

CENTRAL INFORMATION COMMISSION
2nd Floor, August Kranti Bhawan
New Delhi-110066

Complaint No. CIC/PB/C/2008/00304, 00310, 00868 & 00866-7

Dated, November 24, 2008

**Name of the
Complainants:**

- 1) Mrs. Pushpa
C/o Parivartan,
C-3/8, Sundernagari,
Nand Nagri Extension,
Delhi-110093.
- 2) Mrs. Chandrakala,
C/o Parivartan,
G-3/8, Sundernagari,
Delhi-110093.
- 3) Mr. Mudassar Ali
C/o Parivartan,
G-139/F2, Dilshad Colony,
Delhi-110095.
- 4) Mr. R.P. Tiwari.
C/o Public Cause Research
Foundation,
G-139/F-2, Dilshad Colony,
Delhi-110095.

Public Authority: Guru Teg Bahadur Hospital

Date of Hearing: 16.9.2008 and 21.10.2008

Date of Decision: 24.11.2008

FACTS OF THE CASE:

The Full Bench of the Commission took up the following complaints cases together:-

1. **CIC/PB/C/2008/00304** – Case of Mrs. Pushpa

2. **CIC/PB/C/2008/00310** – Case of Mrs. Chandrakala
3. **CIC/PB/C/2008/0000868** – Case of Shri Mudassar Ali.
4. **CIC/PB/C/2008/00867** – Case of Shri R.P. Tiwari

2. All the complainants were present either in person or through a representative. The names of the representatives who presented the case of the **complainants** before the Commission were:

1. S/Shri Arif Hussain,
2. Aftab Siddiqui,
3. Ms. Radhika Arora and
4. Liter

Respondents were represented by:

1. Dr. N.K. Agarwal, Addl. MS/PIO; and
2. Sri Chandan Sengupta, Supdt.

3. Almost all the complainants have a common grievance that they were asked to purchase medicines/consumables from outside the hospital even though they are poor people and the hospital authorities are obliged to provide them medicines free of cost. Under the RTI Act, they wanted to inspect the Stock Register or have information regarding stock position of the medicines that they were asked to buy from outside the hospital. The complainants also wanted to know the name of the doctors who have dealt with their cases and action, if any, taken/proposed to be taken by the respondent Public Authority against these doctors.

4. It has also been submitted by the complainants that even though their cases are a matter of 'life and liberty' and that the respondent Public Authority was obliged to provide information to them within 48 hours under the provisions of the RTI Act. Instead of providing the information, the respondent Public Authority in contravention of the provisions of the Act, failed to respond for several months and did not take any action. The complainants have, therefore, prayed for a direction from this Commission for providing the information to them. They have also pleaded with the

Commission that penalty should be imposed on the erring CPIO who had ignored the mandate of law and did not provide required information within the prescribed period.

5. The case of Smt. Pushpa (**CIC/PB/C/2008/00304**) was taken up first. The complainant submitted that the respondents were informed that the complainant belonged to the BPL category but the Doctors asked her to buy medicines from the market. Despite the fact that medicines were available in the hospital, she was given the drug list which contained only the brand names of medicines and not the pharmacological name and was asked to go to the market to a particular chemist to buy the medicine. The complainant alleged that it is common practice in the respondent hospital that the doctors merely give the patients a drug list and instead of giving them medicine free of cost, they advise patients to buy medicines in the market or contact some agent of a particular medical agency within the hospital. The complainant was running a high viral fever of 104 degrees at the time but she was not provided any medicine on the spot.

6. The complainants further submitted that they had asked for stock availability as to whether this particular medicine was available in the stock on that particular date but till now the respondents have neither allowed them any inspection of their stock records nor have they received any information.

7. Complainant Smt Pushpa submitted that although the Medical Superintendent in an emergency has power to order immediate purchase of medicine worth Rs.1,00,000/-, yet she was asked to purchase medicine in open market.

8 In regard to the case of Ms. Chandrakala who was operated upon for breast cancer, the complainant submitted that although her case was of prolonged treatment but in view of her deteriorated condition during continuation of treatment, it had become a case of threat to life and liberty.

9. The complainant, Shri Mudassar Ali submitted that the respondent hospital demanded Rs.28, 000 for operating upon his mother and asked him to go to certain chemists where he would get the consumables. The Doctor himself has given in his hand-writing the name of the agent from whom the medicines/consumables are to be bought. He alleged that this is a clear case of corruption as, under rules, if the medicines are not available, the Medical Superintendent exercising his special power can immediately make available medicines worth up to Rs.15,000/-.

10. Respondent Dr. N.K. Agarwal submitted that information has been provided vide their letter dated 26/27.3.2008 sent under Regd/Speed Post. However, he could not submit any documentary proof and stated that he would produce the same, if required. To a query from Chief Information Commissioner as to why the respondent did not treat this case as a case of life and liberty and provide prompt information, the respondents stated that none of these cases could be treated to be a case of life and liberty. None of the appellants was admitted to the hospital. The first complainant had high fever and she was provided treatment. Fever did not subside immediately but her condition improved after she was put on medication. He explained the details of different stages a patient has to undergo in the course of his or her treatment. The CPIO also submitted that it was not a case of emergency treatment and it is the doctor's decision whether a patient's case is an emergency case or not.

11. Referring to Ms. Chandrakala's case, the respondents submitted that she had breast cancer and was operated upon about three years ago, and since then she has been taking treatment. Such cases require prolonged treatment and cannot be taken as a case of 'life and liberty'.

12. As regards appellant, Sri Mudassar Ali, the respondents submitted that as per the directives of the Delhi Government, the appellant's mother

has already been admitted in the hospital. She has been given physiotherapy treatment and does not now need hip replacement. They, however, admitted that the Government directives are not clear on the point regarding incurring expenditure on hip-replacement. There was no answer to a query that when the patient was recommended for hip replacement why she should have been given treatment in the nature of physiotherapy.

13. The CPIO also submitted that Medical Superintendent has power to purchase medicines worth up to Rs.1 lakh under certain conditions and all the patients, without any discrimination, are provided medicines free of cost. He explained that when a patient comes, as per their system, the patient is given drug list which the patient has to take to the hospital's pharmacy to collect those medicines. He also said that the attending doctor prepares only one copy of drug list which is given to the patient and it is not made part of the hospital's records. It may happen at times that certain patients want an immediate remedy to their ailment and since such medicines are not available in the hospital's store, he is advised to buy them in the market which is in their own interest. Due to incessant research in the medical field, every now and then, new medicines are coming up in the market and the hospital is not keeping all such medicines in stock. It is only on the patient's request that he is advised to buy them in the market. He further submitted that there is no problem in showing the stock register. The complainants can at any time come to the hospital and inspect the said register. Respondents, however, admitted that it was against hospital policy that treating doctors ask the patient to buy medicines from the market, but this practice is widespread.

14. All these cases have primarily arisen as complaint cases. The complainants feel that the respondent Public Authority should have treated their applications under the Act as pertaining to "life and liberty" and, as such, should have been responded to within 48 hours. As the substantial issue of denial has

also come up for decision, the Commission would first like to determine as to whether these cases can be treated as “life and liberty”.

15. The respondent Public Authority has explained that none of the cases can be treated as a case of “life and liberty”. The complainants were given general treatment and neither life nor liberty was under any kind of threat bringing it within the ambit of the proviso to Section 7(1) of the Right to Information Act, 2005. In view of the submissions recorded in Para 10-12 above, the Commission agrees with the views expressed by the Public Authority that every case of treatment cannot be treated as a case of “life and liberty”.

16. The complainants have requested inspection of the stock register or to furnish information in regard to stock position of a particular medicine which they were asked to buy from the market by the treating doctors. They have also asked the name of the treating doctor. All this information is available with the respondent Public Authority. It is regrettable that the CPIO has totally neglected this mandate of the law and did not provide the requisite information to the complainants even though the public authority was obliged to do so.

17. It has been submitted on behalf of the respondent that the required information has been made available to the complainants, which was sent to him (or her) by post. The complainants have vehemently denied receiving any correspondence from the respondents. After full consideration of the matter, Commission issued following directions:

- (i) CPIO shall facilitate inspection of the Stock Register by the complainants and this should be done **within next 10 working days of the receipt of this order;**
- (ii) CPIO shall within 10 days of the receipt of this order provide **proof of dispatch of letters** to the complainants (in response

to their RTI application) and present it also at the time of the next hearing at the Commission;

18. **CPIO and the respondent Public Authority were asked to submit a compliance report in regard to the directions given above on 21.10.2008 when the other matters concerning the same Public Authority were to come up for hearing.**

19. The cases were heard again on 21.10.2008. The following were present:

Complainants -

1. Ms. Radhika Arora (representing all the Complainants).
2. Ms. Swati Maliwal :

Respondents -

1. Dr. N.K. Agarwal, Addl. M.S.
2. Dr. Sudhir Kumar, H.O.D., Ortho.

20. The representatives claiming to be representing the complainants, however, did not have any Letter of Authority. When they were called upon to produce the Letter of Authority, they asked for some time and promised to fax the same. Eventually, the authority letters, purportedly signed on 19.09.2008, were received through Fax on 21.10.2008. On perusal of the Letters of Authority, purportedly signed by the complainants, it appears that there is a serious doubt as regards the identify of the complainants themselves. It seems that the complainants have authorized P.C.R.F. (Public Cause Research Foundation) probably a NGO, and not authorized any individual person or any other citizen to represent them. The addresses of the complainants also testify to this fact that it is not the complainants who are interested in seeking information. It is the PCRf, a NGO, which seems to be more interested in seeking information through them. The addresses which are indicated on the RTI applications/complaint petitions do not appear to be the genuine addresses of the complainants. **An Enquiry will be conducted in this regard by the Registry as to whether there is any case of impersonation or fabrication of records.** Summons be issued for appearance

of the complainants in person. Registrar, Shri L.C. Singhi will submit the Registry's report to the Full Bench by 30.12.2008

21. At the very outset, Ms. Swati Maliwal, who claimed to be representing the complainants submitted that the RTI petition which was initially submitted is still not replied to and that the Stock Registers have not been made available for inspection. The representative of the complainants further stressed that all the cases should be treated as cases of life and liberty as they relate to medical treatment of citizens. She further stated that even though it is a question of life and liberty yet disclosure of information has taken a long time,

22. The Superintendent representing the Respondent Public Authority submitted that if the prescriptions given to the patients were looked into, the Commission would notice that what had been prescribed were normal medicines, such as, SHELCAL and Alprex in case of Ms. Chandrakala. These medicines cannot be classified as life saving drugs. The case of Ms. Pushpa was a case of Viral fever. Similarly, the case of Hip replacement of Mrs. Sayeeda, who was first treated in Bulandshahr in U.P. and subsequently given treatment by the Respondent Public Authority, could not be a case involving life and liberty. If each and every case of a patient is a case of life and liberty, then probably the hospital authorities would only be attending to the RTI matters rather than attending to the patients. The Superintendent further informed that Ms. Sayeeda has been operated upon 21.10.2008 and medicines have been procured through their own system of procurement. It was made clear to the complainants that they are repeating the same point which has already been decided and made known at the time of the previous hearing.

23. The CPIO, however, admitted that the Doctors attending the patients should prescribe medicines not by the medicine's brand names but by their Pharmacological names and if any Doctor prescribed any medicine by a brand name, then this was a mistake on the part of the attending Doctor. The practice

of prescribing medicines by brand name is also in violation of the Rules and Guidelines.

24. As regards the substantive issue of denial of information is concerned, the Superintendent, on behalf of the Respondent Public Authority, submitted that the Stock Registers are available for inspection and the petitioners have seen them and they can inspect them at any point of time.

25. The respondent public authority is a hospital providing medical facilities to patients and free medicines to those who belong to those classified as 'Below Poverty Line'. The respondent public authority is discharging an important public function of one of the most important responsibilities of the welfare State, which is to provide health care to its citizens. A public authority, such as a hospital, is required to attend to the health needs of the people – some of which could have a bearing on life and death – and must have a sound, transparent, verifiable and accountable system in place. A patient is entitled to know what he is entitled to expect when he approaches a hospital/doctor for treatment. He cannot be disentitled for what is rightly his, on account of his poverty, status, cost or any other social or economic disability, at the whim and fancy of those in authority. For instance, a patient being asked to buy medicines from the open market when he/she is entitled to receive it from the hospital amounts to denial of his right. Since the standard reason provided by hospitals for asking patients to buy their own medicine, is its non-availability in stock, it is important that there is complete transparency regarding the stocks of medicines and consumables held by the Hospital at any given point of time. **The stock register and the stock position of medicines, consumables etc. of an institution such as this should, therefore, be conspicuously displayed.** This is also the mandate of **Section 4 (1) (b) sub-sections (vi) and (xiv)** of the Right to Information Act, 2005. Sub-section 4(1)(B) (xiv) enquires publication of the *“details in respect of the information, available to or held by it, reduced in an electronic form.”*

26. The CPIO was unable to inform the Commission regarding the existence of any proper system to record and exhibit the stock position regarding medicines and consumables, and failed to throw any light whatever on the mechanism for making this known to the patients.

27. The complainants still insisted that these are fit cases where penalty must be imposed as the information had not been supplied within 48 hours. It was made clear to the complainants that every case could not be so treated simply because complainants so demanded.

28. The Commission noted with displeasure the manner in which the case was argued by the representatives purportedly appearing on behalf of the complainants and their attitude which seemed inclined more towards the polemical rather than a quest for information. The decorum which was expected to be maintained in a quasi-judicial proceeding conducted before a Statutory Authority was absent. This was a clear case of misuse of the freedoms ingrained in the Act. It is directed that in all such cases, where the complainants are represented by Civil Society Activists, the Registry would ensure that a Letter of Authorization was first obtained from them and only then would they be allowed to make submissions before the Commission.

29. The Commission makes it clear that it seeks to ensure bringing systemic improvements in the working of the public authorities so as to bring any transparency and accountability in their working rather than routinely imposing penalties on the PIOs. The imposition of penalty cannot be a matter of course and the Commission has to arrive at a considered opinion while deciding to impose a penalty on a Government servant if he is otherwise discharging his duties to the best of his ability and competence. **The RTI as an instrument cannot be used either to harass or to obstruct the very functioning of a Public Authority.**

DECISION NOTICE

30. After careful consideration of the issues involved in the matter, the Commission, in exercise of its powers conferred under Section 19 of the Right to Information Act, directs as under:-

- (i) (a) To institute an enquiry as to the reasons and the circumstances under which the complainants were asked to procure medicines and consumables from open market, contrary to the policy and guidelines; and
- (b) To enquire how and why the prescriptions given by the doctors to the patients contained brand names of medicines/consumables and not their pharmacological names; and
- (c) To fix responsibility in each case; and
- (d) To submit a report to CIC within 6 weeks of the order.
- (ii) (a) To submit a report to the CIC within 6 weeks of the order regarding the system now in place and/or to be put in place regarding prominently displaying details of all medicines and consumables held in stock at given points in time both normally and electronically as well as the system to answer petitioner's queries in this regard.
- (b) To display for the patients' information, their rights and entitlements to medicines, consumables, services. etc.
- (iii) In regard to the case regarding treatment of Ms. Sayeeda, who was allegedly asked by the doctors to buy from open market consumables worth Rs. 28,000/- for her hip-joint replacement operation, it is directed that the public authority shall, within 3 weeks of receipt of this order, submit a report to the Commission comprising the following:-

- (a) A report on whether, and if so, under what circumstances, Mrs. Sayeeda was asked to acquire the consumables from the open market, and by whom (name of the doctor).
- (b) The system about treatment of patients such as Mrs. Sayeeda, especially highlighting whether such patients are entitled to free treatment and how the free treatment mandate is carried out by the Hospital in actual practice.
- (c) In case Mrs. Sayeeda needs hip-joint replacement surgery, what facility she shall be entitled to under the existing provisions of law / Rules.

31. In so far as these RTI petitions are concerned, the Commission is satisfied on perusal of the records that the response to each and every RTI applicant was sent although it may not have been received by the RTI applicants. This could also be due to wrong address given by the complainants. Under the circumstances, **there is no case for imposition of any penalty.**

Announced in open chamber on this the 24th day of November, 2008.
Notice of this decision be given free of cost to the parties.

(Mrs. Padma Balasubramanian)
Information Commissioner

(A.N. Tiwari)
Information Commissioner

(Wajahat Habibullah)
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)
Registrar