

Office of the West Bengal Clinical Establishment Regulatory Commission

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**Case Reference: INT/HGY/2023/197**

**Present: Justice Ashim Kumar Banerjee (Retired), Chairman**

**Dr. Sukumar Mukherjee,**

**Dr. Makhan Lal Saha**

**Sri. Sutirtha Bhattacharya, IAS (Retd)**

**Mr. Sayan Kumar Hore .....Complainant**

**- Versus-**

**S C Bagchi Aragyo Sadan Pvt. Ltd .....Respondent**

**Heard on: November 2, 2023**

**Judgment on: December 21, 2023.**



## **CASE HISTORY**

Sibram Laha 59 year old patient was admitted at S C Bagchi Aragy Sadan at 6 PM on August 24, 2023. He was admitted under Dr. Sumit Patra. At the time of admission the patient had fever since last four days having 74 per cent saturation on NRBM Mask. The case history was signed by Dr. Swarnab Kundu. However, a rubber stamp was also put in the name of Dr. sumit Patra, MBBS in whose care the patient was supposed to have been admitted.

According to the complainant, the brother-in-law of the patient, the patient expired around 11 PM at the CE due to medical negligence. They lodged an FIR at 1.30 AM on August 25, 2023. On an enquiry, they came to know, the doctor who actually treated the patient after his admission being Dr. Swarnab Kundu was a Homeopath.

## **COMPLAINT AND RESPONSE**

We received the complaint and asked for response from the CE. CE gave their response on October 13, 2023.

Dr. Sumona Bagchi, the Director of the CE sent a written response received by us through mail dated October 13, 2023 with a copy to the complainant. Along with the response, the CE also shared CCTV footage that we have viewed.

According to them, the patient had 55 per cent saturation on room air at the time of admission. His respiratory rate was high (40/min), rapid pulse (129/min) B.P (90/60) at the Emergency. His chest X Ray was done at the emergency that would clearly show ARDS. He was admitted in ICU under Dr. Patra. The family was counselled that the patient might need mechanical ventilation. The family however, wanted to shift the patient to a tertiary centre and applied for LAMA at around 10 PM.

He was unable to maintain his vitals. The technician from the critical care ambulance came to retrieve the patient who was febrile, hypotensive, on inotropic support and hypoxic at that point. He was also unable to maintain saturation in spite of high flow oxygen. In such circumstance, the patient had to be intubated with 100% oxygen support. He ultimately suffered cardiac arrest, Prompt CPR was given. All support were escalated. Yet, he succumbed to his illness.

CE categorically denied, Swarnab Kundu was the treating RMO. Mr. Kundu was the physician's assistant present on duty and carried out the treating physician's instructions in letter and spirit in discussion with him and Dr. Nilanjan Patra who was the then RMO.

The relevant extract is quoted below:-

*" It is specifically denied that Swarnab Kundu was the treating RMO as alleged or at all. Mr. Kundu the physician's assistant was present on duty and carried*

out the treating physician's instructions in letter and spirit in discussion with him and Dr. Nilanjan Patra, who was the then RMO. The video footage reveals Dr. Nilanjan Patra's presence at the ICU and the active participation in treatment, which establishes the allegation to be baseless. It is specifically denied that the patient's death, which though very unfortunate like any other death, was due to wrong treatment carried on by or at the nursing home as alleged or at all. It is reiterated that the deceased patient's treatment was carried on as per all prescribed protocols and as advised by the treating consultant in discussion with him. The treating consultant himself had attended to the patient right on admission without delay and for a substantial length of time as he was present in the outdoor consultation chamber at the time of admission. The family was counselled by him for a long time about the prognosis and the proposed line of treatment and the possible poor outcome of the patient due to the grave results of the investigations done (ABG). The family was also counselled by him about the need for immediate airway protection and ventilatory support. Hereafter he was in constant touch with the RMO, his assistant's and the Nursing Home team thereby actively participating in the treatment."

## **HEARING**

The matter came up for hearing before us on November 2, 2023.

## COMPLAINANT'S SUBMISSION

Mr. Sayan Kumar Hore, brother-in-law of the deceased patient made his submission being the complainant in the above case. According to Mr. Hore, the CE did not have any appropriate infrastructure to treat the patient. The entire treatment was done by Dr. Swarnab Kundu, who was homeopath and not a mere assistant and / or technician as claimed by the CE. They verified registration of Dr. Kundu from the West Bengal Medical Council as well as Council of Homeopathic Medicine, West Bengal. As per the appropriate laws relating to Homeopath doctor Dr. Kundu is not eligible to treat a patient in ICU, far to speak of, doing intubation which is completely an allopathic procedure. He would rely upon the letter dated October 6, 2023 issued by Dr. Mithun Chakraborty, Registrar, Council of Homeopathic Medicine, West Bengal. The relevant extract is quoted below:-

*" This is to inform you that 'A practitioner of Homeopathy shall use any drug prepared according to Homeopathic principles and according to Pharmacopeial standards which is approved by the licensing authorities' as per the guideline of National Commission for Homeopathy. "*

According to him, from the certificate it is clear, Dr. Kundu did not have any authority to practice as an allopath or do any procedure he prescribed in such stream.

## PER CONTRA

Dr. Sumona Bagchi, the Director of the CE would submit, the patient was admitted under Dr. Sumit Patra and was being looked after by Dr. Nilanjan Patra the RMO. Swarnab Kundu (Dr. Bagchi never mentioned him as doctor) had the requisite technical qualification to do intubation however, there was no proper authorisation to produce before us to show that Dr. Kundu, was otherwise entitled to do intubation as a technician. According to Dr. Bagchi, the patient came at 6 PM. He was attended by Dr. Sumit Patra at the emergency. The condition of the patient was fully explained to the patient family. The x-ray was done that was explained to the patient family when they were in dilemma whether to continue the treatment at the CE or not. They even did not give any consent for critical care treatment including intubation as and when required. At about 10 PM they asked for LAMA. The process was started however, the patient became too critical and immediately intubated by the technicians. The condition of the patient deteriorated rapidly. He had a cardiac arrest. CPR was given however, the patient succumbed to his illness.

## ANALYSIS

We have considered the rival contentions. We have examined the CCTV footage carefully that would reveal few salient features that are chronologically set out below.

At 18:56 hours one lady patient was on the bed who was being wheeled out side the area.

At about 18:59:50 hours the area on the other side of that bed that was not visible through footage, was possibly occupied by the concerned patient. Dr. Patra was there who could be seen from the back. He was there for about 15 minutes (18:59:50 to 19:14:51). He prescribed something that could be seen from the video footage and left. He could not be seen any further. Most of the time from 18:56: to 22:47 Kundu was all throughout present. After the lady patient moved out the bed was made ready for the patient. He was shifted at 20:41:06 hours.

At 21.28 hours we saw Kundu explaining X-ray plate to the complainant. Kundu was in a deep blue uniform whereas the nurse and paramedical staff wore light blue uniform. Apart from Kundu, we could not see any other doctor. Dr. Patra was not in uniform. Dr. Nilanjan that Dr. Bagchi referred, was there for a very brief period from 21:57 to 22:07 hours. That time the patient was too critical and all paramedical staff including Kundu were very busy with the patient. Dr. Nilanjan was a silent spectator except at 22:11 hours he was seen to supply a syringe to a paramedical staff by taking it from the table of the nursing station. Dr. Nilanjan was again seen for a very brief period at 22:47 hours when he came and rescued Kundu from the assault that he was subjected to from the patient family including the complainant. We have also seen, at

21:16 hours Kundu came out of the chamber and talked about LAMA that was inaudible at 21:28 hours.

From the sequence of events we find, the patient came before 18:56 Hours Dr. Bagchi, during her submission, referred to a picture of the patient being on the wheeled chair. From the video footage we could notice the presence of the patient in an area where a lady patient was on the bed who was being wheeled out and then bed was arranged for the concerned patient. Everything happened at about 7 PM when Dr. Patra came and examined the patient as observed earlier. Dr. Patra was there for 15 minutes and never came back even at the crucial hour. According to Dr. Bagchi, Dr. Patra used to do OPD at the centre. At that time Dr. Bagchi was not in the CE. Only doctor available was Dr. Patra under whom the patient was admitted. As per his advice the x-ray was done and it was explained to the patient family that we could notice from the video footage.

The patient was shifted to bed at 20:41:06 hours and breathed his last at about 22:30 hours. The patient was all though out under care of Dr. Swarnab Kundu. He was never assisted by any other doctor far to speak of Dr. Sumit Patra or Dr. Nilanjan Patra. Pertinent to note, we also find, intubation was done by Kundu at 20:09 hours.

## CONCLUSION

On analysis of the sequence of events it is clear to us, the patient was treated by Kundu who was a homeopath doctor and treatment was done as per allopathic procedure that was clearly illegal. The patient was attended at emergency of the CE. It was their duty to get the patient admitted and treated by an allopath doctor. From the submission of Dr. Bagchi, it would appear, incidentally Dr. Patra was there doing OPD. On the request of the administration, Dr. Patra came and saw the patient and prescribed medicine. His role was totally over thereafter.

We do not find any signature of Dr. Patra in the admission sheet although a rubber stamp had been put. We also examined the treatment chart. Dr. Kundu signed as intubation done. This was not only an unethical practice but also in violation of the licensing conditions that was imposed upon the CE by the licensing authority.

LAMA was prepared at 10 PM. The rubber stamp of Dr. Patra was there with some initial. However such LAMA was never acted upon because of the criticality of the situation. It is true, the patient was critical as would appear from the medical records.

Our esteemed medical member Dr. Sukumar Mukherjee, evaluated the medical records and gave his opinion that is extracted hereinafter:-

*"Sibram Laha, 59 year old, was admitted at the abovenamed CE on August 24, 2023 at 6 PM under Dr. Sumit Patra in ICU- 4 with history of fever since last 4 days.*

*On admission he was found to have tachycardia pulse 129/ min, BP 90/60 Temp 100<sup>0</sup>F , respiratory rate 40 / min and SP2 of 74% , CBG 194 Mg/ dl.*

*The patient was on drugs like Azee 500mgm, Paracetamol 650 mgm and Cbadex CZS as prescribed by Dr. Swarnav Kundu RMO as it appears from the BHIT duly signed by Dr. Kundu.*

*His chest x-ray done at Emergency showed features of ARDS. The family was counselled by consultant doctor about the plan of therapy which included air way management through intubation.*

*After ICU admission the patient went worse with ARDS and profound hypoxia and mechanical ventilation following intubation was initiated but there was no improvement. However, the family wanted to shift to tertiary care at their own risk. But in view of worsening situation the patient could not be shifted and all emergency measures including CPR were taken in time in the same ICU. The patient's family was*

*present inside the ICU throughout the treatment procedure and they witnessed the efforts to salvage the patient.*

*Despite untiring and credible effort the patient could not be saved and he died in the same night i.e, 24 August, 2023 at about 11 pm. Subsequently, there was repeated misbehavior and violence of the patient's party.*

*The allegation of medical negligence was more of a conjecture than real. The death was presumably due to worsening ARDS and subsequent cardiac arrest. Post mortem examination was inconclusive.*

*The vandalism of the family in ICU is unpardonable.*

*Dr. Kundu, being a Homeopath, is not entitled to prescribe allopath Medicine, He is not entitled to treat the patient following allopath procedure."*

## **OUR VIEW**

Considering the entire scenario as also the opinion of Dr. Mukherjee extracted above, we are ad-idem on the issue, there had been clear violation of the licensing condition by CE that would amount to hospital negligence. Patient

died at the CE. We do admit, the patient was critical. However, he was entitled to have proper treatment by doctors having proper authorisation that was not given by the CE.

## **RESULT**

We impose a penalty of Rs. 5,00,000/- upon the CE for such negligence. The money would be paid to the widow of the deceased patient upon sharing of her bank details.

## **BEFORE WE PART WITH**

We express our strong displeasure as to the conduct of the complainant as well as the gentleman seen on the footage, possibly the son of the deceased patient. Both of them assaulted Kundu as we find from the CCTV footage. It was absolutely a unilateral attack that Kundu had to sustain.

No one is entitled to take law in his own hand. It is unfortunate, the patient died within four hours of his admission. We are not sure whether the patient family knew about the credentials of Kundu at that time. Be that as it may, they have no right to physically assault Kundu.

## **DIRECTION**

We grant liberty to the complainant and as also next to kin of the patient to approach the appropriate authority as against Kundu for disciplinary action.

The complaint is disposed of accordingly.

Sd/-

(ASHIM KUMAR BANERJEE)

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

Dr. Makhan Lal Saha

Sd/-

Sri. Sutirtha Bhattacharya, IAS (Retd)

*Authenticated*  
Secretary  
West Bengal Clinical Establishment  
Regulatory Commission

*Q*