



**J&K State Information Commission  
Wazarat Road, Near D.C. Office, Jammu /  
Old Assembly Complex, Srinagar.**

File No. SIC/J/A/268/2016  
Decision No. SIC/J/A/268/2016/334

Appellant : Shri Dalbir Singh Jamwal  
Respondent: Directorate of Health Services, Jammu.  
Date of Institution: 14-03-2016  
Date of Decision: 06-06-2016/  
State Information Commissioner: Er. Nazir Ahmad  
Decision: Appeal disposed of.

1. Brief facts of the case are that Shri Dalbir Singh Jamwal exercising his right to information filed application with PIO, O/o Block Medical Officer, District Hospital, Akhnoor on 09-12-2015, seeking information as under;

- i) What records are kept for patients undergoing abortions in the hospitals.
- ii) List of patients with their name, ....who underwent abortions in the year 1990, 1995, 1997 & 1999.
- iii) Name of the doctors who did these abortions.

2. This application has been responded to by BMO, Sub District Hospital, Akhnor / PIO vide order dated: 06-01-2016, informing that no record could be traced for the years referred to in the application.

3. Aggrieved by the PIO's reply, appellant preferred first appeal with Director, Health Services, Jammu on 12-01-2016 which has been decided by Dr. Baljeet Pathania, designated FAA on 16-01-2016, observing that information sought by the appellant is exempted from disclosure under Section 8(1)(i) and (8)(3) of the J&K RTI Act, 2009, as such can not be provided.

4. Aggrieved by the orders of PIO and FAA, appellant filed 2<sup>nd</sup> appeal before the Commission on 14-03-2016 on the ground that PIO deliberately denied information as asked in

application dated: 09-12-2015 and FAA did not provide an opportunity of being heard as per provisions laid down in the Act. He has prayed that information be provided and PIO be penalized for deliberate denial of information.

5. In compliance to the notice of the Commission, Baljeet Pathania, Director/FAA, Directorate of Health Services, Jammu filed counter reply vide letter dated: 24-03-2016, interalia stating that point 1 of RTI application does not come within the definition of "information", as defined under Section 2(d) of the J&K RTI Act, 2009. With regard to points 2 & 3, FAA submitted that this part of information comes under Section (8)(1)(i) and (8)(3) of the Act, as the information sought is personal in nature and has no relationship to any public activity or interest and is likely to affect the privacy of an individual, if disclosed. FAA has further taken the plea that some part of the information is beyond the period of 20 years.

6. During proceedings in the Commission on 27-04-2016, appellant was directed to file reply /objections to the reply/counter statement of the FAA within 10 days.

7. In compliance to this direction, appellant filed rejoinder to the written statement of the FAA on 05-05-2016, stating that in every government hospital, it is mandatory to keep patients record who undergoes abortion, which includes registration slip with no., receipt of money charges for that slip, entry of the patient's name, age, residence by the doctor who examines the patient, file of patient....referral notes, patients general condition, ....consent by patient/guardian. Appellant has referred to section 2(f), which is actually section 2(d) which defines 'information' and pleaded that, just by saying personal information, FAA can not put a complete ban on providing information to the appellant. Appellant has further referred to Section 8 (Exemption clause) and submitted that PIO can not deny information which involves larger public interest. He has also referred to proviso to Section 8(1)(i), which provides that information which can not be denied to Parliament or State Legislature shall not be denied to any person. It is alleged by the appellant that some doctors in connivance with some female employees are issuing fake medical certificates to get leave benefit without under going medical treatment in hospitals. Appellant has further submitted that regulations made under Medical Council of India Act, barring disclosure of information is a sub-ordinate legislation, as such, RTI Act prevail over them.

8. In compliance to notice of the Commission dated: 03-05-2016, Dr. Baljeet Panthania, Director, Health Services, Jammu / FAA filed written arguments to the objections of the appellant vide letter dated: 17-05-2016, interalia, stating that appellant failed to comply with

the directions of the Commission, as he did not file objections within time, stipulated by the Commission. In reply to para 1 of objections of the appellant, FAA has submitted that record is maintained in the hospitals as....provided under Section 5(1) of the Medical Termination of Pregnancy Regulations, 2003, issued by Ministry of Health and Family Welfare, which provides; **“Every head of the hospital or owner of the approved place shall maintain a register in form III for recording therein the details of the admissions of women for the termination of their pregnancies and keep such register for a period of five years from the end of the calendar year it relates to”**

9. With reference to para 2 of the objections, FAA submitted that these contents are just reproduction of provisions of the RTI Act and is matter of record, needs no reply.

10. As regards para 3 of the objections, FAA has stated that only such information can be provided which is not exempted from disclosure under RTI Act. The information asked by the appellant, i.e., list of patients with their name, parentage, residence...who underwent abortions during 1990s and latest in 1999 is personal information and has no relationship to any public interest and is likely to affect the privacy of an individual, if disclosed. It is further stated that Section 5(3) of Medical Termination of Pregnancy Regulations, 2003 provides that admission register shall be a secret document and information contained therein as to the name and other particulars of the pregnant women shall not be disclosed to any person and as per Section 6 of above referred regulations, admission register shall not be open for inspection to any person except under the authority of law. It is further stated that it is Medical practitioner who on the application of employee issue certificate to her for the purpose of leave.

11. As regards para 4 of the objections, FAA states that PIO as well as FAA did not feel that larger public interest justifies disclosure of information.

**Decision and Reasons:**

12. Commission has perused the statements and counter statements of the parties. As regards point 1, appellant has simply asked “what records are kept of patients undergoing abortions in hospitals.” The contention of the FAA that this information does not fall within the ambit of Section 2(d) of the Act, is not tenable, as FAA himself in his counter statement has referred to Section 6 of the Medical Termination of Pregnancy Regulations, 2003, which provides for safe custody of admission register, which shall not be open for inspection, except under the authority of law. Therefore, this information is part of record and falls within definition of “information.”

13. So far as information at point-2 is concerned, appellant has asked for list of patients with their names and other particulars who underwent abortion in the 1990, 1995,1997 and 1999. Plea of the FAA is upheld that as per Section 5(1) of Medical Termination of Pregnancy Regulations, 2003, as referred above by FAA at para 8, hospitals are not required to maintain records beyond period of five years.

14. The contentions of the FAA with regard to point 2 & 3 that disclosure of such information is exempted under Section 8(1)(i), i.e., "personal information" relating to the privacy of the individuals is upheld on the ground that right to privacy is concomitant to right to life. The Hon'ble Supreme Court has in various decisions upheld the Right to Privacy as a part to right to life, as enshrined in the Constitution of India. **In R.Raja Gopal v/s State of Tamil Nadu (AIR 1995) SC-264, Hon'ble Supreme Court arrived at the conclusion that "Right to privacy is implicit in the right to life and liberty guaranteed to the citizens under Article 21. It is a right to be let alone. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters."** **In Govind V/s State of Madhya Pradesh (AIR 1975) SC, 1378,** Hon'ble Supreme Court has held that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test." These observations has been reiterated by the Hon'ble Court in a recent judgment titled **UPSC Vs R.K.Jain (2012).**

15. Appellant has failed to made out his case that disclosure of information would serve large public interest, as against withholding of this information. Therefore, plea of the FAA for non disclosure of this information is upheld.

16. Arguments of FAA that disclosure of information is hit by Section 8(3) of the Act-being older than 20 years is not in accordance with express provisions of the Act. Section 8(3) of the Act provides that any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section. It has been clarified by the Hon'ble Supreme Court in the **Institute of Chartered Accounts of India V/s Shaunk A. Satya and ors (2011)** that information can be sought under RTI Act at different

stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the nature of exemption. For example, any information which is exempted from disclosure under Section 8 is liable to be disclosed, if the application is made regarding occurrence or event, which took place or occurred or happened twenty years prior to the date of request vide Section 8(3) of the Act. In other words, information which is made within twenty years of the occurrence may not be exempted, if the application is made after twenty years. Again, in case titled **Bihar School Examination Board V/s Suresh Prasad Sinha, 2009, 8 SCC 483** Hon'ble Supreme Court has held that period for which any particular record or information has to be maintained would depend upon the relevant statutory rule or regulation of the Public Authority relating to the preservation of the records. Where any record or information is required to be destroyed under the rules and regulations of a public authority, prior to 20 years, Section 8(3) will not prevent destruction in accordance with rules.

17. In view of the above, PIO/BMO, Sub District Hospital, Akhnor is directed to provide information on point-1 of the RTI application, as per records maintained at present, i.e., at the time filing of RTI application in December, 2015 by severing /hiding that part of record, which may reveal identity of individual patients.

18. With above directions and observations, the appeal filed before the Commission is disposed of.

**Sd/-**  
**(Er. Nazir Ahmad)**  
State Information Commission

No. SIC/J/A/268/2016

Dated: -06-2016

Copy to the:-

1. First Appellate Authority, Directorate of Health Services, Jammu.
2. Public Information Officer, Directorate of Health Services, Jammu.
3. BMO, Sub District Hospital, Akhnor, Jammu /PIO.
4. Pvt. Secretary to HSIC.
5. Shri Dalbir Singh Jamwal S/o Shri Hira Singh Jamwal R/o Village and P.O. Bhalwal, District, Jammu (Appellant).
6. Guard file.

(G.Q.Bhat)  
Registrar,  
J&K, State Information Commission