

Before the State Information Commission, Maharashtra – Appeal under section 19(3) of RTI Act, 2005.

Appeal No.2006/406/02

**Shri Shailesh Gandhi,
B-2, Gokul Apartment,
Podar Road,
Santacruz (West),
Mumbai 400 054.**

.. Appellant

V/s

**Dean, Sir J.J. Hospital,,
Byculla,
Mumbai 400 008.**

.. Respondent

GROUNDS

Shri Shailesh Gandhi had given application on 27.5.2006 under Section 6 of RTI Act, 2005 to the PIO, J.J.Hospital, seeking copies of medical reports including ECG and all other reports pertaining to Shri Surupsinh Naik, Ex. Minister during his hospitalization in J.J.Hospital. He also wanted medical reports made at the time of discharge of Shri Surupsinh Naik.

The PIO by his letter dt. 20.6.2006 sought guidance in this matter from GAD of Government of Maharashtra and marked the copy of this letter to Shri Gandhi. Having not received the information Shri Shailesh Gandhi preferred 1st Appeal under section 19(1) of RTI Act on 24.6.2006. By quoting the following provisions under section 8(1) (c) (d) (e) (j) i.e.

8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) 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;

(j) Information, which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual,
the Appellate Officer denied the information to the Applicant.

In his appeal to this Commission Shri Gandhi has pointed out that as per the provisions of the Act the Appellate Authority cannot give the reasons for rejection. They have to be given by the PIO since as per section 19(5) in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central PIO or the State PIO as the case may be, who denied the request. This appeal was heard on 27th September, 2006 and 29th September, 2006 by the Chief Information Commissioner alone and by a full bench of this Commission on 5.3.2007 when the Dean of J.J.Hospital, Supdt. of J.J.Hospital and the Applicant Shri Shailesh Gandhi were present. The letter dt. 28.6.2006 of the PIO is not an order under RTI Act, it is a letter written by him to the GAD seeking guidance in this case. Probably copy of this was sent to Shri Shailesh Gandhi to apprise him that they were seeking guidance from GAD and there could be delay in taking decision on the application of Shri Gandhi. Therefore, the appeal under section 19(1) should be deemed to be an appeal for not having received a decision of PIO within the time specified in the sub-section 1 of section 7. Therefore when there is no order one way for the Appellate Authority is to ask the PIO to send a reasoned order or decide the application himself after hearing the PIO and the Applicant.

From the letter of the PIO probably some insight in the mind of the PIO about not giving the information is available. Though it is correct that the Appellate Authority's order is almost an order as if written by PIO it could have been worded differently. Alternatively if he asked the PIO to again apply his mind and give the information that would have been time consuming and would have delayed the matter, therefore, while agreeing with the contention of the Applicant we deem it fit that deem the reasoning given by the Appellate Authority in rejecting the application of the applicant could be taken into consideration.

Shri Surupsinh Naik was imprisoned by the orders of Supreme Court for contempt of court. While undergoing imprisonment he was transferred to J.J.Hospital because of his ill-health. The Applicant wants the medical reports of Shri Surupsinh Naik during his stay in J.J.Hospital and at the time of his discharge. The Dean of the J.J.Hospital during his argument has given the extract from the book titled "The Essentials of Forensic Medicine and Toxicology" by Dr. K.S.Narayan Reddy. The extract states "that the medical records of a patient (in-patient or out-patient) should not be given to any person without the consent of the patient. The police do not have a right to demand medical records except when there is statutory provision for such requisitions. The patient's record cannot be used in educational or diagnostic conferences or clinics or for publications, without the patient's consent." It looks to us that the Applicant's intention could be to verify that hospitalization during the imprisonment period is supported by the proper medical diagnosis done during the stay of Shri Surupsinh Naik. The Medical Authorities of J.J.Hospital having regard to the provision of Section 11 under RTI Act have sought the consent from Shri Surupsinh Naik to give the intended information on 3rd July, 2006. However, there has been no response from his side.

Argument on behalf of the Respondents is that the reports of medical

examinations are quite personal to the individual and this privacy has to be respected. The hospital authorities are also governed by the ethics of their professions. Jail authorities have also to take the decision about shifting the inmate of jail who complains of ill-health to the hospital, as there have been cases when delay in shifting such persons to the hospital, have led to unfortunate incidence and subsequently has invited criticism from the public and anguish from the relatives. Discharge of Shri Surupsinh Naik has been after taking into consideration the medical requirement of the case. The Applicant argued that disclosing these records would clear doubt in the mind of public whether the stay of Shri Naik in the hospital instead of in the prison was justified or otherwise.

Thus in this case, there are two contradictory points, right to privacy vis-a-vis right to know, which need to be weighed to arrive at the decision.

People generally feel that those in high places or have money power when imprisoned get shifted to hospitals under one pretext or the other and spend their jail term in the hospitals. However, there could be genuine requirement also for the imprisoned person for specialized medical supervision. To remove veil of secrecy and let people know the actual position in this regard, we feel, would do justice to all the parties concerned, jail authorities, medical authorities at J.J.Hospital and also to Shri Surupsinh Naik who has not responded to the request of consent to give this information. We think that larger public interest would be better served by disclosure of information rather than continuing doubts in the public mind.

One more point to be considered that under section 8(j) the proviso contemplates that the information which could be revealed to State Legislature, such information should not be denied to the public. The PIO admits that information in question could not be denied to the Legislature. Therefore, we

think it would be unjustified to deny this information to Applicant.

We, therefore, are of unanimous opinion that the information asked by Shri Shailesh Gandhi should be given to him. We only expect that information thus received will be used in a responsible manner.


ORDER

Appeal is allowed. PIO of J.J.Hospital is directed to provide the asked information to Shri Shailesh Gandhi, the applicant within a period of seven days free of cost.

Sd/-
Shri Vilas Patil
Information Commissioner,
Nagpur.

Sd/-
Shri V.B.Borge,
Information Commissioner,
Aurangabad.

Sd/-
Shri V.V.Kuwalekar
Information Commissioner,
Punc.


Dr. Suresh V. Joshi
Chief Information Commissioner
Maharashtra

Place: Mumbai
Date: 5.3.2007