Central Information Commission
Baba Gang Nath Marg,
Munirka, New Delhi -110067.

CIC/AA/A/2019/09
CICOM/A/2019/00007
CICOM/R/2018/50904

Name of the appellant : Shri Venkatesh Nayak,
55A, 3rd Floor,
Siddharth Chambers-1,
Kalu Sarai,
New Delhi – 110 016.

1.	Date of RTI application	22.11.2018
2.	Date of reply of the RTI application	19.11.18 & 29.11.18
3.	CPIO(s) who furnished reply	DR to ex. CIC(RK)
4.	1st Appeal Date	01.01.2019
5.	Diary No. of 1st Appeal of the Dak Section	7153
6.	Diary date of the Dak Section	07.01.2019
7.	Diary date of 1st Appeal in the office of FAA	07.01.2019
8.	**Date of Decision**	**11.01.2019**

Brief facts of the case:-

In the RTI application, appellant has stated as under:-

"1) I would like to obtain the following information under the RTI Act, 2005, in relation to the decision of this Honourable Commission dated 11/09/2018, in the matter of Shri Sunil Kishore Ahya vs. CPIO, Election Commission of India, CPIO ECIL and CPIO BEL, registered as Second Appeal No.CIC/ECOMM/A/2017/171660:

a) A legible copy of all records including the concerned RTI application, decisions and further communications of the concerned CPIOs, first appeals, decision of First Appellate Authorities, second appeal, further submissions made by the Appellant and Respondents and all other case related records including file notings, if any.

2) Form of access required:

a) I would like to inspect the aforementioned records for a period of one hour on a date that is mutually convenient.
b) Kindly make arrangements for the supply of printouts or photocopies, as the case may be, of the records and documents that I may identify during the said inspection. In the case of electronic records, kindly arrange to supply copies of the same on a CD."

2. Shri S.C. Sharma, CPIO in his first reply dated 29.11.2018 informed the appellant that this is a third party information and a notice u/s 11 of the RTI Act has been served to the third party for making submission in regard to disclosure of information and will revert on the subject on receipt of submission from the third party.

P.T.O.

3. In continuation to his above letter dated 29.11.2018, Shri S.C. Sharma, CPIO has sent a letter dated 19.12.2018 (wrongly mentioned as 19.11.2018) to the appellant intimating therein that no submission has so far been received from the third party Shri Sunil Kishore Ahya. However, he decided to not to disclose the information as sought for in the RTI application.

Decision with reasons:-

In the appeal, appellant contended the decision of the CPIO by stating that initially CPIO invoked Section 11 of the RTI Act and as per Section 11, where CPIO intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the CPIO give a written notice to such third party of the request. The very fact that CPIO intended to disclose the information sought in the RTI application. In other words, he had arrived at a determination that none of the exemptions listed under various provisions of the RTI Act were applicable to the information sought, in indeed any of them were applicable to the information sought, he could have rejected the instant RTI application forthwith. Yet, he has not done so. Further despite not receiving any objection, the CPIO decided to reject the instant RTI application. The action of the CPIO is wholly illegitimate and lacking in any factual basis.

Secondly, nothing in Sections 8 & 9 of the RTI Act empower a CPIO to reject an RTI application on the ground of 'third party information".

Thirdly, the information sought in the instant RTI application is about a case regarding Electronic Voting Machines (EVMs) that has already been decided by this Hon'ble Commission. In its decision whose case file forms the subject matter of the instant RTI application, this Hon'ble Commission observed that the case had enormous public interest implications and recommended that the matter regarding disclosure of information sought in that RTI application be placed before a competent authority. There is no question of treating such cases and the information relating to such cases as "confidential" by anybody including the third party identified by the CPIO in relation to the instant RTI application. Further, there is no provision of assumptions anywhere in the RTI Act or in the RTI Rules, 2012 that matters relating to second appeals decided by this Hon'ble Commission must be treated as "confidential".

4. The FAA is in agreement with the submissions of the appellant and **direction is accordingly given to Shri S.C. Sharma, CPIO to offer inspection of the case file as sought in the RTI application to the appellant with mutual convenient date within 1 week from the date of receipt of the order and provide copy of the document identified by the appellant during inspection.**

5. The appeal is, therefore, disposed of.

6. In case the appellant is aggrieved by the decision, he is free to file second appeal, if he so desires, before the Central Information Commission, Baba Gang Nath Marg, Munirka, New Delhi-110067 against this order within 90 days.

Dated the 11th January 2019.

(Rakesh Kumar Singh)
Additional Secretary & First Appellate Authority
Tel: 26162290

Copy to:-

1. Shri TBJS Rajappa, CPIO, RTI Cell, CIC, New Delhi.
2. Shri S.C. Sharma, CPIO, CIC, New Delhi.

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