

केन्द्रीय सूचना आयोग  
**Central Information Commission**  
बाबागंगनाथमार्ग, मुनिरका  
**Baba Gangnath Marg, Munirka**  
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/MH&FW/A/2017/171037-BJ

Mr. S.K Verma

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & Under Secretary  
Ministry of Health & Family Welfare  
Medical Service Section, Nirman Bhawan,  
New Delhi

....प्रतिवादीगण /Respondent

Date of Hearing : 13.02.2019  
Date of Decision : 19.02.2019

Date of RTI application	07.11.2016
CPIO's response	Nil
Date of the First Appeal	20.12.2016
First Appellate Authority's response	02.03.2017
Date of diarised receipt of Appeal by the Commission	11.10.2017

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 5 points referring to the Supreme Court decisions in Parmanand Katara v. Union of India (1989) and Paschim Banga Khet Majdoor Samity vs. State of West Bengal (1966) and desired to know whether the Govt. of India intends to make an act on the pattern of TRAI/IRDA Acts to control the expenses charged by Private Hospital till the Govt. Hospitals were equipped to address the critical health care for survival of common people, if government held information regarding the aforementioned question then the time line for the legislation and issues related thereto.

The CPIO, vide its letter dated Nil provided point wise clarification to the Appellant. Dissatisfied by the response, the Appellant approached the FAA. The FAA vide its order dated 02.03.2017 responded that the information sought was already furnished by the CPIO. However, the Appeal for point 2, 3 and 4 was forwarded to the concerned Appellant Authority.

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Mr. S.K Verma;

**Respondent:** Dr. Sudhir Gupta, Addl. DDG, Dr. Anil Kumar, Addl. DDG and Dr. Abhai Garg, Consultant;

The Appellant reiterated the contents of his RTI application and stated that he had raised issues of public importance which were not cogently and comprehensively answered by the Respondent. Furthermore, information on points 02, 03 and 04 remained unaddressed till date. Explaining that he was seeking the information regarding implementation of the Clinical Establishments (Registration and Regulation) Act, 2010, a public welfare legislation and applicable rules, the Appellant raised the issue of exorbitant and unregulated fee charged by the Hospitals in total disregard to the provisions of the aforementioned Act. He further raised the issue of sub-standard medical equipments available at the District Hospitals. Sub-Divisional Hospitals/ Community Health Centres/ Primary Health centres/ Sub Centres in contravention to the requirements of the Indian Public Health Standards. In its reply, the Respondent stated that a suitable response was provided by the CPIO/ FAA. Explaining the constraints regarding the implementation of the Clinical Establishments (Registration and Regulation) Act, 2010, the Respondent submitted that the rates for each type of procedure and services were within the range of rates determined by the Central Government from time to time in consultation with the State Government. No straight jacket formulae prescribing the rate/ price could be created since it was subject to several variable factors. Furthermore, 'Health' being a State subject, the implementation and monitoring of the said Act was within the remit of the concerned State/ UT Government. Moreover, the list of medical procedure and the standard template for costing of medical procedures for regulation of medical treatment charges in those States/ UTs as applicable were already publicly displayed on their website. While providing the details of the States that have adopted the Clinical Establishments (Registration and Regulation) Act, 2010, the Respondent stated the UT of Chandigarh vide communication dated 30.01.2019 informed about their willingness to adopt the cost of Medical Procedures and Services that had been approved by DH & FW cum DRA, U.T. Chandigarh as prescribed under "Ayushman Bharat" and for the consultation charges as per the CGHS Rates in U.T. Chandigarh under the Clinical Establishment Act. On being queried by the Commission regarding the deadline for the implementation of the provisions of the Clinical Establishments (Registration and Regulation) Act, 2010, the Respondent re-iterated that being a State subject it was the prerogative of the State/ UT Governments to adopt the provisions of the Act. The Respondent also sought time till 18.02.2019 to provide their detailed cogent explanation/ submission and point wise reply in the matter in consultation with all the concerned divisions. The Commission instructed the Respondent to furnish their written submission strictly on or before 18.02.2019 taking into consideration the larger public interest involved in the matter.

In the meanwhile, the Commission was in receipt of a written submission from the Respondent dated 11.02.2019, wherein it was stated that the CPIO (MS) had already provided the information available with the Medical Services Section w.r.t. point no. 01 of the RTI application. However, with respect to the remainder points, the RTI as well as the First Appeal were transferred to the Dte GHS. Accordingly, the Addl. DDG (SG) Dr. Sudhir Gupta, FAA, DTE, GHS had been requested to comply with the notice of the CIC with respect to the remaining queries.

Subsequently, the Commission was in receipt of a written submission from Dr. Anil Kumar, Addl. DDG (AK) and CPIO, M/o Health and Family Welfare, Directorate General of Health

Services, National Council Secretariat, dated 18.02.2019, wherein while re-iterating the chronological sequence of the reply provided by the CPIO/ FAA, it was stated that the requisite information was sought from the concerned Divisions and reply was received from the Director, EMR Dte, GHS informing that information on points 01 to 05 was not available with them. Similarly, the ADG, Scheme for "Capacity Building for Trauma Care facilities in Government Hospitals on National Highways" Dte, GHS informed that the information was not available in the Trauma and Burn Program Division. However, the Dy. Secretary, NHM-4, MOHFW informed that revised IHPS Guidelines were disseminated among States and Union Territories to specify the minimum assured(essential) services that the health centres were expected to provide and the desirable service for States and Union Territories that the health scheme should aspire to provide. However, these guidelines were not enforceable. While providing the updated response on each of the 05 queries, the Respondent submitted with regard to point no. 01 that as per Rule 9 (iii) of the Clinical Establishments (Central Government) Rules, 2012, the National Council for Clinical Establishment had approved a list of standard procedures and a template for costing of these procedures which had been shared with the implementing State / Union Territories. The States had been requested to take into consideration all pertinent factors including local factors and define such rates. Thereafter the Respondent provided the updated information in respect of defining of rates of charges for procedures and services as received from all States (11) and Union Territories (6) where Clinical Establishments Act (CEA) was applicable. As regards the overall status of implementation of the CEA as on 18.02.2019, the Respondent annexed a brief status note regarding the CEA, 2010. It was further clarified that one of the conditions for registration of Clinical Establishments (CEs) was that it shall undertake to provide within the staff and facilities available, such medical examination and treatment as may be required to stabilize the emergency medical condition of any individual who comes or is brought to such Clinical Establishment. With reference to question 1 (d), a reference was made to a scheme "Capacity Building for Trauma Care facilities in Government Hospitals on National Highways" to submit that under such scheme the GoI provided funds for setting up of different levels of trauma care facilities in order to augment facilities to treat trauma victims. Regarding points 01 (e) and (f), it was stated that there was no plan of their division as on date to make a legislation for critical health care. However, as mentioned above, stabilization of Emergency Medical Condition was already covered under the CEA. In view of the aforementioned response, information on point no. 02 was treated as Nil. Regarding point 03 and 04, a reference was made to a weblink of National Health Mission and the patient transport ambulance services under Dial 108/102 ambulance services. As regards point no. 05, it was conveyed that the revised IPHS Guidelines were recommendatory in nature and not enforceable. The GoI provided budget under the National Health Mission for upgradation of Government Health Facilities (from Sub Centre to District Hospital Levels) to IPHS level through Programme Implementation Plan (PIP) of respective State Government. States were expected to identify gaps in the available facilities vis a vis IPHS and make provision for filling up of gaps and seek funds through PIP under NHM. Health being a State Subject, it was for the State Government to provide the health care facilities and the GoI only supplemented the efforts of the State Governments.

Having heard both the parties at length and on perusal of the available records, the Commission at the outset observed that even though strictly speaking, the matter was dealt with by the Respondent after taking into consideration the provisions of the RTI Act, 2005, however, taking a humanitarian approach in the matter and keeping in view the larger public interest in the queries raised by the Appellant regarding the implementation of the Clinical Establishments (Registration and Regulation) Act, 2010, the Commission observed that the clarifications issued by the Respondent by way of their written submission dated 18.02.2019 should be suo motu

disclosed by the Respondent in accordance with the provisions of the RTI Act, 2005 for the ease and convenience of the stakeholders at large.

The Hon'ble Supreme Court in the matter of Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi: (2012) 13 SCC 61 while explaining the term "Public Interest" held:

*"22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh([AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.).]"*

The Hon'ble Supreme Court in the matter of Ashok Kumar Pandey vs The State Of West Bengal (decided on 18 November, 2003 Writ Petition (crl.) 199 of 2003) had made reference to the following texts for defining the meaning of "public interest", which is stated as under:

*"Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus: "Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected." In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows : Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."*

In Mardia Chemical Limited v. Union of India (2004) 4 SCC 311, the Hon'ble Supreme Court of India while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, recognised the significance of Public Interest and had held as under :

*".....Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country....."*

The Commission also observed that a voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who *having to seek* information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information *suo-motu* to the public at regular intervals through various means of communications, including the Internet, so that the public need not resort to the use of RTI Act.

The Hon'ble Supreme Court of India in the matter of CBSE and Anr. Vs. Aditya Bandopadhyay and Ors 2011 (8) SCC 497 held as under:

*“37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.”*

The Commission also observes the Hon’ble Delhi High Court ruling in WP (C) 12714/2009 Delhi Development Authority v. Central Information Commission and Another (delivered on: 21.05.2010), wherein it was held as under:

*“16. It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word disseminate has also been defined in the explanation to mean - making the information known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information.”*

Furthermore, High Court of Delhi in the decision of General Manager Finance Air India Ltd & Anr v. Virender Singh, LPA No. 205/2012, Decided On: 16.07.2012 had held as under:

*“8. The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:*

*A. Publish inter alia:*

*i) the procedure followed in the decision making process;*

*ii) the norms for the discharge of its functions;*

*iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;*

*iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;*

*v) the particulars of recipients of concessions, permits or authorizations granted. [see Section [4\(1\)\(b\)](#), (iii), (iv), (v); (xii) & (xiii)].*

*B. Suo moto provide to the public at regular intervals as much information as possible [see Section [4\(2\)](#)].”*

**DECISION:**

Keeping in view the facts of the case and the submissions made by both the parties, the Commission instructs the Respondent to forward a copy of their written submission dated 18.02.2019 to the Appellant as also suo motu upload the contents of the written submission vis a vis the queries raised by the Appellant in his RTI application on their website within a period of 15 days from the date of receipt of this order in the larger public interest.

The Appeal stands disposed accordingly.

**Bimal Julka (बिमल जुल्का)**  
**Information Commissioner (सूचना आयुक्त)**

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