

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
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Decision No. CIC/AD/C/2011/901017/SG/17642
Complaint No. CIC/AD/C/2011/901017/SG

Relevant Facts emerging from the Complaint:

Complainant : Dr. Prasanna T.,
24, Citizen Avenue, Mahaveer Nagar Extension,
Lawspet, Pondicherry 605008

Respondent : Dr. Gautam Roy,
Public Information Officer & Professor (PSM),
Jawaharlal Institute of Post Graduate Medical
Education and Research,
Pondicherry-605006

RTI application filed on : 18/12/2011
Complaint filed on : 23/03/2011
Complaint Notice issued on : 15/07/2011

Information sought:

1. Actions taken on following letters/complaints of the Complainant:
 - a. Letter dt 08.08.10 regarding disturbing and disappointing acute events in the department of PSM (and strike by faculty) from all Residents of PSM
 - b. Letter dt 09.08.10 regarding open discrimination by faculty
 - c. Letter dt 26.08.10 Discrimination and Victimization by Dr KC Premarajan
 - d. Letter dt 31 .08.10 reply to Note from director (with complaint against Dean)
 - e. Letter dt 31.08.10 Discrimination and Victimization by Dr KC Premarajan, threatening and pressuring to withdraw my complaints
 - f. Letter dt 05.10.10 harassment manipulation and instigations of other residents against me by faculty
 - g. Letter dt 6.10.2010 open discrimination by faculty incidents in May 2010
 - h. Letter dt 15.10.2010 apprehension about potential misuse of signature
 - i. Letter dt 22.11.2010 threatening by faculty.
 - j. Letter dt 05.02.11 uncertainty in exam
 - k. Letter dt 21.02.2011 issue of details for exam reminder
 - l. Letter dt 01.03.2011 issue of details for exam reply to note part 1
 - m. Letter dt 02.03.2011 issue of details for exam reply to note part 2
 - n. Curriculum copy of MD Community Medicine circulated on 05.03.2011
 - o. Letter of protest dt 14.03.2011
2. Actions taken till date for the following correspondence from NCSC state Office dt 28.02.2011 (F.No.1/416/2010 rep)

3. Copies of all documents (correspondences/letters! memos/file notes/email or electronic media if any) based on which the reply (No.EDN.41 (5)/2010 dt 23.11.2010 from the Director JIPMER) to the Director NCSC State Office Chennai (Ref: F.No.1/416/2010 rep dt 04.10.201 0) was given.
4. Copies of all documents (correspondences/letters! memos/file notes/email or electronic media if any) related to letter from the Director NCSC State Office Chennai (Ref: F.No.1/416/2010 rep dt 28.02.2011) and action taken till date.
5. Who is the deciding authority regarding MD examinations in Autonomous JIPMER?
6. What are the duties and responsibilities of Dean in the conduct of MD examinations March 2011?
7. Who are the executive authority/ies in the conduct of MD Exams March 2011:
 - a. In JIPMER into to
 - b. In Dept of PSM, JIPMER.
8. Provide the copies of all documents related to conduct of MD Examination in PSM Dept from Office of Dean, academic section and examination section
9. Letters/other correspondences related to External Examiners asking them to be examiners for MD Community Exam march 2011
10. Provide copies of all complaints received from Dr M Bala Soudarssanane HOD PSM against
 - a. Dr KS Reddy, Dean
 - b. Dr Gautam Roy
 - c. Dr KC Premarajan
 - d. Dr Sonali Sarkar
 - e. Dr Ganesh Kumar
11. Provide all documents regarding action taken against the five persons mentioned in Question 10.
12. Copies of all documents (correspondences/letters! memos!filenotes!email or electronic media if any)based on which Dr KC Premarajan Nas removed as co-guide for Dr Prasanna T's thesis.
13. Provide the list of examiners (external and internal examiners) for MD Community Medicine Exam in the past 5 years
14. Provide the copy(s) of complaint received from Dr M Bala Soudarssanane against Dr Zile Singh regarding promotion of Dr KC Premarajan in 2010
15. Provide the copies of other complaints received from other residents (JR/SR) against the five faculty of PSM in the past one year.
16. Copies of circulars/mark sheets for conduct of two model exams for MD candidates in PSM dept. with my signature.
17. Provide the details of marks obtained by Dr Prasanna T in each section of MD Exam (for both theory and clinical exam) in MARCH 2011 with copies of documents and assessment made by individual exams for the same.

Submission from the CPIO:

Reply dated 03/08/2011

With reference to the application no. 541, It is stated that the entire matter is sub-judice vide Writ Petition W.P. No.9612 of 2011 and before the Honorable High Court of Judicature at Madras. It is also stated that the requested information regarding MD Examination is confidential information relating to examinations and is not provided under 8 (1) (e) of the RTI Act, and it also attracts provision under 8 (1) (b) of the RTI Act.

Reply dated 08/08/2011

With reference to the application No.541, it is stated that the entire matter is sub-judice vide Writ Petition W.P.No, 9612 of 2011, before the Hon'ble High Court of Judicature at Madras, wherein you have impleaded as Respondents the Director, Dean, two Professors (Internal Examiner), two Asst. Professors (Supervisor, Department of P&SMI JIPMER), Dr. Zile Singh, Professor of Community Medicine (External Examiner), Pondicherry Institute of Medical Sciences, Puducherry, Professor (Examinations) & Registrar (Academic) seeking a direction from the Hon'ble High Court to set aside the results declared on 26.03.2011 and also seeking a direction to conduct a fresh examinations without involving any of the respondents. Hence, the information you have sought attracts the provisions of **8(1) (b)** of the RTI Act, 2005. Further, it is also stated that the requested information regarding MD Examination is confidential in nature relating to examinations and is held in fiduciary relationship. Hence, the information you have sought also attracts the provisions of 8(1)(e) of the RTI Act.

Reply dated 11/08/2011 :

Information has been provided in office letter dt. 28/04/2011. The matter is sub-judice and the matter is pending in the court. Information can not be disclosed under section 8 (1) (b) of the RTI act.

Relevant Facts emerging during Hearing held on 29 February 2012:

The following were present:

Complainant: Dr. Prasanna T. via video-conference from NIC Studio-Puducherry;

Respondent: Dr. Gautam Roy, Public Information Officer & Professor (PSM), Mr. Jamesh Sekar, Registrar (Academic) along with other officers via video-conference from NIC Studio-Puducherry.

The Commission asked the Respondent to justify the denial of information under Section 8(1)(b) of the RTI Act. No evidence was shown by the Respondent that there was any specific prohibition or ban by any court on disclosure of information. The Respondent stated that in this regard he was relying on a decision dated 16/12/2008 of the Commission in Appeal No. CIC/PB/A/2008/00453/SM dated 22/02/2008. The Respondent referred to the following statements in the said order:

“This Commission has consistently taken a view that if the information sought relates to a pending proceeding before a competent court/tribunal, then the said information should be obtained only through court/tribunal and not under the provisions of the RTI Act.”

The order was reserved at the hearing held on 29/02/2012.

Decision announced on 12 March 2012:

Based on the submissions of the parties at the hearing held on 29/02/2012, the main issue before the Commission is whether the information sought is protected from disclosure under Section 8(1)(b) of the RTI Act. The Respondent has argued that since the matter in relation to which

information has been sought is *sub-judice* before a Court, the information would be exempt under Section 8(1)(b) of the RTI Act.

Section 8(1)(b) of the RTI Act exempts from disclosure “*information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court*”. From a plain reading of Section 8(1)(b) of the RTI Act, it is clear that it does not include sub-judice matters; only information which has been expressly forbidden to be published by any court, or disclosure of which may constitute a contempt of court is protected under Section 8(1)(b) of the RTI Act.

In the instant matter, no evidence was adduced by the Respondent to show that there was a specific prohibition or ban by any court/tribunal on disclosure of the information sought. Moreover, the Respondent has not advanced any argument to show that disclosure of the information sought would constitute a contempt of court. Hence, disclosing information on matters which are sub-judice cannot constitute contempt of court, unless there is a specific order forbidding its disclosure. The mere claim that a matter is sub-judice cannot be used as a reason for denying information under the RTI Act. Therefore, the contention of the Respondent cannot be accepted by the Commission.

The Respondent has also placed reliance on the decision of the Commission in *Vinay Satishkumar Verma v. State Bank of India* CIC/PB/A/2008/00453/SM dated 22/02/2008, the relevant portion of which has been extracted above. On perusal of this decision, the Commission noted that it does not deal with Section 8(1)(b) of the RTI Act and therefore, is not relevant in determining whether the information sought is protected under Section 8(1)(b) of the RTI Act.

Further, the Commission noted that the Respondent vide replies dated 03/08/2011 and 08/08/2011 has denied the information on the basis of Section 8(1)(e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts from disclosure “*information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information*”. The Respondent has stated that the information regarding MD Examination is confidential in nature relating to examinations and held in fiduciary relationship.

This Bench, in a number of decisions, has held that the traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice - as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

Therefore, the Respondent is required to establish the aforementioned criteria in order to seek the protection of Section 8(1)(e) of the RTI Act. As per Section 19(5) of the RTI Act, the burden of establishing the applicability of the exemption lies on the PIO. The Respondent has merely stated that the information sought is confidential in nature. It is relevant to mention that in the functioning of the Government, there may be various instances where certain documents, records, procedures, etc have been treated as confidential and at times, explicitly so provided. However, with the advent of the RTI Act, such information has to be provided subject only to the exemptions of the RTI Act viz. Sections 8 and 9. The Respondent has not adduced any arguments/explanations to show how the nature of the information sought falls within the ambit of Section 8(1)(e) of the RTI Act and was held by the Respondent-public authority in a fiduciary capacity. In other words, the burden required to be discharged by the Respondent under Section 19(5) of the RTI Act has not been done.

Therefore, the information sought cannot be exempt from disclosure under Sections 8(1)(b) and (e) of the RTI Act.

The Complaint is allowed. The PIO is directed to provide the complete information as per record to the Complainant **before 10 April 2012.**

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
12 March 2012

(In any correspondence on this decision, mention the complete decision number.)(PG)