

Case Reference: INT/HGY/2023/197

Sayan Kumar Hore..... Complainant

vs

S C Bagchi Aragyo Sadan Pvt. Ltd.....Respondent/ Respondents

ORDER SHEET

Office Note	Order No.	Date	Order
	2.	20/02/2024	<p>The complaint would relate to death of a patient without any treatment. We heard this matter at length. From our record, it appears that the total hearing took place for one hour seven minutes five seconds. Yet, we are accused of not giving “sufficient and adequate opportunity” of hearing to the respondent.</p> <p>We heard the matter on November 2, 2023. We reserved our judgment to enable our esteemed members to offer their comments. Accordingly, our esteemed member Dr. Sukumar Mukherjee submitted his opinion that was circulated amongst other members. Ultimately, our judgment and order was delivered on December 21, 2023. We held the CE guilty for hospital negligence imposed a penalty of Rs. 5,00,000/- to be paid to the widow of the deceased</p>

patient.

Being aggrieved, the CE has come up in review.

The grounds of review have been enumerated in paragraph 9 of the petition including 11 sub paragraphs. The complainant have also given reply to the same discarding the issues raised by the CE.

Today, we have placed it for hearing.

Dr Sumana Bagchi, the Medical Superintendent and Director and in fact, the de-facto owner of the hospital is present online. We have given her a patient hearing and permitted the complainant to submit only when Dr. Bagchi categorically stated that she had nothing to add. In reply, we have also granted her liberty to make further submissions. Her Advocate is present online. She has also made her submission. The complainant himself is present online. He has also made his submission.

Although eleven issues have been raised in the review application Dr. Bagchi raised three issues. According to her, in the judgment particularly in the opinion of Dr. Mukherjee, few medicines were mentioned. Those medicines were in fact not prescribed by the



doctors at the CE. Those were the medicines that the patient had been using at home prior to visit the CE.

The SPO2 level was also not correctly written according to her. The third and last issue raised by Dr. Bagchi was, once Dr. Mukherjee ultimately observed that there was no deficiency in treatment. We should not have been imposed a penalty particularly when there had been assault on the medical officers and staff of the CE by the patient family as manifested by the CCTV footage and mentioned in the judgment. Dr. Bagchi lastly added, there had been trail mails that would depict the conduct of the patient family. Imposition of penalty and awarding the same in favour of the wrong doers would have a different message. CE would lastly submit, if there had been any infrastructural deficiency, they are prepared to correct themselves for that they should not be penalised.

Per Contra, Mr. Hore, the complainant would reiterate what he had submitted on the date of hearing as well as in his complaint as well as reply to the review application.

Mr Hore, during his submission, is candid enough to mention more than once, they are not interested in money. They want

cancellation of the license.

We have considered the rival contentions. It is the basic principle of law, a judge cannot sit on appeal over his own judgment. Judgment has been pronounced. If the parties are aggrieved they have their remedy in law. The scope of review is very much limited.

Yet, sitting in the forum that would have the grievance redressal mechanism in social welfare legislation, for ends of justice, we deal with each and every eleven issues that the complainant has raised in their application for review:-

Re: SC Bagchi Arogya Sadan Pvt. Ltd

Review application

Sl. No	Allegations	Our view
1	In Paragraph 9 (i), it was alleged, at the time of admission saturation 55 per cent and not 74 per cent as observed by	Our Judgement was based upon the submissions and records. Outdoor prescription would show :- The patient at 5.55 pm was having SPO2 55 per cent whereas case history signed by Dr. Sumit Patra and Dr. Swarnab Kundu would show SPO2 as 74 per cent on NRBM mask however, the case history does not

			Dr. Sukumar Mukherjee, our esteemed member.	mention the exact time when such vital was recorded.
		2	In Paragraph 9 (i), it was claimed, "Dr. Swarnab Kundu as referred to as the RMO, was not the RMO".	The case history was signed by Dr. Swarnab Kundu in the palace of "RMO sign". Initial appearing in the records seems to be of Dr. Kundu. Dr. Sumit Patra did not sign however, his rubber stamp was used in some of the pages except the one where Dr. Patra signed the Progress Note by making initial and such initial would distinctly differed with all other initials appearing on the records including the one where a signature would appear at the place "RMO sign". This would clearly proved, all the signatures except the one would belong to Dr. Kundu including the one where he signed in place of "RMO".
		3	In Paragraph 9 (iii), CE claimed, the team of doctors were led by Dr. Sumit Patra and Dr. Nilanjan Patra.	We have evaluated the actual involvement of Dr. Sumit Patra and Dr. Nilanjan Patra from the CCTV footage and elaborately dealt with such issue in our judgment. We found, Dr. Swarnab Kundu was involved in the process of treatment most of the time as we noticed from the CCTV footage.
		4	In Paragraph 9 (v),	The Commission is empowered in law to award

			<p>the CE commented, penalty of Rs. 5,00,000/- was disproportionate, unreasonable and unjustified since the complainant did not make any such prayer for penalty as a relief.</p>	<p>pecuniary relief and / or make recommendation to suspend and / or cancel license. The complainant has brought the issue before the Commission. It is the duty of the Commission to deal with the same and on being satisfied, should grant appropriate relief irrespective of what prayer the complainant has made.</p>
		5	<p>In Paragraph 9 (viii), CE submitted that Commission, while condemning the violence, should not have imposed penalty that would create a wrong precedent.</p>	<p>There are two different situations to be considered in this regard. One, the hospital negligence and the other, the after-effect. The Commission was satisfied with the hospital negligence hence, impose penalty. At the same time, the Commission could not be a mere onlooker when they noticed physical assault from the CCTV footage and thus condemned such act. Now it is open for the CE as also the victim to take appropriate steps before the appropriate forum in this regard. The Commission is not empowered to deal with such issue</p>
		6	<p>In Paragraph 9 (x), the CE contended, "the respondent CE was not given a</p>	<p>The Commission received the complaint on October 4, 2023. The Commission mailed the complaint to the CE on October 11, 2023 inter-alia, asking for medical records as well as response. The CE gave their</p>

			<p>sufficient and adequate opportunity of hearing on 02.11.2023.”</p>	<p>response along with medical records vide letter dated October 13, 2023. After submission of rival contentions in writing, the Commission fixed the hearing on November 2, 2023. The entire hearing was audio recorded. We have checked our audio recordings that would show, the matter was heard for one hour seven minutes and five seconds.</p>
		7	<p>In Paragraph 9 (xi), the CE contended, there had been multiple proceedings on the identical issue and the Commission should take the same in due consideration.</p>	<p>The Commission is not aware of any such proceeding. In any event, the Judgment and Order dated December 21, 2023 would be restricted to the hospital negligence and that could be relied upon the parties in any other proceedings, if they so like.</p>
<p>We do admit, there are some misgivings on SPO2 level. The patient arrived at 5.55 p.m. having SPO2 at 55 per cent whereas the case history signed by Dr. Sumit Patra and Dr Swarnav Kundu would show SPO2 as 74 per cent on NRBM mask however, the case history did not mention the exact time when such vital was recorded. Dr Mukherjee recorded this fact accordingly. The comment on the issue, in our view, is undesirable.</p>				

The prime issue that guided us to the ultimate result of the complaint was as to whether the main person behind the treatment, Dr. Swarnay Kundu whom we found as RMO in the records, was eligible to treat the patient or not.

We do not find any scope to review our own judgment and order.

Hence, the review application fails and is hereby rejected.

Before we part with, we wish to say the complainant filed his complaint, we gave adequate opportunity of hearing to both the parties and ultimately decided the issue. It is undesirable for the parties to make personal comments against one of our esteemed members. This part is totally unwarranted and we note our dissent on the issue.

Dr. Bagchi has raised an issue that the wrong doers should not be given the benefit of the judgment. Mr Hore, has categorically stated, he does not want any money. In such case, we modify the order to the extent, the CE would be at liberty to deposit this money in the memory of the deceased patient to any nearby philanthropic institution upon prior notice to the Commission as well as the complainant.

The complaint is disposed of accordingly.

Sd/-

The Hon'ble Chairperson

Sd/-

Prof. (Dr.) Sukumar Mukherjee – Member

Sd/-

Prof. (Dr.) Makhān Lal Saha – Member

Sd/-

Dr. Maitrayee Banerjee – Member

Sd/-

Smt Madhabi Das – Member

Authenticated
[Signature]

Secretary
West Bengal Clinical Establishment
Regulatory Commission