

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/C/2015/000275

Neeraj Saxena Vs. District Election Officer, GNCTD

Important Dates and time taken:

RTI/PIO: 25-11/27-1-2015	FA/FAO: 22-1/26-5-2015	2 nd Appeal: 21-8-2015
Adjourned to 11-4-16, 2.30pm	Hearing: 22-02-2016	Decision:18-03-2016

Parties Present:

The complainant is present. The Public Authority is not represented. Mr. Mohan Lal, AERO, AC-40, called Commission office the next day after the hearing, intimating that he received the Hearing Notice late and emailed the proof of the same along with their written submissions.

FACTS:

2. Complainant by his RTI application had sought for copy of Form-8A and other documents, if any filed or submitted by BLO for Mr. Arvind Kejriwal in support of his continuous ordinary residence. PIO replied on 20.12.2014 providing para- wise reply. Being unsatisfied, appellant filed First Appeal and thereafter, approached Commission.

DECISION:

3. Heard the submissions. The complainant submitted that he had downloaded the Form No.8A from the website of the Chief Electoral Officer, Delhi pertaining to Shri Aravind Kejriwal, for inclusion of his name in the Delhi Electoral rolls, even though he was a regular resident of U.P. He wanted a certified copy of the same from the respondent authority for filing a writ

petition in the Delhi High Court. He further submitted that under Section 5(1)[c] of the Representation of People's Act, Mr. Kejriwal cannot be treated as citizen of Delhi as long as he has not properly enrolled his name in the Electoral rolls of Delhi by getting his name struck off in the UP electoral rolls. The appellant also alleged that the respondent authority deliberately delayed supplying the certified copy of form 8A, to protect Mr. Arvind Kejriwal to enable him to contest elections in Delhi. He got this information after the delay of 104 days.

4. The respondent authority, who were not present at the time of hearing, presented written submissions saying that the hearing notice of the Commission reached them one day late, that is on 23-2-2016 and they have emailed a copy of the CIC hearing notice, on which the date of receipt was shown as 23.2-2016. They submitted that the appellant, Mr. Neeraj Saxena had agitated the issue of breach of Section 5(1)[c] of Representation of People's Act, by Shri Arvind Kejriwal, before the CIC in an earlier second appeal as well as before the Hon'ble Delhi High Court, which had dismissed the contentions of the appellant. Thus, the appellant lost his case before the High Court itself. The Commission, vide order No.CIC/SA/C/2015/000100 dt.12-10-2015, dismissed the appeal stating that sufficient information was already furnished to the appellant. As per their records, Mr. Kejriwal submitted Form-6 in the month of October, 2013 for inclusion of his name in the Electoral Rolls of AC-40, New Delhi for his ordinary residence at 41-Hanuman Road, New Delhi and on the basis of subsequent verification done by the BLO, his name was enrolled in the electoral rolls of AC-40, New Delhi. Subsequently, Mr. Kejriwal, submitted Form-8A, three times, for transposition of his name – (1) from 41-Hanuman Road, New Delhi to C-II/23, Tilak Lane, New Delhi – (2) from C-II/23, Tilak Lane, New Delhi to 514-Vithal Bhai Patel House, Rafi Marg, New Delhi – (3) from 514-VBP House, Rafi Marg, New Delhi to K-87 Block-K, B.K.Dutt Colony, New Delhi.

5. The respondent officer further submitted in his written submissions, that the appellant filed a representation dated 24-11-2014 at the time when Mr. Kejriwal had filed form 8-A for the second time (online) on the website of CEO, Delhi, that is, for transposing his name from C-

II/23, Tilak Lane, New Delhi to 514-VBP House, Rafi Marg, New Delhi and this was filed before the CEO, Delhi (Hqs). Immediately, on the next day, i.e., on 25-11-2014, the appellant chose to file the present RTI application seeking action taken report on the representation. In the said representation the appellant was seeking a certified copy of Form 8A, filed online by Mr. Arvind Kejriwal for transposing his name from C-II/23, Tilak Lane, New Delhi to 514-VBP House, New Delhi. The said Form 8A, filed by Mr.Kejriwal on line into the website of CEO, Delhi was transferred to the Respondent authority [AERO, AC-40] only on 5-1-2015. Thereafter on 8-1-2015, Mr. Kejriwal filed withdrawal application of the said form 8A and also filed another Form 8A for transposing his name from CII-23, Tilak Lane to K-87,K-Block, BK Dutt Colony, New Delhi, and hence the said Form 8A, which was sought to be withdrawn by Mr. Kejriwal and which is the one, the appellant is asking certified copy [ID No.467402], was actually stands cancelled/rejected on 9-1-2015 by the AERO, AC-40, as Mr. Kejriwal modified his request for transposing his name to B.K.Dutt Colony, instead of VBP House.

6. The revised/new Form 8A, received from Mr. Kejriwal on 8-1-2015 ID No.480382, was placed on public notice board inviting objections within 7 days and the concerned BLO also verified and found Mr. Kejriwal physically residing at the given address i.e. K-87, K-Block, BK Dutt Colony, New Delhi. Thereafter on 13-1-2015, the respondent officer received an email from the appellant, along with others, under rule 13(2) and 26 of the Registration of Electoral Rules, 1960 against this Form 8A ID No.480382, stating that Mr. Kejriwal is not an ordinary resident of New Delhi and he is a resident of Ghaziabad, UP. But the appellant had not submitted any evidence in support of his claim that Mr. Kejriwal is resident of Ghaziabad, UP. Hence, the AERO rejected the objection raised by the appellant and after taking into consideration the statements made by the witnesses in support of Mr. Kejriwal, including the owner of K-87, K-Block, BK Dutt Colony, New Delhi, the AERO conceded the request of Kejriwal and transposed his name to Part No.144, Serial No.454 of the Electoral Roll of AC-40 at the new address. The respondent officer further stated that their decision as above transposing Mr. Kejriwal's name from one part to another part, was based on the documents produced by him in

support of such residence and on the report of field verification conducted by the staff/BLO of their office.

7. The respondent officers further stated that the claim of the appellant that the certified copy of the Form No.8A I.D. No. 467402, was not furnished, stands nullified by the fact that the said form 8A I.D. No.467402 stands withdrawn by Mr. Kejriwal as described above, and it was replaced by the new Form 8A, with ID No. 480382, on 8-1-2015. As regards the question of delay in furnishing the said form, to the appellant, the same has been explained by the respondent officers chronologically as under:

24-11-2014 Appellant filed representation against Mr. Kejriwal's claim of residence in Delhi, before the CEO, Delhi (Hqs).

25-11-2014 The Appellant files the present RTI application in the CEO, Delhi (Hqs) seeking action taken report on his representation which was filed only yesterday(24-11-2014)

28-11-2014 CEO(Hqs), Delhi transferred the RTI application to the Respondent authority/AERO, AC-40, for dealing with the same under intimation to the appellant.

2-12-2014 The respondent authority/AERO, AC-40 re-transferred back to the CEO(Hqs), Delhi under intimation to the appellant stating that the RTI application of the appellant is seeking action taken report on his representation which was filed online into the website of CEO(Hqs) and hence they don't hold any information for replying RTI application.

18-12-2014 The CEO(Hqs), Delhi again re-transferred back 2nd time to the Respondent authority/AERO, AC-40, asking them to reply.

20-12-2014 The Respondent authority/AERO, AC-40 replied/informed the appellant [within the stipulated period of 30 days] to his RTI

application dated 25-11-2014, stating that Form 8A bearing ID No.467402 dt.17—11-2014 filed online in the website of CEO(Hqs), Delhi by Mr. Arvind Kejriwal for transposition of his name, a certified copy of which was being sought by the

appellant, has not been received in AC-40, New Delhi till that date.

5-1-2015 Form 8A ID No.467402 of Mr. Kejriwal was transferred online to the Login-ID of the respondent authority/AC-40

8-1-2015 Mr.Arvind Kejriwal filed application withdrawing the said Form 8A ID No.467402 and submitted another 8A ID No.480382 both Forms containing the request for transposing his name within AC-40 itself. Hence there is no malafides on the part of Mr. Kejriwal for withdrawing the Form 8A ID No.467402 a certified copy of which the appellant was seeking.

9-1-2015 The Respondent authority/AERO, AC-40, cancels the said 8A ID No.467402 as per the request of Mr. Kejriwal.

In this connection, it may be stated that the Respondent authority, having intimated to the appellant on 20-12-2014 [within the prescribed period] that the certified copy of form 8A ID No.467402, sought by him through his RTI application, was not received by them from CEO(Hqs), cannot now supply any certified copy of the said Form 8A, as the same is cancelled/withdrawn by Mr. Kejriwal.

8. The respondent authority further stated that as against the RTI application dated 25-11-2014, the PIO intimated the appellant within the prescribed period of one month, that is, on 20-12-2014, with the information as held by the PIO as on that date. Even after this date, the appellant had been supplied with further information by the PIO, as soon as the PIO got possession of the same from the CEO(Hqs), as acknowledged by the appellant himself

personally on 9-3-2015. Thus the claim of delay made by the appellant is baseless. In this connection, it may be stated that the Commission had already dismissed the earlier appeal of the appellant on 12-10-2015, as he has received sufficient information.

9. The appellant made submission through email on 9-3-2016 asking for an opportunity to present his case once again as the earlier submissions made on 22-2-2016 were in the absence of the PIO/AERO. The Commission considers that the information sought by the appellant is primarily associated with Mr. Arvind Kejriwal in his initial capacity as a voter of Delhi, as he has made an application for transposition of his vote, within Delhi. The appellant reiterated his allegation that Mr. Kejriwal was resident of Ghaziabad and he makes a claim that he is resident of Delhi and hence it cannot be considered as a trivial representation. He also made an allegation that Mr. Kejriwal was allowed to withdraw the Form 8A requesting the transposition of his name within Delhi AC-40 itself. Though the PIO claimed that there are no mala fides on the part of Mr. Kejriwal in withdrawing the Form 8A, the Commission feels that the PIO cannot talk about the mala fides or otherwise of a legislator. The PIO claimed that he has cancelled the Form 8A ID-467402, as per the request of Mr. Kejriwal. The PIO stated that he cannot furnish the certified copy of the said Form-8A because it was not received from the Headquarters. The appellant is insisting on penalty proceedings against the PIO.

10. The appellant prayed for information/copies of documents relating to the following questions:-

“1. Why Mr. Arvind Kejriwal filed Form8A (ID-467402) dated 17-11-2014 for transpositions of his name at 514 VBP House, Rafi Marg, New Delhi?

2. Why Mr. Arvind Kejriwal withdrew his above-said Form-8A (ID:467401) on 8-1-2015?

3. Why Mr. Arvind Kejriwal submitted another Form 8A (ID467401) dated 8-1-2015 for transposing his name at K-87, k-Block, B.K.Dutt Colony, New Delhi stating that he is residing at this address for 5 (five) months?

4. Why prosecution under section 31 of Representation of the People Act, 1950 (43 of 1950) was not initiated by Election Commission against Mr. Kejriwal for making a false declaration on 17-11-2014 and also on 8-1-2015 regarding his two different residential addresses while continuously living in Ghaziabad, Uttar Pradesh.

5. What papers were filed by Mr. Kejriwal before Election Commission as a proof of 'ordinary residence' at 514 VBP House, Rafi Marg, New Delhi and also for K-87, K-Block, BK Dutt Colony, New Delhi (papers to be placed before the Hon'ble Commission)

6. Why complainant/objector (Neeraj Saxena Advocate and his colleagues) were not invited by office of the Delhi Chief Electoral Officer/New Delhi District Election office to hear the objections before withdrawal of Mr. Kejriwal's Form 8A (467402) dated 17-11-2014 and also before acceptance of Mr. Arvind Kejriwal's 2nd Form 8A (ID: 480382) dated 8-1-2015.

7. Whether Mr. Arvind Kejriwal submitted any other Form 6 or Form 8A with Election Commission after 8-1-2015. If yes papers to be placed before Hon'ble Commission.

8. All correspondence/letters/communication between the Election Commission officials and Mr. Kejriwal and various Form 6 and/or Form 8As submitted by Mr. Arvind Kejriwal before Election Commission must be placed before this Hon'ble Commission."

11. Some of the questions of the appellant cannot be answered by the Public Authority, for instance why Mr. Arvind Kejriwal has withdrawn a transposition application and immediately filed another on the same day. However, the AERO, AC-40 has transferred the RTI questions on 2-12-2015 to the Election Officer(RTI)/PIO, old Stephen's College Building, Kashmere gate, Delhi-6 requesting the later to provide information directly. The PIO/Election Officer cannot refuse to provide copies of several Forms 8A and withdrawal form and related documents as there was nothing personal about Mr. Kejriwal. They are also not exempted by any other provision of RTI Act. Hence the PIO/Election officer is directed to coordinate with the AERO, AC-40 and provide all relevant papers available with them including withdrawal related documents.

12. Some of the questions like why Form-8A was withdrawn and the change of residences are totally in the individual capacity of Mr. Arvind Kejriwal, who at that time was a voter, later became a legislator, leader of AAP legislature party and then the Chief Minister of GNCTD.

13. It will be appropriate to consult the third party Mr. Arvind Kejriwal to respond because the appellant is making a serious allegations against and vociferously challenging the validity of claim of residential addresses of Mr. Kejriwal. Hence, the Commission directs Mr. Arvind Kejriwal to respond to the RTI application, express his opinion/objection, if any, as (a) on the questions of the appellant, (b) why he as an MLA shall not be considered as 'Public

Authority'(c) why AAP Legislature Party cannot be considered as 'Public authority' (d) why AAP political party cannot be considered as 'Public authority' as per the ratio of full bench decision of Commission dated 03.06.2013 in CIC/SM/C/2011/001386 , and (e) why Commission cannot direct him to provide the information which they (Mr. Arvind Kejriwal, AAP Legislature Party, AAP Political party) hold, to the appellant.

14. The Commission posts this case on **11-4-2016 at 2.30 pm. Adjourned.**

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(U. C. Joshi)
Deputy Secretary

Addresses of the parties:

1. The PIO under the RTI Act, Govt of Delhi
District Election Officer, 12/1, Jam Nagar House

New Delhi-110011

2. Shri Neeraj Saxena

20, Naveen Park, Sahibabad

Ghaziabad (UP) PIN: 201005

3. Shri Arvind Kejriwal, Chief Minister of Delhi

Delhi Secretariat, I.P.Estate,

New Delhi-110002

4. The Leader of the AAP Legislature Party

AAM ADMY PARTY, Delhi Assembly,

I.P.Estate, New Delhi-110002.

5. The President of the AAP Party

AAM ADMY PARTY, A-119,

Kaushambi,

Ghaziabad, Uttar Pradesh - 201010

