

CENTRAL INFORMATION COMMISSION

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

File No.CIC/SA/C/2014/000223

Complainant	:	Sh. Rakesh Kumar Gupta
Respondent	:	Directorate of Health Services GNCTD, Delhi
Date of hearing of Show Cause Notice	:	12-01-2015
Date of decision	:	
Information Commissioner	:	Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)
Referred Sections	:	Sections 18 of the Act
Result	:	Complaint Allowed/disposed of

The complainant was heard on Mobile No.9811079436, as requested by him. The Public Authority is represented by Dr.Lily Gangmei and Dr. R.N.Das.

FACTS:

2. This Commission by order dated 31.12.2014 directed the Directorate of Health Services to disclose the action taken against private hospitals which breached the condition of serving EWS patients free of cost and recover the 'unjust enrichment' made by them. Responding to a complaint made by Rakesh Kumar Gupta, on his RTI application dated 30th October, 2013, for information about compliance of Delhi High Court order of 2007 for recovery of unjust money made by the private hospitals. The Commissioner pointed out that the public have a great interest in checking the manipulative tactics in depriving the people of their treatment facilities and maximizing the profits by some private hospitals taking the undue advantage of concessions given by the Government. Even after lapse of seven years, the judgment was not implemented.

3. In the past DDA and Land & Development Office of Government of India had allotted land to the registered societies and trust on concessional rates (predetermined and zonal variant rates) for establishment of hospitals and also stipulated the conditions that they would provide certain percentage of beds in the hospitals free for the poor/indigent category patients. Similarly in the OPD, it was stipulated that free treatment has to be provided to the patients belonging to the indigent category. **These hospitals came into functional stages during different times and had the conditions varying from 10% of free beds in the IPD to 70% IPD beds in some of the cases, however in most of the cases it was 25% free IPD beds.** A high power committee under the chairmanship of Justice AS Qureshi was also constituted in the year 2000 and the recommendations made by the said committee regarding the conditions that there should be 10% free beds in the IPD and 25% of the patients in the OPD should be provided free treatment. It was also recommended that the conditions should be uniform and applicable to all the allottees with or without conditions and the free treatment should be totally free. Delhi Govt found these recommendations reasonable and accepted the same and intimated the concerned land allotting agencies, to solve this whole gamut of problems.

4. Hon'ble Delhi High Court in Civil Writ 2866/2002 delivered judgment on 22.3.2007. The Court pointed out, how 20 private hospitals & nursing homes are unjustly enriching themselves enjoying conditional concessions given by the state without fulfilling those conditions. The court had also observed that only poorer categories of patients go to general public hospitals, and they do not go to the private hospitals due to which the earmarked beds in the private hospitals remain unoccupied.

5. The Commission directed on 31st December 2014 Dr. R. N. Das, who is in custody of information about nursing homes in his capacity as Medical Superintendent, who also supposed to implement the judgment etc, to show cause why maximum penalty cannot be imposed against him for not giving information to CPIO in order that CPIO communicated the same to the appellant, by way of complying with orders of First Appellate Authority. The

Commission also directed Dr. Lily Gangmei, CPIO, to show cause why maximum penalty cannot be imposed for not collecting the information as per the orders of the First Appellate Authority from Medical Superintendent Nursing Homes and for not furnishing it to the appellant.

6. In response to this notice, Dr. R N Das and Dr. Lily Gangmei the CPIO were present on 12th Jan 2015.

- a) Dr R N Das did not file any explanation or affidavit showing cause why he shall not be penalized under Section 20 of RTI Act, but personally explained that he has given the information needed to the CPIO.
- b) The CPIO submitted a bunch of papers claiming the relevant information was given, files were shown in inspection to the complainant and they said that they have brought several files to the Commission.
- c) The Complainant was not physically present and wanted audio conferencing. When contacted, he complained that relevant files were not shown. The **Chartered Accountants Reports were not presented during the inspection**. He alleged that in spite of show cause notice, the respondent officers were adopting delay tactics and not offering any information. He alleged that there were certain hospitals regarding which there was no dispute at all, but the department was not ready to recover from those hospitals also.
- d) CA reports were made by the alleged hospitals by 30th May 2014, interim report was received much earlier on 15th August 2013 with a note that final report would be submitted within 75 days. Going by that date final report should have been received in October 2014 itself. Though the High Court gave 6 months time to enforce the order, the department has totally failed to implement it even after seven years passed off. The process which should have been completed in 2013 has been dragged into 2015 and when it will be done is not known to any, the complainant stated in his written submission.
- e) The Special Committee was entrusted with the responsibility of ascertaining the amount to be collected, where as nothing has been done

so far, the complainant alleged. The Complainant insisted on penal action and disciplinary action against the CPIO and deemed PIO Dr R N Das.

- f) In fact the Complaint is against non-furnishing of part information which is very vital in ascertaining that the order of Hon'ble High Court was not implemented even after seven years. Complainant expressed an apprehension that some of the officers in respondent authority were cooperating with the private hospitals supposed to pay huge amount of compensation for their unjust enrichment.
- g) The CPIO and deemed PIO submitted that the number of hospitals making unjust enrichment was increased from 20 to 43.
- h) The written submission from the CPIO dated 12.1.2015 stated in pursuance of orders of First Appellate Authority they have forwarded the copy of FAA to other offices within their office for compliance. After receiving the report on 6.2.2014 it was forwarded to applicant on 10.2.2014.
- i) The Commission noted that order of FAA dated 30.1.2014 was supposed to be complied with in 10 days on points 2,3 and 4. In the reply it only contained names of members of the special committee, and information that last audit report was received on Dec 2013, leaving out other points in RTI application.
- j) Regarding the vital question about process of recovery of unwarranted profit they gave a lifeless reply, 'it is under process'. The Commission finds reason in complainants' argument that 'under process' is a camouflage for hiding information and it was no compliance of FAO.
- k) It is relevant here to quote the sentence in the order of FAA: "The PIO is directed to get the complete and proper reply with reference to Q No 2,3 and 4 from Nursing Home Cell and provide it to the appellant within 10 days".
- l) Neither the CPIO nor the concerned head of Nursing Homes Dr R N Das have done anything to give the complete and proper information within 10 days.
- m) They spent whole of the year 2014 without giving proper and complete information.

- n) The CPIO reiterated that the entire information about recovery is under process before the committee and the details about status of implementation cannot be given as final decision was not taken.
- o) When the Commission repeatedly pointed out that the RTI Act had not provided any exception that information need not be provide if the matter was under process or consideration by higher authorities, there was no answer.
- p) Original RTI Application was made on 30th October 2013, to which CPIO responded only by letter dated 5.12.2013 and another part came on 13.1.2014.
- q) The RTI point No. 2 (details of Chartered Accountant reports about hospitals, interim report and final report), No. 3 (hospital wise information regarding reasons for delay if the interim report is not received within permitted time i.e., one month), and under point No. 4 he sought inspection of files which was not completed till this day. Regarding these three aspects of his RTI application, the complaint is that there was either delay, denial or incomplete information etc.
- r) The purpose and purport of the RTI application and order of FAA was to give or facilitate inspection about action taken and about reasons for the enormous delay, answering which was also not done so far. They neither answered literally the questions nor addressed the basic issue of the question. There is not only delay in implementation of the court order but also delay in furnishing the information about it.
- s) Though there were last minute responses, there was no giving of substantial information. After show cause notice was issued by the Commission the CPIO wrote a letter to complainant on 9.1.2015 offering inspection of the remaining files/records as available with them.
- t) The fact that CPIO was offering inspection of remaining files confirms allegation of complainant that proper information was not given.
- u) Both the CPIO and deemed PIO, Dr. RN Das explained for long showing the causes like 'they were not members of special committee', 'they were only working like post offices', 'they were not having files from other

officers including higher officers' and most importantly that they could not give information because it was under 'process' by others.

- v) On page 55C of the bunch of papers given on 12th Jan 2015, a document dated 30.2.2014 says interim report of auditor was given before 15.8.2013 and final report was under consideration before the Special Committee. They neither give date of final report nor contents of it.
- w) No authority is explaining what is the term or time limit given to the Special Committee to complete its task, can it go on for years without deciding anything, nor to say when they would decide.
- x) The Commission observes that RTI question provided them a reason to act, but they chose to play with it by giving incomplete and illegal responses like 'under consideration by special committee' which under RTI Act is not a bar to exempt disclosure of status of implementation. First appeal was a warning for the respondent authority to act, but they refused to. Filing complaint before CIC was yet another warning. As per the existing order, the complaint dated 19.2.2014 was posted on 23.12.2014. They got full ten months to act, which the respondent authorities conveniently ignored and on that day Mr R N Das represented the CPIO and public authority with eloquent argument trying to hide lack of will to act and lethargy besides delaying tactics in enforcing the Delhi High Court order.
- y) Only after stern warning under show cause notice was issued by Commission, he brought several files along with the CPIO on this day of hearing. Though there is an improvement in activity there was no information supplied either to Commission or the complainant. Only positive point is that they are now ready to show certain Chartered Accountant reports, which they went on refusing till now under unacceptable pretexts.
- z) After show cause notice dated 31.12.2014, the inspection was offered to complainant, where he reported that he was informed that CA reports and further files were with Law Department/special committee. In a complaint, the Commission has to consider whether complained non-

compliance was true or not. This is further proof of noncompliance of FAA order dated 30.1.2014 which gave 10 days for compliance.

In view of the reasons explained above from a to z, the Commission finds that it is a fit case for imposing maximum penalty against the CPIO Dr Lily Gangmei for just acting like a post office, while the RTI Act 2005 imposed on her in her capacity as Chief Information Officer to collect and give information, or at least abide by the order of FAA who was her senior officer. Another officer who was responsible for Nursing Homes was Dr R N Das who was supposed to give all this information to CPIO but was acting similarly saying 'i am just a post office'. His explanation was totally unsatisfactory and his tone and tenor of argument presented before the Commission was totally against the spirit of taking action in favour of people and giving information under RTI Act.

DECISION

7. The Commission observes the Department of Health Services should serve the health needs of the poor and not the profit-generating private hospitals which are breaching the conditions to serve the poor. The public authority should remember that they are supposed to protect the public money to be collected from these hospitals, as per the High Court order and norms and any delay in recovery is loss of revenue being caused to the people and to that extent it is abdication of that responsibility.

8. The Commission finds inordinate delay in implementation of Court Order by the Public Authority beyond 7 years and finds no ray of hope of implementation in the near future. Entire effort of the PIO and deemed PIO is to hide this delay or justify it with lame excuses. The top officers of the Department are not helping the CPIO by deciding or providing the information. The delay tactics in enforcing the order of the Delhi High Court is reflected in file noting of the department where in they are unnecessarily sending the files to legal counsel for advise and then to Law Department for opinion. Several times they have sent back the file saying 'administration has

to take a decision'. It is clear that the officers including deemed PIO are not taking any decision and hence the CPIO is in a helpless situation.

9. However, the CPIO in this case has not stated anything about the indecision and indifference of the higher officers of the department which is the real cause of the delay in furnishing the information. The Commission finds inordinate delay in implementation of court order which is the cause of denial of information about it. After hearing both the complainant and respondent officers and seeing several files shown by them, the Commission suspects a vested interest and corruption behind delay and denial of information, which need to be probed. Under Section 18(2) the Commission is satisfied that there are reasonable grounds to inquire into this matter. Under Section 19(8)(a) the Commission require the public authority to inquire into this matter as that facilitates, in the opinion of the Commission, to secure compliance with the provisions of the RTI Act. The RTI application in this complaint cum second appeal should have made the Directorate of Health Services accountable to the people and answerable about their inaction and indifference. The Commission thus requires Dr. N V Kamath, the Director, Health Services Department, to inquire into this matter and inform the commission the result of inquiry, in the form of an affidavit, besides giving reasons why the public authority failed to act and why file is being shuttled between different departments and officers unnecessarily and when they would be in a position to initiate any substantive action to implement Hon'ble Delhi High Courts' order given in 2007, within 30 days from the date of receipt of this order.

10. The RTI Act in section 20 provided specifically that the CIC or SIC can penalize the CPIO or State PIO for not furnishing the information without any reasonable cause. The CIC has no power to deal with any other officer other than PIO unless finds someone else as responsible to answer because he held the information. As Medical Superintendent of Nursing Homes Dr R N Das was one identified officer who did not furnish information from his records, the Commission deems him to be the PIO for this case. It was one of the officers

who dealt with, delayed and denied the information sought in this case apparently. The role of others has not come open. The indecision or indifference of the higher officers or department as a whole is not provided with an excuse neither under Section 8 nor in any other provision of the RTI Act. The CPIO or deemed PIO represent the entire Department for its indifference and inaction, hence the Commission has no other way except to impose maximum penalty on the CPIO and deemed PIO, Dr R N Das for their miserable failure in furnishing the information in spite of the direction by their own senior officer the First Appellate Authority.

11. The Commission recommends the public authority to initiate the disciplinary action against the CPIO and Deemed PIO Dr. R N Das based on the above reasons.

12. In view of huge public interest involved in this matter, the Commission considers this as second appeal for compliance of orders of FAA and exercising its powers under 19(8)(a) of RTI Act, the Commission requires Dr. N V Kamath, the Director, Health Services Department, who issued show cause notices to Nursing Homes to explain what action was taken after those notices, in the form of an affidavit, besides giving reasons why the public authority failed to act and why file is being shuttled between the standing counsel, department of law and headquarters, though the Law Department has specifically stated that administrative action should be taken and when they would be in a position to initiate any substantive action to implement Hon'ble Delhi High Courts' order given in 2007, within 21 days from the date of receipt of this order.

13. The Commission directs the CPIO and Dr RN Das, Medical Superintendent Nursing Homes to give certified copies of file notings on implementation of judgment of Delhi High Court, a comprehensive 'action taken report' on that order and report explaining time scheme for action to be taken within one month, to the appellant and the Commission.

14. The Commission, hence, imposes Rs 25,000 as maximum penalty against Dr Lily Gangmei the CPIO for not furnishing complete and proper information to the appellant as directed by FAA even after 10 months instead of giving it in ten days as ordered by FAA.

15. The Commission also imposes Rs 25,000 as maximum penalty against Dr R N Das the incharge MS for Nursing Homes for not giving information in time in compliance with the orders of FAA until 8.1.2015.

16. The Appellate Authority is directed to recover the amount of Rs.25,000/- from the salary payable to Dr Lily Gangmei, the PIO & Dr R N Das, incharge MS for Nursing Homes by way of Demand Draft drawn in favour of '**PAO CAT**' in 5 equal monthly installments. The first installment should reach the Commission by 02nd March, 2015 and the last installment should reach by 2nd July, 2015. The Demand Draft should be sent to **Shri Shanti Priye Beck, Joint Secretary & Additional Registrar Central Information Commission, Bhikaji Cama Place, August Kranti Bhawan, New Delhi 110 066.**

(M.Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Addresses of the parties:

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4. The Director of Health Services, Govt. of NCT of Delhi
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5. Shri. Shanti Priya Beck J.S. (Admin)
Central Information Commission
6. Shri. Babu Lal
Dy. Registrar
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