CENTRAL INFORMATION COMMISSION

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

File No.CIC/AD/A/2013/001681-SA

(Ms.Nisha Priya Bhatia Vs. Institute of HB&AS, GNCTD)

Appellant	**:**	**Ms. Nisha Priya Bhatia**
Respondent	**:**	**Institute of Human Behaviour and Allied Sciences, GNCTD**
Date of hearing	**:**	**27-06-2014**
Date of decision	**:**	**23-07-2014**
Information Commissioner	**:**	**Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)**
Referred Sections	**:**	**Sections 3, Sec 8 (1) (h),19(3) 25(5) of the RTI Act.**
Result	**:**	**Appeal allowed / disposed of**

Ratio: **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 and world medical ethics. The Commission recommends Public Authority to develop a time frame mechanism of disclosure of medical records to patients or their relatives with safeguards for privacy and confidentiality of the patient.**

Parties :

2. The appellant is present. The Public Authority is represented by Mr. S.P. Jaiswal, PIO, Institute of Human Behavior and Allied Sciences, GNCTD, Delhi.

FACTS

3. This is a story of prolonged struggle by appellant, who knocked the doors of almost every forum for justice, perhaps out of compulsion. The appellant was a senior officer at prestigious department, R&AW(Research and Analysis Wing) alleging a raw deal in several matters. The petitions and complaints by appellant contain serious allegations that kicked up conflicts and slapping of criminal cases by and against her. While she was charged with attempt to commit suicide under Section 309 of IPC, she charged senior officers with criminal defamation under Section 499, 500 of IPC. She made several complaints including sexual harassment against which an inquiry was conducted where the charges could not be proved for want of evidence, while the enquiry committee observed violation of guidelines prescribed by Supreme Court in Vishaka & Ors Vs State Of Rajasthan & Ors., pertaining to procedure and constitution of inquiry etc. The appellant was referred to Institute of Human Behavior and Allied Sciences GNCTD by the Delhi High Court, which she strongly believes to be great injustice happened to her as she was detained there for almost a month, leaving sad experience of torture and harassment to her and her aged parents. Detailed report by medical board consisting of several expert doctors did not find any mental disorder or any major illness in her but observed that 'it also cannot be said that there is no mental health problem at all'. It is significant to note that the medical board noted her cooperative attitude in the hospital. She alleged a deliberate conspiracy and attempt to depict her as mentally sick person just because she filed several complaints, which were necessitated out of compelling circumstances, the truth or otherwise of which, this Commission cannot go into. She claimed that because she was not sick, the detention there was illegal and if she is really sick she should be treated and not punished like that.

4. The question before the Commission is limited, that is - **Whether appellant has right to information and access to her own medical record that is held by respondent institute**. In view of the background briefed above, she is in dire need of the medical records to tell the world that she was not mentally sick but fit and also for defending her case before the appropriate forum.

5. Through RTI application dated 11-8-2011, the appellant, Ms. Nisha Priya Bhatia is seeking information regarding her 'illegal detention' in the chronic patients' ward of the respondent Institute, under the garb and on the pretext of a medical check up from the evening of 20-1-2011 to 18-2-2011 and sought the following:-

(i) Certified and paginated copy of the Appellant's entire case file;

(ii) Certified copies of all correspondence/reports/commentaries exchanged between the various doctors at IHBAS concerning the Applicant;

(iii) Certified copies of documents containing all entries – including daily diet consumed by the Applicant/daily medical check up (if any at all) – kept by the nurses in the chronic patients' ward where the Applicant was detained from the evening of 20-01-11 to the afternoon of 18.02.11;

(iv) Certified copies of all correspondence exchanged by IHBAS with any court of law, including the Delhi High Court, or any government agency, including the R&AW or the PMO or the Cabinet Secretariat, Rashtrapati Bhawan, concerning the Applicant;

(v) Certified copies of all official and legal documents' alleged to have been made available by the Applicant to the team of doctors of IHBAS – (Ref. para 1 on page 1 of 3 of the report of medical board which met on 23.02.11).

6. Appellant during hearing submitted that R&AW(Research and Analysis Wing) is an organization where its nature of working requires everything to be kept secret and nothing is known to others, these iron walls of secrecy allow no junior officer to raise his/her voice against the high-handed actions and insults of the Senior officers. Appellant also stated that: "As I questioned, my career was being spoiled by branding me as mentally unsound and was forcefully sent to the respondent institution. In such hospital there will be no scope for any escape or rescue or remedy until officers themselves change their mind and order the discharge". She also said that at the time of 'treatment' she was holding a high position as a director of an Institute, where she was teaching/training the candidates for R&AW (Research and Analysis Wing) in the Cabinet Secretariat. According to her statement, her superiors got antagonized against her for no reason, started withdrawing her privileges as an officer, gradually and ultimately her chair was also removed leaving her with no place to sit and work. She strongly believes that if she gets the information she sought, their actions would be exposed.

7. The PIO claimed via letter dated 15-9-2011 that the information sought was exempted under section 8(1)(h) of the RTI Act as disclosure would impede the process of investigation. FAA vide his order dated 18-10-2011 upheld the PIO's order and disposed of her first appeal, stating that she was absent during the said hearing also. The appellant, therefore, approached the Commission by way of 2nd appeal. On the other hand, the respondent/PIO personally sought adjournment to facilitate his Director/FAA to attend after returning to India on 28th June, 2014, from his foreign tour and defend.

8. PIO during the hearing submitted that his predecessor PIO sought exemption under section 8(1)(h) which states that "if the information sought by the appellant, would impede the process of investigation or apprehension or prosecution of offenders" the same

can be denied, as the case of the appellant is also related to the on-going department enquiry. He cited an order of CIC in No.CIC/SG/A/2011/002238/16606 dated 27.12.11 in appeal filed by Mrs Rashmi Dixit Matiman at IHBAS wherein the denial of information by IHBAS on the ground of fiduciary relationship under 8(1)(e) was not accepted. In the writ petition by IHBAS the Delhi High Court passed an interim order allowing exemption and the hearing is still pending. The PIO claimed the matter was sub-judice. The PIO further contended as follows:

> "IHBAS would also like to make a reference to another similar case wherein a RTI application and appeal was filed by Mrs. Rashmi Dixit Matiman at IHBAS which was duly replied by IHBAS vide letter dated 29-4-11 and subsequent order of FAA, IHBAS dated 1-6-11 providing that the information sought by the applicant is sensitive/confidential in nature and falls under the purview of section 8(1)(e) of the RTI Act. The FAA, IHBAS upheld "that in a psychiatry case – the medical records were not only physical clinical examination but included various information shared by the relatives particularly spouse, children, parents etc. the fiduciary relationship in psychiatry cases extends not only to the patient but also to the information shared by others. Information provided by each of the informants to any of the team members of a mental health team, should be considered as having been provided in a fiduciary relationship, therefore, Section 8(1)(e) of the RTI Act is applicable." Thereafter, the appellant approached the CIC against the order of FAA, IHBAS and CIC announced its verdict in No.CIC/SG/A/2011/002238/16606 on 27-12-11 with the direction that "The Appeal is allowed. The PIO is directed to provide the complete information as per records on queries 1, 3, 4, 8 and 9 to the Appellant before 20th January, 2012"
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> IHBAS felt that the decision of CIC was to be re-looked taking into consideration the involvement of important issues of privacy, affordable public policy and psychiatric practice, which may affect larger public interest as a precedent. It therefore became obligatory on the part of IHBAS in the case to approach Hon'ble High Court of Delhi against the decision of CIC dated 27-12-2011. Hon'ble High Court of Delhi passed an order on 26-3-2012 "Exemption allowed, subject to all just exceptions". The matter has been adjourned for 29-8-14 and the interim order granted by Hon'ble High Court of Delhi has been made to continue. The case of Ms. Rashmit Dixit against the decision of CIC is sub-judice and the implementation of the decision of CIC will be subject to outcome of Civil Writ Petition filed in the Hon'ble High Court of Delhi."

9. With regard to the submission of the PIO, in the case referred [CIC/SG/A/2011/002238/16606], the appellant had claimed that she was forcibly admitted by her husband without informing her what ailments she was suffering from, and alleged that she

was hospitalized only to terrorize her and certify as mentally ill. First Appellate Authority in that case claimed that information about her condition was obtained from different sources which included her husband and therefore the information was held in a fiduciary capacity by the doctors. The FAA's order was rejected by the Commission which directed furnishing of information to the appellant. **The Commission considered the submission and holds that the CIC decision and interim order of Delhi Court had no relevance to this case, because the grounds claimed are different i.e., in this case they invoked section 8(1)(h) and in the other it was 8(1)(e).**

10. As to the submission of the appellant that there is on-going departmental enquiry for denial of information, the PIO chose not to give details of enquiry and how long it would go, what was the charge and stage and how the disclosure would interfere or hamper or impede the investigation or prosecution.

11. In view of the above the **issues before the Commission are:**

A) Whether appellant has right to information about her own medical records?
B) Whether appellant's case fall under provision of life and liberty?
C) Whether information sought can be denied under Section 8(1)(h) of RTI Act?

12. As part of the first issue, we need to refer to provisions of Consumer Protection Act, 1986 to ascertain whether appellant has the right to information about her own medical record.

(A) Right to information under RTI and Consumer Protection Act:

Expression “Consumer’’ is defined in the Consumer Protection Act, 1986: **S 2(1) (d) "consumer"** means any person who, -(i) omitted

> (ii) hires (or avails of) any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires (or avails of) the service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person,

Similarly as per **Section 2(1)(o) : "service"** means –

> “ service of any description which is made available to the potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, (housing construction), entertainment, amusement or the purveying of news or other information, but does not include rendering of any service free of charge or under a contract of personal service.”

In a landmark judgment in **Indian Medical Association Vs. V.P Shantha [1995(6) SCALE 273]** Hon’ble Supreme Court of India has stated that “Service” rendered by Medical Practitioner were covered under Consumer Protection Act. Hon’ble Supreme Court laid down:

> (1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.
>
> .....
>
> (10) Service rendered at a Government hospital/health center/dispensary where services are rendered on payment of charges and also rendered free of charge

to other persons availing such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be "service" and the recipient a "consumer" under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.

(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under Section 2(1)(o) of the Act."

Thus, the appellant is a consumer in her capacity as 'patient' as per the definition of Consumer under Consumer Protection Act 1986 and according to Supreme Court's landmark judgment in IMA vs Shantha, the medical services are 'services' under that Act.

Therefore, the Appellant has right to information and treating institution has a legal duty to give proper information, not to give misleading information and not to resort to unfair trade practices.

The relevant provisions of Consumer Protection Act vide respect to Right to information are -

Section 6 of CPA: Objects of the Central Council:-

The objects of the Central Council shall be to promote and protect the rights of the consumers such as-

(a) the right to be protected against the marketing of goods 2[and services] which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods 1[or services, as the case may be], so as to protect the consumer against unfair trade practices;

Section 2 of the CP Act defines -

(f) "**defect**" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or 2[under any contract, express or] implied, or as is claimed by the trader in any manner whatsoever in relation to any goods;

(g) "**deficiency**" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

UNFAIR TRADE PRACTICE

(r) "**unfair trade practice**" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely,-
(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof: PROVIDED that where a defence is raised to the effect that such warranty or guarantee is

based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation: For the purposes of clause (1), a statement that is-

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale of supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement;.

Ozair Husain Vs Union of India [AIR 2003 Delhi 103], the bench of A D Singh, M Mudgal held that consumer had right to information about the product. In this PIL the petitioner sought a direction to disclose voluntarily as to whether food product that is being

sold contains elements from animals or not. In this case the relationship between Right to Information and freedom of expression was discussed. The bench said:

> "freedom of expression enshrined in Article 19(1)(a) can serve two broad purposes - (1) it can help the consumer to discover the truth about the composition of the products, whether made of animals including birds and fresh water or marine animals or eggs, and (2) it can help him to fulfillll his belief or opinion in vegetarianism". Article 10 of the European Convention on Human Rights provides that everyone has a right to freedom of expression and this right shall include freedom to hold opinions and to receive information and ideas without interference by public authority and regardless of frontiers. Article 19(1) and 19(2) of the International Covenant on Civil and Political Rights declares that every one shall have the right to hold opinions without interference, and every one shall have the right to freedom of expression, and this right shall include freedom to seek, receive and impart information of ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. It needs to be noted that India is a signatory to the aforesaid convention….. Right to hold opinions and to receive information and ideas without interference embodied in the Covenant is concomitant to the right to freedom of speech and expression which includes right to free flow of information. Since ancient times we have allowed noble thoughts to come from all sides [Rig Veda]. This has helped in forming, building, strengthening, nurturing, replenishing and recreating opinions and beliefs of an individual…… Reading Article 19(1)(a) along with the Covenant, it must be recognised that right to freedom of speech and expression includes freedom to seek, receive and impart information of ideas. It seems to us that freedom to hold opinions, ideas, beliefs and freedom of thought, etc., which is also enshrined in Preamble to the Constitution, is part of freedom of speech and expression.
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> 20. It appears to us that where packages of food products, drugs and cosmetics do not disclose any information in writing and by an appropriate symbol about the composition of the products contained therein, right to freedom of conscience of the consumers is violated as they may be unconsciously consuming a product against their faiths, beliefs and opinions.
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> 21. In view of the aforesaid discussion, we are of the view that it is the fundamental right of the consumers to know whether the food products, cosmetics and drugs of non-vegetarian or vegetarian origin, as otherwise it will violate their fundamental rights under Article 19(1)(a), 21 and 25 of the Constitution.
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> 23. In so far as food products are concerned, adequate provisions have been made for informing the consumers as to whether or not the article of food is vegetarian or non-vegetarian. As regards drugs and cosmetics, necessary amendments have not been made in the relevant statutes. In so far as a life saving drug is concerned, there is a view point that the information: whether or not it is derived or manufactured, wholly or partly, from an animal, should not be disclosed since it is meant to fight disease and save life
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> 25. Till such time the requisite amendments are carried out, we direct as under:-

(1) Where a cosmetic or a drug other than life saving drug, as the case may be, contains ingredients of non-vegetarian origin, the package shall carry label bearing the following symbol in red colour on the principal display panel just close in proximity to name or brand name of the drug or cosmetic :-

(2) Where a cosmetic or a drug other than life saving drug, as the case may be, contains ingredients wholly of vegetarian origin, the package shall bear the following symbol in green colour on the principal display panel just close in proximity to name or brand name of the drug or cosmetic:-

(3) Where a cosmetic or a drug other than life saving drug has ingredients of vegetarian or non-vegetarian origin, a declaration shall be made in writing on the package indicating the nature of the origin of the product.

(4) The Director General of Health Services/Drugs Controller General, Govt. of India, shall issue a list of Life Saving Drugs within a period of two months.

Thus, as sought by the petitioner, the division bench of Delhi High Court gave following directions: (i) to protect the rights of innocent conscientious consumers who object to the use of animals in whole or in part or their derivatives in food, cosmetics and drugs, etc., by making the manufacturers and packers thereof to disclose the ingredients of the aforesaid products so that they make an informed choice with regard to their consumption; (ii) to the manufacturers and packers of cosmetics, drugs and articles of food for complete and full disclosure of the ingredients of their products being sold to consumers; (iii) a declaration that the consumers have a right of making an informed choice between the products made or derived from animal and non-animal ingredients; and (iv) a direction to the manufacturers and packers of food, cosmetic and drugs that the products made from animals should bear an easily identifiable symbol conveying that it has an animal ingredient. "

The above judgment deals with right to information to exercise their choices and beliefs under Consumer Protection Act. Extending this principle derived from Articles 21 and 19 of our Constitution, a consumer of medical services too has a right to know what treatment was given to him/her, what were the reports of diagnostic tests, what were the opinions expressed by doctors or specialists, why he/she was kept in hospital etc. Consumer's right to information extends both to the products and services, including medical service.

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 Hospitals 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 Ganeswara 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 anesthetist was not mentioned in the operation notes though anesthesia was administered by two anesthetists. 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.

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

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."

Transformation of ethical norm into right to medical records

16. Medical ethics internationally is governed by the principle of autonomy, which recognizes the rights of individuals to self-determination. Autonomy is rooted in society's respect for individuals' ability to make informed decisions about personal matters. It is an important social value which has shifted to define medical quality in terms of outcomes that are important to the patient rather than medical professionals. The respect for autonomy is the basis for informed consent and advance directives.

17. The Patients are capable of electing to make their own medical decisions, or can delegate decision-making authority to another party. Only if the patient is incapacitated, laws around the world designate different processes for obtaining informed consent, typically by having a person appointed by the patient or their next of kin make decisions for them. Thus the value of informed consent is closely related to the values of autonomy and truth telling.

18. The reason for "ethical conflicts" in medical ethics is lack of communication. Communication breakdowns between patients and their healthcare team, between family members, or between members of the medical community, can all lead to disagreements and strong feelings. These breakdowns should be remedied, and many apparently insurmountable "ethics" problems can be solved with open lines of communication. The Patient has to be communicated all the information about his or her medical treatment, which is now being recognized as a right guaranteed by various statutes rather than leaving it at the level of a mere ethical norm.

19. The **UK's Data Protection Act 1998** gives an individual a right of access to information held about him. The Access to Health Records Act 1990 gave access to a patient's medical records in non-computerized form, while Data Protection Act 1998 Act gives access to both electronic and non-electronic records. The 1990 Act is still relevant to be in force relating to access to a patient's medical records after his death.

20**. Section 3 of Access to Health Records Act 1990** says that the holder of the record, within a maximum period of 40 days, must give access to the record by allowing the applicant to inspect the record (or an extract) or if the applicant so requires by supplying him with a copy of the record or extract. Where any information

Right under RTI Act :

21. Under Section 2(j) of the RTI Act, which defined 'information', imposes an obligation on the Commission to enforce the right to information available to the appellant under any other law. This Commission observes that both the laws- RTI Act and CPA Act provided the appellant a strong and undeniable right to information of her own medical record.

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

(B) Is it "life and liberty" issue?

22. Appellant has alleged a deep conspiracy among certain top officers who manipulated to show her as mentally imbalanced person and she was forced into the Institute of Human Behaviour and Allied Sciences, GNCTD, ''for her behavioral problems'', against which she was waging legal battles on different aspects, including this second appeal. Apart from this right, she also has several rights under Consumer Protection Act 1986, including right to information, right to seek remedy against medical negligence such as treating her for a disease which she did not suffer from.

23. The Commission is concerned with her right to information about medical records, treatment, diagnosis, counsel, prescription etc from the time of admission to discharge including relevant records pertaining to pre and post hospital stages. If her allegation that she was unnecessarily treated in the Institute of Human Behavior and Allied Sciences for no reason or for wrongful reasons is proved her stay in hospital could be considered illegal detention. This would raise questions of serious violation of right to life and liberty. She also claimed that she would be entitled to the information sought within 48 hours under the 'right to life and liberty' provision of Section 7(1) of RTI Act. That is why she sought medical records of so called treatment meted out to her. It was denied without explaining any justification and without substantiating how her petition could not fall under life and liberty clause or how exception of 'impeding' investigation would attract.

The Commission holds that information regarding medical records especially when she is disputing her stay and treatment is concerning life and liberty of the appellant.

(C)Whether claim of Sec 8 (1)(h) exception valid?

24. The Commission then examined the possibility of application of exception under Section 8 (1) (h) of RTI Act. Hon'ble Delhi High Court in [**Bhagat Singh Vs. CIC [146 (2008) DLT 385]** explained that the exception under Section 8(1) (h) should not be used to deny the right itself:

> "Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information. "

In yet another case, **B S Mathur vs Public Information Officer Of Delhi High Court [180(2011)DLT303]** the Delhi High Court emphasized on the point of factual interference with the investigation to claim this exception under Sec 8 (1)(h), as follows:

> "19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public

authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." **The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would „impede" the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry**"

25. Thus these two emphatic judgments made it mandatory for the public authority to show that the disclosure of the information would in fact, impede the process of investigation. The officers of Respondent Authority told the Commission that no such investigation was under process. They did not present anything to explain as to how Sec 8 (1)(h) could be used to deny the information.

DECISION :

26. The Commission, thus rejects the contention of the respondent authority invoking exception under Section 8(1)(h) as devoid of merit as they have miserably failed to establish any factor that would attract such exception. In view of the above, this Commission does not accept the contention of the respondent authority that the information sought by the appellant is exempt under section 8(1)(h) of the RTI Act as this is with reference to the appellant's life and liberty, who was kept in detention by the respondent/institute and she has every right to have the information about the treatment meted out to her during her detention in the respondent/institute. It is

not third party information. More so, the respondent/institute cannot invoke the ground of exemption under section 8(1)(h), as there is no evidence to show that any inquiry pending against the appellant. The Public Authority being an Institute/hospital has a legal responsibility to share the information about her treatment and medical check up etc. The copies of the correspondence exchanged by the Respondent/institute with other officers pertaining to her case, also do not fall under the category of any exemption, under RTI Act.

27. Regarding the application of order of Commission (CIC/SG/A/2011/ 002238/16606 dated 27-11-2011) as contended by appellants, the Commission finds no relevance to this appeal as it was not a dispute between spouses and that she was seeking her own medical record and hence that decision would not come to rescue of respondent, as it has nothing to do with exemption under 8(1)(h).

28. Neither the PIO nor the Appellate Authority tried to substantiate points as to how the disclosure of her own medical record would hamper the process of investigation. They did not even attempt to explain what the charge against her was and what investigation was pending. An empty claim of exception under section 8(1)(h) cannot entitle the authority to refuse the information for which the appellant has right both under Right to Information Act, 2005 and Consumer Protection Act 1986.

29. The Commission is of the view that the patient's right to obtain his medical record is not only protected under RTI Act, but also under the regulation of Indian Medical Council, which is based on world medical ethics, and also as a 'consumer' under Consumer Protection Act, 1986 as explained above. It is the duty of the doctor/Hospital to develop a mechanism whereby the copy of patients medical record from his joining to his

discharge be provided to him or his legal representative even without him asking as a matter of routine procedure at the time of discharge as directed by Bombay High Court in above referred case.

30. This Commission finds that the practice of the public authority in relation to the exercise of its functions under the RTI Act does not conform with the provisions or spirit of the RTI Act as revealed from the defence claimed with casual invocation of Section 8(1)(h) exception to deny the medical records, the Commission exercising its powers under Section 25(5) of RTI Act, recommends the Public Authority IHBAS to develop a mechanism for disclosure of medical records to patients or his relatives in a time frame with proper protection to confidentiality and privacy as ordained by RTI Act, preferably in the lines of judgment of Bombay High Court. The Commission recommends 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. As observed by Bombay High Court 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.

31. The respondent authority/PIO is, therefore, directed to provide certified copies of the complete information sought by the appellant in her RTI application dated 11-8-2011 within 30 days from the date of receipt of this order and **show cause** why maximum penalty cannot be imposed on the then respondent/PIO for taking excuse under non-applicable clause of the RTI Act and denying the information to the appellant. His explanation should reach the Commission within 3 weeks from the date of receipt of this order. Non-compliance of the Commission's order will be taken as serious deviance of the RTI Act. If the respondent/PIO is obstructed by his superior officer, from furnishing the

information to the appellant, such superior officer will be treated as 'deemed PIO' and shall be responsible for penal provisions under the RTI Act.

32. With regard to the submission of the PIO that the case be adjourned, the Commission is of the view that as the present case has already been pending for a long time and as the case pertains to the life and liberty of the appellant, who is a woman officer, and that no justification has been given by PIO for further delaying it, case need not be adjourned. As Mr. S.P.Jaiswal was designated as PIO by the respondent/institute through whom the Commission has to deal with, and neither the Commission nor the RTI Act requires the presence of the Director/FAA, the Commission finds no need to postpone the case.

33. The Commission orders accordingly.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Ashwani K. Sharma)
Designated Officer

Address of the parties:

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

Institute of Human Behaviour & Allied Sciences,

Dilshad Garden,

New Delhi-110095

2. Ms. Nisha Priya Bhatia,

I-263, Nariana,

NEW DELHI-110028

Copy also forwarded to the First Appellate Authority to serve show cause notice on the then PIO, IHBAS as per para 31 of this order:-

3. The Director & First Appellate Authority under RTI

Institute of Human Behaviour & Allied Sciences, GNCTD

Dilshad Garden, DELHI-110095