



**STATE INFORMATION COMMISSION, KERALA
PUNNEN ROAD, THIRUVANANTHAPURAM 695 001**

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**Proceedings of the Appeal Petition No.2359(1)/2019/SIC
(File No.18507/SIC-Gen4/2019)**

PRESENT

Vinson M. Paul, Chief Information Commissioner

✓ Adv. D.B. Binu,
(President, RTI Kerala Federation),
M/s Cochin Chamber of Lawyers,
Providence Road, Kochi - 682 018.

} Appellant

1. The State Public Information Officer &
Deputy Chief Electoral Officer,
O/o the Chief Electoral Officer,
Election (General) Department,
Kerala Legislative Complex, Vikas Bhavan P.O.,
Thiruvananthapuram.
2. The Appellate Authority &
Joint Chief Electoral Officer,
O/o the Chief Electoral Officer,
Election (General) Department,
Kerala Legislative Complex, Vikas Bhavan P.O.,
Thiruvananthapuram.

} Respondents

Date of application w/s 6(1)	1.5.2019
Date of reply	30.5.2019
Date of filing first Appeal	2.7.2019
Date of decision on the first Appeal	5.8.2019.
Date of filing 2 nd appeal in the Commission	12.11.2019
Date of receipt of 2 nd appeal in the Commission	16.11.2019
Date of Report called for by the Commission	25.11.2019
Date of receipt of report in the Commission	11.12.2019
Date & Venue of Hearing conducted	31.12.2019, Commission Headquarters
Presence in the Hearing	Representative present on behalf of Appellant & SPIO Present.



ORDER

Appeal Petitioner Adv. D.B. Binu, represented before the Commission that he had sought information regarding CCTV/Webcasting footage of polling booths having more than 90% polling in the Lok Sabha elections held on 23.4.2019. However, the 1st Respondent provided incomplete and misleading reply. Hence a complaint under section 18(1) of the RTI Act was filed before the State Information Commission. The Commission directed the Appellant to approach the first Appellate Authority. Accordingly an appeal was filed before the 2nd Respondent. However, no information has been provided by the 2nd Respondent till date. The Appellant stated that information sought by the information seeker can be denied only under section 8 or 9 of the RTI Act, Hence he requested the Commission to direct the Respondents to furnish the above information to him and initiate appropriate disciplinary action and other proceedings against the officers responsible for providing misleading, wrong and incomplete information.

2. In his application submitted before the 1st Respondent, the Appellant sought the following information :

i. Name of the polling booths wherein CCTV/Webcasting facilities were provided in connection with the Lok Sabha election held on 23.4.2019.

ii. Names of polling booths wherein bogus voting was detected/reported/identified by the Election Commission.

iii. Names and other details of persons against whom cases have been registered by the police or responsible authorities along with documents which show the provisions under which such persons were proceeded against.

iv. CCTV/Webcasting footage of polling booths having more than 90% polling and so on.

Reply to the above application was provided by the first Respondent. In the information furnished, it was stated that final list of polling booths where webcasting was done was being finalised. It was also informed that no separate details in the manner of polling booths where 90 % and above polling was recorded was kept in that office.

3. The Appellant filed his first appeal before the 2nd Respondent stating that the information sought by him regarding CCTV/Webcasting footage of polling booths having more than 90% polling was not provided to him stating that the



Respondent office was awaiting clarification/permission from the Election Commission of India on providing such video footage to the public. He further stated that the information sought by him can only be denied under section 8 and 9 of the RTI Act.

4. In the report submitted to the Commission by the 2nd Respondent, it was stated that the appeal petition was disposed of on 5.8.2019 and reply was sent to the Appellant in his email address. He further stated that as per Section 13-A in Part II-A of the Representation of Peoples Act, 1950, the functions of the Chief Electoral Officer and his office is made under the superintendence, direction and control of the Election Commission of India. There was a specific direction from the Election Commission of India that webcasting in polling stations will be restricted for viewing only by the election machinery in keeping with the spirit of Rule 93(1) of the Conduct of Election Rules, 1961. As such, a clarification was sought in the matter from the Election Commission of India. Now the Election Commission of India has clarified that videography/CCTV footage should be in the safe custody of the District Election Officer till the expiry of 45 days from the date of declaration of results of the election. If any one applies for copies of such recordings during the said period, copy may be made available on payment of Rs.50/- per CD. However, the information sought by the Appellant are not available on the basis of the classification as required by the Appellant.

5. On scrutinizing the appeal petition and connected documents, the Commission finds that the objection of the Appellant before the Commission is that CCTV/Webcasting footage of polling booths having more than 90% polling has not been provided by the Respondents on the ground that they were awaiting clarification from the Election Commission of India. The Commission finds that the contention of the Respondents office that it was awaiting clarification from the Election Commission of India was not tenable under the RTI Act. Information sought under the Act can be denied only under Section 8 or 9 of the Act. Similarly, the argument that the Respondent office does not maintain details of polling booths which recorded more than 90% polling does not hold valid as the Respondent office is the repository of all such information. Here it may also be noted that the response furnished by the Respondent office to item 'D' in the application of the Appellant was that it was awaiting clarification /permission from the Election Commission of India on providing such video footages to the public. It would show that the information sought by the Appellant was very much available in the Respondent office and that they were awaiting the response of the Election



Commission of India for taking a final decision in the matter. Hence the Commission directs the Respondent office to furnish the above information to the Appellant within 20 days of receipt of this order. The above information should be provided free of cost as the Appellant was not provided any intimation regarding remittance of fees for such documents within 30 days of receipt of the application.

6. The Commission does not initiate any penal action against the 1st Respondent as it does not find any deliberate design or malicious motive on his part in denying the information sought by the Appellant.

7. The Commission dispose s of this appeal petition as stated above on the 31st day of December, 2019.

Sd/-

Vinson M. Paul
Chief Information Commissioner



Authenticated Copy

Joint Secretary

bnk/

