

STATE INFORMATION COMMISSION, HARYANA
SCO 70-71 and 114-115, SECTOR 8-C,
Chandigarh.
Website: cicharyana.gov.in

SCN No. 504/2012 in Appeal Case No. 4197 of 2011
Appeal Case No. 3534 of 2012
Appeal Case No. 3876 of 2012

- 1. Sh. Harinder Dhingra,**
D4 A/7, DLF, Phase-01,
Gurgaon - 122 002.
- 2. Sh. Jagvinder Singh,**
237, Defence Colony,
Hisar.

.....Appellant(s)

Versus

- 1. SPIO and the FAA office of the Director General, Health Services, Haryana, Panchkula.**
- 2. The Medicity Hospital, Sector 38, Gurgaon.**
- 3. The Artemis Medicare Services Limited, Sector 51, Gurgaon.**

Facts:

Shri Harinder Dhingra, the appellant filed an RTI application dated 09.07.2011 seeking twelve point information by addressing it to the SPIO office of the Financial Commissioner & Principal Secretary to Government, Haryana, Health Services. He requested to provide a list of all the hospitals which have been provided land on subsidized rates by HUDA/State Government/other agencies of the Government and are under an obligation to offer free or subsidized treatment to poor and BPL patients etc. The Commission heard the matter in Appeal Case No. 4197 of 2011 on 23.07.2012 & 06.11.2012 and noted that information on point numbers 6, 7, 9

and 10 of the RTI application was yet to be furnished to the appellant. The SPIO office of the Director General, Health Services, Haryana was directed to furnish the requisite information to the appellant after seeking assistance from the custodian of the information i.e. private respondents by invoking his powers vested in section 5 (4) of the RTI Act, 2005. The Commission also decided to initiate penal action under section 20 (1) of the Act since the respondent-SPIO failed to provide information in view of the provision made under section 7 (1) of the Act. A show cause notice bearing No. 504 of 2012 was served on the respondent-SPIO. The detail of remaining information is as under:

- (6) Names and addresses of hospitals which have not created special referral centers for poor patients till date.
- (7) Action taken by the Department against hospitals which have not created special referral center for poor patients till date?
- (9) Details of poor/BPL patients referred to private hospitals by the special committee for the last one year.
- (10) Name & address of the patients for whom the recommendations were sent by the Government Committee to the Hospitals in Haryana for poor/BPL patients for the last one year say 1st July 2010 to 30th June, 2011.

2. Shri Harinder Dhingra, the appellant filed another RTI application dated 14.06.2011 addressed to the Managing Director, Medicity Hospital, Sector 38, Gurgaon seeking eleven point information. The appellant desired to know whether the Haryana Urban Development Authority allotted land to set up hospitals on concessional/discounted/ subsidized rates and if so, whether such

hospitals are expected to treat patients belonging to BPL families either free of cost or on subsidized rates etc.etc. The appeal preferred in this matter was entertained under section 19 (3) of the RTI Act, 2005 by registering it as Appeal case No. 3534 of 2012. Shri Prahlad Rai Meena, State Information Commissioner heard the matter on 06.11.2012 and observed that the vital question to be settled first was whether the Hospital in question falls within the definition of 'Public Authority' as defined under Section 2 (h) of the RTI Act, 2005 and recommended that a larger bench be constituted to adjudicate on the applicability of the provision of the RTI Act on the Medicity Hospital, Sector 38, Gurgaon.

3. Shri Jagvinder Singh, filed another RTI application dated 29.06.2012 addressed to the Public Information Officer of Medanta - The Medicity, Hospital, Sector 38, Gurgaon seeking three point information regarding Human Organ Transplantation done by the Hospital. Finding no information from the Hospital, the appellant preferred an appeal which was entertained under Section 19 (3) of the RTI Act, 2005 by registering it as Appeal Case No. 3876 of 2012. Shri Prahlad Rai Meena, State Information Commissioner heard the matter on 19.11.2012 and forwarded it to the State Chief Information Commissioner with a recommendation for constituting a larger bench in continuation of his earlier recommendation dated 06.11.2012.

4. Accordingly, a Bench consisting of Shri Naresh Gulati, State Chief Information Commissioner, Shri Sajjan Singh, State Information Commissioner and Shri Prahlad Rai Meena, State Information Commissioner was constituted vide orders dated 10.12.2012.

5. The Commission noted the information furnished by the SPIO-cum-Deputy Superintendent, office of the Estate Officer-II, HUDA, Gurgaon that HUDA had allotted land to set up Hospitals in the

name of Artemis Medical Services, Sector 51, Gurgaon and the Medanta – The Medicity Hospital, Gurgaon alongwith some other hospitals. The Commission decided to issue notices to the SPIO O/o the Chief Administrator, HUDA, the SPIO O/o the Urban Local Bodies, Haryana, the SPIO O/o the Director, Panchayats, Haryana, the SPIO O/o the Director General, Health Services, Haryana, the Medicity Global Health, Sector 38, Gurgaon, the Artemis Medicare Services Ltd., Sector 51, Gurgaon, Shri Harinder Dhingra and Shri Jagvinder Singh, the appellants.


The Commission met on 10.1.2013 and the hearing was held in the presence of Shri Harinder Dhingra, the appellant, Shri Raj Pal Lamba, SPIO-cum-Deputy, Estate Office-II, HUDA, Gurgaon and Shri Pankaj Dwivedi, Assistant Manager, Medanta – The Medicity, Gurgaon.

The respondents sought extension in time for submission of their arguments. The Commission granted the prayer and decided to adjourn the matter to 26.02.2013. The Commission directed the hospitals to submit their written arguments alongwith balance sheet, list of Board of Directors, Circle rates of land and any other arguments which the parties should desire to submit to consider their claim. The appellants were also afforded another opportunity to submit written arguments in support of their appeals for the consideration of the Commission.

6. On 26.02.2013, Shri Prahlad Rai Meena, State Information Commissioner was away. The State Chief Information Commissioner, in exercise of the powers vested in him under Section 15 (4) of the Act, decided to include Maj. Gen. (Retd.) Shri J.S. Kundu, AVSM, State Information Commissioner in place of Sh. Prahlad Rai Meena, State Information Commissioner. The Commission heard the matter on 26.02.2013 and again on 18.03.2013 in the presence of Shri Harinder Dhingra, the appellant,

Shri Jagvinder Singh, the appellant, Shri Krishan Lal Kamboj, SPIO-cum-Deputy Superintendent, Urban Branch Office of CA, HUDA, Panchkula, Shri Raj Pal Lamba, SPIO-cum-Deputy Superintendent, Estate Office-II, HUDA, Gurgaon, Shri Roshan Lal, SPIO Office of Director Panchayats, Haryana, Mrs. Vinay Kumari, SPIO-cum-Deputy Superintendent Office of DGHS, Haryana, Shri Sunil Clerk, Office of Civil Surgeon, Gurgaon, Shri Akshay Bhan, Advocate alongwith representatives of Medanta - The Medicity Hospital, Gurgaon and Shri Sanjay Verma, Advocate alongwith representatives of Artemis Medicare Services Ltd., Sector 51, Gurgaon.

7. Shri Harinder Dhingra, the appellant submitted his written arguments which were taken on record. He placed various decisions of different Hon'ble Courts on record to support the argument that the respondent Hospital has been substantially financed by the appropriate Government and hence the Hospitals in question are public authority within the meaning of Section 2 (h) (d) (ii) of the RTI Act, 2005. He submitted that the respondent Hospitals are relying upon the decision taken by the Punjab State Information Commission concerning Fortis Hospital, Mohali which has been stayed by the Hon'ble High Court whereas the facts of Artemis Hospital, Gurgaon are different from the facts of Fortis Hospital, Mohali case since the condition of providing free treatment to poor/BPL patients was not available in the allotment letter of Fortis Hospital, Mohali. He further submitted that the letter of allotment of land to the Artemis Medicare Services Ltd., Sector 51, Gurgaon contained condition of providing free treatment to poor/BPL patients which figures at Serial No. 27 of the allotment letter dated 15th February 2006, issued by the Haryana Urban Development Authority. The appellant further submitted that the word "substantially financed" directly or indirectly has not been defined in



the RTI Act. Hence, to find out the intention of the Legislature, the natural and ordinary meaning of the words used in the statute is to be read. The provisions of a statute have to be interpreted in the same manner as mandated and commanded by it and not otherwise, in order to achieve the larger public interest. The appellant also cited the decision of Hon'ble Supreme Court in *S. Samuel Vs Union of India* (AIR 2004 AC 218 at 223) wherein it was held that when an Act does not contain a definition of a word, it is permissible to see its meaning in dictionary, though its meaning must be seen in the context in which the word has been used. Thus, it is necessary to understand the meaning of the word "substantial" that has been interpreted by various Hon'ble High Courts in different cases. The appellant in this regard referred the above case i.e. *S. Samuel Vs Union of India* (AIR 2004 AC 218 at 223) with the submissions that wherever funds (including all types of public funding) are provided, the word "substantial" has to be understood in contradistinction to the word "trivial". Where the funding is not so trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefits flow in the form of share capital contribution or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc. amount to substantial finance by funds provided by the appropriate Government, for the purpose of section 2 (h) of the Act.

8. The appellant also quoted the judgement delivered in the case of *Dhara Singh Girls High School, Ghaziabad Vs State of Uttar Pradesh* [2008(4) Civil Court Cases 352] by the Hon'ble Allahabad High Court wherein it was held that whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body, institution, private school receiving grant-

in-aid from the State Government, the same should fall under the provisions of the RTI Act. The appellant also submitted that the Hon'ble Delhi High Court, while considering the decision of the Central Information commission in Ms. Navneet kaur Vs Electronic and Software Export Promotion Council, on 19.7.2006, decided that "whether funding is for specific programmes / projects carried on by the petitioners or funds are given not for any specific programme to the petitioners, will not make the petitioners not financed by the Government. The Government can give funds without specifying as to how the funds are to be utilized". Since no contradiction has been placed by the respondent Hospital, therefore, it is deemed acceptance on their part that they accept these judgements as precedents. The appellant also submitted that the Government has allotted 8.30 acres of land @ ₹. 4000/- per square yards whereas the price in vicinity of Sector 51, Gurgaon in 2006 was @ ₹ 12000/- square yard. Hence the total subsidy/concession works out to be ₹ 30.95 crore. Further, the Government vide its circular dated 13th August 2008 has constituted a committee to refer patients to the tune of 20% of functional beds (charging 30% of the normal charges) and providing free services to 20% of patients belonging to BPL families. The Committee is headed by the Chief Minister, Haryana and comprises Health Minister, Civil Surgeon or Nodal Officer of the District and representative of the District Red Cross Society.

9. The appellant also submitted that the Artemis Hospital, Gurgaon has not paid any levy for uninterrupted supply of power which is not trivial or insignificant, thus enjoying exemption of 25% extra added on charges on power tariff. Moreover, said Hospital has been granted a certificate under Section 80 (G) of the Income Tax Act. Thus the hospital is also being exempted from the payment of the Income Tax. The appellant further argued that the Hospital



management has not paid registration fee to execute conveyance deed of the allotted land. It amounts to subsidy to the extent of 6 % on total cost. The Hospital has imported machinery worth ₹ 130 crore or so and has saved import as well State Vat to the tune of ₹ 9 crore. Further, while issuing the advertisement for the allotment of land the Public Authority made it clear that one representative each from Health Department, HUDA and District Administration shall be taken in the Committee/Board/ for managing the affairs/Functioning of the Hospital. The letter of allotment of land mandates that the hospital is to be controlled by the Government by inclusion of Government representative in the Managing Committee.

10. In the case of Medanta- the Medicity Hospital, Gurgaon the appellant submitted that the HUDA allotted 43 acre land with a cost of ₹ 67.06 crore whereas the market value of the land was ₹ 468.71 crore. The appellant has claimed that the State Government through HUDA granted subsidy/concession which works out to ₹ 401.65 crore. He further submitted that Medanta - The Medicity Hospital, Gurgaon is controlled by the Government as clause X of the advertisement mandates that one representative from the Health Department shall be member of the Committee/Board constituted for managing the affairs/functioning of the Hospital. The hospital authority is obliged to follow the conditions laid down by the Government vide its circular dated 13.08.2008 which mandates provision of medical services to economically weaker sections and the BPL families in view of clause 28 of the allotment letter dated 29th October, 2004.

11. Further, citing the decisions of Hon'ble Court in the Indian Olympic Association Vs Veeresh Malik in WP © No. 876 of 2007, Diamond Jubilee High Secondary School Vs Union of India in WP No. 36901 of 2006, DAV College Trust and Management Society Vs Director of Public Instruction AIR 2008, Committee of Management



Shanti Niketan Inter College Vs State of UP (AIR 2009) etc., the appellant prayed to declare both the hospitals i.e. the Artemis Medicare Services Ltd., Sector 51, Gurgaon and Medanta - The Medicity Hospital, Sector-38, Gurgaon as public authority under Section 2 (h) of the Act and be directed to provide the sought information as per provisions of the Act. The appellant also prayed that directions may also be passed that the private hospitals in question would upload the vital information on the website of the hospitals to access it more conveniently by the citizens. He also argued during hearing that the website of the Haryana Urban Development Authority indicates that the land to the institutions/schools/colleges/religious purposes/hospitals are allotted on concessional rates.

12. Shri Jagvinder Singh, the appellant in appeal case no. 3876 of 2012 did not submit written arguments. The grounds and content mentioned in the second appeal dated 14.08.2012 were considered by the larger bench of the Commission.

13. The SPIO office of the Director, Panchayats, Haryana on 26th February, 2013 submitted that the sought information is not available in the records of the public authority.

14. The SPIO office of the Urban Local Bodies, Haryana vide letter dated 18.03.2013 submitted that Municipal Corporation had not allotted land either on concessional rate or free of cost for setting up of any hospital in the State. A copy of the Haryana Management of Municipal Properties and State Properties Rules, 2007 was submitted which was taken on the records of the Commission.

15. The SPIO office of the Director General, Health Services, Haryana vide letter dated 31.08.2012 submitted that whatever information relating to Medanta - The Medicity Hospital and the Artemis Medicare Services Ltd., Sector 51, Gurgaon as it existed in the records of the public authority, stand furnished to the appellant.



Both the hospitals vide letter dated 06.12.2012 were requested to provide the remaining information pertaining to their hospitals which the appellant had sought vide his RTI applications.

16. The SPIO-cum-Assistant Estate Officer, Urban Branch, HUDA (HQ), Panchkula vide letter dated 19.07.2012 submitted that a list of all the Hospital sites allotted by HUDA stands supplied to the appellant. The appellant has been informed that the land has been allotted at the rates fixed by the Authority and the allottees have to follow the policies formulated by the Chief Administrator, HUDA, Panchkula and circulated vide letters dated 12.05.1997, 06.11.1998 and 13.08.2008 for reserving beds and for providing free treatment to poor patients in the hospitals which were established on the land allotted by the public authority. As per policy dated 13.08.2008, the following procedure has been laid down:

I - Eligibility :

- (i) Any person having BPL card, class IV employees of Haryana Government or undertakings or any other person having monthly income not exceeding ₹ 5000/- per month will be classified as belonging to weaker section of the society and would be entitled for treatment as spelt out in the policy.
- (ii) The benefit under the Policy will be restricted to poor persons of Haryana domicile only.

II - Outdoor Patients:

The Hospital Administration of those Hospitals which have been allotted site in HUDA Sectors or any Urban Estate of Haryana shall provide free services to 20% of the total outdoor patients being attended to by them on first come first serve basis to such patients.

III - Indoor patients:

The Hospital Administration shall reserve 10% of the beds for free of cost to the members of the weaker sections of the society as defined above.

IV - Super Specialty Hospitals:

- (i) The Super Specialty Hospitals shall charge subsidized rates i.e. 30% of the normal charges for 20% of the functional beds in addition to providing free OPD services to 20% of patients of weaker sections of society as mentioned above.
- (ii) The patients under this category may be referred by the following:
 - (a) Chief Minister of Haryana;
 - (b) Health Minister of Haryana;
 - (c) Civil Surgeon or Nodal Officer of the District;
 - (d) District Red Cross Society after approval from the President-cum-Deputy Commissioner;

V - Emergency Treatment :

It will, however, be mandatory for the Hospital Authorities to admit and provide treatment to the eligible patients brought to the hospital in emergent situations even without formal reference from the above authorities in advance. The formality of reference can be completed subsequently.

VI - Monitoring Committee :

- i) The following officers shall constitute the Monitoring Committee for ensuring the implementation of terms and conditions of the policy under reference:
 - (a) Administrator, HUDA (Chairperson)

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- (b) President of District Red Cross Society or his Nominee (Member)
 - (c) Civil Surgeon of the District (Member)
 - (d) Estate Officer, HUDA (Member Secretary)
- ii) The Hospital Administration shall maintain a separate register for such patients who have been provided free OPD/Indoor beds/super specially treatment.
 - iii) The register shall be made available for scrutiny from time to time by the Administrator, HUDA, Estate Officer and the President, Red Cross Society or his representative.
 - iv) The concerned Hospitals will submit quarterly report in this behalf to the concerned Estate Officer who will further transmit a copy of the respective Administrator, HUDA for verification of the implementation of the terms and conditions stipulated in the policy.
 - v) The Committee shall meet regularly at least once in a quarter to review the implementation of terms and conditions. The Hospital Administration shall supply such information as may be asked by the Committee. The Committee shall also send its recommendations for better implementation of the services to poor patients to the Chief Administrator, HUDA from time to time.
 - vi) In case of violation of these instructions, the Estate Officer shall be competent to proceed for resumption of the plot (on the recommendations of this Committee) as per HUDA Rules and Regulations.

17. The Artemis Medical Services Limited, Sector 51, Gurgaon through their counsel Sh. Sanjay Verma and on their own has submitted their written arguments dated 18th March 2013. The counsel of the respondent-Hospital, by relying on case law titled Sh. Pritam Singh Gill Vs State of Punjab & Ors. AIR 1982 P&H 228, S.S.



Angadi Vs State Chief Information Commissioner, Bangalore & Anr. 2009 (5) RCR (Civil) 312 and Dattaprasad Cooperative Housing Society Ltd. Vs Karnataka State Chief Information Commissioner & Anr. 2009 (5) RCR (Civil) 833, Dr. Panjanbrao Deshmukh Urban Cooperative Bank Ltd. Vs The State Information Commissioner, Bibarbha Region Nagpur & Ors AIR 2009 Bombay 75 relying upon the judgement in S.S. Rana's case (supra), Bhaskarrao Shankarrao Kulkarni Vs State Information Commissioner, Nagpur & Ors. AIR 2009 Bombay 163 and Nagar Yuwak Shikshan Sanstha, Wanadongri Nagar Vs Maharashtra State Information Commission, Vibaarbha Region, Nagpur 2009 (6) AIR (Bombay) 11, argued that the respondent Hospital is not a public authority since it is neither financed substantially by the Government nor is it controlled by it. Hence the hospitals do not fall under the ambit of the RTI Act, 2005.

18. The representative of the Artemis Medicare Services Limited, Gurgaon vide written submissions dated 18th March 2013 submits that his hospital was never a party in the appeal nor has received any communication, hence could not be included as a respondent in the present appeal before the Larger Bench of the Commission. The appellant is trying to establish that the land for the Hospital was allotted at subsidized rates and that on this ground it is fit to be declared a Public Authority but the appellant has failed to disclose how he has arrived at a figure of ₹ 40,000/- per square yard as prevailing land rate in the year of allotment. The representative of the Hospital submitted a table of the circle rates issued by the Government under various categories of land from the financial year 2003-04 to 2012-13. The HUDA allotted the institutional land vide allotment letter dated 15th February 2006. At that time no circle rate of the land existed. The circle rate was introduced for the first time in financial year 2010-2011 @ ₹ 20000/- per square yard which were the same as for Residential area. However, the Circle Rates for



the financial year 2011-12 and 2012-13 were lower than the residential rates. He emphasized that the land was never allotted on concessional rates. The plot was neither preferential nor special preferential and there is no ambiguity on the issue of subsidy/concession. No subsidy has been given to the respondent hospital. Further, the cost of land and rate charged by PUDA from Fortis Hospital, Mohali was about 6% of its price prevalent at that time. Referring to the balance sheet for the year ended 31st March 2012, it was submitted that there are net accumulated loss of approximate ₹ 74 crore as on date. The cost of transformers needed for running the Hospital set up on the allotted land ranges from ₹ 16 crore to ₹ 90 crore. The respondent-Hospital submitted that the list of Board of Directors show that no control whatsoever was being exercised by HUDA or any other State authority in the management of the Hospital or in its day to day functioning. In view of these facts, it was prayed that the appeal be dismissed since the Hospital cannot be deemed as 'public authority' as defined under section 2 (h) of the Act.

19. The representative of the Medanta – The Medicity Hospital, Sector-38, Gurgaon submitted the final arguments on 18th March 2013 alongwith previously filed replies dated 06th June 2012 and 07th September 2012 with the submission that Medanta - The Medicity Hospital is a private hospital financed, owned, controlled and operated by a private limited company i.e. Global Health Private Limited incorporated under the Companies Act, 1956. It was further submitted that Global Health Private Limited and Medanta – The Medicity Hospital are not directly or indirectly, owned, controlled or substantially financed by funds provided by the Government. The Hospital authority also refuted the charge that a representative of the Government is appointed on the Board of Directors of Medanta - The Medicity Hospital by the State Government. There is no

Government nominee on the Board of Medanta nor do the terms of allotment of the land from HUDA prescribe any such requirement. Further, the institutional land on which the hospital is located was purchased through public tendering at the market rate fixed for institutional land by HUDA. It was not concessional allotment by the Government as claimed by the appellant. He argued that the appellant has relied upon the judgements of the Hon'ble Delhi High Court in the case of Sanskriti School Vs Central Information Commission (WP 1212 of 2007) (2010 (4) ILR (DEL). Indian Olympic Association/Organization Committee of the Commonwealth Games 2010 (4) ILR (DEL), Fortis Hospital, Mohali and DIAL Vs Union of India, but these are not applicable to this case.

20. It is further submitted that the information relating to patients falls in the category of fiduciary relationship between doctor and patient. The public authority (HUDA in the instant case with whom the RTI application was filed) in compliance with certain legal obligations, is under an obligation to protect the confidentiality of this information. The fact that the information is held by a public authority does not render it liable for disclosure. The information sought by the appellant is exempt from disclosure under the RTI Act under Sections 8 (1) (e) and (j) of the Act since the relationship between a doctor/hospital and a patient is a fiduciary relationship and it is incumbent on the doctor/hospital to maintain the confidentiality of such record. Submitting the balance sheet of the financial year ending 31st March 2012, the respondent-Hospital submitted that the hospital was neither financed nor directly or indirectly controlled by the Government, hence it cannot be termed as 'public authority' as defined under section 2 (h) of the Act.

21. The Commission has heard the arguments of the parties put forth during the hearing. The documents already available on the case file and submitted by the respondents and the private

respondents have been perused. The citations quoted in support of their averments were considered. On the contentions urged, the following questions arise for our consideration.

- (i) *Whether the Artemis Medical Services, Sector 51, Gurgaon and the Medanta-The Medicity Hospital, Gurgaon fall within the definition of 'public authority' as per the provision of Section 2 (h) of the RTI Act ?*
- (ii) *Whether records of the hospitals can be accessed as 'information' under the Section 2 (f) of the RTI Act, 2005?*
- (iii) *Whether the hospital holds the record relating to patients in a fiduciary relationship and consequently has no obligation to give information under Section (8) (1) (e) and (j) of the RTI Act?*

To consider these questions, it is necessary to refer to the preamble, objects and the relevant provisions of the RTI Act. The object of the Act is to ensure maximum disclosure of information. The Act was enacted to provide smoother, greater and effective access to information. It provides an effective framework for effectuating the Right of Information recognized under the Article 19 of the Constitution. The object of the Act is to empower the citizens to fight against corruption and hold the Government and their instrumentalities accountable to the citizens, by providing them access to information regarding functioning of every public authority. The provisions of the Act declare the object sought to be achieved by the RTI Act. Thus:

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in

the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto;

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal."

Issue (i)

22. The definition of public authority as defined in clause (h) of Section 2 of the Act is extracted as below:

(h) "**public authority**" means any authority or body or institution of self-government established or constituted—

(a) by or under the *Constitution*;

(b) by other law made by *Parliament*;

(c) by any other law made by *State Legislature*;

(d) by *notification* issued or order made by the *appropriate Government*;

and includes any—

- (i) *Body owned, controlled or substantially financed;*
- (ii) *Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government,"*

The question is whether the hospitals under consideration have been established or constituted under the Constitution or under law made by the Parliament or the State Legislation? The answer is in the negative. These hospitals are not creation of either of them.

The second question is whether there is any notification whereby hospitals under consideration were notified or owned by appropriate Government. There is no evidence on record to show that these two hospitals were notified or owned by the Government. Further, is there any evidence on record to indicate that these hospitals are controlled by the appropriate Government? As per submissions of the private respondents, the control of these hospitals vests in the Board of Directors. There is a clause in land allotment letter dated 15.2.2006 in the case of Artemis Medicare Services Private Limited that there shall be one representative each from the Health Department, HUDA and District Administration on the Board of Directors. However, it is a matter of record that no member of the Government as its representative is on the Board of Directors. Even if the representatives were to be on the Board of Directors, it could not have led to the conclusion that these hospitals were under the control of the Government. The answer is in the negative.

The question whether these hospitals are substantially financed by the Government? The Commission noted that the HUDA authority has fixed rates for the land to be used for institutional/religious/schools/ college purposes. Currently these rates are lower than the rates applicable to other allotments like



residential, industrial etc. Was land allotted to these hospitals on rates lower than the prevailing rates? The Commission noted that there is a clause in the allotment letter issued by the HUDA to the effect that land price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall be payable by the allottee proportionality as determined by the authority. The arguments advanced by the appellant that both the hospitals are functioning on the land provided by the Government on concessional or subsidized rates is correct to the extent that HUDA did provide this land for institutions like hospitals etc. on lower rates than the rate for the other allotments including residential. However, the prevailing circle rates fixed by the Government at the time of allotment of land and the rates fixed by the Registration Authority Gurgaon, as submitted by both the private respondents indicate that no concession was extended by the Government while allotting land to set up hospitals. The HUDA has allotted land to both the parties on the rates fixed by them without offering any concession. However, prevailing circle rates fixed by the Registration Authority Gurgaon, as submitted by both the private respondents make it amply evident that no concession whatsoever has been extended by the Government to these hospitals. The State Government has allotted land after recovering its cost as fixed by them for hospitals and like purposes and has not given any other financial assistance directly. Further, the Commission finds that the HUDA Authority has also allotted land on the same rates on the prevailing rates to other hospitals also, hence, no favour or any concession was made while allotting land to these hospitals. There is also no evidence on record to show that the State Government has provided any financial assistance directly to these hospitals under consideration. The appellant has relied on the decisions of Central Information



Commission in the Sanskriti School and Commonwealth Games Organizing Committee etc. We have perused the relevant decisions and find that the ratio of the above decisions does not apply to the present case in as much as contribution of the Central Government in the aforesaid two institutions was substantial and that is not the case in both these private respondents. There is nothing on record to suggest that the State Government has directly financed the hospitals. These hospitals have not received any grant from the Government. The averment of the appellants that hospitals are enjoying certain exemptions for uninterrupted supply of power remained unsubstantiated. Had there been any documentary evidence on record, even that would not have led to the conclusion that the hospitals are substantially financed by the Government. Similarly, the certificate under Section 80 (G) of the Income Tax would also not lead to the conclusion that the hospitals are substantially financed by the Government.

23. In view of the above discussion, we come to the conclusion that both the hospitals are not 'Public Authority' in terms of section 2 (h) of the RTI Act.

Issue (ii)

24. The issue is *whether records of the hospitals can be accessed as 'information' under Section 2 (f) of the RTI Act, 2005*. It is an admitted fact that the Haryana Urban Development Authority has allotted land to both the private respondents and has imposed certain conditions which are detailed in forgoing para 16 of this order. As per terms and conditions of allotment of land, the hospital authorities are obliged to provide free treatment to BPL persons, class-IV employees having monthly income not exceeding ₹ 5000/- and persons classified as weaker section of the society. 20% of the total outdoor patients will be attended on "first come first serve

basis". Further, 10 % of the total beds shall be reserved for such categories.

25. It is pertinent to read the definition of "information" in the Act. The term "information" has been defined in Section 2 (f) and 2 (j) of the RTI Act, 2005 which is read as under:

2(f) - "Information" means any material in any form including records, documents, memos, e-mails, opinions, advices, press release, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

2(j) - "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- i) Inspection of work, documents, records;
- ii) Taking notes, extracts or certified copies of documents or records;
- iii) Taking certified samples of material;
- iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

26 The provision of Section 2(f) expands the definition to include details or material which can be accessed by a public authority under any law for the time being in force. Two definitions have to be read harmoniously. The term held by or under the control of any public authority in Section 2(j) of the RTI Act, has to be read in a manner that it effectuate and is in harmony with the definition of term "information" as defined in Section 2(f) of the RTI Act, 2005. The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies the definition or

terms in Section 2(f) under the Act. Further, "information" as defined in Section 2(f) of the RTI Act, includes in its ambit, the information relating to any private body which can be accessed by the public authority under any law for the time being in force. Therefore, if a public authority has a right and entitled to access information from a private body, under any law, it is "information" as defined in Section 2(f) of the Act. The term "held by or under the control of the public authority" used in Section 2(j) shall include the information which the public authority can access under the law from the private body. In such a situation a private body need not be a public authority but the said term "private body" has been used to distinguish and in contradiction to the term "public authority" in Section 2(h) of the Act.

27. Thus, the last part of the Section 2(f) broaden the scope of the term "information" to include information which is not available in public domain by virtue of the entity being a non public authority but it can be accessed by the public authority from a private authority. In the instant case, it is in the affirmative that the information available with the private respondents can be accessed to the extent of the scope mentioned in foregoing para 16 this order.

Issue (iii)

28. The third issue is *whether the hospital holds the record relating to patients in a fiduciary relationship and consequently has no obligation to give information under Section (8) (1) (e) and (j) of the RTI Act.* Section 8 (1) (e) governs the disclosure of information available in fiduciary relationship and clause (j) deals with personal information having no relationship to public activity or interest. The relevant provisions are extracted entirely.

- (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 unless the Central Public Information Officer or the State Public Information Officer or the appellant authority as the case may be is satisfied that the larger public interest justifies the disclosure of such information.

The term of *fiduciary* refers to a person having a duty to act for the benefit of another. The fiduciary is expected to act in confidence and for benefit of the beneficiary. The *fiduciary* is expected to act in confidence and expected not to disclose the information to any third party. It refers to integrity and fidelity. The relationship between the doctor and the patient is the relation of trust and confidence and its confidentiality is to be maintained.

29. The Commission observes in the instant case the information which private respondents hold in relation to their patients falls in the category of fiduciary relationship is that of trust and confidence. The information held in the fiduciary relationship is not to be disclosed and personal information which has no relationship to public interest can be denied.

30. The Commission observes that the permissible information has been furnished. The respondent SPIO in the instant case cannot be held responsible for the delay in view of the special



circumstances of this case which need no elaboration as they already were discussed in great detail in the foregoing paras. The delay has been explained and it is due to a reasonable cause. The explanation of the respondent-SPIO is accepted. Hence the penal proceedings are here by dropped.

31. Before parting with this case, the public authorities are advised that permissible information which is required to be accessed under Section 2 (f) of the Act is to be disclosed to the information seeker even if it is held by a private body. The Commission expects the public authorities to implement the provisions of the Act in its true spirit and to make the citizens Right to Information effective. Hence, the Commission advises the private respondents to consider and to voluntarily place the maximum information on its website relating to the treatment of the Economically Weaker Sections of the Society belonging to the State of Haryana as per terms and conditions settled between HUDA and the hospitals.

Decision reserved and pronounced today dated 15th May, 2013.

To be communicated.


(Sajjan Singh)
State Information Commissioner


(Maj Gen Retd J S Kundu AVSM)
State Information Commissioner


(Naresh Gulati)
State Chief Information Commissioner.