

8 SCOB [2016] HCD 110

**HIGH COURT DIVISION
(Special Original Jurisdiction)**

Writ Petition No. 798 of 2015

An application under Article 102 (2) of the
Constitution of the People's Republic of
Bangladesh

**Badiul Alam Majumdar and
others**

...Petitioners

Versus

**Information Commission, Bangladesh
and another**

...Respondents

Mr. Dr. Sharif Bhuiyan with
Mr. Tanim Hussain Shawon, Advocates
...For the petitioners
Mr. Tawhidul Islam, Advocate
...For the respondent No.2

Ms. Amatul Karim, D.A.G
...For the respondent No.1

Heard on: 29.04.2015, 30.04.2015 and
14.02.2016

Judgment on: 18.02.2016

Present:

Madam Justice Farah Mahbub

And

Mr. Justice Kazi Md. Ejarul Haque Akondo

In modern democratic countries citizens have a right to information in order to be able to know about the affairs of each political party which, if elected by them, seeks to formulate policies of good governance. This right to information is a basic right which the citizens of a democratic country aspire in the broader horizon of their right to live. This right has reached a new dimension and urgency, which puts better responsibility upon those political parties towards their conduct, maintenance of transparency and accountability to the public whom they aspire to represent in the parliament.

... (Para 59)

Registration Rules, 2008 framed under Article 94 of the Representation of the People Order, 1972

Right to Information Act, 2009

Section 9:

As per the provision of the Registration Rules of our country the registered political parties are required to submit their audited statements of accounts to the Election Commission every year for the purpose of, amongst others, transparency and accountability to the people and the electorate. According to the RPO, 1972 and the said Registration Rules it is the statutory duty of the Election Commission to collect such statements of accounts from those parties on an annual basis to regulate their functioning and to ensure a free and fair electoral process. As such, such statements should not be treated as 'secret information' under the RTI Act.

... (Para 60)

Ignoring the people's right to know, keeping them in dark and playing hide-and-seek with them in a democratic country like us where all powers belong to the people and their mandate is necessary for ruling the country no registered political party can be

allowed to take the stand that the audited statements submitted to the Election Commission were “secret information”. ... (Para 62)

In the case in hand, though, admittedly, the political parties did not consider their submitted audited statements of accounts as ‘secret information’ or ‘confidential’, but the respondents without any mandate of law erroneously served notices upon the respective political parties concern seeking their opinion in respect of providing information to the petitioners and most of the political parties, which operate in the public sphere and have constitutional and statutory obligations for accountability and transparency, provided a negative opinion in providing such information violating the citizen’s right to information guaranteed under the RTI Act, frustrating the purpose of the Registration Rules and the RTI Act and also damaging the spirit of ensuring and guaranteeing their transparency and accountability in all spheres including the people, which is unfortunate and hence, is deprecated. ... (Para 63)

Judgment

Kazi Md. Ejarul Haque Akondo, J:

1. This Rule Nisi, under Article 102 (2) of the Constitution of the People’s Republic of Bangladesh, was issued calling upon the respondents to show cause as to why the impugned decision/order dated 16.07.2014 issued by the respondent No.1 in Complaint No.57/2014 (Annexure-N-1) affirming the decision/order dated 22.10.2013 passed in Complaint No.97/2013 directing the respondent No.2 to seek consent/opinion from the respective political parties with respect to disclosure of their annual audited reports to the petitioner No.1, should not be declared to have been passed without lawful authority and is of no legal effect and/ or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts, in short, are that the petitioner No.1 is the Secretary of Shushashoner Jonno Nagorik (SHUJAN), an organization in Bangladesh, which conducts various activities with a view to establishing and promoting democracy and good governance in the country by creating awareness among the citizens and ensuring their active participation for achieving transparency and rule of law at all levels.

3. The petitioner Nos. 2 to 6 are various office-bearers of SHUJAN, and have been closely involved with various activities to promote transparency in the public life and the right of the citizens to information. It has also been contended that all the petitioners have played active roles in pursuing the proceedings under the Right to Information Act, 2009 (in short, RTI Act, 2009), which resulted in the decision/order impugned in the instant writ petition, and have thus genuine interest in the subject matter of the instant writ petition.

4. The respondent No.1 is the Information Commission, Bangladesh, which has been constituted under the provisions of the RTI Act, 2009 and the respondent No.2 is the Election Commission of Bangladesh, which has been constituted pursuant to Article 118 of the Constitution of the People’s Republic of Bangladesh, and is responsible for the registration and regulation of the registered political parties in accordance with the Political Parties Registration Rules, 2008 (in short, Registration Rules, 2008) framed under Article 94 of the Representation of the People Order, 1972 (in short, RPO-1972).

5. It has been stated that according to rule 9(b) of the Registration Rules, 2008 every registered political party is required, as a part of its continuous obligation to satisfy the conditions of registration, to submit its audited annual statement of accounts to the Election Commission, the respondent No.2 by 31st July every year. The petitioner No.1, along with the petitioner Nos.2 to 6, submitted an application dated 12.06.2013 to the designated Officer (RTI) of the Election Commission requesting him to provide photocopies of the audited annual statements of accounts filed by the registered political parties for all calendar years (Annexure-A). In response thereof, the said designated Officer (RTI) vide Memo No. 17.00.0000.040.22.001.10-80 dated 14.07.2013 informed the petitioner No.1 that the information requested by him was not Election Commission's own information and hence, requested him to collect those directly from the respective political parties (Annexure-B). Being aggrieved by the same, the petitioner No.1 on 04.08.2013 preferred an appeal under section 24 of the RTI Act to the Secretary of the Election Commission, which is the appellate authority for the purposes of the right to information requests, on the ground that if the information sought by him were not provided, his right to information would be infringed and consequently, the objectives and the effectiveness of the RTI Act would be hindered (Annexure-C). Thereafter, the Secretary of the Election Commission vide letter dated 03.09.2013 bearing Memo No. 17.00.0000.040.22.001.10-149 gave a decision on the said appeal affirming the decision dated 14.07.2013 given by the designated Officer (RTI) without assigning any reason whatsoever (Annexure-D). Being aggrieved, the petitioner No.1 filed a complaint dated 09.09.2013 under section 25 of the RTI Act before the respondent No.1-Information Commission stating that as a citizen of Bangladesh he was entitled under the RTI Act to be provided with the information requested from the Election Commission (Annexure-E). On receipt thereof, it was registered as Complaint No. 97/20103. Accordingly, the respondent No.1 issued a summons dated 26.09.2013 requiring the petitioner No.1 to attend a hearing at the office of the Information Commission on 22.10.2013 at 11.00 AM. In compliance thereof, he duly appeared and attended the hearing (Annexure-F).

6. After the hearing on 22.10.2013, the respondent No.1 issued its decision dated 22.10.2013 (Annexure-G) holding that the information requested involved a "third-party" and that the disclosure of such information was not possible without the opinion of the "third-party". Said decisions are quoted below:

- "1. The petitioner No.1 is directed to make an application to the designated Officer (RTI) of the Bangladesh Election Commission Secretariat by 31.10.2013 requesting for specific information by mentioning the names of the political parties and specifying the years in relation to which the information are sought.*
- 2. The designated Officer (RTI) is directed to serve, within 5(five) working days of receipt of such application, a notice to the third-parties concern requiring their written consent/opinion in accordance with section 9(8) of the RTI Act, and to intimate the petitioner No.1 of the same.*
- 3. The designated Officer (RTI) is directed to deposit the money, received under section 9 of RTI Act and the Right to Information (Receipt of Information Related) Rules, 2009, as the payment of the price of the information provided, to the Government treasury under code No. 1-3301-0001-1807.*
- 4. Both the parties are asked to inform the Information Commission of their compliance with the directions after they have been complied with."*

7. Pursuant to the aforesaid decision, the petitioner No.1 made an application on 23.10.2013 with a list of the names of 40 political parties, and requesting for copies of all

audited annual statements of accounts submitted by the registered political parties since the date of their respective registration (Annexure-H). However, the designated Officer (RTI) did not respond to the same; as a result, the petitioner No.1 preferred an appeal dated 19.12.2013 to the Secretary, Election Commission stating that although 30 working days had passed since the application had been made but he had not been informed of anything by the said Officer (RTI) [Annexure-I]. The Election Commission issued a reply vide Memo No. 17.00.0000.040.22.001.10-271 dated 23.12.2013 informing the petitioner No.1 that the Election Commission received opinions on his request from 21 registered political parties out of which only 3 (three) political parties, namely Bangladesh Muslim League, Jatiya Shomajtantrik Dal (JSD) and Bikalpadhara Bangladesh consented to the disclosure of their audited annual statements of accounts. The Election Commission further stated that the Commission was in the process of collecting opinion from the rest of the registered political parties, but did not specify any time-limit for completing the process. The Secretary of the Election Commission accordingly issued a direction dated 01.01.2014 to the designated Officer of the Commission requiring him to supply to the petitioner No.1 statements of accounts of those political parties, who had consented to the disclosure (Annexure- J and J-1 respectively).

8. It has further been stated that since the petitioner No.1 did not receive any further information or response from the Election Commission, he submitted a review application dated 06.04.2014 to the Chief Information Commissioner, with copies to the two Information Commissioners, expressing his grievance about the failure of the Election Commission to provide any further information in relation to the remaining political parties since its communication dated 23.12.2013. In the said review application, the petitioner No.1 also stated that he was of the view that the decision of the respondent No.1-Commission laying down a requirement of consent from the “third-parties” was not correct, as the information sought were “public information”, to which every citizen is entitled under section 4 of the RTI Act; as such, he sought review of the decision dated 22.10.2013 (Annexure-K). On receipt thereof, the respondent No.1 issued a letter dated 13.04.2014 concluding that there was no scope under the RTI Act to review a decision issued by the Information Commission and accordingly, advising the petitioner No.1 to file a complaint in prescribed Form ‘A’ in case of any dissatisfaction (Annexure L). Pursuant thereto, he filed a further complaint in Form ‘A’ on 01.06.2014 to the respondent No. 1 narrating the facts leading up to the 2nd complaint stating, *inter alia*, that the information sought by him were already in the possession of the respondent No. 2, who could have provided the information to him as an “Authority” by virtue of the RTI Act without recourse to any third-party. In the complaint he prayed that: (a) the respondent No.1 should direct the Election Commission to provide the requested information to him from the information preserved by the Commission itself without seeking opinion from any third-party; (b) the respondent No.1 should declare that section 9(8) of RTI Act does not apply to the statements of accounts submitted by the registered political parties; (c) the respondent No. 1 should direct the Election Commission to publish all information provided by the political parties on their website; and (d) the respondent No.1 should direct the Commission to dispose of all applications under the RTI Act within the timeframe stipulated by the RTI Act (Annexure M). The said complaint was numbered as Complaint No.57 of 2014. In response thereto, the respondent No.1 issued a summons dated 01.07.2014 requiring the petitioner No.1 to attend a hearing on 16.07.2014 at 11.00 A.M at the office of the Information Commission, wherein the petitioner Nos.2, 3 and 4 were also present. After hearing the same on 16.07.2014, the respondent No.1 issued the impugned decision dated 16.07.2014 affirming its earlier decision/order dated 22.10.2013 in

Complaint No.97/2013 (Annexure-N and N-1 respectively). In the circumstances, the petitioners had filed this application and obtained the instant Rule Nisi.

9. The respondent No.1-Information Commission contested the case by filing an affidavit-in-opposition stating, *inter-alia*, that according to the provision of section 25 of the Right to Information Act, 2009 the Information Commission had disposed of the Complaint No. 57/2014 and thereby the petitioners have in no way been deprived of any legal right and hence, they are not entitled to get any remedy as prayed for.

10. The respondent No.2-Election Commission also contested the case by filing a separate affidavit-in-opposition stating, *inter-alia*, that the information demanded by the petitioners from the Election Commission are not information of their own institution; rather those are submitted to the Commission by different political parties under the relevant law, and as such, those are categorized as information supplied by third-parties (অর্থ ফর লাঁ পলিটিকাল্ অর্গানাইজেশন্স). Since those falls under the category of information supplied by third-parties, the incumbent Officer of the Election Commission was bound under section 9(8) of the RTI Act, 2009 to seek consent of the political parties concern. Most of the political parties expressed their opinion in negative in respect of disclosure and supplying of those reports to the petitioners; therefore, the Commission, considering such opinion decided not to disclose and supply that information to the petitioners. However, some of the political parties expressed their opinion in positive in respect of disclosure and supplying of those reports to the petitioners; therefore, the Commission acted according to their opinion and disclosed and supplied those information to the petitioners. The Commission acted in accordance with the RTI Act, 2009 and thereby committed no illegality. It has also been stated that some of the registered political parties have submitted audit reports of their income and expenses to the Election Commission for the year 2012, 2013 and 2014 respectively along with the forwarding letters (Annexure-7series), where none of the political parties, so far, have made any specific request to the Commission to consider those audit reports as “*confidential*”.

11. At the outset, Dr. Sharif Bhuiyan, the learned Advocate appearing with Mr. Tanim Hussain Shawon, the learned Advocate on behalf of the petitioners submits that the Right to Information Act, 2009 (in short, the Act) and the Political Parties Registration Rules, 2008 are intended to ensure transparency, accountability and good governance with respect to the political parties, which are major stakeholders in the democratic process and in public affairs. He also submits that the impugned decision has the effect of curtailing the citizen’s right to information with regard to the affairs of the political parties and holds them accountable through public discourse. Such an interpretation of the RTI Act could not have been intended by the legislature.

12. He goes to argue that incompatibility of the impugned decision with the RTI Act is manifest from the preamble of the said Act, which makes it clear that the Act has been enacted to give effect to the right to information, as an inalienable part of freedom of thought, conscience and speech, and to empower the people by ensuring transparency and accountability of all public, autonomous and statutory organizations. Therefore, any interpretation of the RTI Act restricting the people’s right to have access to information provided to the Election Commission by the political parties, both of which are public bodies, is contrary to both the Constitution and the RTI Act. He further goes to argue that the Election Commission by framing the Registration Rules has sought to ensure effective transparency and accountability of the political parties, which are to be registered with the Election Commission and are to enjoy the benefits of such registration. Therefore, withholding the audited financial accounts submitted by the political parties as a requirement

under the said Rules frustrates the purpose of the Rules and has the consequence of disempowering the people and the electorate in relation to accountability of the political parties.

13. He next submits that by issuing the impugned decision/order, the respondent No.1-Information Commission has in effect abdicated its role of ensuring that all public bodies adhere to the principle of the right to information of all citizens, and has purported to condone the failure of the Election Commission to provide information in its possession in relation to political parties. Thus, the Commission has acted against the provisions, intention and the spirit of the RTI Act and the Constitution of Bangladesh. He also argues that the respondent No.1, in passing the impugned order/decision, has misinterpreted the relevant provisions of the RTI Act. In this regard he further submits that section 9(8) of the Act sets out the procedure for dealing with information, which may have been considered by a third-party as “secret information” as referred to in sections 7(a), (d), (o) and (r) of the RTI Act. Hence, the provisions of section 9(8) could not have been the basis for not allowing /ordering supply of copies of the audited statements of the registered political parties, who, according to the materials on record, did not take the position that the audited statements were “secret information” under the above quoted provisions of law. He further argues that section 7 of the said Act contains the grounds /circumstances under which an “authority” is not bound to provide information, and the second proviso to section 7 requires that “the concerned authority shall take prior approval from Information Commission for withholding information under this section”. Since the Election Commission did not seek any prior approval from the Information Commission in respect of withholding the audited statements of accounts submitted by the political parties; hence, issuance of the impugned decision/order is without any jurisdiction and in violation of the RTI Act.

14. He further submits that the definition of the term “information” as provided in section 2(f) of the RTI Act clearly states that “information” includes “....any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the official activities of any authority.” According to section 2(b) of the said Act, the Election Commission is an “authority” with responsibilities and obligations to ensure transparency. Since the political parties are required by the Registration Rules to submit their audited statements of accounts to the Election Commission, such statements of accounts, as soon as submitted to the Election Commission, fall under the scope of “information” defined in the RTI Act. Therefore, the Election Commission, being an “authority” under the said Act is under a clear obligation to provide to anyone who seeks such audited statements of accounts under the said Act. He also argues that the respondent No.1 in passing the impugned decision/order misinterpreted section 9(8) of the RTI Act in violation of the provisions of the Act and the Rules made thereunder in holding that the audited financial accounts of a registered political party is “secret information”. Political parties, being constitutionally recognized public organizations, are required by the Registration Rules to submit such accounts to the Election Commission for the main purpose of transparency and accountability to the people and the electorate, and therefore, withholding such statements/accounts as third-party’s secret documents amounts to negating the purpose of both the Registration Rules and the RTI Act.

15. He again submits that as soon as a political party submits its audited statements of accounts to the Election Commission, the same becomes a “public document” under section 74(2) of the Evidence Act, 1872. The RTI Act and the Rules made thereunder having not provided for obtaining opinion of political parties for supplying copy of the same to the

petitioners; the impugned order is without jurisdiction. According to the provisions of section 9(8) of the RTI Act, the authority from which the information has been sought is not required to rely solely on the “opinion” of a third-party in taking its decision, and is required to have regard to such “opinion” if expressed, and to arrive at a decision in accordance with the provisions of the RTI Act. Therefore, the refusal of the Election Commission to provide the audited statements on the pretext that the political parties concern have not provided an affirmative opinion is wholly in violation of the provisions of the said Act. He also submits that in passing the impugned decision/order, the respondent No.1 has acted in a mechanical way to deny the right of the people to information, and has, thus, acted in violation of the very legislation under which the Information Commission has been constituted for the purpose of upholding and promoting the people’s right to information.

16. He lastly submits that the provisions of the RTI Act, in particular, section 13(5) entrust the Information Commission with the positive responsibilities to preserve, promote and uphold the right of the citizens to information by, amongst others, giving effect to the principles enshrined in the Constitution of Bangladesh and making recommendation for promoting the application of the provisions of the RTI Act so as to ensure and guarantee transparency and accountability in all spheres. The impugned decision/order is contrary to the functions of the Information Commission as set out in section 13 of the said Act; and as such, the same is liable to be declared without any lawful authority and of no legal effect.

17. Conversely, Mr. Tawhidul Islam, the learned Advocate appearing on behalf of the respondent No.2 submits that the information demanded by the petitioners from the Election Commission are not information of their own, rather those are submitted to the Commission by different political parties under the relevant law, and as such those are categorized as information supplied by third-parties (a«afu fr La«ÑL plhl;qL^a abÉ) as defined in section 2 (i) of the RTI Act, 2009. Since those information falls under the category of information supplied by third-parties, the incumbent Officer of the Election Commission was bound under section 9 (8) of the RTI Act to seek consent of the political parties who have submitted their audited reports to the Commission. He also argues that most of the political parties expressed their opinion in negative in respect of disclosure and supplying of those reports to the petitioners; therefore, the Commission considering the opinion of those political parties, decided not to disclose and supply those information to the petitioners.

18. He next submits that some of the political parties expressed their opinion in positive in respect of disclosure and supplying of those reports to the petitioners; therefore, the Commission acted according to their opinion and disclosed and supplied that information to the petitioners. He goes to argue that the Commission acted in accordance with the provisions of the RTI Act and thereby committed no illegality.

19. He further submits that section 7 of the RTI Act provides for the conditions when disclosure of information is not mandatory; and the condition of section 7 (d) of the said Act is more relevant to the present matter. On the other hand, the petitioners did not make out a case of larger public interest before the Election Commission or Information Commission as against the confidentiality pleaded by the political parties for non-disclosure of the relevant information as such the Election Commission or the Information Commission did not at all have the opportunity to consider any issue of public interest. He further argues that since the plea of confidentiality of the political parties has already been approved by the respondent No.1 the requirement of prior approval from the respondent No.1 under the proviso to section 7 of the RTI Act for postponing disclosure has become redundant.

20. He lastly submits that the petitioner is to make out a case of larger public interest before the Election Commission in a fresh application, if they so desire for such disclosure; and then the Election Commission would have the opportunity to decide on the issue of public interest, if at all involved, after hearing objections from the political parties concern.

21. Ms. Amatul Karim, the learned Deputy Attorney General appearing for the respondent No.1-Information Commission submits that the respondent No.1 had acted as per the provision of section 25 of the RTI Act, 2009 and accordingly disposed of the petitioners' Complaint No. 57/2014 and thereby committed no illegality. In the circumstances, she prays for discharging the Rule.

22. We have heard the learned Advocates of both the contending parties and have perused the writ petition and the affidavit-in-oppositions.

23. It appears that the petitioner No.1 submitted an application to the designated Officer (RTI) of the Election Commission on 12.06.2013 requesting him to provide photocopies of the audited annual statements of accounts filed by the registered political parties for all calendar years to the Election Commission (Annexure-A). In response thereto, the said designated Officer (RTI) by Memo No. 17.00.0000.040.22.001.10-80 dated 14.07.2013 informed the petitioner No.1 that the information requested by him were not Election Commission's own information, and requested him to collect those statements of accounts directly from the political parties concern (Annexure-B). Being aggrieved by the same, the petitioner No.1 on 04.08.2013 preferred an appeal (Annexure-C) to the Secretary of the Election Commission, who by Memo No. 17.00.0000.040.22.001.10-149 dated 03.09.2013, affirmed the said decision dated 14.07.2013 given by the designated Officer (RTI) (Annexure-D). Being aggrieved thereto, the petitioner No.1 filed a complaint before the respondent No.1-Information Commission under section 25 of the RTI Act, 2009 on 09.09.2013 (Annexure-E), which was registered as Complaint No. 97/2013. Upon hearing the same, the respondent No.1 decided the matter on 22.10.2013 holding that the information requested involved a "third-party" and that the disclosure of such information was not possible without the opinion of the "third-party" (Annexure-G), which runs as follows-

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অভিযোগ নং: 97/2013

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(ajœl Mx 22-10-2013 Cw)

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02| D³ Av̄te`t̄bi t̄c̄w̄j̄t̄Z̄ 14-07-2013 Z̄wii t̄L 80 bs `̄ȳīt̄Ki gva`tg বাংলাদেশ নির্বাচন L̄j̄ne miPej̄tqi f̄lQ;j K (জনসংযোগ) ও দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) জনাব এস Hj Bp̄j;c̄ ij̄je Awf̄th̄v̄MKv̄ix̄K̄ Z̄vi c̄h̄Z̄ Z̄" ms̄uk- ó ivR%̄w̄ZK `t̄j̄i ̄wb̄KU n̄t̄Z̄ ms̄M̄h̄ Kivi Rb` Ab̄t̄iva K̄tib| cieZ̄Z̄, Awf̄th̄v̄MKv̄ix̄ 04-08-2013 Z̄wii t̄L বাংলাদেশ নির্বাচন কমিশন miPej̄tqi miPe l̄ Av̄c̄j̄ KZ̄ēj̄ (AvīUAv̄B) eivēti Av̄c̄j̄ Av̄te`b K̄tib| Av̄c̄j̄ Av̄te`t̄bi t̄c̄w̄j̄t̄Z̄ 03-09-2013 Z̄wii t̄L 149 bs `̄ȳīt̄Ki gva`tg Av̄c̄j̄ KZ̄ēj̄ (AvīUAv̄B) Awf̄th̄v̄MKv̄ix̄K̄ c̄h̄Z̄ Z̄t̄`i ̄w̄el̄t̄q ̄beP̄b K̄uḡkb miPej̄tqi Z̄" c̄v̄bK̄v̄ix̄ KḡR̄Z̄h̄ t̄c̄h̄i Z̄ 14-07-2013 Z̄wii t̄Li ̄w̄P̄w̄i ̄w̄m̄x̄v̄s̄l̄ en̄j̄ iv̄L̄vi ̄w̄el̄q̄ū Āēw̄Z̄ K̄tib| G t̄c̄w̄j̄t̄Z̄ Awf̄th̄v̄MKv̄ix̄ 09-09-2-013 Z̄wii t̄L Z̄" K̄uḡk̄t̄b Awf̄th̄v̄M `w̄L̄j̄ K̄tib|

03| ̄w̄el̄q̄ū K̄uḡk̄t̄bi 25-09-2013 Z̄wii t̄Li m̄fv̄q Av̄t̄j̄ v̄P̄bv̄ Kiv̄ n̄q| m̄fv̄i ̄w̄m̄x̄v̄s̄l̄ Abyv̄qx Awf̄th̄v̄M̄i ̄w̄el̄t̄q 22-10-2013 Z̄wii t̄L īb̄v̄b̄xi ̄w̄`b av̄h̄K̄t̄i ms̄uk- ó c̄w̄j̄M̄t̄Yi c̄h̄Z̄ m̄gb R̄w̄i Kiv̄ nh|

04| īb̄v̄b̄xi av̄h̄K̄t̄i Z̄wii t̄L Awf̄th̄v̄MKv̄ix̄ W. h̄cEm Bmj j S̄j;c;l, বাংলাদেশ নির্বাচন কমিশন miPej̄tqi f̄lQ;j K (জনসংযোগ) ও দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) Sejh Hp Hj Bp̄j;c̄ ij̄je Ges `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) পক্ষে বিজ্ঞ আইনজীবী জনাব তৌহিদুল ইসলাম Dc̄w̄`Z̄ n̄t̄q Z̄t̄`i e³e` Dc̄`v̄cb K̄tib| Awf̄th̄v̄MKv̄ix̄ Z̄vi e³t̄e` D̄t̄j̄-L K̄tib th, Z̄" AwaKvi AvBb, 2009 Abyv̄qx `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) Gi ̄wb̄KU 01 bs Ab̄t̄j̄Q̄t̄` D̄w̄j̄- ̄w̄LZ Z̄" t̄Ptq Av̄te`b K̄tib| `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) Z̄" c̄v̄t̄b Ac̄īv̄M̄Z̄v̄ c̄K̄v̄k̄ Kīt̄j̄ ̄w̄Z̄wb̄ Av̄c̄j̄ KZ̄ēj̄ (AvīUAv̄B) eivēti Av̄c̄j̄ Av̄te`b K̄tib| Av̄c̄j̄ KZ̄ēj̄ (AvīUAv̄B) GKB ̄w̄m̄x̄v̄s̄l̄ c̄v̄b Kīt̄j̄ ̄w̄Z̄wb̄ Z̄" K̄uḡk̄t̄b Awf̄th̄v̄M `w̄L̄j̄ K̄tib|

05| বাংলাদেশ নির্বাচন কমিশন miPej̄tqi f̄lQ;j K (জনসংযোগ) ও দায়িত্বপ্রাপ্ত কর্মকর্তা (BI/VBC) Z̄vi e³t̄e` D̄t̄j̄-L K̄tib th, ̄beP̄b K̄uḡk̄t̄bi t̄K̄v̄b&t̄K̄v̄b&Z̄" c̄v̄b̄t̄h̄v̄M` Z̄vi GK̄w̄L̄ Z̄w̄j̄ Kv̄ l̄t̄q̄em̄v̄B̄t̄Ū īt̄q̄t̄Q̄| Z̄" AwaKvi AvBb, 2009 Gi aviv 9 (8) Abyv̄qx Z̄Z̄x̄q̄ c̄t̄j̄i t̄K̄v̄b t̄M̄v̄cb̄x̄q̄ Z̄" Z̄vi ḡZ̄vḡZ̄ ev̄ m̄s̄j̄Z̄ ēw̄Z̄t̄īt̄K̄ Ab̄t̄ivaK̄v̄ix̄K̄ c̄v̄b̄ Kivi ̄w̄eav̄b̄ īt̄q̄t̄Q̄| Awf̄th̄v̄MKv̄ix̄i c̄h̄Z̄ Z̄t̄`i t̄j̄t̄ī Z̄Z̄x̄q̄ c̄t̄j̄i ms̄uk- óZ̄v̄ v̄K̄v̄q̄ Z̄v̄ miēiv̄n̄ Kiv̄ m̄s̄ē n̄q̄ub̄| ̄w̄eÁ AvBbR̄x̄ex̄ Z̄vi e³t̄e` D̄t̄j̄-L K̄tib th, ̄beP̄b K̄uḡk̄t̄b R̄gv̄K̄Z̄. ivR%̄w̄ZK `t̄j̄i ev̄r̄m̄īī K̄ Avq-e`t̄qi ̄nm̄ve (Aw̄w̄Ū ̄w̄īt̄c̄v̄Ū) ̄beP̄b K̄uḡk̄t̄bi ̄wb̄R̄`Z̄" b̄q̄ | ivR%̄w̄ZK `t̄j̄i ḡZ̄vḡZ̄ Q̄rov̄ Z̄" miēiv̄n̄ Kiv̄ m̄s̄ē b̄q̄|

06| Awf̄th̄v̄MKv̄ix̄i c̄h̄Z̄ Z̄" m̄ȳúó bv̄ n̄l̄q̄v̄q Awf̄th̄v̄MKv̄ix̄ t̄K̄v̄b̄ t̄K̄v̄b̄ ivR%̄w̄ZK `t̄j̄i Ges t̄K̄v̄b̄ t̄K̄v̄b̄ m̄t̄j̄i Z̄" t̄c̄t̄Z̄ Av̄M̄h̄x̄ Z̄v̄ m̄ȳúófv̄t̄e `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄v̄(AvīUAv̄B) Gi ̄wb̄KU Av̄te`b̄ Kivi Rb` K̄uḡkb̄ ḡZ̄vḡZ̄ c̄v̄b̄ K̄tib| Z̄" AwaKvi AvBb, 2009 Gi aviv 9 (8) Abyv̄qx Z̄Z̄x̄q̄ c̄t̄j̄i ḡZ̄vḡZ̄ M̄h̄t̄Yi c̄h̄q̄v̄R̄b̄x̄q̄Z̄v̄ v̄K̄v̄q̄ Z̄Z̄x̄q̄ c̄t̄j̄i eivēti `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) t̄K̄ ḡZ̄vḡZ̄ M̄h̄t̄Yi Rb` t̄b̄w̄JK̄ c̄v̄t̄bi ̄w̄el̄t̄q̄ K̄uḡkb̄ Awf̄ḡZ̄ e³ K̄tib|

ch̄v̄j̄ v̄P̄bv̄|

Awf̄th̄v̄MKv̄ix̄, `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) l̄ ̄w̄eÁ AvBbR̄x̄ex̄ Gi e³e` k̄eb̄v̄t̄s̄l̄ Ges `̄w̄L̄j̄ K̄Z̄.c̄h̄v̄Ȳw̄ ch̄v̄j̄ v̄P̄bv̄t̄s̄l̄c̄w̄īj̄ ̄w̄j̄Z̄ n̄q̄ th, Awf̄th̄v̄MKv̄ix̄i c̄h̄Z̄ Z̄" ̄w̄ī t̄j̄t̄ī Z̄Z̄x̄q̄ c̄t̄j̄i ms̄uk-óZ̄v̄ īt̄q̄t̄Q̄| Z̄Z̄x̄q̄ c̄t̄j̄i ḡZ̄vḡZ̄ M̄h̄Ȳ Q̄rov̄ `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄v̄(AvīUAv̄B) K̄Z̄R̄.Z̄v̄ miēiv̄n̄ Kiv̄ m̄s̄ē b̄q̄ | GQ̄rov̄ Awf̄th̄v̄MK̄ix̄i c̄h̄Z̄ Z̄" ̄w̄ī m̄ȳúó bv̄ n̄l̄q̄v̄q̄ m̄ȳúófv̄t̄e Z̄" c̄h̄v̄ī Av̄te`b̄ Kivi c̄h̄q̄v̄R̄b̄x̄q̄Z̄v̄ īt̄q̄t̄Q̄| Awf̄th̄v̄MKv̄ix̄ m̄ȳúófv̄t̄e Z̄" c̄h̄v̄ī Av̄te`b̄ Kīt̄j̄, `̄w̄q̄Z̄c̄h̄B KḡR̄Z̄P̄ (AvīUAv̄B) Awf̄th̄v̄MKv̄ix̄i c̄h̄Z̄ Z̄" Z̄" AwaKvi AvBb, 2009 Abyv̄qx̄ miēiv̄t̄nī ̄wb̄ō̄q̄Z̄v̄ c̄v̄b̄ Kiv̄q̄ Awf̄th̄v̄M̄Ū ̄w̄b̄^ōūĒth̄v̄M` ḡt̄ḡMY` Kiv̄ hv̄q̄|

cvl qv tMtQ Gi gta" evsj vt`k gnyij g j xM, RvZxq mgvRZmŠK `j - Rvm` Ges weKÍ aviv evsj vt`k Zvt`i evrmwi K Avq-e`tqi nmve ZZxq cŕŕtK mieivtñi AbvcuE cŕvb KtiQ| ũbenŪZ Ab`vb` `j , tŕvi gZvgZ msMŕni cŕŕŕqv Pj tQ|

ivR%ŕwZK `j mgŕni Avq-e`tqi AmWU wi tciU`Z_ " AnaKvi AvBtbi ũewa 8 tgvZvteK cŕZ cŕvi Rb` 02 (`ŕ) ũvKv ũbaŕY Kiv ntqtQ| 1-3301-0001-1807 tKvW 50 (cŕvk) cŕvi Rb` cŕŕqvRbxq A_`tKvU`nd/ tURvni Pvj vtB Rgv ũ tŕ AvMvq 5 Kvhŕeŕmi gta` Dvj ũLZ ũZb cvUŕ Z_ " MŕY Kivi Rb` Abŕi va Kiv ntj v|

ab`ev`vtšÍ

GKvšfvte Avcbvi
`ŕ: A`úó
(Gm Gg Avmiv`ŕvŕvŕb)
cvi Pvj K (RbmsŕhŕM)
Z_ " cŕvbKvix KgŕZŕ
tŕdvb: 9180812

m`q AeMwZ:
mŕPe, Z_ " Kŕgkb
cŕZŕÉj Feb, 3q Zj v , 4/G AvMvi Mŕ .XvKv|Ō

25. Subsequent thereto, the Secretary of the Election Commission by disposing of the said appeal (Annexure-I) on 01.01.2014 had directed the designated Officer of the Commission to supply the statements of accounts of those political parties, who had consented to the disclosure (Annexure- J-1), which runs as follows-

ŌũbeŕPb Kŕgkb
evsj vt`k

ũbeŕPb Kŕgkb mŕPej q
tktŕi evsj v bMi , XvKv-1207|

bs-17.00.0000.040.22.001.10-319

Zvvi L: 01 Rŕvŕvni 2014

ũbeŕPb Kŕgkb `ũLj KZ.ivR%ŕwZK `tŕi evrmwi K Avq-e`tqi AmWU wi tciU`cŕvb ũel tŕ W. ev`Dj Avj g gRŕ`vi Z_ " AnaKvi AvBb Abŕvŕti Avncj `vtqi KtiŕQb| th me ivR%ŕwZK `j ũbeŕPb Kŕgkb `ũLj KZ.evrmwi K Avq e`tqi AmWU wi tciU`ZZxq cŕŕtK t`qvi ũel tŕ AbvcuE cŕvb KtiŕQb Zv cŕvtbi ũel tŕ Kŕgkb Abŕvŕ b itqtQ| tm tgvZvteK Z_ " AnaKvi AvBtbi Avncj ũb`úũEi ũel tŕ 24 (3) avivi (K) Abŕvŕ Rbve ev`Dj Avj g gRŕ`vi , ũcZv-i ½yŕgqv gRŕ`vi -tK D³ AbvcuE KZ.Z_ " mieivtñi Rb` ũb`ŕ cŕvb Kiv hŕt`Q|

`ŕ: A`úó

W. tŕvŕvŕŕ mŕv`K

mŕPe

|

Avncj KZŕŕ

cŕcK:

Gm Gg Avmiv`ŕvŕvŕb
cvi Pvj K (RbmsŕhŕM)
Z_ " cŕvbKvix KgŕZŕ
ũbeŕPb Kŕgkb mŕPej q

Abŕj ũc:

W. ev`Dj Avj g gRŕ`vi
ũcZv- i ½yŕgqv gRŕ`vi
12/2, BKejŕ ŕi vW,tŕvŕvŕŕ cŕj, XvKv|Ō

26. Thereafter, the petitioner No.1 further filed a complaint in Form 'A' to the respondent No.1-Information Commission on 01.06.2014 (Annexure-M) stating that the information sought by him were already in the possession of the respondent No.2-Election Commission, who could have provided the information to him as an "Authority" by virtue of section 2(b)(i) of the RTI Act without recourse to any third party. He further stated that the information sought did not fall within the ambit of section 7 of the RTI Act; the objective of rule 9(b) of the Registration Rules, 2008 was to establish transparency and accountability of the registered political parties, which is also the objective of the RTI Act, and that the information sought by him were not in the nature of "secret information" referred to in section 9(8) of the RTI Act. In the said complaint he prayed that: (a) the respondent No.1 should direct the Election Commission to provide the requested information to him from the information preserved by the Commission itself without seeking opinion from any third-party; (b) the respondent No.1 should declare that section 9(8) of RTI Act does not apply to the statement of accounts submitted by the registered political parties; (c) the respondent No. 1 should direct the Election Commission to publish all information provided by the political parties on their website; and (d) the respondent No.1 should direct the Election Commission to dispose of all applications under the RTI Act within the timeframe stipulated by the RTI Act. The said complaint was numbered as Complaint No.57/2014. After hearing the same, the respondent No.1 issued the impugned decision on 16.07.2014 (Annexure-N-1) affirming the earlier decision dated 22.10.2013 passed in Complaint No.97/2013 (Annexure-G), in which the respondent No.2-Election Commission was directed to seek consent/opinion from the political parties with respect to disclosure of their annual audit reports to the petitioner No.1. The said impugned decision dated 16.07.2014 is quoted below-

0 abf Lcj ne
fñhJÅ he (3u amj)
Hg-4/H, BNj|Nijy fñjpteL HmjLj
শেরে-hjmmj eNI, YjLj-1207

অভিযোগ নং-57/2014

অভিযোগকারীঃ জনাব বদিউল আলম j Sjcjl fñfrx Sejh Hp,Hj Bpjc* jje
cfaj-l%stj uj j Sjcjl পরিচালক (জনসংযোগ) ও দায়িত্বপ্রাপ্ত
12/2 CLhjm @jX, LjLajl(BI/VBC)
@jijlj cf#,XvKv বাংলাদেশ ehjñe Lcj ne pñhmu,
শেরে বাংলা নগর, ঢাকা।

ppUj:Fæ
(ajñMx 16-07-2014Cw)

অভিযোগকারী জনাব বদিউল আলম মজুমদার তার দাখিলকৃত ৯৭/২০১৩ নং অভিযোগের বিষয়ে 22-10-২০১৩ তারিখে তথ্য কমিশন কর্তৃক প্রদত্ত সিদ্ধান্ত মোতাবেক নির্বাচন কমিশন রাজনৈতিক দলসমূহের কাছে তথ্য আর্ডিএর আইনের ধারা ৯ (৮) এর ভিত্তিতে তৃতীয় পক্ষের মতামত নেয়ার যে পদক্ষেপ নিয়েছে তাতে আইনের সঠিক পাঠ ও প্রয়োগ প্রতিফলিত হয়নি বলে অভিযোগ করেন। তথ্য কমিশনের সিদ্ধান্ত ও নির্বাচন কমিশনের উক্ত পদক্ষেপের বিরুদ্ধে তিনি ০১-06-২০১৪ তারিখে Z_ কমিশনে অভিযোগ দায়ের করেন।

০২। বিষয়টি কমিশনে 29-06-২০১৪ তারিখের সভায় আলোচনা করা হয়। সভার সিদ্ধান্ত অনুযায়ী অভিযোগের বিষয়ে ১৬-07-২০১৪ তারিখ শুনানীর দিন ধার্য করে সংশ্লিষ্ট পক্ষগণের প্রতি সমন জারী করা quz

০৩। শুনানীর ধার্য তারিখে অভিযোগকারী জনাব বদিউল আলম মজুমদার ও প্রতিপক্ষ বাংলাদেশ নির্বাচন কমিশনের পরিচালক (সংযোগ) ও দায়িত্বপ্রাপ্ত কর্মকর্তা (BI/WBC) Sejh Hp,Hj, Bp;c* ijje Hhww Zvi পক্ষে নিয়োজিত বিজ্ঞ আইনজীবী জনাব তৌহিদুল ইসলাম হাজির। অভিযোগকারী তার বক্তব্যে উল্লেখ করেন যে, রাজনৈতিক দলের অডিট রিপোর্ট প্রাপ্ত হননি। তথ্য কমিশনে দায়েরকৃত ৯৭/২০১৩ নং অভিযোগের বিষয়ে কমিশন কর্তৃক প্রদত্ত সিদ্ধান্তে রাজনৈতিক দলের মতামত নেয়ার কথা বলা হয়েছে কিন্তু রাজনৈতিক দলের অডিট রিপোর্ট নির্বাচন কমিশনে রয়েছে এবং তা পাবলিক ডকুমেন্ট। যেহেতু পাবলিক ডকুমেন্ট তাই এ তথ্য সরবরাহযোগ্য।

০৪। বাংলাদেশ নির্বাচন কমিশনের পরিচালক (জনসংযোগ) ও দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) তা। বক্তব্যে উল্লেখ করেন যে, ইতোপূর্বে তথ্য কমিশনে দায়েরকৃত ৯৭/২০১৩ নং অভিযোগের প্রেক্ষিতে তথ্য কমিশনের নির্দেশনা অনুযায়ী নির্বাচন কমিশনের পক্ষ থেকে ২১ (একুশ) টি রাজনৈতিক দলের কাছে তাদের সম্মতি চেয়ে চিঠি প্রদান করা হয়, এবং তার মধ্যে মাত্র তিনটি রাজনৈতিক দল তথ্য প্রদানে তাদে। AejfŠI কথা জানায়। এ প্রেক্ষিতে অভিযোগকারীকে ২৩-12-২০১৩ তারিখের পত্রের মাধ্যমে জানিয়ে দেয়া হয় যে, তিনি ঐ তিনটি রাজনৈতিক দলের Z_ পেতে পারেন। তথ্য অধিকার আইন, ২০০৯ এর ধারা ৯(৮) অনুযায়ী তৃতীয় পক্ষের কোন গোপনীয় তথ্য তার মতামত ও সম্মতি ব্যতিরেকে অনুরোধকারীকে প্রদান ej Lljl Hhdje রয়েছে। সংশ্লিষ্ট যে সমস্ত রাজনৈতিক দলসমূহ উল্লিখিত তথ্যাদি কোন তৃতীয় পক্ষের নিকট প্রদান করার বিষয়ে কোন সম্মতি প্রদান করেনি, সে সমস্ত তথ্যাদি প্রদান আইনসংগত নয় বিধায় তা যথাযথভাবে অভিযোগকারীকে জানিয়ে দেয়া হয়েছে।

ch#j wPbv

অভিযোগকারী ও দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) উভয়ের বক্তব্য শ্রবনান্তে এবং দাখিলকৃত প্রমাণাদি পর্যালোচনান্তে পরিলক্ষিত হয় যে, দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) ৯৭/২০১৩ নং অভিযোগে কমিশনের প্রদত্ত নির্দেশনা অনুযায়ী ব্যবস্থা গ্রহণপূর্বক অভিযোগকারীকে অবগত করায় অভিযোগটি নিষ্পত্তিযোগ্য মর্মে fHhuj je quz

qUjz

HUjরত পর্যালোচনান্তে নিম্নলিখিতভাবে অভিযোগটি নিষ্পত্তি করা হলোঃ-
যেহেতু, দায়িত্বপ্রাপ্ত কর্মকর্তা (আরটিআই) অভিযোগকারীকে তথ্য কমিশনের নির্দেশনা অনুযায়ী Z_ সরবরাহের বিষয়ে অবগত করেছেন, সেহেতু পূর্বের সিদ্ধান্ত বহাল রেখে অভিযোগটি wb:©UwE করা হলো।
সংশ্লিষ্ট পক্ষগণকে অনুলিপি প্রেরণ করা হোক।

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(Gjqj;c gjl;L)
fHje abE Lcj nejl 0

27. In view of the above, it appears that the Election Commission refused to supply the audited statements of accounts of the registered political parties to the petitioners without their opinion considering those statements as “secret information”; but it appears from Annexure-7 series to the supplementary affidavit-in-opposition filed by the respondent No.2 and the statements of paragraph No.4 to the said affidavit-in-opposition that none of the political parties specifically requested the Election Commission to consider their submitted audit statements of accounts as “confidential”.

28. However, citizens’ right to information has been enshrined in section 4 of the RTI Act, 2009, which runs as follows-

“Subject to the provisions of this Act, every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information.”

29. As per section 8 (1) of the RTI Act any person may apply for information, which is as follows-

“Under this Act a person may apply to the officer-in-charge requesting for information either in writing or through electronic means or through e-mail.”

30. According to section 2 (f) of the RTI Act ‘Information’ includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority:

Provided that it shall not include note-sheets or copies of note-sheets;

31. On the other hand, in view of section 2 (b) of the RTI Act the Election Commission is an ‘authority’ and the registered political parties are required to submit their audited statements of accounts to the Election Commission under rule 9 of the Registration Rules, 2008, which runs as follows-

০৯/ ৱেউ#বি কজি` চিিবিব মসুকKigkbtK AeinZKiY|- চZ`K ৱেউZ
 ivR%ৱZK `j ৱেউ#বি কজি`x চিিবিব মসুকKigkbtK, mgq mgq, AeinZ Kwi te Ges
 Z`j` ৱ`msuk`ó `j`K ৱ`ৱ`LZ e`e`v MhY Kwi tZ nBte, h_vt-
 (K) `tj i tK>`tq ch`q bZb Kigwi ৱেউPZ m`m`t`i Zwi Kv Ges msuk`
 `tj i এতদসংক্রান্ত সভার কার্যবিবরণীর অনুলিপি কমিশনে দাখিল;
 (L) cZ ermi 31tk RjvB Gi gta` Ae`einZ cteP cwAKv erm`i i msuk`
 `tj i Awi_R tj bt`b GKwU tiRóvW`PvUvW`GKvDwUs div`v i v AiwU
 KivBqv AiwU wi tcv`U` GKwU Kic Kigkbt `vLj ;
 (M) Kigkb, mgq mgq, th mKj Z_` ev KivMRcT Pwnte Dnv Kigkbt tc`Y;
 Ges
 (N) Kigkb, mgq mgq, th mKj ৱel`qi Dci gšé` ev e`vL`v Pwnte Dnv
 চিিবিব | ০

32. In view of the above provisions of law, the registered political parties are required to submit their audited statements of accounts to the Election Commission and soon after submission of such statements it falls under the category of ‘information’ as defined in the RTI Act. Moreover, soon after submission of the said audited statements it becomes “public document” under section 74 (2) of the Evidence Act, 1872. Therefore, the Election Commission being an authority under the said Act is under obligation to provide the concerned information to the petitioners.

33. However, section 9(8) of the RTI Act, 2009 sets out the procedures for dealing with third-party’s “secret information” as referred to in sections 7(c), (d), (o) and (r) of the said Act. The said provision of section 9 (8) of the RTI Act is quoted below-

“Where an officer-in-charge thinks that the request made for information under sub-section (1) of section 8 is appropriate, and such information has been supplied by a third party or a third party’s interest is involved in it and the third party has

considered it as secret information, the officer-in-charge shall cause a notice to be served upon the third party within 5 (five) working days for written or oral opinion, and if the third party gives any opinion in response to such notice, the officer-in-charge shall take into consideration such opinion and make a decision in respect of providing information to the applicant.”

34. In the case in hand, the registered political parties did not consider their audited statements as “secret information” under sections 7(c),(d),(o) or (r) of the RTI Act; as such, in view of the said provision there was no need to seek opinion from the registered political parties for supplying their audited statements of accounts to the petitioners.

35. Moreover, according to the said provision, the authority from which the information has been sought is not required to rely solely on the opinion of a third-party in taking its decision; rather it shall take into consideration such opinion and arrive at a decision in accordance with the provisions of the RTI Act. As such, refusal of the Election Commission to provide with the concerned information on the ground that the political parties concerns have not provided an affirmative opinion is violative of the provisions of the said Act.

36. On the other hand, section 7 of the RTI Act provides with certain types of information, which the authority is not bound to provide, and the 2nd proviso to section 7 requires that “the concerned authority shall take prior approval from the Information Commission for withholding information under this section”. But in the instant case, since the Election Commission did not seek any such prior approval from the Information Commission in respect of withholding the audited statements of accounts submitted by the political parties; hence, issuance of the impugned order is without jurisdiction and violative of the RTI Act.

37. In support of his submissions Mr. Sharif Bhuiyan relied on the following sets of decisions.

38. In the case of *Abdul Momen vs. Bangladesh* 66 DLR (2014) 9, the High Court Division issued a Rule Nisi calling upon the respondent Nos. (1) Bangladesh and (2) Bangladesh Election Commission to show cause as to why they should not be directed to secure to the voters particulars from the candidates for the election to the Parliament in the form of information disclosing the past of the candidates including certain facts necessary for making correct choice for candidates. In its judgment the Court held as follows:

“..... that the Election Commission has been given a plenary power of superintendence direction and control of the preparation of the electoral rolls for elections and therefore whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by express provisions.’ (Para-8)
‘....The respondent No.2 is further directed to disseminate the information amongst the voters about the candidates through mass media and respondent No.1 is directed to provide necessary logistic support for the purpose to the respondent No.2.” (Para-11)

39. The said decision was subsequently upheld by the Appellate Division in *Abu Safa vs. Abdul Momen Chowdhury* 66 DLR (AD) 17.

40. In *Ms. Anumeha, C/o Association for Democratic Reforms and the Chief Commissioner and Income Tax-XI, New Delhi and others*, the subject-matter of which case

was similar to the instant matter, the Central Information Commission of India, in its decision dated 29 April, 2008, stated in paragraphs 28, 29, 45 and 49 as follows:

“Political parties are a unique institution of the modern Constitutional State. These are essentially civil society institutions and are, therefore, non-governmental. Their uniqueness lies in the fact that in spite of being non-governmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that have assumed critical significance in the context of the Right of Information- an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the political parties, which control the most important of those organs. For example, it will be a fallacy to hold that transparency is good for the bureaucracy, but not good enough for the political parties which control those bureaucracies through political executives.” (Para-28)

“In modern day context, transparency and accountability are spoken of together- as twins. Higher the levels of transparency greater the accountability. This link between transparency and accountability is sharply highlighted in the Preamble to the RTI Act. -----In people’s Union for Civil Liberties (PUCL) and Ors vs. Union of India and Anr. (AIR 2003 SC 2363), the apex court stated that it is true that the elections are fought by the political parties, yet election would be a farce if the voters are unaware of antecedents of candidates contesting elections. Their decisions to vote either in favour of ‘A’ or ‘B’ candidate would be without any basis. Such election would be neither free nor fair.-----” (Para-29)

“The scheme of the Act makes it abundantly clear that disclosure of information to a citizen is the norm and non-disclosure by a Public Authority an exception and it necessitates justification for any decision not to disclose an information.” (Para-45)

“-----The German Basic Law contains very elaborate provisions regarding political funding. Section 21 of the Basic Law enjoins that political parties shall publicly account for the sources and the use of their funds and for their assets. The German Federal Constitutional Court has in its decisions strengthened the trend towards transparency in the functioning of political parties. It follows that transparency in funding of political parties in a democracy is the norm and, must be promoted in public interest.-----” (Para-49)

41. In Complaints No.CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 filed by Shri Subhash Chandra Aggarwal and Shri Anil Bairwal respectively against the six political parties of India including Indian National Congress/ All India Congress Committee (AICC), Bharatiya Janata Party (BJP) and others, the Central Information Commission of India, in its decision dated 3rd June, 2013 stated in paragraph 77 as follows:

“The Political Parties are the life blood of our polity. As observed by Laski ‘The life of the democratic state is built upon the party system.’ Elections are contested on party basis. The Political Parties select some problems as more urgent than others and present solutions to them which may be acceptable to the citizens. The ruling party draws its development programs on the basis of its political agenda. It is responsible for the growth and development of the society and the nation. Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and

are continuously engaged in performing public duty. It is, therefore, important that they became accountable to the public.”

42. Before passing of the Right to Information Act, 2005 in India, the Supreme Court of India upheld people’s right to access to information in relation to political parties and candidates in elections. *In Common Cause (A Registered Society) v. Union of India and others 2 SCC (1996) 752*, the following was held by the Supreme Court of India:

“-----The political parties in their quest for power spend more than one thousand crore of rupees on the General Election (Parliament alone), yet nobody accounts for the bulk of the money so spent and there is no accountability anywhere. Nobody discloses the source of the money. There are no proper accounts and no audit. From where does the money come nobody knows. In a democracy where rule of law prevails this type of naked display of black money, by violating the mandatory provisions of law, cannot be permitted.” (Para-18)

‘Superintendence and control over the conduct of election by the Election Commission include the scrutiny of all expenses incurred by a political party, a candidate or any other association or body of persons or by any individual in the course of the election. The expression “conduct of election” is wide enough to include in its sweep, the power to issue directions- in the process of the conduct of an election –to the effect that the political parties shall submit to the Election Commission, for its scrutiny, the details of the expenditure incurred or authorized by the parties in connection with the election of their respective candidates’’. (Para-26)

43. In *Union of India v. Association for democratic Reforms and another 5 SCC (2002) 294*, another case decided by the Supreme Court of India before the commencement of the Right to Information Act, 2005, it was held as follows:

“-----After considering the relevant submissions and the reports as well as the say of the Election Commission, the High Court held that for making a right choice, it is essential that the past of the candidate should not be kept in the dark as it is not in the interest of the democracy and well being of the country. The Court directed the Election Commission to secure to voters the following information pertaining to each of the candidates contesting election to Parliament and to the State Legislatures and the parties they represent:

1. -----
2. *Assets possessed by a candidate, his or her spouse and dependent relations. -----.’ (Para-4)*

‘Thereafter, this Court in Common Cause (A Registered Society) v. Union of India dealt with election expenses incurred by political parties and submission of return and the scope of Article 324 of the Constitution, where it was contended that cumulative effect of the three statutory provisions, namely, Section 293-A of the Companies Act, 1956, Section 13-A of the Income Tax Act, 1961 and Section 77 of the Representation of the People Act, 1951, is to bring transparency in the election funding and the people of India must know the source of expenditure incurred by the political parties and by the candidates in the process of election. It was contended that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election and that this vicious circle has totally polluted the basic democracy in the country. The Court held that purity of election is fundamental to democracy and the

Commission can ask the candidates about the expenditure incurred by the candidates and by a political party for this purpose.-----’ (Para- 28)

‘-----it can be deducted that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes.’(Para-34)

‘If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen /voter –a little man-to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of “speech and expression” and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy .’ (Para-38)

‘ The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1)-----

(2)-----

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5)-----.” (Para-48)

44. We have gone through the aforementioned decisions and we are in respectful agreement with the ratio so decided therein. The very spirit of the said decisions in respect of the citizen’s right to information and disclosure of antecedents of candidates contesting elections and information of political parties relating to funding and candidates expenditure in election are applicable in the instant case.

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46. In this connection it is the contention of Mr. Tawhidul Islam that the provisions of sections 7 and 9 (8) of the Right to Information Act, 2009 of Bangladesh are quite similar and identical to the provisions of sections 8 and 11 of the Right to Information Act, 2005 of India. Sections 8 and 11 of the RTI Act, 2005 of India were interpreted together by the Delhi High Court in *Arvind Kejriwal vs. Central Public Information Officer* reported in *AIR 2010 Delhi 216*. In this case disclosure of information was sought to be resisted on the ground of privacy; but the Court observed (Para- 21, 22, 23, 24 and 25) that-

- (a) The procedural safeguard that has been inserted in the RTI Act intends to balance the rights of privacy and the public interest involved in disclosure of such information, and whether one should trump the other (i.e. privacy and public interest) is ultimately for the Information Officer to decide in the facts of a given case; and
- (b) The logic of section 11(1) of the RTI Act is plain; once the information seeker is provided information relating to a third-party, it is no longer in the private domain and such information seeker can then disclose in turn such information to the whole world; and
- (c) The defense of privacy cannot be lightly brushed aside; and
- (d) The competing interest (i.e. privacy and public interest) can possibly be weighed after undertaking hearing of all interested parties.

47. The above interpretation of section 11 of the Indian Act given by the Delhi High Court was again considered by a larger bench of the Delhi High Court (*Arvind Kejriwal vs. Central Public Information Officer*) on 30 September, 2011, wherein the Court after exhaustively interpreting that section observed that- (Para 5, 9, 10, 11, 12, 13, 14 and 15).

- (a) The said section 11 has to be read along with the exemptions which have been provided in section 8; and the right of the citizens to access any information held or under the control of any public authority, should be read in harmony with the exclusions /exemptions in the Act; and
- (b) The test which has to be applied in such conflicting interest is the larger public interest.

48. The Supreme Court of India in *R.K. Jain vs. Union of India* (decided on 16 April, 2013) agreed with the above two decisions, while giving observations on the issue of disclosure of some information of ACR, which are quoted below (para-13, 14, 15 and 16):

- (a) The third-party may plead privacy defense, but such defense may, for good reasons, be overruled, in other words, after following the procedure outlined in section 11 of the RTI Act, and the authority may decide that information should be disclosed in public interest overruling any objection that the third-party may have to the disclosure; and
- (b) The disclosure must have nexus to any public activity or public interest; and
- (c) The bonafide of the applicant must be considered.

49. The above criteria of public activity/public interest in disclosing third-party's information was reiterated in *Girigh Ramachandra Deshpande vs. Central Information Commission and others* (2013) 1 SCC 212.

50. In *Abdul Momen Chowdhury and others vs. Bangladesh and others* [66 DLR (2014) 9], people's right to know was acknowledged and disclosure and dissemination of

information relating to candidates of elections to the house of nation was directed through mass media.

51. In view of the above decisions, it is the further contention of Mr. Tawhidul Islam that the petitioners did not make out a case of larger public interest before the Election Commission or the Information Commission as against the confidentiality pleaded by the political parties for non-disclosure of the relevant information, as such no illegality was committed by the respondent No.1 in the impugned order.

52. It is the admitted position of fact that the registered political parties concern did not consider their audited statements of accounts as “confidential” (as discussed herein before). On the other hand, the petitioner No.1 is the Secretary of Shushashoner Jonno Nagorik (SHUJAN), an organization which conducts various activities with a view to establishing and promoting democracy and good governance in the country by creating awareness among the citizens and ensuring their active participation. He has been involved with various activities aimed at achieving transparency, rule of law and citizens’ rights at all levels while the petitioner Nos.2 to 6 are various office-bearers of SHUJAN, who have been closely involved with various activities to promote transparency in the public life and the right of the citizens to information. As such, the above contention of Mr. Tawhidul Islam in respect of ‘confidentiality of information’ and ‘case of larger public interest’ falls through.

53. We have gone through the decisions of *Arvind Kejriwal vs. Central Public Information Officer AIR 2010 Delhi 216* and *R.K. Jain vs. Union of India*, which are not applicable in the facts and circumstances of the present case, for both the decisions involved the disclosure of information relating to Annual Confidential Rolls (ACRs) of government officers, which are treated as personal information; but in the instant case, issue is disclosure of the annual audited statements of accounts of the registered political parties, which the political parties are under obligation to submit to the Election Commission according to the provision of the Registration Rules, 2008, for as soon as a political party submits such statements it becomes a “public document” (as discussed herein before). Hence, the subject matter of the instant writ petition is different from that of the above cited cases.

54. However, both the contesting parties relied on the decision of our jurisdiction in the case of *Abdul Momen vs. Bangladesh* reported in *66 DLR (2014) 9*, wherein citizen’s right to information was upheld, is applicable here in the case in hand, for the Election Commission has a similar obligation to disclose the audited statements of accounts submitted by the registered political parties concern under the Registration Rules so as to enable the public to assess the financial transparency within the political parties.

55. In the light of the foregoing discussions and findings, the submissions made by the learned Advocate for the respondent No.2 in respect of sections 7 and 9 (8) of the RTI Act, 2009, falls through.

56. Moreover, amongst others the following objectives and purposes of the RTI Act are set out in the preamble to the said Act for establishing good governance:

“Whereas freedom of thought, conscience and speech is recognized in the Constitution of the People’s Republic of Bangladesh as one of the fundamental rights and right to information is an inalienable part of freedom of thought, conscience and speech; and

Whereas all powers of the Republic belong to the people, and it is necessary to ensure right to information for the empowerment of the people....”

57. On the other hand, the provision of section 13(5) of the RTI Act entrust the Information Commission with the positive responsibilities to preserve, promote and uphold the right of the citizens to information by, amongst other, giving effect to the principles enshrined in the Constitution of Bangladesh and making recommendation for promoting the application of the provisions of the RTI Act so as to ensure and guarantee transparency and accountability in all spheres.

58. The impugned order is contrary to the said provision of law and hence, the same is liable to be declared without lawful authority and is of no legal effect.

59. In modern democratic countries citizens have a right to information in order to be able to know about the affairs of each political party which, if elected by them, seeks to formulate policies of good governance. This right to information is a basic right which the citizens of a democratic country aspire in the broader horizon of their right to live. This right has reached a new dimension and urgency, which puts better responsibility upon those political parties towards their conduct, maintenance of transparency and accountability to the public whom they aspire to represent in the parliament.

60. As per the provision of the Registration Rules of our country the registered political parties are required to submit their audited statements of accounts to the Election Commission every year for the purpose of, amongst others, transparency and accountability to the people and the electorate. According to the RPO, 1972 and the said Registration Rules it is the statutory duty of the Election Commission to collect such statements of accounts from those parties on an annual basis to regulate their functioning and to ensure a free and fair electoral process. As such, such statements should not be treated as ‘secret information’ under the RTI Act.

61. It is to be remembered, the political parties registered with the Election Commission are doing politics in the name of the people, amongst others, for the betterment of the citizens and the nation and towards establishing democracy in the country. The Central Information Commission of India in Complaints No.CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 profoundly held that *“The Political Parties are the life blood of our polity. As observed by Laski ‘The life of the democratic state is built upon the party system.’ Elections are contested on party basis. The Political Parties select some problems as more urgent than others and present solutions to them which may be acceptable to the citizens. The ruling party draws its development programs on the basis of its political agenda. It is responsible for the growth and development of the society and the nation. Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty. It is, therefore, important that they became accountable to the public.”*

62. Ignoring the people’s right to know, keeping them in dark and playing hide-and-seek with them in a democratic country like us where all powers belong to the people and their mandate is necessary for ruling the country no registered political party can be allowed to take the stand that the audited statements submitted to the Election Commission were “secret information”.

63. In the case in hand, though, admittedly, the political parties did not consider their submitted audited statements of accounts as 'secret information' or 'confidential', but the respondents without any mandate of law erroneously served notices upon the respective political parties concerning seeking their opinion in respect of providing information to the petitioners and most of the political parties, which operate in the public sphere and have constitutional and statutory obligations for accountability and transparency, provided a negative opinion in providing such information violating the citizen's right to information guaranteed under the RTI Act, frustrating the purpose of the Registration Rules and the RTI Act and also damaging the spirit of ensuring and guaranteeing their transparency and accountability in all spheres including the people, which is unfortunate and hence, is deprecated.

64. In view of the above, we find substance in the submissions made by the learned Advocate for the petitioners and merit in the Rule.

65. In the result, the Rule is made absolute without any order as to costs.

66. The impugned decision/order dated 16.07.2014 issued by the respondent No.1-Information Commission in Complaint No.57/2014 (Annexure-N-1) affirming the decision/order dated 22.10.2013 passed in Complaint No.97/2013 directing the respondent No.2-Election Commission to seek consent/opinion from the respective political parties with respect to disclosure of their annual audited reports to the petitioner No.1 is hereby declared to have been passed without lawful authority and is of no legal effect.

67. Communicate this judgment at once.