



J&K State Information Commission
Wazarat Road, Near D.C. Office, Jammu /
Old Assembly Complex, Srinagar.

File No. SIC/K/Comp/15/2015
Decision No. SIC/K/Comp/15/2015/825

Appellant : Dr. Raja Muzaffar Bhat / Dr. Mushtaq Ahmad
Respondent : PIO, G.B.Panth, Hospital, Srinagar.
Date of hearing : 03.07.2015
Date of Decision : 01.12.2015
Chief Information Commissioner : **G.R. Sufi**
Referred Sections : Section 3, 15 of J&K RTI Act, 2009
Result : Complaint disposed of.

1. Dr. Zaffar Riyaz, RMO, G.B.Panth, Hospital, Srinagar on behalf of PIO and the complainants Dr. Raja Muzaffar Bhat and Dr. Mushtaq Ahmad attended the Commission.

FACTS:

2. Dr. Raja Muzaffar Bhat and Dr. Mushtaq Ahmad Bhat, both resident of the State and active pursuers of the RTI Act since the introduction of the Act in the State of J&K while exercising their right conferred on them under Section 15 of the J&K RTI Act, 2009, filed a complaint in this Commission on 03-07-2015, stating therein that they had filed an RTI application before the PIO, G.B.Panth, Hospital, Srinagar on 29-06-2015, seeking following information;

1. Please provide the details of total number of infant deaths that took place in NICU-A and NICU-B since 1st March, 2015 till 30th June, 2015.
2. Total number of deaths that took place in PICU in your hospital since 1st March, 2015 to June, 2015. Please provide monthly breakup.
3. Please provide the details of the vehicular assistance provided to the attendants of patients to carry death body back home with details of patients

on board. Total number of vehicles hired since January, 2015 to 30th June, 2015 and the total expenditure incurred on the same and total number of death certificates issued by hospital from January 2015 to 30th June, 2015.

4. Total staff strength posted in NICU and PICU with their names, qualifications, designations and period of posting.
5. Total number of ventilators, Monitors, Nebulizers and total bed strength of the hospital at the present.

3. The complainants also wanted inspection of the original records to ascertain that the information so provided was correct. The complainants have invoked proviso to Section 7(1) of the J&K State RTI Act, 2009 which provides disclosure of information within 48 hours of the receipt of the request for information, if the information so sought concerns with life and liberty of a person. The main plea of the Complainants has been that the PIO did not provide information within 48 hours, hence a prayer to the Commission was made to take requisite action under the Act against the said PIO. The Commission heard Dr. Zaffar Riyaz (RMO), G.B.Panth, Hospital, Srinagar, representative of the PIO and the complainants during several hearing. During the last hearing, PIO contended that the information so sought did not fall under the above quoted proviso because there was no imminent danger of the life or liberty of the patients, who were admitted in the hospital. The PIO in his written submissions while defending his action of not providing information within 48 hours referred to Central Information Commission's Decision in the case of Pratap Kumar Jain Vs Dr. D.Ram, PIO/Prof. of Psychiatry, Central Institute of Psychiatry, Kanke, Ranchi, Jharkhand under No. CIC/SG/A/2012/000814/18825. On the other hand, the information seekers submitted that nature of said information does suggest that it falls under the proviso to Section 7(1). It

was contended by the complainants that infant deaths are occurring frequently in the hospital, which got also highlighted by the media. It was further contended that had the information sought been provided within a few days, it could have been proved that there was negligence on the part of the hospital administration to cause the infant deaths. To rebut this contention of the complainants, PIO contended that the proviso invoked by information seekers applies only in exceptional circumstances and whether the information sought concerns the life and liberty of a person has to be established and substantiated with evidence and that also only in rare cases, this ground can be relied upon. The PIO further contended that the government machinery is not designed in such a way that responses to the RTI applications could be given within 48 hours. The broad interpretation of life and liberty would result in a substantial diversion of man power and resources in replying the RTI queries. The PIO further submitted that the Parliament has made a very special exception for cases involving life or liberty, so that it would be used only when an imminent threat to life or liberty is involved. Liberty of a person is threatened if he or she is going to be incarcerated or has already been incarcerated and the disclosure of the information would obviate the danger, then it may be considered under the proviso to Section 7(1). Therefore this imminent danger has to be demonstrably proven.

DECISION:

4. The Commission has considered the rival submissions and during the last hearing, Commission had specifically asked the complainants to substantiate how the information sought by them fall under the proviso to

Section 7(1). However, nothing substantial was produced before the Commission by the complainants to prove that the information so sought does definitely fall under the said proviso of law. As the proviso speaks about life and liberty, therefore, there is a heavy burden on the applicants who invoke such proviso to prove that the denial of said information has definitely caused danger to the life or liberty of a person. Secondly, this proviso speaks about concern of life or liberty of a person. The Commission is of the considered opinion that this proviso has to be read with Section 3 of the J&K RTI Act, 2009, which confers a right of information to every "person" residing in the State of J&K. Similarly, Section 6 has also used the term "a person" who wants information. Hence, in this case, it is relevant to see whether the RTI application filed jointly by two individuals was in accordance with the provisions of law or not. The right to information as mentioned above has used the term "a person". If a strict interpretation is given to this term, then there may be a legal ground to reject the RTI application as being not in accordance with the provisions of the J&K RTI Act, 2009. However, keeping in view, the fact that the RTI Act itself is a people's friendly Act and is aimed at bringing transparency and accountability in the working of public authorities, therefore, a liberal construction has to be applied while interpreting the provisions of the Act. It will be against the basic spirit and idea of transparency law to deny information to a section of the people simply on the plea that their right is conferred only on "a person". Also Section 13 of the General Clauses Act 1897 has given a wider definition to "person" and has defined the term "a person" inclusively extending the definition to various persons. Therefore, Commission does not find any infirmity in the RTI application filed by the two persons who are the

members of the community and society of persons belonging to the State of J&K.

5. Similarly, there was a question, whether information sought for the life and liberty of a person has to be by the same person whose life or liberty is at stake. The nature of the situations for these two eventualities and situations makes seeking of information directly by the affected persons very difficult and at times impossible. If a person is unauthorizedly incarcerated, he may not be in a position to use his right of seeking information. Similarly, if a patient is admitted in the hospital and is not in a position to invoke his right personally, any close member of his family or any other person who has bonafied interest in the preservation and maintenance of life and liberty of that person can invoke the right to information which may ultimately ensure safety of the life and liberty of any person. Therefore, if after establishing genuine interest in preserving life and liberty of a person, the information can be sought by any other person who is otherwise qualified to seek information under J&K RTI Act, 2009.

6. Now the issue before Commission is to determine whether the information so sought does fall under the proviso to Section 7(1) of the J&K RTI Act, 2009. The very nature of the information does suggest that information is sought for occurrence which has already taken place in March 2015 till 30th June, 2015 in the said hospital. Similarly, information with regard to names, designation and period of posting of the staff working in the NICU/ICU and other information as mentioned above may not be used for stopping the imminent danger to the life and liberty. The

PIO did refer and relying on Central Information Commission's above referred decision, but Commission would like to inform the PIO that J&K State Information Commission is a creation of J&K State RTI Act, 2009 and the decisions passed by the Central Information Commission and other Information Commissions in the country have not a binding force on J&K State Information Commission, however, in similar facts and under the circumstances of the case, such decisions definitely have a persuasive force. In the case under consideration, the complainants have not proved any imminent danger to any life, hence, proviso to Section 7(1) is not applicable. However, the information sought has definitely a high public value which if disclosed on time would bring out number of deficiencies in the health sector particularly health care of infants which are our future generation. The PIO informed the Commission that RTI application under appeal was promptly responded to by the PIO on 16-07-2015. It is also seen from the records that the PIO has taken very prompt action for seeking assistance from other wings of the hospital for providing information to the information seekers. Therefore, in the facts and under the circumstances of the case, nothing adverse is warranted against the PIO. However, as the information is related to human life particularly that of infants, therefore, Commission would like to direct the public authority of G.B.Panth Hospital, Srinagar to strictly follow the mandate given to it under Section 4 of the J&K State RTI Act, 2009 and upload all necessary information which may have direct or indirect effect on the cure, protection and safeguard of human life and to ward off any imminent danger to the human life. The public authority is directed to report its compliance to the Commission within 20 days of the receipt of this order. The Director, Health Services, Kashmir is required to ensure strict implementation of

Section 4 in G.B.Panth, Hospital, Srinagar expeditiously. In case of non compliance on part of the public authority, Commission may be construed to initiate penalty proceedings as provided under Section 17 of the J&K State RTI Act, 2009 against the said public authority, deeming the failure on the part of the said public authority to disclose the information which is mandated to be disclosed under the Act.

7. The Commission would also like to appreciate the efforts of the complainants for highlighting the issue.

8. With these directions, complaint is disposed of.

**Sd/-
(G.R.Sufi)**

Chief Information Commissioner

No. SIC/K/Comp/15/2015

Dated: -12-2015

Copy to the:-

1. Director, SKIMS, Soura, Srinagar for information.
2. Director, Health Services, Kashmir for information.
3. First Appellate Authority, G.B.Panth, Hospital, Srinagar.
4. Public Information Officer, G.B.Panth, Hospital, Srinagar.
5. Pvt. Secretary to HCIC / HSIC, Kashmir.
5. Dr. Raja Muzaffar Bhat R/o Gopalpora, Chadoora, Budgam (Complainant).
6. Dr. Mushtaq Ahmad Khan R/o Kathia Darwaza Near Central Jail, Srinagar (Complainant).
6. Guard file

**(M.S. Bhat)
Deputy Registrar,
J&K State Information Commission**