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/A/2015/001894

Anita Singh Vs. Directorate of Health Services, GNCTD

RTI/PIO: 17-8/9-10-15 (53)	FA/FAO: Not attached	2nd Appeal: 9-11-2015
Show cause	Hearing: 11-01-2016	Decision: 16-03-2016

Parties present:

Both the parties are not present.

Facts:

1. Appellant through his RTI application had sought following information regarding the treatment of her son, Dr Dinesh Kumar Singh, in Sir Gangaram Hospital,(SGH) New Delhi, who was admitted on 8.2.2015 in SGH and died on 3.3.2015 during treatment on the following points:

a. Name of consultant under which patient was treated during the period mentioned above,

b. Treatment records prescribed day to day,

c. Copy of test report/test results conducted during the aforesaid period,

d. Total amount they charged during the period.

2. CPIO on 9.9.2015 replied that requisite information is not available in this Directorate. He also stated that hospital cannot disclose the documents, which are confidential to patients to the third party in absence of any authority letter from the patients/legal heirs. The medical record of the patients namely Dr. Dinesh Kumar, his legal heirs may be advised to contact medical record section of Sir Ganga Ram Hospital along with relevant identity proof and detail of patient.

3. Being unsatisfied with the information furnished, appellant filed First Appeal. Being unsatisfied, appellant approached the Commission in second appeal.

Decision:

4. Both the parties are not present. The Commission perused the available record on the file. This Commission had examined the issue of right of patient to have the medical records in **Nisha Priya Bhatia v Institute of Human Behaviour and Allied Sciences GNCTD**, [CIC/AD/A/2013/001681-SA], decided 23 July 2014, wherein it was observed that the Patient has a right to his/her medical record and Respondent Hospital Authorities have a duty to provide the same under Right to Information Act, 2005, Consumer Protection Act, 1986, The Medical Council Act as per world medical ethics. Relevant Para is reproduced below :

"Right to Information under Medical Council of India Regulations:

13. The Medical Council of India has imposed an obligation on Hospitals as per the regulations notified on 11th March 2002, amended up to December 2010 to

maintain the medical record and provide patient access to it. These regulations were made in exercise of the powers conferred under section 20A read with section 33(m) of the Indian Medical Council Act, 1956 (102 of 1956), by the Medical Council of India, with the previous approval of the Central Government, relating to the Professional Conduct, Etiquette and Ethics for registered medical practitioners, namely:-

Maintenance of Medical Records:

> 1.3.1. Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of three years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.
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> 1.3.2. **If any request is made for medical records either by the patients/authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.**

14. Hon'ble Kerala High Court recognizing the above principle in **Rajappan Vs. Sree Chitra Tirunal Institute for Medical Science and Technology [ILR2004(2)Kerala150]** had observed that :

> "…..Appendix 3 referred to in regulations 1.3.1 provides for information, among other things, pertaining to diagnosis, investigations advised with reports, diagnosis after investigation, and advice. Therefore it is obvious from the appendix that what is to be given is the full details about the patient, namely, the findings pertaining to the deceased. That is the diagnosis and the periodical advice for treatment. As and when diagnosis is made the treatment will be advised by the doctor to the nursing staff in the case sheet itself. Therefore the case sheet will show the progressive testing, diagnosis and treatment given to the patient. The details to be furnished in Appendix 3 are of comprehensive in nature and should contain the diagnosis and treatment given to the patient during the period, the patient was under treatment. ***Regulation 1.3.1 has to be read with regulation 1.3.2 which makes it mandatory that any patient requesting for medical records should be furnished copies of "documents" within 72 hours from the date of demand. In other words, the patient's right to receive documents pertaining to his/her treatment is recognised by the Regulations. The documents referred to in Regulation 1.3.2 necessarily have to be the entire case sheet maintained in the hospital which contains the result of diagnosis and treatment administered, the summary of which is provided in Appendix 3. Therefore the petitioner is entitled to photocopies of the entire case sheet and the***

respondents cannot decline to give the same by stating that the details are available in Appendix 3 furnished, which they are willing to furnish."

Kerala High Court further observed that:

> It is also to be noticed that Regulations **do not provide any immunity for any medical record to be retained by any medical practitioner of the hospital from being given to the patient.** On the other hand it is expressly provided that a patient should be given medical records in Appendix 3 with supporting documents. **Therefore in the absence of any immunity either under the Regulations or under any other law, the respondent-Hospital is bound to give photocopies of the entire documents of the patient.** Standing counsel for the respondent-Hospital submitted that the documents once furnished will be used as evidence against the hospital and against the doctors concerned. I do not think this apprehension will justify for claiming immunity against furnishing the documents. **If proper service was rendered in the course of treatment, I see no reason why the hospital, or staff, or doctors should be apprehensive of any litigation. A patient or victim's relative is entitled to know whether proper medical care was rendered to the patient entrusted with the hospital, which will be revealed from case sheet and medical records. There should be absolute transparency with regard to the treatment of a patient and a patient or victim's relative is entitled to get copies of medical records.** This is recognized by the Medical Council Regulations and therefore petitioner is entitled to have copies of the entire medical records of his daughter which should be furnished in full.

Case Law as to Right of information of Patients :

15. There are several decisions by the High Courts and Consumer Commissions establishing the right of patient to information and duty of the Doctors/Hospitals (both private and public) to provide the same.

In **Kanaiyalal Ramanlal Trivedi v Dr. Satyanarayan Vishwakarma** 1996; 3 CPR 24 (Guj); I (1997) CPJ 332 (Guj); 1998 CCJ 690 (Guj), the hospital and doctor were held guilty of deficiency in service as case records were not produced before the court to refute the allegation of a lack of standard care.

If hospital takes up a plea of record destroyed, it was held that it could be a case of negligence. In **S.A. Quereshi v Padode memorial Hospital and Research Centre II** 2000. CPJ 463 (Bhopal) it was held that the plea of destroying the case sheet as per the general practice of the hospitals appeared to the court as an attempt to suppress certain facts that are likely to be revealed from the case sheet. The opposite party was found negligent as he should have retained the case records until the disposal of the complaint.

Explaining the **consequences of denial of medical record**, it was held that an adverse inference could be drawn from that. In case of **Dr. Shyam Kumar v Rameshbhai, Harmanbhai Kachiya** 2002;1 CPR 320, I (2006) CPJ 16 (NC). The National Commission said that not producing medical records to the patient prevents the complainant from seeking an expert opinion and it is the duty of the person in possession of the medical records to produce it in the court and adverse inference could be drawn for not producing the records.

On the point of negligence, AP State Commission said in case of **Force v. M Gnaneswara Rao** 1998;3 CPR 251; 1998 (1) CPJ 413 (AP SCDRC) that there was negligence as the case sheet did not contain a proper history, history of prior treatment and investigations, and even the consent papers were missing.

In **V P Shanta v. Cosmopolitan Hospitals (P) Ltd** 1997;1 CPR 377 (Kerala SCDRC) the State Commission held that failure to deliver X-ray films is deficient service. The patient and his attendants were deprived of their right to be informed of the nature of injury sustained.

In **Devendra Kantilal Nayak v Dr. Kalyaniben Dhruv Shah** 1996;3 CPR 56; I (1997) CPJ 103; 1998 CCJ 544 (Guj) the State Commission disbelieved the evidence

of the surgeon because only photocopies were produced to substantiate the evidence without any plausible explanation regarding the absence of the original.

National Commission in case of **Meenakshi Mission Hospital and Research Centre v. Samuraj and Anr**. I(2005) CPJ (NC) held that the hospital was guilty of negligence on the ground that the name of the anaesthetist was not mentioned in the operation notes though anaesthesia was administered by two anaesthetists. There were two progress cards about the same patient on two separate papers that were produced in court.

In **Dr. Tokugha Yeptomi v. Appollo Hospital Enterprises Ltd and Anr** III 1998 CPJ 132 (SC) it was held that not maintaining confidentiality of patient information could be an issue of medical negligence. In this case the HIV status of a patient was made known to others without the consent of the patient.

These decisions establish the right of the patient and obligation of hospitals or medical institutions to give medical records.

In **Raghunath Raheja v Maharashtra Medical Council**, AIR 1996 Bom 198, Bombay High Court upheld the right of patient to medical record very emphatically. Judges M Shah and A Savanth stated:

> "We are of the view that when a patient or his near relative demands from the Hospital or the doctor the copies of the case papers, it is necessary for the Hospital authorities and the doctors concerned to furnish copies of such case papers to the patient or his near relative. In our view, it would be necessary for the Medical Council to ensure that necessary directions are given to all the Hospitals and the doctors calling upon then to furnish the copies of the case papers and all the relevant documents pertaining to the patient concerned. The hospitals and the doctors may be justified, in demanding necessary charges for supplying the copies of such documents to the patient or the near relative. We, therefore, direct the first respondent Maharashtra Medical Council to issue necessary circulars in this behalf to all the hospitals and doctors in the State of Maharashtra. We do not think that thet hospitals or the doctors can claim any secrecy! or any confidentiality in the matter of copies of the case papers relating to the

patient. These must be made available to him on demand, subject to payment of usual charges. If necessary, the Medical Council may issue a press-note in this behalf giving it wide publicity in all the media."

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Patients' Right to Information

21. Section 2(f) of RTI Act 2005 says:

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

This section gives power and imposes an obligation on the Commission to enforce the right to information available to the appellant under any other law. This Commission observes that three enactments- RTI Act, Consumer Protection Act and Medical Council Act, provided the appellant a strong and undeniable right to information of her own medical record.

Article 21 of Constitution says: No person shall be deprived of his life or personal liberty except according to procedure established by law. This includes right to health.

Supreme Court held in Consumer Education & Research Centre and Union of India, AIR 1995 SC 992, that the right to health, medical aid to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. This right extends to every person.

According to Article 19(1) all citizens shall have the right (a) to freedom of speech and expression, subject to limitations under Article 19(2). International Conventions including Universal Declaration of Human Rights and Supreme Court of India emphatically stated that right of expression inherently includes right to receive information. Article 21 also extends to cover right to know. Hence the right of a

patient to her/his own information as its foundation in fundamental rights guaranteed by the Constitution. This right can be enforced by the arms of legislations and forum created by them such as Consumer Protection Forum and Information Commissions.

The Right of patient to Information to his/her own medical record is not only guaranteed under above three legislations but also rooted in Article 21, right to life which include right to health and Article 19(1)(a), right to freedom of speech and expression, which include right to receive information. This right is not limited to records held by public authorities alone but extends to all hospitals including private or corporate hospitals also to individual doctors, who treat patients. The Information Commission can enforce the same as per mandate of Parliament through the definition of information under Section 2(f).

The Commission, thus, holds that undoubtedly the appellant, being a patient has a right to detailed medical record about her treatment under Section 3 of the RTI Act, also under Consumer Protection Act, 1986 and Medical Council Act 1956.

5. In the case of **Prabhat Kumar v. DHS** [CIC/SA/A/2014/000004], Commission with regard to right of patients for medical record in relation to private hospital had observed as follows:

> "42. Once the information sought by appellant is 'information' under s 2(f) of RTI Act, entire law will come to the rescue of the right of appellant and the Commission has statutory duty to enforce his right with all its powers available under RTI Act to secure the information legitimately sought by the appellant.
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> 43. In the case of Jarnail Singh vs. Registrar, Cooperative Societies Delhi (Complaint No.CIC/WB/C/2006/00302, dated 9/4/2007), the CIC ordered the private authority to provide inspection under the supervision of the public authority. In this case the applicant had sought some information from the Registrar, Cooperative Societies (RCS) regarding the alleged irregularities in the allotment of a house to him

by a cooperative group housing society. However, the information pertaining to these issues was available with the management of the cooperative society, which could not be treated as a public authority in terms of the definition of public authority under the RTI Act. The Commission held that a cooperative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant, under Sections 2(f) and 2(g) of the RTI Act. It was also ordered by the Commission that the applicant will be provided the required information from the office records of the cooperative society under the supervision of a competent officer of the RCS.

44. Since the CPIO of respondent authority sought to collect the information asked by the appellant, the Fortis Hospital should have performed their legal responsibility of furnishing information. But by denial of information through baseless grounds the authorities of Fortis Hospital created hurdles and caused breach of the provisions RTI Act, necessitating the Commission to initiate penal proceedings against them under Section 20 of RTI Act. It is relevant to see Section 5(4) and (5).

> Section 5(4) of the RTI Act, 2004
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> The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

> Section 5(5) of the RTI Act, 2004:
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> Any other officer, whose assistance has been sought under sun section (4) shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provision of this Act, Such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

45. Under Section 5(4) CPIO can seek assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. The Commission finds that by writing a letter to Fortis Hospital to give information, respondent authority sought assistance of the authorities in Fortis Hospital. By that act the authority has initiated action under RTI Act, 2005. As they resorted to Section 5(4), next sub-clause Section 5(5) will necessarily follow, which says that CPIO shall treat such officer whose assistance is sought, as CPIO.

46. The Commission observes that under section 2(f) of the RTI Act, it is the duty of the Public Authority who is vested with the regulatory powers over all the Hospitals, including the Private Hospitals such as Fortis in Delhi, to see that the right as enshrined in the Medical Council Act, 1971, and other relevant Acts, is obeyed by the said hospitals. This law and the RTI Act mandates that every hospital whether it is private or public, to provide the medical record within 72 hours of the death of the patient. Hence the Commission has authority to implement RTI of the appellant.

….

50. This second appeal and complaint deals with the right to life of father of the appellant as declared under Article 21, which include right to quality treatment and other medical services without deficiency and negligence in proportion to the high cost they were charged to pay. The Commission finds that the respondent public authority and the Fortis Hospital have denied the appellant of his right to legally agitate against violated right to life of his father, which include the right to medical records.

51. The Commission also holds that even if the Fortis Hospital is a private body it is not immune from statutory duty of providing medical record to the patient or his son. Private body cannot claim a right to take the life of a patient by negligence and when especially it was suspected of medical negligence, it cannot deny the medical records. In fact, the Commission has every reason to draw an adverse inference against the hospital, from this unreasonable, unethical, illegal and unconstitutional denial of information that it is trying to hide something which might establish medical negligence if disclosed. It is in the interest of justice, establishment of truth, and of course, reputation or credibility, if the private hospital has and is interested in protecting it, it has to give the medical record on its own. The Commission is surprised at the defiant attitude of Fortis Hospital in denial of medical record and indifferent attitude of public authority, the respondents in not securing it.

52. The Commission recommends the Union Government and Delhi Government to take this as undesirable example of defiance of private hospitals and of their indifference towards lives, health and rights of the patients from who they fleece huge amounts of money, to come up with a strict mechanism of enforcing the rights of the patients as per law. The Commission also recommends the Governments to take note that right to information of medical records of patient is equal against both public and private hospitals and any attempt to ignore enforcement of this right against private hospital will amount to practice of discrimination in violation of Article 14 of the Constitution.

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The Commission also issues a show cause notice to the officer-in-charge of administration of the Fortis Hospital or any other responsible person having authority and knowledge to explain why maximum penalty cannot be imposed against him for breach of right to information of appellant within 21 days from the date of receipt of this order.

54. The Commission issues a show cause notice to CPIO of respondent authority why maximum penalty cannot be imposed against him for not exercising regulatory power to secure information of medical treatment to appellant within 15 days from the receipt of this order.

55. The Commission also directs the respondent authority to compel the said private hospital with its regulatory power provided under the law to comply with the provisions of the Nursing Homes Registration Act or Clinical Establishment (Registration & Regulation) Act, MCI Act and RTI Act or any other rule or provision under any law, and provide the entire information to the appellant within one 21 days from the date of receipt of this order.

56. The Commission recommends the Government of India, states and Union Territories, besides the respondent authority in this case, to take necessary steps to enforce the right to information, i.e., forcing the private hospitals to give medical records of the patients on day to day basis, because this daily disclosure will prevent undesirable practices of altering records after damage caused to patient. Forcing the private hospitals to provide daily-wise medical records will also act as a check on some hospitals from resorting to extortionist, inhuman and ruthless business of prescribing unnecessary diagnostic tests, unnecessary surgical operations, caesarean deliveries, unwarranted angioplasties, inserting stents, without need, or of substandard nature, or putting low quality stent while collecting price of high quality stent, and several such malpractices amounting to medical terrorism, etc. They should not be allowed to such malpractices with all impunity and get away without any legal consequences as if there is an absolute immunity. The Government, Medical Council of India and the health regulatory has to see that licence to practice medicine will not become licence to kill and extort and come to the rescue of helpless patients.

57. The appeal is disposed of."

Decision:

6. In view of the above stated case laws, it is clear that the patients and their relatives are entitled to know the treatment details including names and qualifications/experience of doctors. As per the law, this information had to be given within 72 hours, under section

2(f) of the RTI Act. This falls under the scope of definition of information as per the RTI Act. The lack of responsibility from the respondent authority reflects its utter disregard for the law. The Commission issues show cause notice to the PIO to explain why penalty should not be imposed on him for obstructing the process of giving information to the appellant whose son had died during the treatment on 3-3-2015 in Sri Gangaram Hospital. Commission also notes that the Public Authority did not care to respond to the hearing notice sent by the Commission. The Commission also directs the PIO to show cause why compensation of Rs.50,000/- should not be awarded to the appellant. Their explanation should reach the Commission within 21days from the date of receipt of this order.

7. The Commission orders accordingly.

(M.Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(U.C.Joshi)
Deputy Secretary

Address of the parties :

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3. The First Appellate Authority under the RTI Act
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