



Jammu and Kashmir State Information Commission

شہنیشن کمیٹی انفارمیری اسٹیٹسٹ کشمیری جموں ا

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

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File No. SIC/J/A/04/2017

Decision No. SIC/J/A/04/2017/09

Final Order

- Appellant : Sh. Avinash Razdan
S/o. Late Sh. Mohan Lal Razdan
R/o. 783, Subash Nagar, Jammu.
- Respondent : First Appellate Authority (FAA)/Director,
Health Services (HQ), Jammu and
Public Information Officer (PIO)/
Deputy Director, Health Services (HQ), Jammu.
- Date of Registration : 17.04.2017
- Date of Decision : 12.06.2017

Brief Facts:

This is a second appeal filed under section 16 (4) of the J&K Right to Information Act, 2009 in the J&K State Information Commission by one Sh. Avinash Razdan, S/o. Late Sh. Mohan Lal Razdan, R/o. 783, Subash Nagar, Jammu, on 08.03.2017. The appellant interalia submitted that he had filed an RTI application to the PIO, O/o. Director Health Services, Jammu on 27.01.2017 as under:-

1. Provide the names of doctors on the panel appointed by the Director, Health Services, Jammu for to be trained to medically examine an

arrested person by the police in the Jammu District in all the years from 1998 to ending 2016 year wise respectively.

2. Provide the name of the doctors who were appointed and approved by the Director, Health Services, Jammu to be on the panel of doctors to examine the arrested persons by the police in Jammu District in the year, 2016 in the following hospitals:
 - a) Government Medical College, Bakshi Nagar, Jammu.
 - b) Government Hospital, Gandhi Nagar, Jammu.
 - c) Government Hospital, Sarwal, Jammu.
 - d) Government Super Specialty Hospital, Resham Ghar Colony, Jammu.
3. Provide the name of the doctors who were appointed and approved by the Director, Health Services, Jammu to be on the panel of doctors to medically examine the arrested persons by the police in Jammu District in the year 2016 in each month respectively in the following hospitals:-
 - a) Government Medical College, Bakshi Nagar, Jammu.
 - b) Government Hospital, Gandhi Nagar, Jammu.
 - c) Government Hospital, Sarwal, Jammu.
 - d) Government Super Specialty Hospital, Resham Ghar Colony, Jammu.
4. Provide the manual of the training, containing there in the instructions/guidelines for medical examination of arrested person/s by the police to the panel of doctors approved and appointed by the Director of Health Services, Jammu.
5. In the absence of a panel of doctors to medically examine the arrested persons by the police, what other measures have been

adapted by the respective Hospitals of the Jammu District under the directions of the Director of Health Services, Jammu in all the year of 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

That he received a letter dated: 30.01.2017 bearing No. DHSJ/PIO 11745-48 from the office of the concerned PIO, intimating the transfer of the requested information under section 6(3) to the concerned public authorities and the PIO of the GMC, Bakshi Nagar, Jammu. That he received a letter bearing No. AHJ/RTI/2017/539-42 dated; 07.02.2017 from the PIO, GMC, Bakshi Nagar, Jammu conveying the applicant the request forwarded to other public authorities u/s 5(4)(5) of the J&K RTI Act for furnishing information. That he received a letter bearing No. MS/SSH/RTI/2017/7070-71 dated: 15.02.2017 from the Medical Superintendent of the Super Specialty Hospital, Jammu. The Medical Superintendent denied information on the basis that the concerned hospital was not under the administrative control of the Director, Health Services, Jammu. That he did not receive any information from the PIO/deemed PIOs and any other concerned Public authority. That the denial of the information resulted into the first appeal preferred by the appellant on 06.03.2017. That the FAA had failed to cause any hearing in the appeal preferred by the appellant within the prescribed time, under the RTI Act. That the failure to receive information and the failure of the First Appellate Authority to cause any hearing has resulted into this second appeal by the appellant. The appellant has further requested that the right to information is a fundamental right. That the suppression or obstruction of any information sought under the Right to Information Act, 2009 is a violation

of the RTI Act, 2009. That the information requested under the RTI Act, 2009 in the application is bound to be provided by the DHS, Jammu. That the Hon'ble Supreme Court has laid down guidelines in respect of duties of the Directors of Health viz a viz the medical examination of the arrested person. The requirement of appointment of panel of doctors by the Directorate of Health Services for medical examination of the arrested persons is a guideline of the Apex Court in case titled Sh. D.K. Basu, Ashok K. Johri V/s State of West Bengal, State of U.P. on 18 December, 1996. That the PIO and other public authorities have no grounds to obstruct the information requested which is supported and based on the guidelines of the Apex court. In view of the above, the appellant has requested the State Information Commission to take a serious view of the functioning of the DHS, Jammu in respect to its duties and have the information provided in the second appeal. Finally, the appellant has asked the Commission to inquire into the matter, seek the relevant records and documents, impose penalty on the concerned authorities and compensate the appellant for any loss or detriment suffered.

Proceedings on 12.06.2017.

Ms. Ansuya Jamwal, KAS/PIO, Associated Hospitals, Jammu, Dr. Sajeev Puri, Assistant Director (Schemes), Health Services, Jammu representing the PIO, Directorate of Health Services, Jammu, Dr. Renu Sharma, Medical Superintendent, Government Hospital, Sarwal and Dr. Madhuri Slathia, Medical Superintendent, Government Hospital Gandhi Nagar, Jammu attended the hearing today on 12.06.2017. PIO of the

Directorate Health Services, Jammu Dr. Ajay Gupta, Deputy Director did not attend personally. The appellant also attended.

The first hearing of this second appeal took place today on 12th of June, 2017. Respondent PIO of the Directorate of Health Services, Jammu submitted his written reply and informed that he had transferred the said RTI application to heads of various Hospitals under their control in Jammu city and to the Principal, Medical College, Jammu for submitting their reply directly to the applicant and which they had done. This assertion of the PIO of the Directorate of Health Services, Jammu was authenticated by the Medical Superintendents of the Gandhi Nagar and Sarwal Hospitals respectively who were present personally and showed the copy of the reply sent by them to the applicant (now appellant) who did not deny having received the reply from the hospitals. The PIO of the office of Principal, Medical College submitted that the Principal's office had transferred the request to Medical Superintendents of the Medical College Hospital and the Super Specialty Hospital which are under the control of Medical College, Jammu.

From the proceedings of the hearing and the information provided by the PIO of the Directorate of Health Services (DHS), Jammu it became clear that the PIO of DHS (Jammu) had handled this RTI application in a typically bureaucratic manner by way of providing part info and then transferring the application to other PIOs namely Medical Superintendents of the Gandhi Nagar and Sarwal Hospitals and the Principal Medical College with a view to transfer the responsibility of replying. That's what it looks like. The PIO has invoked section 6 (3) relating to transfer of the

application to another Public Authority but has done the same mechanically like a superior office writing to a subordinate office or authority asking them to provide information directly to the appellant. The queries in the RTI application referred to the panel of doctors approved by the Director, Health Services, Jammu. What this had to do with other Hospitals or the Medical College is not understandable as information sought was about any 'panel of doctors appointed by the Director Health Services, Jammu' and not by subordinate Hospitals or the Medical College, Hospitals. If, however, PIO of the Directorate of Health Services, Jammu wanted to be doubly sure by way of 'abundant caution' he should have first collected replies at his level and then sent a single reply to the applicant (now appellant). Therefore, it is apparent that the PIO of the DHS, (Jammu) has transferred the application to the subordinate Hospitals and to the Medical College without application of mind, though invoking section 6(3) of the RTI Act.

From all the replies shown and seen during the course of the hearing, it transpired that the Director Health Services, Jammu has never approved a 'panel of doctors to conduct medical examination of the arrested persons' brought to various Jammu Hospitals and that the medical examination of the arrested persons is done by the doctors detailed as such by the Hospitals to whom the request is made by the police for medical examination of the arrested persons. The PIO of Director, Health Services, Jammu also stated that such an order of the Director, Health Services, Jammu approving a panel of doctors for conducting medical examination of the arrested persons has not been found in the office records and no such

order is forthcoming. He was of the opinion that such an order has most probably never been issued in the past and also the records do not suggest that such a panel ever existed. The appellant stated that his intention to file this RTI was also prompted by the Hon'ble Supreme Court ruling in Sh. D.K. Basu, Ashok K. Johri v/s State of West Bengal, State of U.P. on 18th December, 1996 that the medical examination of the arrested persons must be done only by the doctors who are part of the approved panel and that the Hon'ble Supreme Court orders in this regard were being flouted by the concerned authorities in the State Government such as Director, Health Services, Jammu.

Directions/Decision:

After hearing the parties who attended the State Information Commission proceedings today on 12.06.2017, namely the appellant Sh. Avinash Razdan and the PIO O/o. Director, Health Services, Jammu etc. and perusal of the record on file and shown by the parties in the course of the hearing, following directions are hereby issued to the PIO and the FAA of the Directorate of Health Services, Jammu:

- 1. PIO of the Director, Health Services, Jammu will provide the information properly compiled parawise to the appellant Sh. Avinash Razdan in terms of the original RTI application submitted by the applicant on 27.01.2017. This may be done within 04 weeks from the date of issue of this order.**
- 2. The FAA/Director, Health Services, Jammu will ensure that he understands his duties and responsibilities as laid down in the J&K RTI Act, 2009 and in future discharges such duties and responsibilities in the manner as has been provided therein and the rules. In this particular case, the FAA i.e. Director, Health Services, Jammu has not acted in the manner as was expected with the result that proceedings under First Appeal could neither**

be held nor was information provided to the appellant. The appellant had to come in second appeal which situation could have been avoided had the FAA done his job under law.

3. Take notice of the Hon'ble Supreme Court ruling regarding medical examination of arrested persons by trained doctors who are on the 'panel of doctors approved by the Directorate of Health Services' in *Sh. D.K. Basu, Ashok K. Johri v/s State of West Bengal, State of U.P. on 18th December, 1996* for perusal and information.

A copy of this order in 2nd appeal (**Sh. Avinash Razdan v/s First Appellate Authority (FAA)/Director, Health Services (HQ), Jammu and Public Information Officer (PIO)/ Deputy Director, Health Services (HQ), Jammu**) be also sent to Commissioner/ Secretary, Health and Medical Education Department, Government of Jammu and Kashmir for information in the light of Hon'ble Supreme Court Order titled *Sh. D.K. Basu, Ashok K. Johri v/s State of West Bengal, State of U.P. on 18th December, 1996* which was brought to the notice of the Commission by the appellant during the course of the hearing.

The appeal is accordingly disposed of.

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

Sd/-

(Khurshid A. Ganai) IAS Retd.

Chief Information Commissioner

J&K State Information Commission

No: SIC/J/A/04/2017_____

Dated: . .2017

Copy to:

1. Commissioner/Secretary to Government, Health and Medical Education Department, Government of Jammu and Kashmir for information.
2. Registrar, J&KSIC for information and necessary action.
3. FAA/Director, Health Services (HQ), Jammu for information and necessary action.
4. PIO/Deputy Director, Health Services (HQ), Jammu for information and n/a.
5. Private Secretary to HCIC for information of the HCIC.
6. Appellant/Sh. Avinash Razdan, S/o. Late Sh. Mohan Lal Razdan, R/o. 783, Subash Nagar, Jammu for information.
7. Office file.

(Dr.Gh.Mohi-Ud-Din)

Joint Registrar

J&K State Information Commission