

CENTRAL INFORMATION COMMISSION

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

File No.CIC/SA/A/2014/000072

Appellant : **Shri Satbir Singh**

Respondent : **Rao Tula Ram Memorial Hospital
GNCTD, Delhi**

Date of hearing : **07-11-2014**

Date of decision : **25-11-2014**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 3, 19(3) of the RTI
Act**

Result : **Appeal allowed/
Disposed of**

The appellant is present. The Public Authority is represented by Dr. Sangeeta Basu, Mr. C.R.Yadav,APIO, Rao Tula Ram Memorial Hospital, GNCTD, Delhi.

FACTS:

2. The appellant Mr Satbir Singh is father of Anil Kumar, a young man who died in an a motor vehicle accident on 13.7.2013, where two motor vehicles collided in Delhi. Mr Naveen, Mr Vikas, Mr Monu were also injured in this accident. Appellant sought vide RTI application dt 31.8.2013 copy of MLC dt 13.7.2013 in respect of Vikas, Monu, Navin and Anil Kumar; No. of Vans attached with the Hospital and how many Ambulances were in hospital premises on

13.7.2013; copy of registration slip of these people and their medical treatment records. The PIO Dr Sangeetha Basu has promptly written to Mr Naveen Mr Vikas and Mr Monu seeking permission to give information sought by appellant about MLC report etc regarding those persons. Mr Naveen wrote back saying he had no objection in giving MLC and other papers. The photocopies of MLC of Navin and Anil, son of appellant were given on 7.10.2013. The CPIO vide reply dt 23.8.2013 claimed the exemption of section 8(1)(j) on point 1 and 3 saying she did not receive any communication from Vikas and Monu. Being aggrieved by the CPIO reply, the appellant made First appeal on 12.10.2013. FAA vide order dt 9.11.2013 held that the MLC report cannot be provided but direct the CPIO to provide other information like MLC no. police station etc. On non-compliance of the FAA order within the prescribed time and for complete information, the appellant made Second Appeal before the Commission.

Decision

3. Both the parties made their submissions. The respondent/PIO submitted that they had already provided MLC reports in two cases namely, Anil and Vikas. The reports in other cases are not provided, as the third party has not replied anything to their letter. They, therefore, submitted that in the absence of definite response from the third party, they are not able to take any decision to provide the information. Moreover, these cases are under investigation by the SHO, Jaffarpur PS.

4. Whether the information sought is the Medico Legal Case report? Is it a public document or deemed to be confidential & personal? Whether accused has right to that information either under RTI or under any other law? The Medico Legal Case (MLC) is defined as “any case of injury or ailment where, the attending doctor after history taking and clinical examination, considers that investigations by law enforcement agencies (and

also superior military authorities) are warranted to ascertain circumstances and fix responsibility regarding the said injury or ailment according to the law”.

5. Medico Legal reports are prepared by the hospital on the instruction of the Police authorities. The reports are used by the police to establish guilt during prosecution. Medico legal cases include certificates of Physical Examination of any person, by a Specialist Medical Officer or Team of Specialist Medical Officers, on the written requisition from a Judicial or Police Officer.

6. The rule laid down in **Abdul Halim Khan v. Saadat Ali Khan**, AIR 1928 Oudh 155, was that "when a Civil Surgeon reports to a Magistrate he is merely giving his expert opinion and is not making a record of his 'act' in official capacity for the use of the public. It is only his act of making a record in such a capacity that would be considered to be an 'act' within the meaning of S. 74." Judges in that case explained that the opinion of the Medical Officer contained in the post-mortem report was only to aid the Investigating Officer in investigation. The report cannot be held to be a record of Medical Officer of his official "act" for the use of the public. It is well settled that the post-mortem report or an injury report is not substantive evidence. It has to be proved by the maker of it. It cannot, therefore, be termed as a public document as envisaged under S. 74 of the Evidence Act". This was accepted by Delhi High Court in **State vs Gian Singh** decided on 13 October, 1980, by A B Rohatgi, Chiranjit Talwar, JJ. (<http://www.indiankanoon.org/doc/1940919>). This Bench held: As a rule, the post-mortem report is bound to contain the opinion of the Medical Officer. He is to opine whether the injuries were post-mortem or ante-mortem; he is to state the approximate time of death. Invariably he must mention the kind of weapon which was used in causing the injuries.

7. This Commission has ordered in file No.CIC/AD/A/2013/000778-SA dated 13/6/2014 saying..."every medico-legal report is not a public document. Especially when related to prosecution of criminal charges, the disclosure of those documents depend upon several

legal provisions. These medico-legal case records are not prepared at the instance of the accused or patient, but were made for the legal requirements of criminal justice system”.

8. In ***Union of India through Director, Ministry of Personnel, PG & Pension v. Central Information commissioner***, the Delhi High Court held in Writ Petitions 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007 on 30th November, 2009 under paragraph 87: “FIR and post mortem reports are information as defined under Section 2(f) of the RTI Act as they are material in form of record, documents or reports which are held by the public authority”. If disclosure of such information impedes the investigation or apprehension of offender or prosecution of offender, it can be denied, as held by the Delhi High Court in the above referred case. The said Section does not provide blanket exemption, even if it is partial in nature and is justified. Delhi High Court explained that there shall be no disclosure of post mortem reports when investigation is in progress. Thus MLC reports can be shared when that would not impede the process of investigation or prosecution.

9. One option before the Commission is remanding case back to CPIO for fulfilling Section 11 requirement of seeking objections from two injured persons and giving second and third notices to them besides giving them opportunity to go in for first and second appeals. This should have been considered at the First Appellate Authority level. Unfortunately, the first appellate authority Dr. Vijay Rai, did not apply mind and concluded on 9.11.2013 that the information sought could not be provided. As more than one year was lapsed, and the process would take long time for completion, which might cause serious injury to the public interest in pursuing the action in criminal case and compensation case of the deceased son of the appellant, the Commission thinks that remanding case back to CPIO, who did not perform her duty completely under Section 11, would serve no purpose and defeat the ends of justice for which the appellant is fighting.

10. This case being a motor vehicle accident wherein the son of appellant died, and the actions are under way to secure compensation and adjudication on allegations of negligence, the MLC and related record would be highly relevant to the appellant-father of the deceased son. The denial of MLC and other medical record of two persons injured in the same accident who were driving motor vehicle which collided with the other, would be improper and not provided by the RTI Act. Whether Section 8(1)(j) exemption will apply to this demand for information about MLC of another person, which is regarded as personal information, need to be examined.

11. The letters dated 3.9.2013 from to three injured persons seeking their objection/permission to provide MLC and other medico legal record pertaining to them, contained a clause "in case, you fail to submit your reply in this regard within stipulated time, it will be presumed that you have no objection to provide the information to the applicant". The time given for reply was seven days from the date of issue of the letter. No response received by the date of hearing i.e., 7.11.2014. The CPIO furnished the information about two injured persons but withheld the MLC papers about other two. The CPIO should have presumed that those two have no objection, and should have considered whether information sought could be given and issued notice of her decision to disclose the information, as prescribed under Section 11(2) to Section 11(4), presuming that they had no objection as indicated by absence of response. Mr Navin in his letter of no objection, alleged that he suffered injuries because of negligent driving of Mr. Anil Kumar, son of the appellant. Since Mr Anil Kumar is the deceased, the criminal case against him cannot continue. As the 'negligence' or otherwise of other users of vehicle is not known, the investigating officer might have decided to investigate and prosecute the case. In any eventuality, the MLC reports and other records assume importance in establishing negligence or otherwise, which will be

useful for claiming insurance money by the injured persons and deceased person. In this case all the injured persons are involved in same accident, they could be 'accused' and their negligence or innocence need to be established in the court of law. Hence, MLC and related information, cannot be treated as third party information or personal information. There is public interest in giving such information to the appellant, who is the father of the deceased, for whatever worth it is for him, in the interests of criminal justice.

12. The Commission, therefore, directs the respondent authority to write to the concerned Investigation Officer/SHO, Jaffarpur and seek the current status of the medico-legal case and objections, if any, against furnishing the information, with full reasoning and justification for those objections. If the disclosure of this information to the appellant, impedes investigation in any manner, only then the information can be withheld. If the Investigation Officer has no objection or does not respond within ten days from the date of CPIO's letter to him, and if the PIO/Department is ready to provide the information to the appellant, then the respondent authority shall furnish the desired information to the appellant after the expiry of 10 days, from the date of writing to the investigation officer. The entire process should be completed within one month from the date of receipt of this order. The appeal is **disposed** of.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

1. The CPIO under RTI, Govt. of NCT of Delhi
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