CENTRAL INFORMATION COMMISSION

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

File No.CIC/SA/A/2014/000004

Appellant	**:**	**Shri Prabhat Kumar**
Respondent	**:**	**Directorate of Health Services GNCTD, Delhi**
Date of hearing	**:**	**03-11-2014**
Date of decision	**:**	**03-11-2014/7-4-15**
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. Lily Gangmei, PIO, Directorate of Health Services, GNCTD, Delhi.

FACTS:

2. The appellant has admmitted his father , Late Shri Kailash Prasad Singh on 3.11.2012 having UHID No. FHL6.173745, who died on 3.12.2012 during his hospitalization. According to the appellant the death summary of his father (Annexure) prepared by the team of Doctor led

by Dr. Vivek Nangia of Fortis Hospital is insufficent, unsatisfactory, ambigious, vague and does not have complete facts. Seeking complete Death Summary Report and disclosure of the real facts and circumstances leading to death of his father, the appellant has filed RTI application on 24.7.2013 seeking information with regard to the same through following 29 points:

1. What are the Registration no.s of Dr Vivek Nangia, Dr Hemant Tiwari, Dr Meenakshi, Dr Ashwani Malhotra and Dr Vishal(All from MICU of Dr Vivek Nangia Team), who were attending to my father Late Shri Kaillash Prasad Singh, since he was admitted in the Fortis Hospital with a complaint of constipation and weakness on 3.11.2012? It is pertinent to mention that the Registration number of all the aforesaid Doctors are not mentioned in any prescription or any piece of paper given by Fortis Hospital.

2. Please provide the name of hospitals, and in what category, for how long and in which department Dr Vivek Nangia, Dr Hemant Tiwari, Dr Meenakshi , Dr Ashwani Malhotra and Dr Vishal were working prior to joining Fortis Hospital, Vasant kunj?

3. Please specify that on what basis it was written in the death summary that my father Late Shri Kailash Singh was a known case of ILD and, if so, since when it was in knowledge of doctors of Fortis, Vasant Kunj?

4. What was the prognosis/diagnosis of doctor at the time of admission, who attended to my father when he was brought to your Hospital on 3.3.2012?

5. Name and registration number of doctor who first attended to my father when he was brought to the Hospital?

6. Please specify as to what was the time when he was brought to the hospital, what was the time when he was first attended to by the doctor and what was the time when he was shifted to the ward?

7. Who took a decision to send my late father for angiography of lungs on 04-11-2012? Please provide the registration number of the said doctor? What was the basis of such decision? Please provide documents in support of such decision?

8. Did any doctor physically examine the patient Late Kailash Prasad Singh before sending him for CT Pulmo Angiography. Please provide the copy of the report of the doctor who examined Late Kailsash Prasad Singh prior to the recommending him for CT Pulmo Angiography. Please also provide the name and the registration number of the doctor who recommended the Late K.P Singh for CT Pulmo Angiography on 04.11.2012.

9. Why it is written in the death summary dated 03.12.2012 that he had recurrent retrosternal chest discomfort? Please provide the document to suggest regarding the aforesaid chest discomfort and medication provided by the hospital for such a chest discomfort.

10. Was the patient late K.P Singh after admission in Fortis Hospital, Vasant Kunj examined for acute Pancreatis or any test conducted to rule out Pancreatis as he was complaining of upper abdominal pain since the day he was admitted. Please provide a copy of the said diagnosis and opinion of the doctor in respect of Pancreatis.

11. Was the patient late Shri KP Singh examined to rule out any kind of tuberculosis.

12. What was the immediate and specific cause of admitting the patient in ICU and putting him on ventilator support for almost 1 month from 05.11.2012 to 03.12.2012?

13. What could be the reason for the so called 'aspiration'? Was there any examination done to rule out or to ascertain the possibility of aspiration. Please provide the name and registration number of the doctor along with copy of the said report of the examination in respect of the aspiration.

14. Please provide the name and registration number of the Doctor on duty on the night of 04-11-2012 and in the morning of 05-11-2012, when an emergency call was given and the Patient Late KP Singh was admitted to MICU.

15. It is written in the death summary that the patient developed a sudden shortness of breath with de-saturation and went in AF with FVR following a possible aspiration as per history given by the attended who were feeding him? The undersigned being the son of the patient who attending to his father on the very morning of 05.11.2012. the undersigned wants to know what was the exact and specific reason for de saturation of the Patient and going in AF. What investigation was done and what was the outcome of the alleged possible aspiration. As it was not told by the doctor at the point of time?

16. After a few days of his admission to the MICU and putting on ventilator why Late KP Singh was unable to close his mouth and also unable to move his limbs. Was there any controlled force used on his limb and his jaw during his admission in MICU for the purpose of treatment or stop him to agitate against the ventilator and other devices

17. What was the cause of “serratia marcescens” infection? How and when this development occur in patient during this month long examination form 03.11.2012 to 03.12.2012?

18. The family members of the patient were told by Dr. Vivek Nangia and his team member that the aforesaid patient had developed “sepsis or septicaemia or septic shock” during the hospitalisation but the same is not specifically mentioned in the death summary. Be that as it may, what was the reason for the development of Sepsis in the patient Late Kailash Prasad Singh during the stay in the Fortis Hospital from 03.11.2012 till he died 03.12.2012?

19. On what date the Tracheostomy done. What was the need of Tracheostomy on the patient late Kailash Prasad Singh and which doctor took a decision to do tracheostomy. Please provide the name and registration number of the sadi doctor?

20. Was the Tracheostomy done after administering local anaesthesia? Please provide the name of the doctor who administer anaesthesia for the purpose of Tracheostomy done on the patient Late Kailash Prasad Singh.

21. Please provide the name and registration number of the surgeon who conducted surgery of Tracheostomy on the patient Late KP Singh.

22. Why Late KP Singh never again regained consciousness after the surgery of Tracheostomy and finally declared dead on 03.12.2012?

23. What was the actual cause of death of Late KP Singh on 03.12.2012? Please provide a documentary proof of cause of death of Late KP Singh.

24. As mentioned in the report that the aforesaid patient was found low haemoglobin and low platelets. Please provide me what was the reason of haemoglobin and platelets coming down suddenly

25. Why, when and at what stage of treatment was the aforesaid patient was Hemodialysed? In total how many times and how many days in continuity the aforesaid patient was Hemodialysed? Please provide the copies of Dialysis prescriptions of Nephrologist or the team of Doctors of Nephrology Department.

26. Please provide the name and registration no of the doctors who prescribed Hemodialysis to be done on the patient Late Sh. K.P Singh.

27. What was the outcome of the Hemodialysis done on the patient? Was such Hemodialysis of any benefit on the patient during the Corse of his treatment? Please provide documentary evidence of such outcome and benefit.

28. Please provide reasons RDPs, FFPs and loss of VITk in the patient. How many units of platelets were transfused? What was the reason for such a huge requirement of 8.2 units of blood all of a sudden?

29. Who took decision to start living and what was the outcome of this medicine which was started on 30.11.2012 to aforesaid patient?

3. CPIO replied on 27.8.2013 by enclosing (annexure dt 2.8.2013) a response from the Medical Superintendent, Directorate of Health and Service, GNCTD, who further enclose the copy of reply from the faculty Director of the concern hospital (annexure Dt. 12.8.2013), restated as under:

> "*We wish to inform you that the information asked for is **private, confidential and privileged**. Please be further advises that the provision of the Right to Information Act **do not apply to private hospitals**. The provisions of the said act apply only to the Public Authorities/offices. Accordingly we regret that we will not be in a position to provide the requisite information."*

4. Aggrieved by CPIO reply the appellant made first appeal on 10.9.2013. FAA vide order dated 19.9.2013 held that:

> *" CPIO(RTI)DHS(HQ) is directed to forward the application to DMC for answer to question no. 1 as the State Medical Registrar is maintained by DMC. The other queries related to alleged negligence which may be taken up with the appropriate authority i.e., DMC"*

5. For compliance of the FAA order Medical Superintendent , Nursing Home, Directorate of Health Service has wrote a letter to Medical Superintendent , Fortis Hospital, Vasant Kunj That:

" As the sought information pertains to you, hence, you are requested to provide the same within 3 days on the receipt of this letter positively"

6. On non-compliance of the FAA order, the appellant made second appeal before commission.

Decision:

7. Both the parties made their submissions. The appellant contended that his father was admitted into the hospital with the complaint of constipation, but he was kept in the ICU and the hospital conducted unnecessary tests. Appellant had spent nearly Rs.18 lakh on his father's treatment in the Fortis Hospital, and in spite of that his father expired during the treatment. The appellant claimed that, being son of patient, who is party to the contract and consumer besides being victim of treatment, he has right to know the details of diagnosis, treatment and the prescriptions of the doctors who have attended him. When CPIO wrote to the Hospital seeking the details of treatment given to his father, the Hospital denied. Hence appellant was compelled to use RTI for information from private hospital through the respondent public authority, the regulatory authority of the hospitals. Appellant complained that the respondent authority has forwarded reply received from the private hospital without taking any regulatory steps to secure the information as per the law.

8. It is the legitimate right of the son of the deceased patient to know such details of treatment, which the hospital also contractually bound to supply, having received a consideration (payment) from the deceased's family. It could not only be breach of contract by the hospital, but also breach of the provisions of Medical Council Act, 1971. The respondent authority being the regulatory authority, is expected to enforce the law and come

to the rescue of the deceased's family, when the rights are being violated by a private or public hospital.

9. The issues before the Commission are:

a) Whether information sought by appellant in this case is 'information' as per section 2(f)?

b) Whether this Commission has power under RTI Act, to enforce the Right to information of the appellant against a body which is not held to be public authority, by directing the respondent public authority to collect the information by exercising their regulatory power?

c) Whether the Commission has power to consider the authorities of private hospitals as deemed PIOs and proceed against them with penal actions for breach of RTI Act by obstructing the supply of information?

Constitutional Obligation of State Health Regulatory

10. The preamble to the Constitution of India coupled with the Directive Principles of State Policy strives to provide a welfare State with socialist patterns of society. It enjoins the State to make the "improvement of public health" a primary responsibility. Furthermore, Articles 38, 42, 43 and 47 of the Constitution provide for promotion of health of individuals as well as health care. The Constitution of India also enumerates the separate and shared legislative powers of Parliament and State Legislatures in three separate lists: the Union List, the State List and the Concurrent List. The Parliament and State legislatures share authority over matters on the Concurrent List, which include criminal law and procedure. Health service includes securing citizen from medical negligence by punishing concerned for crime of medical negligence and compensating the damage caused by doctor or hospital through negligence under tort action or securing the enforcement of contractual obligation under law of contract. Consumer Protection Act is another legislation which is aimed at preventing

negligence and deficient services besides assuring right to information about medical treatment given to the patient at the threat of imposing compensation.

11. The Working Group on Clinical Establishments, Professional Services Regulation and Accreditation of Health Care Infrastructure, constituted by the Planning Commission for the 11th Five-Year Plan, pointed out in its report that although the "for-profit private sector accounts for...50% of inpatient care and 60-70% of outpatient care...[it] has...remained largely fragmented and uncontrolled", with problems ranging from "inadequate and inappropriate treatments, excessive use of higher technologies, and wasting of scarce resources, to serious problems of medical malpractice and negligence" (Government of India. Report of The Working Group on Clinical Establishments: Professional Services Regulation and Accreditation of Health Care Infrastructure. New Delhi: Planning Commission; 2006, p.6.)

12. There exists legislation with respect to licensing of medical professionals such as doctors, nurses, dentists and pharmacists with a view to control their entry into the market. Statutory regulatory councils have been established to monitor the standards of medical education, promote medical training and research activities, and oversee the qualifications, registration, and professional conduct of doctors, dentists, nurses, pharmacists, and practitioners of other systems of Medicine such as Ayurveda, Yoga, Unani, Siddha and Homeopathy. Important of these laws are: the Indian Medical Council Act, 1956, the Indian Nursing Council Act, 1947; the Indian Medicine Central Council Act, 1970; the Homeopathy Central Council Act, 1973; and the Pharmacy Act, 1948. Almost all of these laws establish councils that set forth uniform educational and qualification standards. In addition, each statute establishes a central registry for individuals certified to practice the field of medicine regulated. Finally, councils often prescribe standards of professional conduct and determine which actions amount to professional misconduct.

13. As ‘ health’ is a state subject, some State legislation had been brought out by UTs/States quite early such as:

i. The Bombay Nursing Homes Registration Act, 1949;
ii. Delhi Nursing Homes Registration Act, 1953;
iii. Tamilnadu Private Clinical Establishments Act, 1997.

The High Courts of Delhi and Mumbai have also intervened through their various orders for effective implementation of these statutes. For the empanelment of hospitals and diagnostic centres by the Central Government health Scheme, it has now been made mandatory that all diagnostic labs must be certified by the National Accreditation Board for Testing and Calibration Laboratories (NABL). Similarly, physical inspections of hospital that have applied for empanelment have been entrusted by Ministry of Health and Family Welfare to the Quality Council of India.

14. The Planning Commission of India recognized in its Report on the Working Group on Clinical Establishments, Professional Services Regulation and Accreditation of Health Care Infrastructure for 11th Five Year Plan in 2006, the need for a central legislation for registration of clinical establishments in the country. The Working group suggested draft legislation prepared by Ministry of Health and Family Welfare should be carried forward. But till now there is no effective regulation and if the private hospital refuses to give medical record, the patient is left with no effective remedy even today.

15. Professor Kalpana Kannabiran, in her article in Indian Journal on Clinical Ethics, Volume 5, No. 3, 2008, while reviewing the Clinical Establishment (Registration & Regulation) Bill, 2007 stated: “In a situation of complete lack of accountability, any move towards regulation and monitoring is welcome. While generally concerns have been raised with respect to the impossibility of monitoring rural health care and unscrupulous practices at the

lower end, what is equally necessary to address is the lack of accountability in corporate health care and unregulated practices at the upper end of the cost ladder. Between these two points lie a host of variations in health care delivery that are unregulated and for the most part uncharted. There is also the encouraging reality of community health care initiatives across the country that have done remarkable work under extremely difficult conditions, developing priorities, standards and measures, and demonstrating results with complete transparency and accountability". (http://ijme.in/index.php/ijme/rt/printerFriendly/509/1330)

'Information' under section 2(f)

16. This Commission has examined the issue of right of patient to have the medical records in ***Nisha Priya Bhatia v Institute of Human Behaviour and Allied Sciences GNCTD***, File No.CIC/AD/A/2013/001681-SA, decided 23 July 2014) and stated "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 as per world medical ethics. The Commission recommended the 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". In that order Commission referred to various legislations. "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.

Right to information under RTI and Consumer Protection Act:

17. 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."

18. 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."

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

Indian Medical Council Act

20. 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 pro-forma laid down by the Medical Council of India and attached as Appendix 3.

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.**

With the enforcement of the MCI Regulations, 2002 it is made clear that the patient has a right to claim medical records pertaining to his treatment and the hospitals are under obligation to maintain them and provide them to the patient on request.

21. Hon'ble Kerala High Court recognizing the above principle in **Rajappan Vs. Sree Chitra Tirunal Institute for Medical Science and Technology [ILR 2004 (2) Kerala 150].**

In this case the Petitioner was the father of an epilepsy patient who died in the course of treatment in the Respondent Medical Institution, which was a statutory corporation created by the Government of Kerala. After her death, the Petitioner applied for medical records pertaining to the treatment of his daughter. The husband of the deceased was given case summary and discharge record and investigation report. The request of the Petitioner for copies of medical records was declined. Therefore he approached this Court under Article 226 of the Constitution for necessary direction. Allowing the petition, the High Court extracted relevant regulations of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 **as under:**

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"…..Appendix 3 (of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002) 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 in the above case 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 about Right of information of Patients:

22. 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.

23. Thus, 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.

24. 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.

25. 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."

There are several decisions by High Courts and Consumer Dispute Redressal Commissions which emphasized the right to medical records from hospitals or doctors whether they are private or public, running for profit or charitable.

Some more decisions of National Commission:

1. The hospital was held vicariously liable for the negligent action of the doctor on the basis of the bill showing the professional fees of the doctor and the discharge certificate under

the letterhead of the hospital signed by the doctor [P.P. Ismail v K.K. Radha 1997 (2) CPR 171 (NC); I(1998) CPJ 16 (NC); (1997) 5 CTJ 685 (CP) (NCRDC); 1999 CPJ 99 (NC)].

2. It was 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 [Meenakshi Mission Hospital and Research Centre v. Samuraj and Anr., I(2005) CPJ 33 (NC)].

Some more decisions of State Commission:

1. Decision of Chandigarh Commission: It is negligence on the basis of the records, which seemed to be manipulated [Nihal Kaur v. Director, PGI, Chandigarh *. 1996 (3) CPJ 112 (Chandigarh (U.T.) CDRC.*].
2. Decision of AP State Commission: Negligence was established as the case sheet did not contain a proper history, history of prior treatment and investigations, and even the consent papers were missing. [Force v. M Ganeswara Rao *. 1998 (3) CPR 251; 1998 (1) CPJ 413 (AP SCDRC)*].
3. Decision of Kerala State Commission: The failure to deliver X-ray films is held to be deficient service. The patient and his attendants were deprived of their right to be informed of the nature of injury sustained [V P Shanta v. Cosmopolitan Hospitals (P) Ltd *1997 (1) CPR 377 (Kerala SCDRC.*].
4. Decision of Gujarath State Commission: The evidence of the surgeon cannot be believed because only photocopies were produced to substantiate the evidence without any plausible explanation regarding the absence of the original [Devendra Kantilal Nayak v Dr. Kalyaniben Dhruv Shah 1996 (3) CPR 56; I (1997) CPJ 103; 1998 CCJ 544 (Guj)].

26. Under Section 2(f) 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.

Law Secretary's letter to Health Secretary

27. Referring to this order of CIC, Union Law Secretary P.K. Malhotra has, in a letter to Union Health Secretary Lov Verma, said that according to the CIC's July 23 order, a patient has a right to his/her medical record which is rooted in Article 19 and 21 of the Constitution and the hospital authorities have a duty to provide the same under Right To Information Act, Consumer Protection Act, Medical Council Act and world medical ethics dealt with constitutional rights. Mr Malhotra wrote, "If there are existing instructions to this effect, the same need to be reiterated and the concerned authorities sensitised about the same, and if there are no existing instructions, the health ministry may consider issuing suitable orders or rules so that patients get copies of their medical record, including details

of treatment, as a matter of right." The law ministry has stated that "most of the time the hospital authorities do not provide details of the medical record or the treatment given to a patient." The letter quoted this CIC's order saying patients have a right to their medical records which is rooted in Articles 19 and 21 of the Constitution and respondent hospitals have a duty to provide it. (August 22, 2014)

Appellant's Right to information

28. Besides the above, the appellant and his father are the parties to the contract with the concerned hospital who agreed to render service on payment of consideration. Non-furnishing of medical records amounts to deficiency in service under Consumer Protection Act, and also breach of contract, for which the appellant is entitled to remedy of payment of compensation.

29. In **Poorna Prajna Public School vs Central Information Commission & another decided on 25 September, 2009 by Delhi High Court in Writ Petition** (CIVIL) NO. 7265 OF 2007, Justice Sanjeev Khanna explained the objective of RTI Act: "

> *RTI Act was enacted in the year 2005 as a progressive and enabling legislation with the object of assigning meaningful role and providing access to the citizens. It ensures openness and transparency consistent with the concept of participatory democracy and constitutional right to seek information and be informed. It also ensures that the Government and their instrumentalities are accountable to the governed and checks corruption, harassment and red-tapism".*

Section 2(f). says:

> *information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any* ***private body*** *which can be* ***accessed*** *by a public authority* ***under any other law*** *for the time being in force****.*** *(emphasis supplied)*

The second part of the definition expands the scope of the law and extends to cover private bodies also. First part deals with information 'held' by public authorities and second part deals with information held by private bodies but under control of public authorities, if provided by other law.

Section 2(j) says:

> 'right to information' means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

30. Justice Sanjay Khanna in above case, dealt with the harmonious reading of two sections:

> Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f) expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term — '**held** by or under the **control of** any public authority' in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term — 'information' as defined in Section 2(f).

Justice Sanjay Khanna rightly said:

> The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term — 'information' in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is — 'information' as defined in Section 2(f) of the RTI Act. The term —held by the or under the control of the public authority used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term —private body has been used to distinguish and in contradistinction to the term 'public authority' as defined in Section 2(h) of the RTI Act. Thus, information

which a 'public authority' is entitled to access, under any law, from private body, is 'information' as defined under Section 2(f) of the RTI Act and has to be furnished.

31. To further clarify, Justice Sanjay Khanna reiterated: "Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act".

32. The Commission examined the Medical Council Act, 1971 which gave the appellant right to information and Consumer Protection Act, 1986 which imposed an obligation on service providers to inform. Both the laws emphasized that the appellant has the right to medical records as explained above which the Fortis Hospitals cannot avoid simply because it is a private body and not public authority as per Section 2(h) of RTI Act.

33. Justice Sanjay Khanna explained that as the information is accessible through other law, conditions prescribed there should be satisfied. He said: "If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied".

34. Under Consumer Protection Act, 1986 the condition that need to be satisfied before seeking information is that he must be a consumer, who paid for the medical service or fee prescribed. It is not the case of Fortis Hospital that patient or his son (appellant) not paid the fee or that he was not consumer or that the hospital did not render the services. Hence the appellant has satisfied all conditions prescribed under Consumer Protection Act, 1986 which entitles him to 'information' held by private authority as controlled by the public authority, i.e., respondents in this case. Looking from the other law, Medical Council Act 1971, the patient fulfilled conditions of being a patient and paying a fee. Thus under two enactments, the patient's (appellant's) right to information is established along with the

obligation of public authority to demand the information exercising their regulatory powers and the obligation of the Fortis Hospital to provide medical records to the appellant.

35. Justice Sanjay Khanna referred to the opportunities available to private authority to raise objections for disclosure of information as sought by the applicants. Justice Khanna says as third party could rise defences, exceptions and exemptions under RTI Act, private body also could do. Third party as per Section 2(n) means a person other than the citizen making a request for information and includes a public authority. Thus the term 'third party' includes not only the public authority but also any private body or person other than the citizen making request for the information. Like third party, private body also can appeal under Section 19(4). A private body or third party can take objections under Section 8 of the RTI Act before the public information officer or the CIC. In terms of Section 11(4) of the RTI Act, an order under Section 11(3) rejecting objections of the third party is appealable under Section 19 of the RTI Act before the CIC.

36. Thus it is established that the medical records of the father of appellant held by Fortis Hospital which treated him, is held to be 'information' under last part of section 2(f) as the Medical Council Act, 1971 provided that right, as referred above in Paras 13 and 14. Then the question is whether the respondent public authority Directorate of Health Services Delhi is entitled to have access to medical records of patients? The Directorate in its website (http://www.delhi.gov.in/wps/wcm/connect/doit_health/Health/Home/Directorate+of+Health+Services/)claimed: "In Delhi, health care facilities are being provided by both Government & Non-Government Organizations. Among the Government Organizations, Directorate of Health Services (DHS) of Government NCT of Delhi is the major agency related to health care delivery….. This Directorate not only actively participates in delivery of health care facilities but also coordinates with other Govt. and Non Government Organizations for health related activities for the improvement of health of citizens of Delhi. DHS is instrumental in coordination and implementation of various national and state health programmes. This Directorate also monitors the health services being provided by registered Private Nursing Homes. The registration is done subject to the fulfillment of pre requisite of Delhi Nursing Homes Registration ACT and renewal in yearly basis. The registration of Private Nursing Homes and hospitals is mandatory under this Act."

37. Under Clinical Establishments (Registration & Regulation) Act 2011, Section 12 (1) says for registration and continuation, the clinical establishments shall fulfill the conditions, among others, (i) the minimum standards of facilities and services as may be prescribed,

(iii) provision of maintenance of records and reporting as may be prescribed. Under section 42, the clinical establishment is liable to be penalized with penalty up to Rs 5 lakh for disobedience of director or order lawfully given by any person or authority.

38. The Regulatory has even the power to cancel the registration if the conditions for registration are not fulfilled. Under both the laws, Delhi Nursing Homes Registration Act, Clinical Establishments (Registration & Regulation) Act 2011, the respondent authority has a duty to coordinate and facilitate the health services. Securing medical record of the patient is the service and not providing the same is deficiency under Consumer Protection Act as held by different courts, referred above. Thus the respondent public authority is entitled to access the information held by Fortis Hospital which means the information sought is under its control.

39. The Fortis Hospital has raised objection to disclose information saying that it was 'private, confidential and privileged'. None was present on behalf of Fortis Hospital. Representative of Public Authority did not take any defence or raised any objection under any exception. The Commission rules out this objection of Fortis Hospital as information was a) not private, because the information about treatment given to patient on payment of fee belong to patient or his heirs and it can never be the 'private' information of hospital and thus it will not fall under exemption 8(1)(j) as it has relationship with public activity which includes treating any patient, which is the purpose of the establishment of commercial private hospital as that of Fortis Hospital, b) not confidential because patient is not asking any information which has any commercial value for the hospital, he is asking because he suspects negligence in treatment and lack of necessity in conducting diagnostic tests, it will not fall under category of protected commercial confidence or competitive information as provided under section 8(d), and c) not privileged at all which does not attract any provision of RTI Act or Consumer Protection Act, or Medical Council Act. Using three words without any further explanation or basis by Fortis Hospital to deny the right of patient and his son reflects arrogance and recklessness of hospital and fortifies the common impression of the patients that they are unethically being fleeced by commercially greedy hospital shops. Fortis Hospital's denial shows disrespect to three enactments referred above, their professional duty and contractual obligation towards the patient from whom they have collected huge amount of money. They should have shown professional character and dignity by furnishing the required medical records if they really had not committed any greedy exploitation of this patient. They lost a chance to establish their integrity, if any. It is equally unethical and immoral on their part in declining to give

information, reasons for treatment, or failure of treatment, if any or entire medical record besides coming up with baseless and unreasonable grounds.

40. Thus the claim of the hospital that the information is private, confidential and privileged, is untenable and illegal and by this they have violated the right to information of the appellant based on grounds which were not part of exceptions under Section 8 of RTI Act, for which the appellant has all remedies under breach of contract, Consumer Protection Act, Medical Council Act besides RTI Act. And if the disclosed medical record reveals gross negligence, the patient's son (appellant) may also have recourse to criminal proceedings under IPC.

41. The Commission, therefore, holds that undoubtedly the appellant, being a patient has specific right to detailed medical record about treatment under Section 3 of the RTI Act and also under Consumer Protection Act, 1986". Hence, the information sought by the appellant is the 'information' as per Section 2(f) of RTI Act.

Commission's authority to implement RTI of appellant

42. Once the information sought by appellant is 'information' under s 2(f) of RTI Act, entire law will come to the rescue of the right of appellant and the Commission has statutory duty to enforce his right with all its powers available under RTI Act to secure the information legitimately sought by the appellant.

43. In the case of ***Jarnail Singh vs. Registrar, Cooperative Societies Delhi*** (Complaint No.CIC/WB/C/2006/00302, dated 9/4/2007), the CIC ordered the private authority to provide inspection under the supervision of the public authority. In this case the applicant had sought some information from the Registrar, Cooperative Societies (RCS) regarding the alleged irregularities in the allotment of a house to him by a cooperative group housing society. However, the information pertaining to these issues

was available with the management of the cooperative society, which could not be treated as a public authority in terms of the definition of public authority under the RTI Act. The Commission held that a cooperative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant, under Sections 2(f) and 2(g) of the RTI Act. It was also ordered by the Commission that the applicant will be provided the required information from the office records of the cooperative society under the supervision of a competent officer of the RCS.

44. Since the CPIO of respondent authority sought to collect the information asked by the appellant, the Fortis Hospital should have performed their legal responsibility of furnishing information. But by denial of information through baseless grounds the authorities of Fortis Hospital created hurdles and caused breach of the provisions RTI Act, necessitating the Commission to initiate penal proceedings against them under Section 20 of RTI Act. It is relevant to see Section 5(4) and (5).

Section 5(4) of the RTI Act, 2004

The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

Section 5(5) of the RTI Act, 2004:

Any other officer, whose assistance has been sought under sun section (4) shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provision of this Act, Such other officer shall

be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

45. Under Section 5(4) CPIO can seek assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties. The Commission finds that by writing a letter to Fortis Hospital to give information, respondent authority sought assistance of the authorities in Fortis Hospital. By that act the authority has initiated action under RTI Act, 2005. As they resorted to Section 5(4), next sub-clause Section 5(5) will necessarily follow, which says that CPIO shall treat such officer whose assistance is sought, as CPIO.

46. The Commission observes that under section 2(f) of the RTI Act, it is the duty of the Public Authority who is vested with the regulatory powers over all the Hospitals, including the Private Hospitals such as Fortis in Delhi, to see that the right as enshrined in the Medical Council Act, 1971, and other relevant Acts, is obeyed by the said hospitals. This law and the RTI Act mandates that every hospital whether it is private or public, to provide the medical record within 72 hours of the death of the patient. Hence the Commission has authority to implement RTI of the appellant.

47. The Commission is not going into the question, whether Fortis Hospital is a public authority or not. Every person has a right to seek the information, define under section 2(f) of the Act. That right of the appellant has been violated by the Respondent authority and Fortis Hospital who refused by stating that the information was confidential and privileged. Considering it as a serious case of shading the truth in dark, the commission is exercising the powers under section 18 of the RTI Act, text of which is reproduced as under:

Section 18 of RTI Act says:

(1) Subject to provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, receive and inquire into a complaint from any person, ….(b) who has been refused access to any information requested under this Act.

(2): Where the CIC or SIC as the case may be, shall, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate inquiry in respect thereof.

(3) The Central Information Commission or SIC, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil Court while trying a suit under the Code of Civil Procedure 1908, in respect of the following matters, namely…

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4): Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or State Information Commission, as the case may be, may, during inquiry of any

complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

48. The above provisions show that the Commission has enough power to summon and enforce attendance of any persons, compel them to give oral or written evidence on oath and produce the documents or things and ultimately impose the penalty as prescribed under Section 20 of RTI Act.

49. The appellant who filed this second appeal, during hearing complained against the respondent authority for not securing the information from Fortis Hospital, exercising their regulatory power over that hospital, and against the authorities of the Fortis Hospital who made an illegal claim that information sought was private, confidential and privileged, which amount to refusal of access to information requested under RTI Act, which empowers the CIC to implement such right.

50. This second appeal and complaint deals with the right to life of father of the appellant as declared under Article 21, which include right to quality treatment and other medical services without deficiency and negligence in proportion to the high cost they were charged to pay. The Commission finds that the respondent public authority and the Fortis Hospital have denied the appellant of his right to legally agitate against violated right to life of his father, which include the right to medical records.

51. The Commission also holds that even if the Fortis Hospital is a private body it is not immune from statutory duty of providing medical record to the patient or his son. Private body cannot claim a right to take the life of a patient by negligence and when especially it

was suspected of medical negligence, it cannot deny the medical records. In fact, the Commission has every reason to draw an adverse inference against the hospital, from this unreasonable, unethical, illegal and unconstitutional denial of information that it is trying to hide something which might establish medical negligence if disclosed. It is in the interest of justice, establishment of truth, and of course, reputation or credibility, if the private hospital has and is interested in protecting it, it has to give the medical record on its own. The Commission is surprised at the defiant attitude of Fortis Hospital in denial of medical record and indifferent attitude of public authority, the respondents in not securing it.

52. The Commission recommends the Union Government and Delhi Government to take this as undesirable example of defiance of private hospitals and of their indifference towards lives, health and rights of the patients from who they fleece huge amounts of money, to come up with a strict mechanism of enforcing the rights of the patients as per law. The Commission also recommends the Governments to take note that right to information of medical records of patient is equal against both public and private hospitals and any attempt to ignore enforcement of this right against private hospital will amount to practice of discrimination in violation of Article 14 of the Constitution.

53. The Commission directs officer-in-charge of administration of the Fortis Hospital or any other responsible person having authority and knowledge about the case of the father of the appellant to furnish:

a. the certified copies of entire medical record including a note explaining the cause of death of the father of the appellant,

b. the certified copies of documents based on which the causes were ascertained,

c. the certified copies of bills and receipts of payments made by or for the father of the appellant within 21 days from the date of receipt of this order, free of cost to the appellant.

The Commission also issues a show cause notice to the officer-in-charge of administration of the Fortis Hospital or any other responsible person having authority and knowledge to explain why maximum penalty cannot be imposed against him for breach of right to information of appellant within 21 days from the date of receipt of this order.

54. The Commission issues a show cause notice to CPIO of respondent authority why maximum penalty cannot be imposed against him for not exercising regulatory power to secure information of medical treatment to appellant within 15 days from the receipt of this order.

55. The Commission also directs the respondent authority to compel the said private hospital with its regulatory power provided under the law to comply with the provisions of the Nursing Homes Registration Act or Clinical Establishment (Registration & Regulation) Act, MCI Act and RTI Act or any other rule or provision under any law, and provide the entire information to the appellant within one 21 days from the date of receipt of this order.

56. The Commission recommends the Government of India, states and Union Territories, besides the respondent authority in this case, to take necessary steps to enforce the right to information, i.e., forcing the private hospitals to give medical records of the patients on **day to day basis**, because this daily disclosure will prevent undesirable practices of altering records after damage caused to patient. Forcing the private hospitals to provide daily-wise medical records will also act as a check on some hospitals from resorting to

extortionist, inhuman and ruthless business of prescribing unnecessary diagnostic tests, unnecessary surgical operations, caesarean deliveries, unwarranted angioplasties, inserting stents, without need, or of substandard nature, or putting low quality stent while collecting price of high quality stent, and several such malpractices amounting to medical terrorism, etc. They should not be allowed to such malpractices with all impunity and get away without any legal consequences as if there is an absolute immunity. The Government, Medical Council of India and the health regulatory has to see that licence to practice medicine will not become licence to kill and extort and come to the rescue of helpless patients.

57. The appeal is **disposed** of.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

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