

Before the Designated First Appellate Authority

and General Manager (IA), Bharat Electronics

Corporate Office, Nagavara, Bengaluru – 560 045

2nd round of Appeal filed under
Section 19(1) of the Right to Information Act, 2005

In the matter of

Venkatesh Nayak

vs

Central Public Information Officer,
Bharat Electronics Ltd.

Date of submission: 10/09/2019

Table of Contents

<u>No.</u>	<u>Item</u>	<u>Page</u>
1.	Letter of First Appeal submitted under Section 19(1) of the RTI Act	2-11
2.	Annexe1: Self-attested copy of the RTI application dated 17/06/2019	12-14
3.	Annexe 2: Self-attested copy of the CPIO's initial reply dated 16/07/2019	15-18
4.	Annexe 3: Self-attested copy of the covering letter dated 18/07/2019 sent along with additional fee	19-20
	Annexe 4: Self-attested copy of the 1 st round of appeal to the FAA, dated 28/08/2019	21-23
5.	Annexe 5:	

S. S. Venkatesh Nayak

	Self-attested copy of the revised reply received from the CPIO dated 27/08/2019	24-27
6.	Annexe 6: Self-attested copy of the web printout of RTI Online Facility indicating refusal to permit submission of this appeal	28

S. S. Venkatesh Nayak

Before the Designated First Appellate Authority

and General Manager (IA), Bharat Electronics

Corporate Office, Nagavara, Bengaluru – 560 045

2nd round of Appeal filed under
Section 19(1) of the Right to Information Act, 2005

Date: 10/09/2019

- 1) Name and address of the Appellant :** Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the RTI Application was sent :** The Central Public Information Officer
Bharat Electronics Ltd.
(through RTI Online Facility)
- 3) Name and address of the CPIO who gave reply to the RTI Application :** Shri Kabilan M
CPIO & Sr. Deputy General Manager
Bharat Electronics Ltd.
Jalahalli Post
Bengaluru – 560 013
- 4) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. BELBL/R/2019/50071 dated 17/06/2019
- b) Date of payment of additional fee (if any) :** Rs. 1,434/- paid on 18/07/2019 (and subsequently returned by the CPIO on 27/08/2019)
- 5) Particulars of the order(s) including number, if any against which the appeal is preferred :** Communication of Nil No. dated 27/08/2019 issued by the CPIO named at para #3 above relating to RTI application of Control No. RTI/BG-CX/19-20/481.

S.S. Venkatesh Nayak

6) Brief facts leading to the appeal :

6.1) On 17/07/2019 this Appellant submitted a request for information, to the CPIO, mentioned at **para #2** above, along with the prescribed application fee, through the RTI Online Facility, stating as follows (**Annexe 1**):

"I would like to obtain the following information pertaining to the Electronic Voting Machines (EVMs), Voter Verified Paper Audit Trails (VVPATs) and Symbol Loading Units (SLUs) supplied by your company for use during the recently concluded General Elections to the Lok Sabha, under the RTI Act:

- 1) The maximum number of votes recordable on each EVM supplied for use in the 2019 Lok Sabha Elections,
- 2) The maximum number of votes printable on each VVPAT Machine supplied for use in the 2019 Lok Sabha Elections,
- 3) The district-wise number of Control Units of EVMs transported across India for use in the 2019 Lok Sabha Elections,
- 4) The district-wise number of Ballot Units of EVMs transported across India for use in the 2019 Lok Sabha Elections,
- 5) The district-wise number of VVPATs transported across India for use in the 2019 Lok Sabha Elections,
- 6) The district-wise number of thermal paper rolls used in VVPATs transported across India for use in the 2019 Lok Sabha Elections,
- 7) A clear photocopy of the List of Engineers with name and designation, deputed for carrying out tasks relating to the preparation of EVMs and VVPATs that was sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections,
- 8) A clear photocopy of the List of Senior Level Engineers with name and designation, deputed for supervision and coordination during the preparation of EVMs and VVPATs that was sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections,
- 9) The total number of SLUs used by your Team(s) of Engineers during the 2019 Lok Sabha Elections,
- 10) A clear photocopy of the official document handed over to every District Election Officer during the 2019 Lok Sabha Elections containing details of every SLU allocated to your team(s) of Engineers,
- 11) A clear photocopy of the User Manual prepared by your company, pertaining to the VVPAT machines used during the 2019 Lok Sabha Elections, if any,
- 12) A clear photocopy of the User Manual prepared by your company, pertaining to the SLUs used during the 2019 Lok Sabha Elections, if any,
- 13) A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on VVPAT, if any, along with the postal address of such office, and



14) A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on SLU, if any, along with the postal address of such office."

6.2) On 17/06/2019 the CPIO of this Public Authority sent this Appellant a reply to the instant RTI application, stating *inter alia* as follows (**Annexe 2**):

"Sl. No.	Query	Response
1.	The maximum number of votes recordable on each EVM supplied for use in the 2019 Lok Sabha Elections	2000 votes
2.	The maximum number of votes recordable on each VVPAT machine supplied for use in the 2019 Lok Sabha Elections	1,300 votes
3.	The district-wise number of Control Units of EVM transported across India for use in the 2019 Lok Sabha Elections	The number of Control Units collected by the Districts consists of 6 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 12/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore.
4.	The district-wise number of Ballot Units of EVM transported across India for use in the 2019 Lok Sabha Elections	The number of Ballot Units collected by the Districts consists of 6 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 12/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore.
5.	The district-wise number of VVPATs transported across India for use in the 2019 Lok Sabha Elections (17 pages)	The number of VVPAT's collected by the Districts consists of 17 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 34/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore.
6.	The district-wise number of Thermal Paper Rolls used in VVPATs transported across India for use in the 2019 Lok Sabha Elections	The number of Thermal Paper Roll collected by the Districts consists of 20 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 40/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore.
7.	A clear photocopy of the list of Engineers with name and	A list of Engineers with Staff No. Name, Gender, Mobile Number has been

S.S. Rinkatah Nayak

	designation deputed for carrying out tasks relating to the preparation of EVMs and VVPATs that were sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections	maintained. Trade and Designations have not been maintained. The deployment list consists of 540 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 1,080/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore. The Personnel deployed are required to do all tasks related to First Level Checking of EVM/VVPAT and all other Election Activities.
8.	A clear photocopy of the list of Senior Level Engineers with name and designation deputed for supervision and co-ordination during the preparation of EVMs and VVPATs that were sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections	Serial No. 7 includes list of Senior Level Engineers
9.	The total number of SLUs used by your team(s) of Engineers during the 2019 Lok Sabha Elections	The total number of SLU's used during the 2019 Lok Sabha elections is about 1400.
10.	A clear photocopy of the official document handed over to every District Election Officer during the 2019 Lok Sabha Elections containing details of every SLU allocated to your team(s) of Engineers	The official document has been retained by the respective District Administration and not held by the Public Authority.
11.	A clear photocopy of the User Manual prepared by your Company pertaining to the VVPAT machines used during the 2019 Lok Sabha Elections, if any.	A copy of the User Manual pertaining to different Models of VVPAT used during the Lok Sabha Election consists of 128 pages. Kindly note that the information sought may be provided on receipt of payment of Rs. 256/- (Rs. 2/- per page) by way of Demand Draft (DD) drawn in favour of Bharat Electronics Limited payable at Bangalore.
12.	A clear photocopy of the User Manual prepared by your Company pertaining to the SLUs used during the 2019 Lok Sabha Elections, if any	The use of SLU is covered in the User Manual of VVPAT (2016) at Serial No. 11
13.	A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on VVPAT, if any along with the postal address of such	The information requested by your falls under the exempted category of information under Section 8(1)(d) of the RTI Act and hence is not liable to be disclosed to you

	office.	
14.	A clear photocopy of the application filed with the Office of the Patent Controller for securing a patent on SLU, if any along with the postal address of such office.	Patent application has not been filed for SLU till now."

6.3) Subsequently, on 18/07/2019, this Appellant despatched by Speed Post, a bank draft for Rs. 1,434/- along with a covering letter to the CPIO mentioned at **para #3** above stating that the fee is being paid **without prejudice** to this Appellant's right to submit a first appeal against the CPIO's reply rejecting access to the information sought at Query #13 of this instant RTI application (**Annexe 3**).

6.4) After waiting in vain for more than a month for the copies of documents that the CPIO mentioned at **para #3** above had agreed to supply, this Appellant submitted an appeal on 28/08/2019 to this Hon'ble First Appellate Authority (FAA) via the RTI Online Facility with the following prayers (**Annexe 4**):

"This Honourable Appellate Authority may be pleased to:

- 1) admit this appeal and inquire into the matters raised herein, and
- 2) direct the CPIO to furnish all the information sought in the instant RTI application free of charge."

This Appellant adduced multiple grounds in support of his prayers which are included in **Annexe 4. This Appellant is eagerly awaiting the decision of this Hon'ble FAA on the said first appeal.**

6.5) Meanwhile during the pendency of the said first appeal, on 02/09/2019, this Appellant received a revised reply from the CPIO mentioned at **para #3** above returning the bank draft and stating as follows (**Annexe 5**):

"Sl. No.	Query	Response
1.	The district-wise number of Control Units of EVM transported across India for use in the 2019 Lok Sabha Elections	The district-wise number of Control Units of EVM's transported across India for use in the 2019 Lok Sabha Elections is not held by this Public Authority.
2.	The district-wise number of Ballot Units of EVM transported across India for use in the 2019 Lok Sabha Elections	The district-wise number of Ballot Units of EVM's transported across India for use in the 2019 Lok Sabha Elections is not held by this Public Authority.
3.	The district-wise number of	The district-wise number of Control

S.S. Kinkatish Nayak

	VVPATs transported across India for use in the 2019 Lok Sabha Elections (17 pages)	Units of VVPAT's transported across India for use in the 2019 Lok Sabha Elections is not held by this Public Authority.
4.	The district-wise number of Thermal Paper Rolls used in VVPATs transported across India for use in the 2019 Lok Sabha Elections	The district-wise number of Thermal Paper rolls used in VVPAT's transported across India for use in the 2019 Lok Sabha Elections is not held by this Public Authority.
5.	A clear photocopy of the list of Engineers with name and designation deputed for carrying out tasks relating to the preparation of EVMs and VVPATs that were sent to every District Election Officer in India for the purpose of the 2019 Lok Sabha Elections	Disclosure of this information would endanger the life or physical safety of Engineers who carried out the assignment related to preparation of EVM's and VVPAT's. Therefore it is denied under Section 8(1)(g) of the RTI Act, 2005.
6.	A clear photocopy of the User Manual prepared by your Company pertaining to the VVPAT machines used during the 2019 Lok Sabha Elections, if any.	VVPAT User Manual published by ECI is strictly for official use only. Therefore it cannot be shared with member of the Public and the copyright are subsisting in ECI and is denied under Section 8(10)(d) of the RTI Act. However, the manual on VVPAT is available in ECI website."

7) Prayers or relief sought :

This Appellant prays that this Hon'ble First Appellate Authority be pleased to:

- 1) admit this appeal and inquire into the matters raised herein;**
- 2) club the present appeal along with the initial appeal already submitted on 28/08/2019 for the purpose of issuing a combined decision; and**
- 3) direct the CPIO to furnish information sought all the information that he was initially prepared to furnish, free of cost as is this Appellant's right under Section 7(6) of the RTI Act;**

8) Grounds for the prayer or relief :

- 8.1)** According to Section 19(1) of the RTI Act, any person who is aggrieved by the decision of the CPIO may prefer an appeal to the officer senior in rank to such CPIO within 30 days of the receipt of such decision. This Appellant received the revised reply of the CPIO of this Public Authority on 02/09/2019. This first appeal is being filed on the 8th day of the date of receipt of the CPIO's revised reply, which is well within the limitation period mentioned in

S. S. Venkatesh Nayak

Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision made by the CPIO of this Public Authority for reasons explained below:

8.1.1) The revised reply sent by the CPIO mentioned at para #3 above, is perplexing when examined in the light of his initial reply. The said CPIO's initial reply constituted, primarily, a demand for payment of the copying charges as per fee rates prescribed under the RTI Rules, 2012 against most of the information sought in the instant RTI application save the reply provided against Query #13. This Appellant's appeal against the said CPIO's reply to the information sought at Query #13 already stands submitted to this Hon'ble Appellate Authority. So this Appellant does not intend to repeat those arguments here in order to prevent wastage of the time of this Hon'ble Appellate Authority. However, the CPIO's revised reply to Queries #3-6 and 11 contained in the instant RTI application seems to indicate that he is under pressure from some agency- external or internal to this Public Authority, to not supply this information. No other conclusion is possible given the detailed reply that the said CPIO furnished initially. **He had calculated the exact number of pages containing the information described in the said Queries of the instant RTI application. This clearly indicates that all that information was physically available with the said CPIO at the time of determining the fee payable for supplying this information.** So the said CPIO's revised reply against information sought at Queries 3-6 seems at first glance to be misleading and false. Providing false or misleading information is a valid ground for demanding and imposing penalty against a CPIO under Section 20(1) of the RTI Act. This Appellant reserves his right to demand such action against the said CPIO at a later stage, if necessary. However, this Appellant would like to afford this Public Authority one opportunity to correct its erroneous action by submitting this first appeal. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.2) Further, even if it the CPIO of this Public Authority were to contend that the information sought at Queries #3-6 were not physically available with him at the time when the bank draft for Rs. 1,434/- was delivered to him, under Section 6(3) of the RTI Act, the CPIO has a duty to transfer those parts of the RTI application to the concerned public authority that holds that information in material form. However, the said CPIO has not elected this course of action either. Instead he has merely stated that the requested information is not available with this Public Authority. The said CPIO has resiled from his statutory duty required to be performed as per Section 6(3) of the RTI Act. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.3) Further, the CPIO of this Public Authority initially, made a determination that the information sought at Queries #7-8 were fit to be disclosed. Nothing in his revised reply indicates as to how he has arrived at the opinion that disclosing the names of Engineers who were tasked with preparing the EVMs and VVPATs and those Senior Engineers who supervised these tasks would endanger their life and physical safety. What circumstances have come to pass in a period of one month from the date of the initial reply of the said CPIO, that these categories of information have suddenly acquired a very high degree of sensitivity is not indicated in his revised reply. Clearly, the said CPIO is under pressure from some agency- external or internal to this Public Authority to not disclose this information.

S. R. Venkatesh Nayak

Further, in several quarters, both internal and external to the country, the 2019 Lok Sabha Elections have been hailed to be a successful exercise without much doubt being raised about their freeness or fairness. There is no conceivable reason why the names of the Engineers may not be disclosed or such disclosure should endanger their life or physical safety. **It is this Appellant's firm belief that the CPIO of this Public Authority has prevaricated in his revised reply.** Therefore his reply deserves to be set aside. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.4) Further, the reply of the CPIO of this Public Authority against Query #11 of the instant RTI application is not only perplexing but also contradictory. In his initial reply he had agreed to supply this information on payment of additional fees. However in his revised reply he has first claimed an exemption and then stated that the VVPAT User Manual is available on the website of the Election Commission of India, in addition to stating that ECI holds copyright over such Manual. This Appellant has not sought any VVPAT Manual that is already published on the ECI's website. Instead, he has sought the User Manual that Engineers of this Public Authority have used during the Lok Sabha Elections. That Manual is not available on the ECI's website. This confusing and contradictory reply clearly indicates that the said CPIO has not adequately applied his mind to the queries or is under some pressure- external or internal to this Public Authority to not disclose this information. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.5) Further, the CPIO of this Public Authority has not sent any revised reply against Query #12 of the instant RTI application pertaining to the User Manual for Symbol Loading Units (SLUs). To the best of this Appellant's knowledge the VVPAT Manual uploaded on the ECI's website does not contain detailed instructions for Engineers to operate the SLUs. The CPIO has not bothered to check his facts before sending his revised reply. This indicates a lack of due application of mind on the part of the CPIO. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.6) Further, according to Section 7(6) of the RTI Act, where a CPIO fails to provide the information sought in an RTI application within the time limit specified in Section 7(1) of the RTI Act, the RTI applicant is entitled to receive all the information free of charge. Should this Hon'ble Appellate Authority decide that any or all of the balance information sought in the instant RTI application ought to be furnished to this Appellant, this Appellant believes that he is entitled to receive it free of charge as more than 30 days have lapsed since the submission of the instant RTI application to the CPIO of this Public Authority. ***Hence the submission of this appeal to this Hon'ble First Appellate Authority.***

8.1.7) Further, this Appellant tried to submit this appeal through the RTI Online Facility. However, the said Facility reacted that the initial first appeal had already been submitted in the instant case (**Annexe 6**). ***Hence the submission of this appeal in hard copy to this Hon'ble First Appellate Authority.***

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:

S. S. Venkatesh Nayak
(Venkatesh Nayak) 10/9/19

प्रथम अपील प्राधिकारी - सूचना का अधिकार अधिनियम/

First Appellate Authority - RTI Act

अपील सं/Appeal no. FAA/2019-20/Q2/754

15 अक्टूबर/October 2019

तथ्य/ Facts

- (1) हमें दिनांक 16 सितम्बर 2019 को आपसे यानी श्री वेकटेश नायक, 55ए, तीसरी मंज़िल, सिद्धार्थ चेंबर्स - 1, कलु सराई, नई दिल्ली 110 016 से की अपील दिनांक 10 सितम्बर 2019, को प्राप्त हुई। यह अपील हमारे बैंगलोर यूनिट के पीआईओ पर आपके आरटीआई आवेदन 17 जून 2019 के बारे में है।

On 16th September 2019 we got an appeal of 10th September 2019 from you, Shri Venkatesh Nayak, 55A, 3rd Floor, Siddharth Chambers- 1, Kalu Sarai, New Delhi - 110 016. The appeal is on your RTI Application to the PIO of our Bangalore Unit dated 17th June 2019 respectively.

- (2) आपका आवेदन मुख्य रूप से पृथक ट्रेड व गैर तकनीकी व्यक्तियों की तैनाती आदि के बारे में था। आप बैंगलोर यूनिट के पी.आई.ओ. के उत्तर से संतुष्ट नहीं हैं।

Your application was mainly about EVMs, VVPATs and SLU etc. You are not satisfied with the reply of our PIO – Bangalore Unit.

निर्णय

Decision

- (3) आर टी आई निवेदन संख्या बी ई एल बी एल एल / आर / 2019/50071 दिनांक 17.06.2019 और कंट्रोल नंबर - RTI / BG-CX / 19-20 / 470 दिनांक 16.07.2019 के संदर्भ में सीरियल नंबर: 1,2,9 10,12 और 13 से संबंधित जानकारी इस प्रकार है: -

With reference to RTI Request No BELBL/R/2019/50071 dated 17.06.2019 & Control No. - RTI/BG-CX/19-20/470 dated 16.07.2019 the information pertaining to Serial No: 1,2,9,10,12 & 13 :-

मेरी जानकारी में बैंगलोर यूनिट के पी.आई.ओ. द्वारा दिया गया उत्तर यथा संभव पूर्ण है।

I believe that the reply by the PIO of Bangalore Unit is complete to the extent possible.

आर टी आई निवेदन संख्या बी ई एल बी एल एल / आर / 2019/60022 दिनांक 28.08.2019 के संदर्भ में (आर टी आई निवेदन संख्या बी ई एल बी एल एल / आर / 2019/50071 दिनांक 17.06.2019 के संदर्भ में) सीरियल नंबर: 3,4,5,6,7,8 और 11 एवं नियंत्रण संख्या - आरटीआई / बीजी-सीएक्स / 19-20 / 481 दिनांक 27.08.2019 सीरियल 1,2,3,4,5 और 6 से संबंधित जानकारी इस प्रकार है: -

With reference to RTI Request No BELBL/R/2019/60022 dated 28.08.2019 (referring RTI Request No BELBL/R/2019/50071 dated 17.06.2019) Serial No: 3,4,5,6,7,8 & 11 and Control No. – RTI/BG-CX/19-20/481 dated 27.08.2019 the information pertaining to Serial No: 1,2,3,4,5 & 6 :-

पीआईओ को इस अपील को बंद करने से पांच (5) दिनों पहले या उससे पहले उपयुक्त / प्रासंगिक लोक प्राधिकरण को स्थानांतरित करने का निर्देश दिया जाता है।

The PIO is directed to transfer the case to appropriate/ relevant Public Authority on or before five (5) days from the closure of this Appeal.

पीआईओ को आरटीआई आवेदक को जानकारी प्रदान करते समय आवश्यक सावधानी बरतने के लिए निर्देशित किया जाता है।

The PIO is directed to take necessary precaution while providing information to the RTI Applicant(s).

- (4) अपील आंशिक रूप से स्वीकृत की जाती है।
Appeal partially Accepted.

हेमा जी आचार्य

हेमा जी आचार्य /Hema G Acharya

जीएम (आइए) / सीओ और ए.ए./GM (IA)/CO & AA