

Office of the West Bengal Clinical Establishment Regulatory Commission

1st Floor, 32 B.B.D Bag, West Bengal, Kolkata – 700001.

Phone:- (033) 2262-8447 , Email: wbcerc@wb.gov.in Website: www.wbcerc.gov.in

Case Reference: ID- INT/KOL/2021/316

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Sukumar Mukherjee,

Dr. Makhan Lal Saha

Sri . Sutirtha Bhattacharya, IAS (Retd)

Dr. Maitrayee Banerjee,

Smt. Madhabi Das.

Mr. Nikunj BhutraComplainant

- Versus-

Bhagirathi Neotia Woman & Child Care Centre & Belle
Vue ClinicRespondent

Heard on: September 27, 2023 & October 05, 2023

Judgment on: November 17, 2023.

REMAND

The complaint dated April 30, 2021 numbered as INT/KOL/2021/316 was disposed off by us vide judgment and order dated September 6, 2021 inter-alia holding on Neotia guilty of the offence of hospital negligence and awarded a sum of Rs. 20,00,000/- as against Neotia to be paid to the complainant.

Being aggrieved, Neotia filed a writ petition before the Hon'ble High Court at Kolkata being WPA NO 16381 of 2021 (Park Hospitals and Another vs. the West Bengal Clinical Establishment Regulatory Commission and Another). The Hon'ble Justice Mr. Sabyasachi Bhattacharyya was pleased to hear the matter on August 21, 2023 and disposed of the same vide judgment and Order dated August 30, 2023 inter-alia, setting aside our judgment and order dated September 6, 2021 and remanded the complaint back to us for re-adjudication.

The relevant paragraph being paragraph 38 of His lordship's judgment and order is quoted below.

Accordingly, WPA No. 16381 of 2021 is allowed, thereby setting aside the impugned award passed the respondent no.1- Commission dated September 6, 2021 on the sad demise of Dr. Shraddha Bhutra. The matter is remanded to the respondent no.1- Commission for a re-adjudication, upon giving opportunity to the parties to produce further evidence to substantiate their cases and for a fresh decision on the issue as to the compensation to be awarded against the BNWCCC and/or Belle Vue Clinic in the facts and circumstances of the case, in the light of the observations as made hereinabove. It is expected that the Commission shall complete such re-adjudication at the earliest, preferably within three months from the date of communication of this order to the Commission.

The said judgment and order has not yet been communicated to us by the writ petitioner or the Respondent No 2, the complainant above named. The Commission got the order downloaded from the website of the Hon'ble High Court at Calcutta and immediately issued notice of hearing on remand to all concerned.

The notice was duly received by all the parties. The matter was placed for hearing on September 27, 2023 when the two clinical establishments being Apollo and Belle Vue were present. So was the complainant himself. Surprisingly, the writ petitioner being Neotia at whose insistence the matter was remanded back to us, was conspicuously absent. We tried to contact the Unit Head Ms Pinki Dutta who expressed her inability to appear at the hearing as she was abroad. She gave telephone number of one Akash Sharma. We contacted Mr. Sharma over phone. He also expressed his inability to appear at the hearing as he was not aware of the case.

We placed the matter for hearing again on October 5, 2023 when Ms. Dutta, represented Neotia. The hearing was audio recorded as we do in all other cases and the audio recording is available at our office and can be produced as and when required.

On perusal of the Paragraph 38, quoted supra, it appears, the Commission was directed to give liberty to the parties to produce further evidence to substantiate their cases and for a fresh decision on the issue as to the compensation to be awarded against Neotia and/or Belle Vue.

Neither any of the parties produced any documentary evidence to support their cases nor produced any witness to support them.

Case came on remand hence, the Commission proceeded to rehear the matter on the strength of the available records that they had at the time of initial hearing. No new record or evidence could be considered.

Accordingly, we heard the matter. Neotia was represented by Ms. Pinki Dutta. Apollo was represented by Dr. Bhatia, the Medical Administration Head and Ms. Yosodhara Ghosh, Vice President, Apollo. Mr. S Ghosh, General Manager, represented Belle Vue. Mr. Bhutra, the complainant, was also present. None of the parties made any further submission except Neotia. The others submitted, they would rely upon what they had stated at the initial hearing.

We thus heard only Ms. Dutta. She also did not throw any further light on the issue and reiterate what she had stated earlier. Ms. Dutta would re-iterate, they relied on the advice of Dr. Khaitan received over phone who asked them not to admit the patient as the patient would need hospitalization somewhere else. No call recording to support such telephonic conversation, was produced.

She would admit, they had three ICU beds to take care of the critical care patients. They admitted, they did not admit the patient.

In this backdrop, let us have a re-look to what transpired at the initial hearing. Relevant paragraphs of earlier judgment and order dated September 6, 2021 are reproduced.

“BACKDROP

Dr. Shrradda Bhutra was in the family way. She was under constant observation of Dr. (Mrs) Supriya Khetan. All periodical check-up were done by Dr. Khetan from time to time. Dr. Bhutra was scheduled for delivery on June 12, 2021. On April 24, 2021, she had mild chest pain in the evening. She went to Dr. Khetan at her Bangur chamber for check-up. Dr. Khetan advised the patient, everything was normal, no need to worry at all. Dr. Bhutra came back. On the same day at about 10 pm, the patient felt severe pain in her lower abdomen. The complainant, the husband of the patient, called up Dr. Khetan for immediate medication. To his utter surprise, Dr. Khetan refused to prescribe medicine, nor did she agree to come to their house to examine the patient, only advised her for hospital admission. The complainant was surprised by such

indifferent, behaviour of Dr. Khetan. Since the condition of the patient did not improve and the patient was having constant pain, the complainant took her to Apollo hospital. Apollo declined to admit the patient on the pretext, that the hospital was full of covid patients and it would be risky to admit a pregnant patient there. The complainant rushed to Bhagirathi Neotia at Rawdon street. At about 11 pm, the complainant reached Neotia with the patient when her blood pressure (diastolic) was 117. Neotia also refused to admit the patient. They informed the complainant that they talked to Dr. Khetan over phone and Dr. Khetan did not instruct them to admit the patient at Neotia. The members of the family, with folded hands, requested the hospital to admit her, but, all in vain. They waited there for about 45 minutes. The patient party then approached the third CE, the Belle Vue hospital. They reached Belle Vue at about 11.55 pm. By that time, the patient was in state of collapse. Yet, Belle Vue was reluctant to admit the patient till 12.30 am. When one of the members of the patient party streamed a video through "Facebook Live", Belle Vue took the patient to emergency and started treatment. Despite all efforts by the attending



RMO at Belle Vue, the patient died. She was declared dead by Belle Vue at 1.12 a.m.

COMPLAINT

Complainant filed the complaint as against Bhagirathi Neotia and Belle Vue. We issued notice to Apollo as well. According to the complainant, when the patient had mild chest pain in the evening of April 24, 2021, at about 8 pm he took his wife to Dr. Khetan. Dr. Khetan opined, everything was normal and there was no need to worry. However, the pain became intense and the complainant contacted Dr. Khetan who refused to prescribe any medicine and advised hospital admission. Despite request, she refused to come to their house to attend the patient. The complainant took her to Apollo Hospital but Apollo declined to admit the patient on the ground that the hospital was full of covid patients. They went to Bhagirathi Neotia which also declined to admit on the ground, they had contacted Dr. Khetan who advised them not to admit the patient at Neotia. They went to Belle Vue which also was initially reluctant. When the patient started collapsing, they ultimately admitted the patient at the emergency and gave treatment. However, by

then the golden hours were lost and the patient died. He complained of medical negligence as against Dr. Khetan and hospital negligence as against Neotia and Belle Vue.

RESPONSE

The Commission forwarded the complainant to Neotia and Belle Vue. Both of them denied having any negligence in the instant case.

NEOTIA

*Ms. Pinki Dutta, the facility director of Bhagirathi Neotia, filed an affidavit on behalf of the CE. She would deny the allegation made in the complaint as against Neotia. She would admit, the patient had visited the hospital on April 24, 2021. **She never visited Neotia or consulted any doctor at the OPD before and did not have any booking for confinement at the CE.** On the fateful day, the patient was brought at about 11.15 pm. As per their Emergency Master Register, the RMO on duty, attended the patient. **The patient was found to be in delirium, agitated, disoriented and restless so much that she did not allow the attending physician to examine her.** The RMO on duty, contacted Dr. Khetan over telephone and apprised her about the patient's condition.*

Dr. Khetan informed the concerned RMO over telephone that she had advised the complainant to get the patient admitted in Apollo, being a multi disciplinary hospital. She also informed the RMO on duty that she would instruct the hospital to shift her to Apollo. However, the RMO on duty provided the basic emergency treatment in consultation with Dr. Khetan. Accordingly, the patient's family members ultimately desired to take the patient to Belle Vue Clinic. The Neotia arranged an ambulance as a "humanitarian gesture" for expediting, transfer. She relied on an office copy of the prescription issued by the RMO on duty where it appears Dr. Khetan was informed about the condition of the patient. According to her, since Dr. Khetan instructed to get the patient transferred they could not act contrary to her instruction. According to Ms Dutta, the patient was there from 11:15 to 11:43 pm.

BELLE VUE

Belle Vue gave their response in a letter dated May 24, 2021 through Mr. P Tondon, CEO. According to the Belle Vue, the patient arrived at 12:15 am. She was immediately attended by Dr. Santanu Adhikari the emergency doctor on duty. The patient was examined by the Dr.



Adhikari in the ambulance itself. Her condition was very critical. She was brought to the emergency department for further management. The patient was clinically unresponsive, and all possible measures were taken to resuscitate her. The patient had history of seizure at 10:15 pm. The complainant informed the doctors at Belle Vue that the patient had pre-eclampsia during the said pregnancy.

The patient came at a very late stage in acute critical condition. Belle Vue extended the treatment support, all possible care was taken, she was admitted in gasping condition in a very feeble pulse with un-recordable blood pressure and also fetal heart. The sound was not audible after checking with Doppler. Dr. Sourav Koley and Dr. Anirban Neogi, being the senior doctors attached to Belle Vue attended the patient. The medical team contacted Dr. Bhaskar Pal, Gynaecologist attached to Belle Vue over phone and took his advise. The patient was intubated and CPR was given. Despite all their best efforts, the patient died at 1:12am. The relevant treatment records were enclosed with the letter.

HEARING

On perusal of the complaint as well as the response, the Commission



felt, the case should be heard in presence of the representative of the Apollo and accordingly the Commission issued notice to all three CEs, being Apollo, Neotia and Belle Vue. The Commission heard this matter on July 8, 2021 when, after hearing, the panel reserved the judgement.

CONTENTION

APOLLO

Apollo was represented by Dr. Joy Basu. Dr. Basu contended, as per hospital records, the patient never visited the CE on the fateful day or any other day. Hence, they were unable to apprise the Commission as to what had actually happened on that day. He would also contend that since the complainant did not make any complaint as against Apollo, they should not be involved at the hearing.

NEOTIA

Neotia repeated what they had stated in their affidavit through Ms. Pinki Dutta. According to them, the consultant Gynaecologist Dr. Khetan was duly informed about the condition of the patient. She did not advise for her admission at Neotia and they acted as per the instruction of the Dr. Khetan. Their protocol would not permit them to act contrary to the

instruction of the concerned Gynaecologist, as such they declined to admit the patient. However, showing good humanitarian gesture, they facilitated the ambulance support for shifting of the patient to Belle Vue.

BELLE VUE

Belle Vue was represented By Mr. Suranajan Ghosh. The concerned RMO was present. So was Dr. Pal who advised the RMO on duty over phone the line of treatment. Belle Vue denied the allegation that they declined to admit the patient. According to them, the patient visited the CE. Dr Adhikari, the RMO on duty, examined the patient in the ambulance itself when she was very critical. She was transferred to Emergency and all possible emergency treatment were given. Apart from Dr. Adhikari, RMO on duty, Dr. Sourav Koley and Dr. Anirban Neogi attended the patient. Dr. Pal advised the medical team, as required.

According to Bhagirathi Neotia, the patient left their hospital at 11.43 pm. Hence, the patient in our view, must have reached Belle Vue by

11.50 pm. However, according to Belle Vue, they received the patient at 12.15 a.m.

Soon after the hearing, Belle Vue shared a pen drive containing CCTV footage for about nine minutes. The said CCTV footage would relate to the place just outside the Emergency gate and the total period spend there would be about nine to ten minutes. We have watched the same. We find, an ambulance parked at the emergency gate where the doctor and the sister were rushing towards the ambulance, examined the patient and then patient was taken to the emergency department. The people found rushing would include paramedical staff who took her in emergency room. We are, however, candid enough to say, the CCTV footage would not show the timing also when the ambulance arrived at the premises.

We were not fully satisfied. We asked for CCTV footage from another angle. The Belle Vue shared the same that would have recording within the Emergency triage. Fortunately, the Emergency footage would have time recording. We would find active movement of the medical and para-medical staff within Emergency room. The patient was brought in

and was taken to the treatment area that rightly did not have CCTV coverage. We also find, the first CD would start at 12.11 am when we find a lot of activity by the medical and para- medical staff. Doctors and nursing staff were discussing something and informing someone over phone about the condition of the patient. They would also inform someone over phone that no critical care bed was vacant at the moment. The people were found rushing around at 12.13 am. They possibly went outside to bring the patient in. The stretcher was taken out at 12.15 am, a nursing staff was calling for medical support from her team over phone. She was asking someone to come down for support. **The patient was brought in the emergency room and taken to the triage at 12.18 am.** The movement of the medical and para-medical staff got escalated. The relatives of the patient were also within the emergency. They went to the treatment area along with the patient. It was not completely audible. However, at about 12.22 am Code Blue was declared as could be heard from the CCTV footage. By that time, many medical and para-medical staff rushed to the emergency to help the medical team attending the patient. At 12.26 am there had been some altercation between the junior doctor and one member from the



patient family. At about 12.28 am a lady from the patient family fell down. By that time the triage was full of medical and paramedical staff as well as the patient family. At about 12.31 am we find a lady, possibly a doctor, was taking advice over phone from someone. At about 12.32 am a senior nursing staff called possibly a senior doctor over phone. At about 12.45 am the most of the medical and / or paramedical staff left the triage. A male member of the patient family with spectacles and along with a female member was however inside. At about 12.56 am the patient party wanted to know the actual status of the patient from the nursing staff. The nursing staff then called the doctor to attend the patient party. At about 1.17 am the male member and the female member threatened the attending doctor as at that time the patient was declared dead. Someone was recording video. However, the patient party left the emergency triage within a couple of minutes. The police also came. At about 1.30 a.m the police left the emergency triage.

From the sequence of events, it appears, according to the complainant, they reached Belle Vue at 11.55 pm. The CCTV footage within the emergency would show at 12.18 am the patient was brought within the emergency. We have also seen the pen drive that would have nine



minutes recording where at the end of the recording the patient was seen to be shifted to the emergency. So if we put the clock back we would find, ambulance at the emergency gate at about 11.58 am. Hence, we do not find any delay in attending the patient. We find lot of activities within and outside the emergency for about an hour. What treatment was given to the patient, would be within the exclusive domain of the West Bengal Medical Council. The CCTV footage would not cover the treatment area (since the treatment area is a private zone. CCTV is not permitted at the said area). It would be very difficult for us to blame Belle Vue Clinic.

They did their best. Unfortunately, the patient died at 1:12 am, after almost one hour of treatment being given."

OUR VIEW

Ms Dutta at the time of hearing could not throw any new light on the issue. However, for ends of justice we wish to go through the observations made by His Lordship in the judgement and Order dated August 30, 2023 and try to remove the doubt as expressed by His lordship that would really clinch the issue.



Apollo

Apollo was not made party by the complainant. Yet, for ends of justice we asked them to appear. They categorically denied the visit of the patient on the fateful day. They were consistent on their stand even at the time of re-hearing when Ms Ghosh would inform us, they categorically checked Emergency records to find out the name of the patient that was not there. The complainant categorically told that the patient was not allowed to approach the Emergency hence, question of recording the particulars would not arise. The issue could only be clinched from the CCTV footage of Apollo that we could not get. Hence, despite our best efforts, we could not decide on the issue of alleged involvement of Apollo.

Belle Vue:- We exonerated Belle Vue on examination of the CCTV footage that would record the complete journey of the patient from the Ambulance to the Emergency room till her death to the extent possible as it is known to everyone's knowledge that the treatment area, being private area, was always outside the purview of the CCTV.

It is true, we do not know what treatment Belle Vue had given. We did not venture for the same as it was completely outside our domain. Since we are to examine the hospital negligence we only examined their conduct whether they attended the patient properly or not. It was said that Belle Vue also delayed for more than half an hour. It was not fully correct as we find from the CCTV footage as discussed in detail in our earlier judgment extracted above. However, we cannot overlook the initial delay that could be 15-20 minutes. It was a fact, the patient was duly wheeled to the Emergency room from the Ambulance with utmost expedition. On our evaluation, we could not find any fault on the part of the Belle Vue to hold them guilty of hospital negligence. We categorically asked Ms Dutta to throw light on the issue however, she opted not to do so as would be apparent from the audio recording maintained by us.

NEOTIA

That would bring us to Neotia. It is an admitted fact, patient was there for 45 minutes. Ms. Dutta was consistent even at the second hearing on October 5, 2023, they relied on the advice of Dr. Khaitan given over

phone to the concerned RMO. Neither Dr. K confirmed the same nor the concerned RMO was produced for his examination.

The issue could be clinched had there been any call recording produced before us.

Our experts present at the first hearing, Dr. Madhusudan Banerjee clearly relied on the treatment protocol required to be adopted. Unfortunately we lost Dr. Banerjee in between. We requested Dr. Runa Bal, HOD, NRS Medical college, Kolkata to be present at the second hearing as expert. Dr. Bal joined us at the hearing. She also evaluated the entire records in a fresh mind as she was not there at the initial hearing. She gave an opinion that is extracted below:-

"It is noted that Dr Shraddha Bhutra, 32 yrs, W/O Mr Nikunj Bhutra expired at Belle Vue clinic on 25.4.21 with a provisional diagnosis of "Pre eclamptic Toxemia" and she had a history of convulsion. She (Dr Bhutra) was initially taken to Bhagirathi Neotia Women and Child Care centre, BNWCCC, where she was not admitted (24.4.21 at 11.15 pm to 11.43 pm). In the BNWCCC, the deceased was not admitted and Inj Magnesium Sulphate was also not given by proper regimen. The



deceased lady was then transferred to the Belle Vue clinic where she was received in gasping stage without recordable pulse and blood pressure. According to the declaration by BNWCCC she was transferred because of the instructions given by Dr Khetan."

Dr. Bal also had the same opinion that Dr. Banerjee gave at the first hearing extracted above.

CONCLUSION

We have considered the issue in a fresh mind. His Lordship directed re-adjudication upon giving liberty to the parties to produce **further evidence to substantiate their cases and for a fresh decision on the issue. We did not get any further evidence from any of the parties, including Neotia.**

We tried our best to re-examine the earlier records that we had at the time of first hearing. We also kept in mind the observations made by His Lordship.

With all humility and deepest regard we have for His Lordship we could not have a second opinion on the issue and stick to our decision that we



took at the first hearing vide our judgment an order dated September 6, 2021.

The complaint is thus disposed of by directing Bhagarathi Neotia, Women and Child Care Centre to pay Rs. 20,00,000/- to the complainant and/or the patient family.

In case they would decline to accept the amount the CE would be obliged to deposit the same with the Missionaries of Charity for their Orphanage that they would maintain in the memory of Dr. Sharadha Bhutra.

The complaint is disposed off accordingly.

Sd/-

(ASHIM KUMAR BANERJEE)

We agree,

Sd/-

Dr. Sukumar Mukherjee

Sd/-

Dr. Makhan Lal Saha

Sd/-

Sri . Sutirtha Bhattacharya, IAS (Retd)

Authenticated
WJL

Sd/-

Dr. Maitrayee Banerjee

Sd/-

Smt. Madhabi Das.

Authenticated

W. B.

Secretary
West Bengal Clinical Establishment
Regulatory Commission

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