

**REPORTABLE**  
**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ WRIT PETITION (CIVIL) No. 4715 OF 2008**

**% Reserved on : 25<sup>th</sup> August, 2009.**  
**Date of Decision : 4<sup>th</sup> November, 2009.**

ELECTION COMMISSION OF INDIA ..... Petitioner.  
Through Ms.Meenakshi Arora, Mr.P.R.Chopra,  
Advocates.

**VERSUS**

CENTRAL INFORMATION COMMISSION  
& OTHERS ..... Respondents  
Through Mr. Najimi Waziri, Mr.Ali Naqvi,  
Mr.Asbhishek Singh, advocates for respondent  
no.2.

**CORAM :  
HON'BLE MR. JUSTICE SANJIV KHANNA**

- |  |     |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? |     |
| 2. To be referred to the Reporter or not?                                | YES |
| 3. Whether the judgment should be reported in the Digest?                | YES |

**SANJIV KHANNA, J.:**

1. The Election Commission of India (Election Commission for short) has filed the present Writ Petition against the Order dated 6<sup>th</sup> June, 2008 passed by the Central Information Commission (hereinafter referred to as CIC, for short) directing disclosure of the following information to Shri Neelesh Mishra- respondent no.2 herein

under the Right to Information Act, 2005 (hereinafter referred to as RTI Act, for short) :-

“1. x x x x x

2. x x x x x

3. x x x x x

4. Confirmation of information on the EVM (date and time, votes polled, vote tally and any other information which were noted down from the EVM machines, including any spare machines that were used, to from 17 C math (sic) the information presently available on the EVMs and that there has been no deletion/alteration or addition of addition of information by reason of any technical or other flaw in the EVMs.

5. Confirmation that the date, time and/or any other information or the lack thereof on spare EVMs that were not used at all, continues to be consistent with the information so recorded at the time of the assembly election.

6. That if there is any discrepancy in information or the lack thereof on the EVMs in question (including spare EVMs) as of today in comparison to the recorded information at the time of the Assembly Election, then what is the cause of the same? Please provide information as to the steps being taken by the Election Commission of India to iron out any technical glitches in the EVMs, if the same becomes apparent by reason of the information sought by the undersigned.”

2. It is the contention of the petitioner that the aforesaid information cannot be made available to respondent no. 2, as it is not held by or under control of the Election Commission as per the provisions of the Representation of Peoples’ Act, 1951 (hereinafter

referred to as REP Act, for short) and Conduct of Election Rules, 1961 (hereinafter referred to as Election Rules, for short).It is submitted by the petitioner that there is no conflict between the provisions of the REP Act, the Election Rules and the provisions of the RTI Act, therefore, the CIC has erred in directing disclosure of information sought by respondent no.2.

3. In 1989, the REP Act was amended to authorize use of Electronic Voting Machines (hereinafter referred to as EVMs, for short) for polling and counting of votes. In the year 1992, the Election Rules were amended to incorporate provisions for EVMs.

4. Each EVM has a balloting unit and a control unit. Data of the votes polled is stored in the control unit. After polls, the data stored in the control unit is encoded for counting of votes which is done in the presence of the candidates or their election/counting agents. Thereafter, entries are made in Form nos.17C and 20 and the poll result in form of a result-sheet is announced. After the counting is over and the results are announced, the control units are sealed following the procedure mentioned in Election Rule 57C which reads as under:

**“57C. Sealing of voting machines.-** (1) After the result of voting recorded in a control unit has been ascertained candidate-wise and entered in Part II of Form 17C and Form 20 under Rule 56C, the returning officer shall reseal the unit with his seal and the seals of such of the candidates or their election agents present who

may desire to affix the seals thereon so however that the result of voting recorded in the unit is not obliterated and the unit retains the memory of such result.

(2) The control unit so sealed shall be kept in specially prepared boxes on which the returning officer shall record the following particulars, namely :-

- (a) the name of the constituency;
- (b) the particulars of polling station or stations where the control unit has been used;
- (c) serial number of the control unit;
- (d) date of poll; and
- (e) date of counting;”

5. Maintenance of secrecy is enshrined and duly provided in Section 128 of the REP Act which reads as under:-

**“128. Maintenance of secrecy of voting.-** (1) Every officer, clerk, agent or other person who performs, any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.”

6. Further, under the Election Rules, the production, inspection and disposal of ballot papers/ EVMs is subject to and controlled by Rules 92, 93 and 94.

7. Rule 92 provides for the custody of ballot boxes and papers relating to election and reads as under:

**“92. Custody of ballot boxes and papers relating to election.-** (1) All ballot boxes used at an election shall be kept in such custody as the chief election officer may direct.

(1A) All voting machines used at an election shall be kept in the custody of the concerned district election officer.

(2) The district election officer shall keep in safe custody-

(a) the packets of unused ballot papers with counterfoils attached thereto;

(b) the packets of used ballot papers whether valid tendered or rejected;

(c) the packets of the counterfoils of used ballot papers;

(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of Section 152;

(dd) the packets containing registers in Form-17A;

(e) the packets of the declarations by electors and the attestation of their signatures; and

(f) all other papers relating to the election.

Provided that in the case of an election in an assembly constituency or a parliamentary constituency or a council constituency which extends over more districts than one, the said papers shall be kept in the custody of such one of the district election officers having jurisdiction over the constituency as the Election Commission may direct;

Provided further that in the case of an election by assembly members the said papers shall be kept in the custody of the returning officer.

8. Rules 93 and 94 of the Election Rules read as under:

**93. Production and inspection of election papers.-** (1) While in the custody of the district election officer, or, as the case may be, the returning officer-

(a) the packets of unused ballot papers with counterfoils attached thereto;

(b) the packets of used ballot papers whether valid tendered or rejected;

(c) the packets of the counterfoils of used ballot papers;

(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of Section 152; and

(dd) the packets containing registers in Form-17A;

(e) the packets of the declarations by electors and the attestation of their signatures;

shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court.

**(1A)** The control units sealed under the provisions of rule 57C and kept in the custody of the district election officer shall not be opened and shall not be inspected by, or produced before, any person or authority except under the orders of a competent court.

X X X X X X

**(aa)** the voting machines kept in the custody of the district election officers under sub-rule(1A) of Rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;

(b) the other packets referred to in sub-rule (1) of Rule 93 shall be retained for a period of one year and shall thereafter be destroyed:

Provided that the packets containing the counterfoils of used ballot papers shall not be destroyed except with the previous approval of the Election Commission;

(c) all other papers relating to the election shall be retained for such period as the Election Commission may direct.”

**Rule 94:**

Disposal of election papers.-Subject to any direction to the contrary given by the Election Commission or by a competent court or tribunal-

(a) the packets of unused ballot papers shall be retained for a period of six months and shall thereafter be destroyed in such manner as the Election Commission may direct;]

(aa) the voting machines kept in the custody of the district election officer under sub-rule (1A) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;

(b) the other packets referred to in sub-rule (1) of rule 93 shall be retained for a period of one year and shall thereafter be destroyed:

provided that packets containing the counterfoils of used ballot papers shall not be destroyed except with the previous approval of the Election Commission;

(c) all other papers relating to the election shall be retained for such period as the Election Commission may direct.”

9. Rule 93 stipulates that ballot papers in physical form cannot be inspected or produced before any person or authority except under

the order of a competent court. Rule 93(1A) which deals with data stored in the control unit in electronic form, states that the control unit cannot be opened, inspected or produced before any person or authority except upon an order of a competent court. Use of the word “shall” in said Rule; “shall...not opened except under the orders of a Competent Court..”, makes the provision imperative or obligatory.

10. The object and purpose behind these Rules 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 petitions based on mere apprehensions and unfounded grounds. Ensuring confidentiality and secrecy of the votes polled is sacrosanct in elections by a secret ballot. This is 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 reasons directs disclosure or inspection.

11. The contention of the respondent no. 2 that the restriction contained in Rule 93 is of limited nature and applies only when the election papers are in custody of the District Election Officer



(hereinafter referred to as DEO, for short) and once it is outside his control, the restriction or bar no longer operates is not correct. The Rules do not authorize the Election Commission to access and disclose information/data stored after expiry of any period. Prohibition continues till destruction. Opening of seals and inspection require order of a competent court.

12. Rule 94 of the Election Rules deals with the discretion of Election Commission in the matters of retention and disposal of the election papers. Rule 94 2(aa) which specifically deals with the EVMs kept in the custody of the DEO, states that the Election Commission may direct the period for which it may be retained and its subsequent usage at any elections. It states that the Election Commission, the Court and the Tribunal are at par to issue directions with regard to such disposal. That is to say, subject to any directions by the Court or Tribunal, the Election Commission may dispose the election papers in the manner provided in the Rule therein, but where there is a specific direction, the elections papers should be disposed accordingly. The power vested on the Election Commission, is only with respect to the retention and disposal of the election papers and not to order access and examination.

13. Retention and disposal of the EVMs, an administrative act, exercised by the Election Commission, is aimed at avoiding technical delays and problems due to non-availability of the EVMs; retaining sealed papers/units and maintain confidentiality over a length of time.

Thus, even though, the Election Commission has the power under Rule 94 (2)(aa) to retain or dispose of the voting machines, but that by itself does not expand Election Commission's power and negate the requirement of an order of a competent court under Rule 93.

14. In fact, on a conjoint reading of said Rules the two conclusions that emerge are as follows:

a) Firstly, that the words 'orders of a Competent Court' used in the rules 92 and 93 is to be strictly construed and in the absence of any apparent ambiguity, no more should be imputed that what is expressly provided for. Order of the competent court is mandatory.

b) Secondly, that even after the expiry of the period provided in the Rule or by an express direction of the Election Commission, the specified information, data or ballot papers cannot be disclosed without express order from a competent court. Election Commission does not have power and authority to direct de-sealing for examination or verification of data. This power is solely vested on the Competent Court.

15. The Supreme Court has interpreted Rule 93 in various cases. In ***Ram Sewak Yadav versus Hussain K. Kidwai***, (1964) 6 SCR 238, it was 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. An order for inspection should not be granted as a matter of course, on mere allegations and vague pleas made in the petition. In ***Bhabhi versus Sheo Govind and others*** (1976) 1 SCC 687, after considering earlier judgments, the Supreme Court observed that inspection of the ballot papers cannot be allowed in order to indulge in a roving inquiry or in order to fish out materials for declaring elections to be bad. The primary aim of the courts is to do justice to the parties balancing the respective rights and interest and accordingly it was held that the following conditions are imperative before inspection of ballot papers can be allowed. It was held :

“15. Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a court can grant inspection, or for that matter sample inspection, of the ballot papers:

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
- (3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
- (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is

necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving enquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lead further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper.”

16. Underlying principle behind the aforesaid judgment is to protect secrecy and confidentiality of ballots, unless there are compelling and justiciable reasons why in a particular case inspection of ballot papers should be allowed and this requires an order of a competent court/tribunal. Thus, vague or indefinite material even if involving bold and serious allegations, cannot be a ground to overlook principles of secrecy and confidentiality attached to ballot papers. The aforesaid principle was again reiterated in ***V.S. Achutanandan versus P.G. Francis and another*** (2001) 3 SCC 81 wherein it was emphasized that it is for the applicant to prima facie establish existence of grounds justifying examination of the ballot papers. The following principles were enunciated by the Supreme Court:-

“1. The secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and

merely for asking or on vague and indefinite allegations or averments of general nature. At the same time purity of election process has to be preserved and therefore inspection and recount shall be permitted but only on a case being properly made out in that regard.

2. A petitioner seeking inspection and re-count of ballot-papers must contain averments which are adequate, clear and specific making out a case of improper acceptance or rejection of votes or non-compliance with statutory provisions in counting. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted would not serve the purpose.

3. The scheme of the rules prescribed in Part V of the Conduct of Election Rules, 1961 emphasises the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

4. The election petitioner must produce trustworthy material in support of the allegations made for a re-count enabling the court to record a satisfaction of a prima facie case having been made out for grant of the prayer. The court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.

5. The power to direct inspection and re-count shall not be exercised by the court to show indulgence to a petitioner who was indulging in a roving enquiry with a view to fish out material for declaring the election to be void.

6. By mere production of the sealed boxes of ballot papers or the documents forming part of record of the election proceedings before the court the ballot papers do not become a part of the court record and they are not liable to be inspected unless the court is satisfied in accordance with the principles stated hereinabove to direct the inspection and re-count.

7. In the peculiar facts of a given case the court may exercise its power to permit a sample inspection to lend further assurance to the prima facie satisfaction of the court regarding the truth of the allegations made in support of a prayer for re-count and not for the purpose of fishing out materials.”

17. The aforesaid dictum will equally apply to the data and information stored in the control unit in electronic form. Principles of secrecy and confidentiality in both cases are identical and the ratio of the aforesaid decisions equally applies.

18. The CIC has, however, relied upon Section 22 of the RTI Act to hold that the REP Act and the Election Rules framed there under have to give way to the over-riding provision and the non-obstante clause in the RTI Act. Section 22 of the RTI Act reads as under:-

**“22. Act to have overriding effect.-**The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

19. REP Act is prior in point of time and in case of conflict with any provision of the RTI Act, the latter Act will prevail. Further the Rules

framed under the REP Act are subordinate legislation and in case of conflict between the provisions of the said Rules and the RTI Act, the RTI Act will hold the field and has to be applied. However, Section 22 of the RTI Act is triggered and is applicable if there is a conflict between REP Act, the Election Rules and the RTI Act. Albeit, where there is no conflict between the two statutory enactments, Section 22 of the RTI Act is not applicable.

20. Section 2(f) and (j) of the RTI Act read as under:

**“2(f). “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”**

**(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-**

- i) inspection of work, documents, records;
- ii) taking notes, extracts, or certified copies of documents or records;
- iii) taking certified samples of material;
- iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

(emphasis supplied)

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 (15<sup>th</sup> edition) defines the word “held” as “to have the ownership or use of: keep as one’s own”. In Stroud’s Judicial Dictionary (4<sup>th</sup> 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.

26. Interpreted in this manner there is no conflict between the provisions of the RTI Act and the REP Act and the Election Rules framed thereunder. As per the Election Rules, once the ballot papers or control unit or EVMs is sealed, no one can have any access to the same except on an order passed by a competent court. The Election Commission does not have right to access the control unit of the EVMs, to encode or download and re-examine the data without permission of the competent court. There is a prohibition and/or restriction on the right of the public authority to have access to the information. It cannot be said that information in respect of queries which can be answered only after examining and downloading the data stored in the EVMs is “information accessible” as it is “held by” or “under the control of” the Election Commission of India unless the

conditions specified in the Election Rules are satisfied. Satisfaction of the conditions for encoding and downloading of data stored in the control unit is mandatory before the said information is said to be “held by” or “under the control” of the Election Commission of India- the petitioner herein.

27. Right to information is an important right. At the same time, maintaining secrecy and confidentiality of the ballot papers, etc. is also an equally valuable right. The Supreme Court has balanced the two rights when it dealt with the question of re-examination and inspection of ballot papers in its decision in **Bhabhi** (supra), **V.S.Achuthanandan** (supra) and **Ram Sewak Yadav** (supra). Enactment of RTI Act has not undone or negated the aforesaid principles and occasioned an absolute right to citizen of India to ask for full details of electronic data relating to ballot papers stored in the control unit of the EVMs. The Supreme Court in the aforesaid decisions has interpreted the two conflicting rights both of which are relevant to uphold democracy and Right to Freedom of Speech and Expression.

28. The CIC in its impugned order has observed that since no public disclosure of information held in confidence is contemplated there is no necessity for verification by the Election Commission of third parties to whom the information relates as per Section 11 (1) and Section 11(2) of RTI. On this basis, CIC has directed the Election

Commission to 'confirm' the information to respondent no. 2. Learned counsel for the respondent no.2 had submitted that furnishing information in respect of queries 4, 5 and 6 would not violate the secrecy of an individual voter and details of voting pattern, etc. cannot be inferred or gathered by supply of the said information. It was pointed out that information is already available in the Form no.17(C), Part I and II and the petitioner only seeks reaffirmation or confirmation of the said information which is already available. The argument though attractive, does not merit acceptance on deeper consideration. In the absence of power vested with the Election Commission, the difference if any, between 'confirmation' and 'Information' itself fades away. It is clear that an application under the RTI may lie only with respect to information which the public authority can access. No confirmation of information can be made unless the data stored in the control units is encoded and downloaded. This is prohibited in the Election Rules. The Election Commission would be acting contrary to the express provisions of the Election Rules. Insisting for the information on the basis that it is mere 'confirmation' and not 'information' would only amount to indirectly achieving something which is directly prohibited. It is well settled that if the law requires a particular act to be done in a particular way and on fulfilling necessary pre-conditions, it cannot be by-passed and violated by adopting an indirect method to achieve the same purpose. A different interpretation will lead to anomalous

situation whereby taking recourse to the RTI Act, secrecy of the data stored in the control unit of the EVMs will be obliterated and will be open to verification and examination inspite of strict and stringent provisions to the contrary in the REP Act and the Rules. Further, the distinction drawn by the CIC and submitted by the respondent no.2, viz. confidential data and confirmation of data available by downloading data from the control unit, has to be rejected as it in actual practice amounts to re-verification. There is always a possibility that once the control unit of EVMs is operationalised and the data is downloaded, the data with regard to the ballot papers, voting pattern, etc. can also be examined and downloaded. Once the EVMs are sealed it is no longer open to the Election Commission to de-seal them and re-examine the data stored in the control unit except when the pre-conditions mentioned in the relevant rules are satisfied. This requires an order of a competent court/tribunal which is passed only when the stringent conditions laid down by the Supreme Court are satisfied.

29. On legal interpretation of Section 2(j) of the RTI Act, information must be accessible and held by or under the control of any public authority. If this plea of the respondent no.2 is to be accepted then no distinction can be made between queries relating to information accessible to a public authority and information which is not accessible to a public authority or accessible on satisfaction of pre-conditions. Further, all information including confidential information

relating to voting will be covered by the Right to Information and over written in view of Section 22 of the RTI Act (whether the said queries are exempted under Section 8(1) of the RTI Act is a separate aspect). Lastly, it is not as if an aggrieved party is remediless. In case a 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.

30. In view of the aforesaid discussion, the Writ Petition is allowed and the impugned Order dated 13<sup>th</sup> February, 2008 passed by CIC is quashed and set aside.

In the facts and circumstances of the case, there will be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**NOVEMBER 4<sup>th</sup>, 2009.**  
**P**