ODISHA INFORMATION COMMISSION
BHUBANESWAR

Present: Shri B.K.Mohapatra,
State Information Commissioner

Date: 30th September, 2020

Second Appeal No.378/2016

Namita Pattanaik,
C/o- S.K. Dey,
Bakharabad,
PO- Chandinichowk,
Dist- Cuttack.....Appellant

Vrs.

1. Public Information Officer,
   Apollo Hospital,
   Sainik School Road,
   Bhubaneswar.

2. First Appellate Authority,
   Apollo Hospital,
   Sainik School Road,
   Bhubaneswar .....Respondents

Decision

Present is an appeal preferred under Section 19(3) of the Right to Information Act, 2005, for short "the Act".

2. Late Nirupama Pattanaik, the mother of the appellant, had been admitted in Apollo Hospital, Bhubaneswar, here-in-after referred to as the "respondent hospital", for medical treatment and the appellant vide her application in Form-A dated 14.09.2015 addressed to the Public Information Officer (PIO), office of the Superintendent of the respondent hospital, sought information as follows;

"1. What was the prognosis/diagnosis of doctor at the time of admission of my mother Late Nirupama Pattanaik, who attended to my mother when she was brought & admitted to your Hospital on 07.05.2015 ?

2. What was the immediate and specific cause of admitting the patient in ICU and putting her – from 07.05.2015 to 14.05.2015 & from 17.05.2015 to 19.05.2015 in Semi Private ICU ?

3. Please provide the name and registration number of the Doctor who attended on the patient Late Nirupama Pattanaik. Why, when and at what stage of treatment, the aforesaid patient was Hemodialysed ? In total how many times and how many days in continuity the aforesaid patient was Hemo dialysed ?

4. Please provide the copies of Hemo Dialysis prescriptions of Nephrologist or the team of Doctors of Nephrology Department.

5. Please specify as to what was the time when she was brought to the hospital, what was the time when she was first attended to by the doctor and what was the time when she was shifted to the ICU and shifted to ward and thereafter to ICU, and condition of the patient in all time thereto.

6. What was the cause of "Sensorial Hematomesis"? How and when this development occur in patient during this period from 07.05.2015 to 08.05.2015 ?

7. Please provide the name and registration number of the doctors who look after on the patient Late Nirupama Pattanaik and their treatment procedure and development.

8. It is written in the Discharge summary that "the patients condition is now stable but as her TLC was till high. Patient surgery has to be delayed patients attendant wants to take the patient home and manage her at home till she is optrimized for surgery Riles tome feeding", By then what was the cause of discharge and proof of conditions of patients in stable condition ?

9. How many doctors look after the patient, Late Nirupama Pattanaik ?

10. The medicine "Spectra" was given on the advice of which doctor, and on which date ? What was the condition of the patient by then, and thereafter till discharge ?

11 .What was the conditions of such patient by the time of her discharge ?

12. What are the procedures followed to discharge a patient ? what are the defaulted procedures laid down under the medical jurisprudence pertaining to discharge of a patient ? Please supply the details of the same ?

13. What are the feels structures and procedures for the treatment of a patient in private Hospital/ Nursing Home and where is it laiddown?How do your Hospital follow it ?

14. What is the Registration Number of Hospital and Under which Act & Authority ? and Whether your Institution is a Hospital or a Nursing Home?

15. Please supply the copy of the paper How many times family members meeting arrange by your hospital with which doctor the name of the doctor?

16. What are the medicines and dozes and injections etc are administered to patient during her treatment, Please give the details of the same pertaining to its specific dose with specific time.

17. Is there any procedure under the medical jurisprudence performing to the communication of the condition of the patient and necessary treatment taken thereto with doses administered time to time, to the attendant / present family members, or not ? If it is so there, why your hospital did not communicate the same to me in case of my mother. Please give the details of the same".

As there was no response to her application, the appellant preferred an appeal purportedly under Section 19(1) of the Act vide her Form-D application dated 31.10.2015 addressed to the First Appellate Authority of the respondent hospital. The Assistant Director (Medical Services) of the respondent hospital vide his letter dated 16.11.2015 intimated the appellant that the respondent being an unit of Apollo Hospitals Enterprise Limited, registered under the Companies Act, 1956, is not amenable to the RTI Act and that for the said reason the Form-A application in question was not attended to, and the appeal vide Form-D application was misconceived and not maintainable. Being aggrieved thereby, the appellant has approached this Commission with the present second appeal.

3. The gist of the contention of the appellant is that the respondent hospital being registered under the Companies Act, 1956, and obligated to provide copy of medical records in view of the provisions of the Indian Medical Council Act, Consumer Protection Act, Indian Medical Council (Professional Conduct and Ethics) Regulations, 2002 etc, the information sought by the appellant regarding the medical treatment of her mother cannot be withheld. Her further contention is that in view of grant of land by the State Government on lease basis in favour of the respondent hospital and also for the statutory control exercised by the State Government over it, the respondent hospital is well within the definition of "Public Authority" under Section 2(h) of the Act.

4. Per contra, it is the submission of the respondent hospital that since it is neither owned nor controlled nor also financed by the Government directly or indirectly, it does not come within the purview of Section 2(h) of the Act. It is also contended by the respondent that the lease of land granted by the State Government for construction of the hospital cannot be treated as a funding much less substantial inasmuch as the premium paid therefor was almost equivalent to the then prevailing market price. In course of hearing the learned counsel for the respondent hospital placed reliance on **"Thalappalam vs. State of Kerala** reported in 2013 (11) CLR (SC) 881" and also a three-bench decision of this Commission in Complaint Case No. 1620/2012 (decided on 21.06.2013).

5. Heard both the sides at length. The core of the issue in this appeal is whether the respondent hospital is a "Public Authority" within the definition under Section 2(h) of the Act. In **Thalappalam** case (Supra) the aforesaid section has been broadly divided into two parts with four categories under the first part and two under the later part. The later part which is relevant for the issue embraces within its fold the following two categories;

> " (i) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government.
>
> (ii) non-Governmental Organizations substantially financed directly or indirectly by funds provided by the Government."

As regards the meaning of the expression "controlled" used in the later part of Section 2(h) indicated Supra, the Hon'ble Apex Court held as follows;

> *"44. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate Government must be a control of a substantial nature. The mere "supervision" or "regulation" as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the Right to Information Act. In other words, just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory and supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.*
>
> *45. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate Government, that is, the control of the body is such a degree which amounts to substantial control over the management and affairs of the body."*

While dealing with the words "substantially financed", the Hon'ble Apex Court held in paragraph 47 of the judgement that the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of considerable value". "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context. Further, in paragraph 48, it has been held as follows;

"48. Merely providing subsidies, grants, exemptions, privileges, etc. as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate Government, may answer the definition of public authority under Section 2(h)(d)(i)."

In paragraph 53 of the judgement it was further observed by the Hon'ble Apex Court that the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring other categories into its fold which do not satisfy the test as laid down. It was, ultimately, held that Cooperative Societies do not fall within the definition under Section 2(h) of the Act.

6. The question of applicability of the Act to non-Governmental Organizations came up again for consideration before the Hon'ble Supreme Court in the case of **D.A.V. College Trust and Management Society and Ors. Versus Director of Public Instructions & Ors.** reported in (2019) 9 SCC 185. In the said case while referring to several earlier judgements including the one in **Thalappalam case** (supra), the Hon'ble Apex Court held as follows: -

"14. The Section, no doubt, is unartistically worded and therefore, a duty is cast upon us to analyse the Section, find out its true meaning and interpret it in a manner which serves the purpose of the Act.

15. xx xx xx

16. We must note that after the end of clause (d) there is a comma and a big gap and then the definition goes on to say „and includes any –„ and thereafter the definition reads as:

"(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed directly or indirectly by funds provided by the appropriate Government;"

The words „and includes any‟, in our considered view, expand the definition as compared to the first part. The second part of the definition is an inclusive clause which indicates the intention of the Legislature to cover bodies other than those mentioned in clauses (a) to (d) of Section 2(h).

17. We have no doubt in our mind that the bodies and NGOs mentioned in subclauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Anybody which is owned, controlled or substantially financed by the Government, would be a public authority.

18. xx xx xx

19. Even in the **Thalappalam case** (supra) in para 32 of the judgement, this Court held that in addition to the four categories there would be two more categories, (5) and (6).

20. The principle of purposive construction of a statute is a well-recognised principle which has been incorporated in our jurisprudence. While giving a purposive interpretation, a court is required to place itself in the chair of the Legislature or author of the statute. The provision should be constructed in such a manner to ensure that the object of the Act is fulfilled. Obviously, if the language of the Act is clear then the language has to be followed, and the court cannot give its own interpretation. However, if the language admits of two meanings then the court can refer to the Objects and Reasons, and find out the true meaning of the provisions as intended by the authors of the enactment. Justice S.B. Sinha in **New India Assurance Company Ltd. V. Nusli Neville Wadia and Anr.5** held as follows: -

> **"51. ....**to interpret a statute in a reasonable manner, the court must place itself in the chair or reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd."

Justice Sinha quoted with approval the following passage from Barak's treatise on Purposive Interpretation in Law, 6 which reads as follows: -

> **"52. ....** Hart and Sachs also appear to treat „purpose‟ as a subjective concept. I say „appear‟ because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator‟s shoes, they introduce two elements of objectivity. First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and

second, the interpreter should accept the nonrebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

21. Justice M.B. Lokur speaking for the majority in Abhiram Singh v. C.D. Commachen (Dead) by L.Rs. and Ors.7 held as follows: -

"39. ..... Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses..."

22. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub clauses (i) and (ii). Any other interpretation would make clauses (i) and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of the Parliament was to include these two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.

7. In the paragraphs 26 and 27 of the judgement in **D.A.V. College Trust case** (supra) the term "substantially financed" has been elucidated as follows:

26. In our view, "substantial'' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

27. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not

be called substantially financed. Supposing a small NGO which has a total capital of Rs.10,000/- gets a grant of Rs.5,000/- from the Government, though this grant may be 50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.

In paragraph 29 of the judgement the Hon'ble Apex Court observed that while interpreting the provisions of the Act and deciding what is substantially financed one has to keep in mind the provisions of the Act which has been enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantially financed from the Government, a citizen is entitled to information to find out whether his/ her money which has been given to the organisation is being used for the requisite purpose or not.

8. Now reverting to the case at hand, admittedly, the respondent hospital has been established over the land granted by the State Government on lease basis vide the order no. 13870 dated 04.09.2004 of the General Administration Department, Government of Odisha, and the registered lease deed dated 08.12.2014 copies of which have been submitted by the Authorised Officer along with his report. As it appears from his above documents, land measuring AC 3.500 was leased for a term of 90 years at the premium of Rs. 24,50,000/- only on providing 80% concession on the normal premium applicable and annual rent was fixed at Rs. 1050/- only subject to revision from time to time. One of the conditions of the lease was that the respondent hospital shall provide free treatment to 10% poor and non-paying patients out of the total number of patients. It needs no mention that Bhubaneswar is not only the State Capital but also an ear marked smart city. As held by the Hon'ble Apex Court in **D.A.V. College Trust Case** (Supra) the land allotted to the respondent needs to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the body or the NGO is substantially financed.

Grant of discount of 80% in the premium on the date of allotment of land by the State Government crystallises the public interest behind the lease, and it is implicit that the very establishment of the respondent hospital was dependent upon the largesse of the State. In the fact situation and in view of the principle of law as laid down by the Hon'ble Apex Court, the respondent hospital cannot deny to have been substantially financed by the State Government within the meaning of Section 2(h) of the Act.

9. Apart from the above, the Commission has also examined the question as to if the respondent hospital is controlled by the State Government so as to be brought within the purview of Section 2(h) of the Act. Indisputably, the respondent hospital has been registered under the Odisha Clinical Establishment (Control and Regulation) Act, 1990, for short "the OCE (C & R) Act", an Act enacted by the State Legislature to provide for the control and regulation of registration and proper functioning of private Nursing Homes and other Clinical Establishments in the State. As per Section 3 of the said Act, no Clinical Establishment can be established or maintained in the State without a certificate of registration issued by the Supervising Authority as per the provisions of Section 5 of the said Act. The nature and scope of control of the State Government on the functioning of a Clinical Establishment may be gathered, interalia, from the following sections of the OCE (C & R) Act.

" ×× ×× ××

> **3. Clinical establishment not to be established or maintained without registration: -** (1) On and after the commencement of this Act, no person shall establish or maintain a clinical establishment, unless he holds a valid certificate of registration and except under and in accordance with the terms and conditions as may be prescribed which shall be specified in the certificate of registration.
>
> (2) Not withstanding anything contained in sub-section (1), a clinical establishment established and maintained as such immediately before the commencement of this Act may continue to be maintained, and shall be deemed to be a registered clinical establishment under this Act,-

(a) for a period of three months from the date commencement of this Act; or

(b) if an application for registration is made to the supervising authority within the period specified in clause (a) in accordance with Section4, till the disposal of such application.

×× ×× ×× ×× ××

5. Grant of refusal of certificate of registration: - (1) On receipt of an application under Section 4, the supervising authority shall make such inquires as it may deem fit and where it is satisfied that-

(a) the applicant or any person proposed to be employed by him at the clinical establishment is a fit person to maintain or, as the case may be, to be employed at the clinical establishment named in the application; or

(b) the clinical establishment is under the supervision of a person who is a qualified medical practitioner, and that person or a qualified nurse is resident in the establishment, or there is adequate representation of qualified nurses among the persons having the superintendence of, or employed in, the nursing of the patients in such establishment; or

(c) in the case of maternity home, its staff includes a qualified mid wife and a qualified medical practitioner; or

(d) for reasons connected with the situation, construction, accommodation, staff of equipment, the nursing home or any premises used in connection therewith is or are fit to be used for a clinical establishment of the description mentioned in the application or that clinical establishment or any of its premised is or are used or to be used for purposes which are not in any way improper or undesirable;

It shall grant a certificate of registration to the applicant in the prescribed form and where it is not so satisfied, it shall, by order, refuse to grant the certificate of registration:

Provided that in the case of a clinical establishment referred to in clause (b) or a maternity home referred to in clause (c) which has been establishment prior to the commencement of this Act and continues to be maintained as such after such commencement, the supervising authority shall not refuse to grant a certificate of registration to the applicant on the ground that-

(a) A qualified nurse is not resident in such clinical establishment; or
(b) The staff of such maternity home does not include a qualified midwife; as the case may be, if-
    (i) A nurse resident in such clinical establishment; or
    (ii) A midwife included in the staff of such maternity home, as the case may be, is continuing therein as such, for a period

not less than five years, subject to the condition that after the grant of a certificate of registration to the applicant, the nurse or, as the case may be midwife shall qualify in a test to be conducted by the Chief District Medical Officer of the district in such manner and within such period, as may be prescriber, and where any such nurse or midwife fails to qualify such test within the prescribed period the registration certificate shall be deemed to have revoked from the date when the said prescribed period expires, unless such nurse or midwife is substituted by a qualified nurse by the clinical establishment or, as the case may be, by a qualified midwife by the maternity home before the expiry of the said period:

Provided further that the supervising authority shall, before making any order refusing to grant a certificate of registration, give the applicant a reasonable opportunity of being heard and every order of refusal shall set out therein the reasons for such refusal and shall be communicated to the applicant in such manner as may be prescribed.

(2) The certificate of registration issued under this section in respect of a clinical establishment shall be kept affixed in a conspicuous place in the clinical establishment.

×× ×× ×× ××

8. Revocation of certificate of registration: - (1) The supervising authority may, without prejudice to any other penalty that may be imposed on the certificate holder, by order in writing, revoke the certificate of registration in respect of any clinical establishment.0

(a) on any ground which would entitle it to refuse an application for registration under Section 5; or

(b) if the clinical establishment, fails to comply with the requirements prescribed under Section 10; or

(c) if the certificate holder has been convicted of any offence in respect of that establishment:

Provided that no such order shall be made except after giving the certificate holder a reasonable opportunity of being heard, and every such order shall set out therein the grounds for the revocation of the certificate of registration and such grounds shall be communicated to the certificate holder in such manner as may be prescribed.

(2) Every order made under sub-section (1) shall contain a direction that the inpatients of the clinical establishment shall be transferred to such other clinical establishment as the patient or his attendant opts or where, it is not practicable to transfer the inpatient to the clinical establishment so opted, to the nearest Government Hospital, which shall be specified in that order and it shall also contain such provisions (including provisions by way of direction) as to the care and custody of such inpatients pending such transfer.

×× ×× ×× ×× ××

10. Clinical establishment to comply with certain requirement:- Every clinical establishment registered or deemed to be registered under this Act shall comply with such requirements in relation to location, accommodation, equipments and instruments and personnel (Medical and Paramedical) as may be prescribed:

×× ×× ×× ×× ××

11. Inspection of clinical establishment:- (1) the supervising authority or any officer empowered by it in that behalf may, subject to such general or special order as may be made by the State Government, at any time, enter and inspect any premises which are used or which the supervising authority or, as the case may be, the officer empowered by it has reason to believe to be used for the purpose of a clinical establishment and require the production of any records, which are required to be kept in accordance with the provisions of this Act or the rules, for inspection:

×× ×× ×× ×× ××

16. Penalty for offences:- (1) Any person who establishes or maintains a clinical establishment in contravention of the provisions of Section 3 or who, being a certificate holder , fails, without reasonable excuse, to keep or affix the certificate of registration in the clinical establishment in contravention of sub-section (2) of Section 5, shall on conviction, be punishable with fine which may extend to ten thousand rupees and where any such person , after being convicted under this section for any offence continues to commit the offence or commits it for the second or any subsequent time, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

(2) Any person who contravenes any of the provision of this Act other than those mentioned in sub-section (1), shall on conviction, be punishable with fine which may extend to one thousand rupees and in the case where any such person, after conviction under this sub-section for any offence, continues to commit the offence, he shall, on conviction be punishable with further fine of one hundred rupees for every day after the first day during which the contravention is continued.

17. Offences by Companies:- (1) where an offence under this Act has been committed be a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

10. From the aforequoted provisions of the OCE (C& R) Act it becomes transparent that holding of a certificate of registration is sine qua non for establishment and functioning of the respondent hospital and to hold such a certificate or get the same renewed from time to time it has to satisfy the norms and conditions as stipulated under the said act.

11. As provided under Section 14 of the OCE (C & R) Act, every clinical establishment shall maintain registers and records as may be prescribed. Rule 5 of the OCE (C & R) Rules, 1994 which corresponds to the aforesaid section is reproduced here below:

" Rule-5 – Records:- *(1) Every clinical establishment to be registered under the Act shall maintain all records, in respect of inpatients and outpatients in the manner provided under "Schedule B" and "Schedule C" respectively.*

(2) A free copy of the summary of treatment along with a copy of the record maintained by the clinical establishment concerned shall be supplied to inpatients admitted and outpatients treated in the said establishment while referring their case for treatment in Government hospital or other clinical establishment.

(3) In the event of death of a patient in a clinical establishment the Director or Managing Partner or the Proprietor of the Establishment as the case may be shall furnish information to the supervising authority in Form 3 forthwith.

(4) The owner of the clinical establishment shall display the names of the visiting specialities to the establishment in a conspicuous place of the establishment for public information ".

For ready reference, Schedules B and C of the aforesaid Rules are also reproduced here below:

" SCHEDULE-B

[See rule 5(1)]

Maintenance of records in respect of in patients treated in the Clinical Establishment

1. Name of the patient .....
2. Date of treatment .....
3. Past history of the patient .....
4. Disease diagnosed .....
5. Drug regiment used.....
6. Name of the Doctor who treated .....
7. Length of treatment .....
8. Details of adverse reaction of drug, if noticed.....
9. Details of drugs administered.....
10. Frequency of drug charged in drug therapy.....
11. If the patient under went operation, type of anaesthesia used .....
12. Name of the Anaesthesist .....
13. Name of the Surgeon.....
14. Date of discharge .....
15. Was Blood Transfused .....
    If so (a) What tests were performed.....

    (b)Source of Blood supply.....

Place: Signature of the authority
Date: Seal

_____

SCHEDULE-C

[See rule 5(1)]

Maintenance of records in respect of in patients treated

in the Clinical Establishment

1. Name of the patient .....
2. Date of treatment .....
3. Past history of the patient.....
4. Disease diagnosed.....
5. Drug regiment used.....
6. Name of the Doctor who treated.....
7. Length of treatment .....
8. Remarks....."

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12. In the context of the right of a patient or his attendants/ relatives to have access to the medical record, a reference may also be made to a decision of Hon'ble Allahbad High Court (Lucknow Bench) in the case of **Sameer Kumar vs. State of UP** reported in (2014) O Supreme (All) 1282. The relevant paragraphs of the said decision are extracted here below: -

" NECESSITY OF MEDICAL RECORDS " –

> *24. With the growing population and increasing negligence and misconduct committed by the medical professionals, the citizens suffer and in absence of any remedial measure to check such menace, irreparable loss and injury may be caused to the patients and their attendants in due course of time. Otherwise also, there are number of statutes which confer statutory right to citizens to claim damages/ compensation and punish the guilty medical professionals. To avail the benefit of statutory provisions and prosecute the medical professional in the event of negligent, it is necessary to provide medical record to patients or their attendants as the case may be.*
>
> *25. Under Right to Information Act, 2005, every citizen has got right to obtain copy of medical records. The democracy requires an informed citizenry and transparency of information. The RTI Act recognises the rights of citizens to secure the information*

under the control of public authority in order to promote transparency and accountability in the working of every public authority. However, statutory remedy requires copy of medical records from private and Government hospitals.

26. Section 3 of the RTI Act confers right to information to all the citizens and corresponding obligation under Section 4 on every public authority to maintain record so that the information sought for, be provided vide T.S.R. Subramanyam and others v. Union of India and others, AIR 2014 SC 263. In the case of T.S.R. Subramanyam (supra), their lordships of Hon'ble Supreme Court settled that nothing should be done by oral instructions and the practice of giving oral directions and directions by administrative superiors and public executives, would defeat the object and purpose of RTI Act and shall give room for favouritism and corruption. In view of the above, every decision taken for the purpose of treatment of a patient or instruction issued by the doctors to their subordinates, must be converted in writing indicating the name of doctors.

27. Under Section 5 of the Medical Termination of Pregnancy Act, 1971, misconduct is punishable. Under the different provisions of Indian Penal Code and other statutory provisions, medical professionals may be punished or they may be directed to pay damages/ compensation.

28. Under the Consumer Protection Act, burden lies on the shoulders of patients or their attendants to establish that the medical professional has committed negligence while providing treatment hence compensation may be awarded. Under the Consumer Protection Act, citizens may claim damages from the medical professionals, hospitals, nursing homes, medical colleges, universities and other alike clinical establishments who are involved in providing medical treatment."

"30. For availing the benefit of Consumer Protection Act (supra), from the medical professionals on account of negligence committed by them, the patients or their attendants shall require the copy of medical record to prove negligence. Statutory benefits available to citizens by the Act of parliament or State Legislature, cannot be put to red tapism under the garb of technicalities depriving the citizens of availing the copy of medical records.30 Medical records are not required only to claim certain benefits under the Consumer Protect Act but also in the event of accident, they are required to claim compensation under the Motor Vehicles Act.

31. Apart from the above, rules and regulations framed by the Medical Council of India, have got statutory force and are binding. It has been settled long way back by majority judgement of constitution bench of Hon'ble Supreme Court in the case in Dr. Preeti Srivastava and another v. State of M.P., (1999) 7 SCC 120 and has been the consistent view of Hon'ble Supreme Court that the Medical Council of India is the regulatory authority and has power to maintain the standard of education as well as medical professionals. To meet out the requirement, the Medical Council of India may frame rules and regulations which have got statutory force and are mandatory in nature

with binding effect, vide Medical Council of India v. Rama Medical College Hospital and Research Centre, Kanpur and another, 2012 (8) SCC 80; Priya Gupta v. State of Chhatisgarh and others, (2012) 7 SCC 433; Harish Verma and others v. Ajay Srivastava and another, (2003) (8) SCC 69; Maharashtra University of Health Science represented by Deputy Registrar v. Paryani Mukesh Jawaharlal and others, (2007) (10) SCC 201; State of Madhya Pradesh and another v. Kumari Nivedita Jain and others, (1981) (4) SCC 296.

32. Accordingly, whether it is Government hospital or private, under whatsoever name may be, or the clinical establishments covered by Section 2 (c) of 2010 Act or the Medical Council of India Act, shall be liable to maintain the medical record and provide to patient or their attendants. Regulation 1.3 of the Regulations framed by the Medical Council of India (supra) requires that medical record shall be provided within 72 hours as and when demanded. The provision contained in Regulation 1.3 is applicable equally to all clinical establishments, private or State sponsored like individual medical professionals, hospitals, medical colleges, nursing homes, universities etc. Even if 2010 Act has not been applied, the definition of clinical establishment contained in 2010 Act, may be borrowed for the purpose of implementation of Regulation 1.3 framed by the Medical Council of India."

13. It is the contention of the learned counsel for the respondent hospital that since the powers exercised by the officers/ authorities under the OCE (C & R) Act and Rules are supervisory and regulatory in nature, the same can not be construed as the substantial control of the State Government over the respondent hospital. It is true that in view of the law propounded by the Hon'ble Apex Court in **Thalappalam Case** (Supra), the control of the State Government over the respondent hospital as indicated above ipso facto does not lead to a conclusion that the respondent is under the substantive control of the State Government inasmuch as the OCE (C & R) Act does not enable the State Government to interfere with the management or administration of the respondent hospital.

14. The respondent hospital is not substantially controlled by the State Government notwithstanding, as per the discussion made here-in-before, the respondent hospital being substantially financed by the State Government by way

of grant of lease of land with heavy discount in premium is held to be a public authority within the definition under Section 2(h) of the RTI Act.

15. Even if for sake of argument, it is assumed for a while that the respondent hospital does not come within the purview of Section 2(h) of the RTI Act, still it cannot claim to be immune from maintenance and disclosure of the medical record/ record of treatment in respect of a patient inasmuch as in view of the provisions the OCE (C & R)Act, 1990, other enactments, Rules and regulations referred to here-in-before, it is the legal, moral and ethical obligation of every hospital, either public or private, to give access to medical record to the patient himself or his attendant or relatives. It is also not out of place to mention here that in view of the definition of "information" under Section 2(f) of the RTI Act, this Commission can exercise its power to enforce the right to information available to the petitioner under any other law.

16. In course of argument it was submitted by the learned counsel for the respondent that since the queries made by the appellant vide her Form-A application are in the nature of cross examining a medical expert in witness box, those are not qualified to be "information" within the definition of Section 2(f) of the RTI Act. This argument, does not hold good inasmuch as most of the queries made by the appellant appear to be in relation to the diagnosis of the ailment of the patient, name and nature of the medication provided to her, name of the doctors who attended to her, fee structure etc, which required to be part of the medical record in view of the provisions of OCE (C & R) Act and the Rules thereunder. One of the conditions of registration of an hospital or Clinical Establishment under Section 5 of the OCE (C & R) Act read with rule-3(5) of the Rules, 1994 is that the fees to be charged for different medical treatment / laboratory test/ x-ray etc realised shall be displayed in the part of premises for information of public and satisfaction of the Supervising Authority [vide Form-2 of the OCE (C & R) Rules].

17. For the total discussion made and findings recorded here-in-above, the Commission allows the present appeal. The respondent hospital is hereby declared to be a public authority within the definition under Section 2(h) of the RTI Act, 2005, and amenable to the provisions of the said Act. The respondent hospital is directed to comply with the provisions of Sections 4 & 5 of the Act within 30 days hence and report compliance to this Commission. It is further directed that the respondent hospital shall provide to the appellant the information as solicited vide her Form-A application dated 14.09.2015 insofar as the same qualify as such within the meaning under Section 2(f) of the RTI Act and in conformity with the provisions of the OCE (C & R) Act, 1990 and the Rules framed thereafter, and also other laws applicable to Government and Private hospitals and clinical establishments, within 30 days hence. In case of non-compliance, the appellant shall be at liberty to pursue remedies under the law.

18. A copy of this order be communicated to the Director and the DGM (Finance and Accounts) of the respondent hospital forthwith for necessary compliance.

A copy of this order be also communicated to the Additional Chief Secretary, Health and Family Welfare Department, Government of Odisha, Bhubaneswar and the Director, Medical Education and Training (DMET), Odisha, Bhubaneswar for information and necessary action.

A copy of this order be also communicated to the appellant.

Transcribed to my dictation, corrected by me and pronounced in the open proceeding today this the 30th day of September, 2020.

(B.K.Mohapatra)
State Information Commissioner