

CENTRAL INFORMATION COMMISSION
Club Building, Opposite Ber Sarai Market,
Old JNU Campus, New Delhi - 110067.
Tel: +91-11-26161796

Decision No. CIC/SG/C/2009/001628/9090
Complaint No. CIC/SG/C/2009/001628

Complainant : Mr. Pooran Chand
S/o of Shri Narayan Chand,
D-44, West Vinod Nagar,
New Delhi-110092

Respondent : Dr. G. Kausalya
Public Information Officer & Chief Medical Officer
Directorate of Health Services
Govt. of NCT of Delhi,
F-17, Karkardooma, New Delhi.

RTI application filed on : 31/08/2009
PIO replied on : 16/09/2009
First Appeal filed on : 21/09/2009
Order of First Appellate Authority of : 09/11/2009
Complaint filed on : 02/12/2009
Complaint notice issued on : 02/12/2009
Notice of hearing : 16/07/2010
Date of hearing : 16/08/2010

The Complainant had with a subject 'RTI Application under Section 7(1) on a matter affecting *Life and Liberty*' sought information. He stated that he was a BPL card holder suffering from a serious disease,- compression of the spine,- which needed to be operated urgently. He went to the India Spinal Injury Center ("ISIC"), which is covered under a scheme whereby a person belonging to the EWS category is entitled to get freeship facility. However, ISIC gave the Complainant an estimate of Rs. 1.75 lakhs. Therefore he sought the following information from the Directorate of Health Services ("DHS" or the "public authority"):

S.No.	Information Sought	PIO's reply obtained from ISIC
1.	Whether the estimate given by ISIC was correct?	The estimate given to the patient is based on the proposed treatment/surgery whether it is free or paid as suggested by the consultant.
2.	Shouldn't the operation and treatment of the Complainant be carried out for free under freeship facility scheme?	As per Supreme Court ruling 10% of the beds are to be kept for treatment of poor patients free of charge and not all the beds in the hospital for them. On 28 th August 2009 when Shri. Pooran Chand visited the hospital all the 14 free beds were occupied by poor

		patients and no free bed was vacant.
3.	Please mention the name, designation and phone number of the officer of the public authority under whom ISIC falls.	Directorate of Health Services, GNCTD.
4.	Haven't the officers of the public authority given any directions regarding the freeship facility scheme to ISIC?	Suitable instructions have been received from DHS, as to the condition prescribe for providing free treatment to EWS category.
5.	Has the public authority not given directions regarding the freeship facility scheme to all hospitals?	-do-
6.	By when will ISIC be given instructions regarding the operation and treatment of the Complainant?	The patient may report to the coordinator of this hospital for getting free bed as and when the free bed is vacant.
7.	What action is taken by the public authority if hospitals do not work as per the directions pertaining to the freeship facility scheme? Mention the date by when the said action shall be taken.	No comments.
8.	By which department was land allotted to ISIC? Would the allotment of land be cancelled if ISIC does not abide by the directions of the public authority?	Land was allotted to this hospital by DDA on concessional rates.
9.	Specify the number of patients who are admitted at ISIC under the freeship facility scheme? Please specify their bed numbers.	As on date there are 14 patients occupying free beds. This is 10% of the total number of beds in the hospital. The daily report sent to the DHS on the state of free bed availability and the names of the patients is enclosed.
10.	How many patients have been given free treatment under the freeship facility scheme in last 4 years? Mention their names and addresses.	The number of free OPD and IPDs since April 2007 is enclosed.

The PIO sought the assistance of Dr. J. N. Mohanty, MS, Nursing Home Cell & the deemed PIO under Section 5(4) of the RTI Act to obtain the information above. Dr. Mohanty further sought assistance from ISIC.

Grounds for First Appeal:

The Complainant stated in the First Appeal that no information was provided by the PIO.

Order of the First Appellate Authority (FAA):

“The Appeal was received from Sh. Puran Chand vide ID. No. 704. Ms. Nirmal D/o Shri Puran Chand informed the DHS after getting estimate of Rs. 1.75 Lac in favour of treatment provided to Sh. Puran Chand in the Hospital. She went to social worker for getting necessary information about free treatment in respect of her father. As per her verbal statement social worker told that only Eleven Thousand rupees concession will be allowed over and above 1.75 lac estimated expenditure.

Dr. J. N. Mohanty MS, Nursing Home Cell informed the Appellate Authority that after receiving the RTI application of Sh. Puran Chand he directed the Hospital Authority on 10.9.09 to provide free treatment and a copy of the same was sent to the patient address for information to go Indian Spinal Injuries Centre for free treatment. He also directed the Research Officer of his Branch to inform telephonically accordingly to Ms. Nirmal to approach Medical Superintendent (MS), Indian Spinal Injuries Centre. A letter was sent MS, Indian Spinal Injuries Centre for providing to free treatment to Shri Puran Chand. Copy of letter sent to Shri Puran Chand through speed post, was returned back undelivered. Postman remark on the envelop of the letter was that on “repeated visit to the house of the addresses, the house was found locked”.

She also told that her father was admitted in Gangaram Hospital on 8th September 2009 and got operated on 10.9.09 for which whether the hospital has given free treatment could not be ascertained as no documentary proof was submitted by the Ms. Nirmal.

Though the appellant asked that the reply to be furnished within 48 hours of date of filling of application as per RTI Section (7) (1). On examination of prescription of Sh. Puran Chand, it was found that consulting doctor had never been advised the patient for immediate treatment for his illness. Hence the matter does not come under section 7(1) of RTI Act 2005. Moreover the patient had already availed treatment from Private Hospital.

Accordingly appeal is disposed off.”

Grounds for the Complaint:

The Commission received correspondence on 02/12/2009 wherein the Complainant stated that information was sought from the PIO vide RTI application dated 31/08/2009. The Complainant neither mentioned whether any reply was received from the PIO nor enclosed the PIO’s reply dated 16/09/2009. Further, he did not state that the FAA had passed an order and did not enclose a copy of the same. Therefore, the Commission registered the same as a Complaint under Section 18 of the RTI Act and issued a notice to the PIO, DHS on 02/12/2009 directing that complete information in relation to the RTI application be provided to the Complainant before 27/12/2009. Thereafter, the Commission received a letter dated 14/12/2009 from the PIO stating that information was provided in response to the said RTI application on 16/09/2009. The PIO enclosed a copy of the reply dated 16/09/2009, the order of the FAA dated 09/11/2009 and other relevant correspondence for the Commission’s perusal.

Relevant Facts emerging during Hearing held on August 16, 2010:

The following were present

Complainant: Ms. Nirmala representing Mr. Pooran Chand;

Respondent: Dr. G. Kausalya, Public Information Officer & Chief Medical Officer;

Dr. Ashok Kumar, CMO on behalf of Dr. J. N. Mohanty, Deemed PIO & MS, Nursing Home Cell.

The Complainant was in need of an urgent spinal operation and had approached the ISIC for carrying out an operation. He comes under the EWS category and was therefore eligible for treatment. It must be noted that the Government has allotted land to certain private hospitals at nominal rates on the condition that they will provide 10% of the beds to EWS patients. The Complainant was given an 'Admission Request' form from the ISIC on 28/08/2009 in which it was stated, "approximate cost of treatment is Rs 1.75 lakhs". The Complainant claimed that he should be given treatment free of cost as he was a BPL card holder. However, the hospital authorities refused to give him admission for free treatment. The Complainant could not afford to pay Rs 1.75 lakhs. He filed the RTI application on 31/08/2009 and pointed out that the information sought was required within 48 hours since the matter related to 'life or liberty'.

During the hearing, the Complainant stated that he would get the attention of the concerned authorities and be able to get his operation done free of cost, since he did not have the money. The RTI application was posted on 31/08/2009 but the PIO states that it was received on 02/09/2009. The PIO sought the assistance of the Nursing Home Cell. Dr. J. N. Mohanty, MS, Nursing Home Cell received the RTI application on 09/09/2009. He obtained the information from ISIC and sent it on 11/09/2009 to the PIO. The PIO, in turn, sent the information to the Complainant on 16/09/2009.

In the meantime, since the surgery was very urgent, the Complainant got himself operated at Ganga Ram Hospital where he incurred a cost of about Rs.73,000. The Complainant had also tried to get the treatment at Ganga Ram Hospital under the freeship facility scheme but was told that there was no free bed available. In desperation, the Complainant decided to borrow money and got himself admitted in Ganga Ram Hospital where he was told that the operation would cost him less than a Rs. 1 lakh. He borrowed money from his relatives. On 10/9/2009 he was able to get himself operated when enough money had been deposited. The Complainant states that because he got the treatment late he has been paralyzed from hip below.

The Respondent states that the papers sent to them did not indicate a medical emergency and hence they did not treat this as a RTI application which deserves to be treated under the 'life or liberty' clause.

The decision was reserved during the hearing held on August 16, 2010.

Decision announced on August 20, 2010:

The main issue before the Commission is whether the information sought by the Complainant in his RTI application dated 31/08/2009 concerns the 'life or liberty of the Complainant'. In the instant case, the Complainant is a BPL card holder suffering from a serious disease which was required to be operated urgently. He approached ISIC which was covered under the freeship facility scheme whereby a person belonging to the EWS category shall get free treatment. However, ISIC gave him an estimate of Rs. 1.75 lakhs. Pursuant to the same, certain information was sought vide RTI application dated 31/08/2009.

From a perusal of the RTI application, the Complainant has enquired *inter alia* whether the estimate of Rs. 1.75 lakhs given by ISIC was correct, whether the public authority had informed ISIC about the freeship facility scheme, given the medical condition of the Complainant by when will ISIC be given instructions regarding the operation and treatment of the Complainant, bed numbers of those patients who had availed the freeship facility at ISIC, etc. The Complainant also enquired whether he should be given treatment free of cost as per the freeship facility scheme, whether hospitals have been informed about the scheme, action taken against those hospitals that do not comply with the scheme requirements, etc.

Under Section 7(1) of the RTI Act, the PIO is mandated to provide the complete information sought by a person within 30 days of the receipt of the RTI application. However, the proviso to Section 7(1) of the RTI Act carves out an exception to this general rule and mandates that where the information sought by a person concerns his life or liberty, the PIO is required to provide the same within 48 hours of the receipt of the RTI application. In the instant case, the RTI application dated 31/08/2009 was filed with a subject- 'RTI Application under Section 7(1) on a matter affecting life and liberty'.

The Commission, in Mr. Satish Kumar Gupta v. PIO & AR, University of Delhi in its decision in CIC/SG/A/2009/001781/4807 dated 15/09/2009, observed as follows:

“Proviso of Section 7(1) states that ‘where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.’ This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of ‘life or liberty’ would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving ‘life or liberty’ so that it would be used only when an imminent threat to life or liberty is involved.

The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life and liberty can be proven.” (Emphasis added)

The Complainant was suffering from a serious disease which required a spinal operation and if he had continued in the same medical condition, he could have gone into coma. Being a BPL card holder, he sought the free medical facility from ISIC available to him under the scheme. When the freeship facility was denied to him, he sought information regarding his entitlement to the said scheme from the public authority. However, when no information was received from the public authority after a lapse of 4 days, the Complainant was compelled to approach Ganga Ram Hospital on 04/09/2009 for medical treatment where he was told that the operation would cost him less than Rs. 1 lakh. The Complainant approached his relatives for loan and after he was able to get commitments for about Rs. 1 lakh, he got himself admitted to Ganga Ram Hospital on 08/09/2009 and was operated on 10/09/2009.

From the facts before the Commission, it appears that the medical condition of the Complainant was grave and required immediate medical attention. The compression in the spinal cord was serious in nature and if allowed to deteriorate, could have led to the Complainant going in a coma. An analysis of the queries in the RTI application reveal that the replies thereto would have enabled the Complainant to know whether

he would be provided the urgent medical attention at ISIC or would he have to approach some other hospital. The fact that within 4 days of filing the RTI application, the Complainant was forced to approach another hospital for treatment is reflective of the serious nature of his disease. Given the urgent need for medical attention, the Commission finds that the information sought for in the RTI Application does concern the life of the Complainant and therefore information should have been provided within 48 hours of receipt of the RTI Application.

From a perusal of the papers, the Commission noted that the RTI application dated 31/08/2009 was received by the PIO on 02/09/2009. Therefore, further to proviso to Section 7(1) of the RTI Act, complete information should have been provided to the Complainant on 04/09/2009. On receipt of the RTI application, the PIO sought assistance of the Nursing Home Cell. Dr. Mohanty, the deemed PIO and MS, Nursing Home Cell received the RTI application on 09/09/2009 i.e. after 7 days. There is no rational explanation why it took 7 days for the RTI application to reach Dr. Mohanty from the PIO's office. Dr. Mohanty obtained the information from ISIC and sent it to the PIO 11/09/2009, which was forwarded to the Complainant only on 16/09/2009 i.e. after 5 days. In other words, information which was required to be provided by 04/09/2009 was finally given to the Complainant on 16/09/2009 i.e. after a delay of 12 days.

Furthermore, on perusal of the PIO's reply, the information provided appears to be inappropriate. For instance, in queries 7 and 8 of the RTI application, information sought mainly pertains to the action that can be taken by DHS where hospitals do not comply with the directions in relation to the freeship facility scheme and the effect of such non-compliance on the allotment of land to the said hospitals. No information has been provided in response to the aforementioned queries. Therefore, not only is the information provided by the PIO unsatisfactory, there was also a delay of 12 days in furnishing the same where the information concerns the life of the Complainant. In the instant case, the PIO sought the assistance of Dr. Mohanty under Section 5(4) of the RTI Act, who, in turn sought further assistance from ISIC to provide the requisite information. The Commission is of the opinion there was an administrative responsibility on the part of the PIO as well as Dr. Mohanty, the deemed PIO to ensure that the information finally provided to the Complainant was complete in all respect.

Since the matter pertains to life or liberty of the Complainant, there should have been fast and effective coordination between the PIO and the officers from whom assistance was sought. Instead there has been a delay of 7 days in receipt of the RTI application by the deemed PIO. The Commission feels that when there are urgent medical matters like spinal operation, which affect the life of the patient involved, PIOs would have to look more sensitively and ensure that the system gives information within 48 hours. The Complainant had mentioned in his RTI application that he needed an urgent operation and hence was seeking the said information in 48 hours. Even after the deemed PIO sent the information to the PIO on 11/09/2009, the same was provided to the Complainant only on 16/09/2009 i.e. after 5 days. The Commission noted that no reasonable explanation was offered by the PIO as well as the deemed PIO for justifying the total delay of 12 days in providing the information.

Further, it has been established before the Commission by Dr. Mohanty that the Complainant was entitled to the freeship facility scheme. The order of the FAA recorded "*Dr. J. N. Mohanty M.S., Nursing Home Cell informed the Appellate Authority that after receiving the RTI application of Sh. Puran Chand he directed the Hospital Authority on 10.9.09 to provide free treatment and a copy of the same was sent to the patient address for information to go Indian Spinal Injuries Centre for free treatment.*" However, the same was communicated to the Complainant only on 10/09/2009. The Commission feels if the PIO had perused the RTI application carefully and applied his mind, he could have sought the necessary assistance

from Dr. Mohanty, the deemed PIO in a more expeditious manner and at the same time communicated to the Complainant his entitlement to the said scheme on 04/09/2009 itself.

However, the Complainant did not receive any information on his RTI application within 48 hours and consequently, could not avail of the medical facility at ISIC free of cost. Moreover, he was compelled to approach Ganga Ram Hospital for his surgery where he incurred a heavy expenditure. The Commission feels that evidently there was a possibility of the Complainant being able to avail the medical facilities free of cost, which the Government promises to those who belong to the EWS category. The Complainant claims that he had taken loans to undertake his operation and was financially burdened by the debt. The Complainant established that he spent over Rs. 84,000 out of which Rs. 74,860 was paid by him to Ganga Ram Hospital as per bill no. 2009-2010/Ca/I/0022962.

Section 19(8)(b) of the RTI Act empowers the Commission to require the public authority to compensate the Complainant for any loss or other detriment suffered. In the instant case, the Commission noted that despite the fact the information sought pertained to life or liberty of the Complainant, the information provided was incomplete coupled with a delay of 12 days. Further, the Complainant belongs to the BPL category and irreparable loss, both physically and financially, was incurred by him due to the careless and insensitive attitude of the PIO. The instant case represents the failure of the delivery system to the poor. The Commission feels that unless all officers and systems can respond in a time bound manner, governance cannot deliver to those who need it the most. The High Court of Delhi in Union of India v. Central Information Commission W.P. (C) 6661/2008 while discussing the Commission's power to award compensation under Section 19(8)(b) of the RTI Act, held in its decision dated April 16, 2009:

“9. ... The Jurisdiction to direct compensation under the Act, has to be understood as arising in relation to culpability of the organization's inability to respond suitably, in time, or otherwise, to the information applicant.”

In light of the aforesaid, the Commission finds this to be a fit case to award compensation to the Complainant on account of the loss and detriment suffered by him vide its powers under Section 19(8)(b) of the RTI Act. If the PIO and all the officers had acted with urgency when the RTI Application was received on 02/09/2009 and provided the information within 48 hours, the Complainant may have been able to avail the free service that he was entitled to. If the PIO had acted proactively information could have been provided over the telephone to the Complainant who had given the telephone number on the RTI application. It is unfortunate that most schemes which promise to deliver to the poor fail because of lack of sensitivity in implementation. The Complainant was forced to approach others to borrow money to pay for his urgent surgery.

The Commission takes this unfortunate circumstance to highlight the complete failure of the government to deliver social welfare schemes, particularly those involving free medical treatment to persons who cannot afford them, effectively. The Government has allotted land to certain private hospitals at nominal rates on the condition that they will provide 10% of the beds to EWS patients. This scheme is clearly intended for the economically weaker section of the society. The allotment of land at a nominal price is actually a loss to the exchequer and a gift to the private hospitals, on the tenet that the land given to the hospitals for private profit will benefit the weaker sections of the society. However, in reality most persons for whom such scheme is intended do not enjoy its benefits due to lack of proper implementation.

Keeping in view the deplorable manner in which the PIO processed the said RTI application, the Commission recommends that cases where information sought pertains to 'life or liberty' of the individual, the PIO should ensure that information sought is provided within 48 hours. The instant case is

reflective of the incompetence and callousness of the public authority, which was incapable of responding to the RTI application concerning the life of the Complainant within 48 hours. This case represents how the delivery systems to the poor fail. Unless all officers and systems can respond in time-bound manner, governance cannot deliver to those who need it most. The Commission hereby directs the public authority to pay a compensation of Rs. 50,000 to the Complainant on account of the suffering and detriment that he had to undergo due to the delay caused by the Department in providing him timely information.

Decision:

The Complaint is allowed. The Commission directs the PIO to provide complete information on queries 3, 7 and 8 of the RTI application dated 31/08/2009 to the Complainant **before September 10, 2010.**

The Commission further directs the PIO to ensure that a cheque of Rs. 50,000/- as compensation is sent to the Complainant **before September 30, 2010.**

Furthermore, in light of the fact that DHS is most likely to receive RTI applications where the life of an individual may be in imminent danger, the Commission vide its powers under Section 25(5) of the RTI Act recommends to the Principal Secretary, DHS that it should devise processes/ mechanisms by which it must provide information within 48 hours when required.

This decision is announced in open chamber.

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
August 20, 2010

CC :-

The Principal Secretary,
Health & Family Welfare
Directorate of Health Services (DHS)
9th Level , A- Wing, Delhi Secretariat,
New Delhi - 110002

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