to state the number of EVM, which malfunctioned in the last Lok Sabha and Rajya Sabha Polls
- PIO to state if any IT or other TECHNICAL AUDIT OF THE EVM HAS BEEN DONE/SPONSORED BY CEC UTTARAKHAND, IN THE LAST 5 YEARS

AUDIT REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES, WHICH DID NOT SUBMIT THEIR AUDIT REPORTS AND ANNUAL ACCOUNTS, FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE AUDIT REPORTS AND ANNUAL ACCOUNTS, SUBMITTED TO THE CEC UTTARAKHAND BY REGISTERED POLITICAL PARTIES

CONTRIBUTION REPORTS

- PIO TO STATE THE NAMES OF THE POLITICAL PARTIES, WHICH DID NOT SUBMIT THEIR CONTRIBUTION REPORTS, FOR THE LAST 2 YEARS
- PIO TO ALLOW THE APPLICANT TO INSPECT THE CONTRIBUTION REPORTS, SUBMITTED TO THE CEC UTTARAKHAND BY POLITICAL PARTIES

8.2.2. Ground of Appeal No.2 - PIO HAS NOT ALLOWED INSPECTIONS

8.2.2.1. THE PIO HAS NOT ALLOWED INSPECTIONS OF THE FOLLOWING

Inspection

- PiO to allow the applicant to inspect the election affidavits of the candidates, in the last Lok Sabha and State Polls, for the Top 2 candidates by vote number for each seat
- PiO to allow the applicant to inspect the election affidavits of the candidates, in the last Panchayat Polls, for the Top 2 candidates by vote number for each seat

8.2.3. Ground of Appeal No.3- PIO HAS ASKED FOR A FEE OF RS 10000, FOR INFORMATION, WHICH SHOULD BE IN THE PUBLIC DOMAIN, U/S 4 OF THE RTI ACT

8.2.3.1. The PIO HAS ASKED FOR A FEE OF RS 10000, FOR INFORMATION, WHICH SHOULD BE IN THE PUBLIC DOMAIN, U/S 4 OF THE RTI ACT

8.2.3.2 As per the CIC, Election affidavits, expenses and results by polls and candidates are to be uploaded on portals of cec free of cost

<https://timesofindia.indiatimes.com/india/public-representative-cant-deny-declared-info-under-rti-cic/articleshow/66057436.cms>

<https://www.moneylife.in/article/upload-credentials-and-affidavits-of-panchayat-election-candidates-orders-mps-information-commissioner/64402.html>

<https://www.thehindu.com/news/cities/Hyderabad/candidates-affidavit-should-be-open-to-public-scrutiny/article25419875.ece>

8.2.3.3 Many states upload the Election affidavits, expenses and results by polls and candidates on their portal

<https://ceobihar.nic.in/affidavits.html>

<https://ceoelection.maharashtra.gov.in/ceo/Affidavits/candidate-affidavits.aspx>

<https://ceochhattisgarh.nic.in/en/candidates-affidavit-and-expenses>

8.2.3.4. LIST OF RUPP IS ALSO ONLINE, IN SEVERAL STATES AS A SECTION 4 DISCLOSURE

<https://ceorajasthan.nic.in/Publications/RUPP%20List%20in%20Raj.pdf>

https://ceobihar.nic.in/BiharElection/Statistical%20Report/statistical_report_2010/1%20-%20List%20of%20Participating%20Political%20Parties.pdf

https://ceobihar.nic.in/PDF/ppp_09012023.pdf

8.2.3.5. PANCHAYAT ELECTION DATA IS SECTION 4 DATA WHICH SHOULD BE PLACED ONLINE

8.2.4. Ground of Appeal No.4- PIO HAS MADE A PATENTLY ILLEGAL DEMAND FOR FEES

8.2.4.1. PIO HAS MADE A PATENTLY ILLEGAL DEMAND FOR FEES

8.2.4.2. PIO HAS NOT STATED THE FEES FOR :ANTECEDENTS SEPARATELY WHICH IS REQUIRED AS PER LAW (IS THIS RUNNING INTO 500 PAGES ?

Antecedents

- PIO to state the names of the candidates with criminal antecedents (with addresses and parties), in the last 2 Lok and Rajya Sabha Poll

8.2.4.3. THERE ARE ONLY 5 LOK SABHA SEATS IN UTTARAKHAND AND 70 ASSEMBLY SEATS. EACH SEAT CAN HAVE ONLY 1 WINNER

- SO THERE ARE 5 LOK SABHA WINNERS FOR WHOM aggregate assets, liabilities, age, Educational Qualifications AND ELECTION EXPENSES, WAS SOUGHT
 - HOW CAN THIS RUN INTO 600 PAGES
- SO THERE ARE 70 ASSEMBLY WINNERS FOR WHOM aggregate assets, liabilities, age, Educational Qualifications AND ELECTION EXPENSES, WAS SOUGHT
 - HOW CAN THIS RUN INTO 600 PAGES

8.2.4.4. PIO WAS ASKED FOR number of EVM, which malfunctioned in the last Lok Sabha and Rajya Sabha Polls. SO IT IS JUST FOR 1 ELECTION. HOW DOES THIS RUN INTO 7 PAGES?

8.2.5. Ground of Appeal No.5- PIO HAS MADE A LINK TO HIS PORTAL IN THE PIO REPLY , W.O STATING WHAT INFORMATION IS AVAILABLE THERE

8.2.5.1. PIO HAS MADE A LINK TO HIS PORTAL IN THE PIO REPLY , W.O STATING WHAT INFORMATION IS AVAILABLE THERE

8.2.6. Ground of Appeal No.6 – ELECTION AUTHORITY, UTTARAKHAND is not exempted from standards of oversight, transparency and accountability.

8.2.6.1. In addition, the information is also sought in the public interest, to assess the integrity, competence, efficacy and effectiveness of the ELECTION AUTHORITY, UTTARAKHAND and the political and other pressures that it possibly operates under

o In this regard, the Supreme Court Direction No.14, in the case of Vineet Narain & Others vs. Union Of India & Another on 18 December, 1997, Bench: S.P. Bharucha, S.C. Sen, may be noted as under :

§ A document on CBI 's functioning should be published within three months to provide the general public with a feedback on investigations and information for redress of genuine grievances in a manner which does not compromise with the operational requirements of the CBI

8.2.6.2.Haryana HC held that if the PA has "nothing to hide" and the information will promote transparency, the information has to be disclosed, as under:

o LPA 744 and 755 of 2011, First Appellate Authority and Addl DGP v CSIC, Haryana, the bench of Hemant Gupta, AN Jindal, JJ on 2842011 observed:

§ If such information is disclosed, it will lead to transparent administration which is anti-thesis of corruption. If organization has nothing to hide or to cover a corrupt practice, the information should be made available.

§ The information sought may help in dispelling favoritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration

8.2.7.Ground of Appeal No 7.- PIO does not have the ken to execute a Rights based welfare enactment

8.2.7.1.The PIO **lacks the Intellectual angulature, to understand and implement, the RTI Act,2005,** and its discretionary provisions

HON'BLE HIGH COURT OF DELHI in WP(C) No. 3114/2007,decided on 03.12.2007, Appellants: Bhagat Singh Vs. Respondent: Chief Information Commissioner and Ors.

o A rights based enactment **is akin to a welfare measure, like the Act, should receive a "liberal interpretation".** The "**contextual background and history**" of the Act, is such that the exemptions, outlined in Section 8,relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it.

o Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sessa Reddy 1977 (3) SCC 99).

o **Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.**

9.Burden of Proof

9. 1.. As per Section 19(5) of the RTI Act,2005,**the burden of proof lies in the PIO/CPIO/Public Authority.** According to Section 19(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."

The same is also held in **BS. Mathur Vs. Public Information Officer of Delhi High**

Court, W.P. (C) 295 and 608/2011 High Court of Delhi".

9.2. As per Section 20(1) of the RTI Act - Provided further that the "**burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer**" or the State Public Information Officer, as the case may be.

10. Order Sought

10.1. The Appellant seeks the following order from the FAA

- **Impose Maximum Penalty, on the PIO under Section 20(1), of the RTI Act, 2005**
- **Dismissal of the PIO FOR ILLEGAL AND MALAFIDE ACTION, and also under the ELECTION AUTHORITY, UTTARAKHAND SERVICE RULES— which has several provisions for the same**
- **Administrative action and/strictures, against the PIO (under Section 20(2), of the RTI Act, 2005, and also under the ELECTION AUTHORITY, UTTARAKHAND service rules— which has several provisions for the same**
- **Recommendation to the ELECTION AUTHORITY, UTTARAKHAND for administrative action and/strictures, against the PIO**
- **Direct the Respondents to refund the Application fee paid by Complainant while submitting RTI Application, as per section (7)(6) of the RTI Act;**
- **PROVIDE ALL THE INFORMATION SOUGHT BY THE APPLICANT**
- **Invoke its powers under the RTI Act to issue any other direction or recommendation as it may deem appropriate.**
- **Direct the public authority to make entry in Service Book/Annual Performance Appraisal Report of the PIO for defying the provisions of the Act (under the ELECTION AUTHORITY, UTTARAKHAND SERVICE RULES— which has several provisions for the same)**
- **Compensate the Appellant**

Yours Sincerely,

Samir Sardana

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