THE WEST BENGAL CLINICAL ESTABLISHMENT REGULATORY COMMISSION.

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Madhusudan Banerjee, Member.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: EMID/2017/000038.

Mr. Pradeep Mukherjee.....Complainant.

-versus-

Apollo Gleneagles Hospital & others.....Respondents.

Heard on: 07/07/2017
15/09/2017

Date of pronouncement of judgment: 10th November, 2017.

J U D G M E N T.

1. The complainant happens to be the brother of Mr. Shibram Mukherjee, (hereinafter referred to as the service recipient).

According to the case of the complainant, on 16th March, 2017, service recipient got admitted at ***Kothari Medical Centre***, complaining of recurrent greenish vomiting, blackish stool with yellowish discoloration of urine. At the Kothari, as medically advised on 21st March, 2017, the service recipient underwent colonoscopy and during such procedure two polyps were detected in his rectum and colon. On March 27, 2017, he was discharged from ***Kothari Medical Centre*** and advised for polypectomy. Subsequently, on 11th April, 2017, the service recipient was examined by Dr. Mahesh Kumar Goenka at ***Apollo Gleneagles Hospital*** and was advised for urgent admission and Polypectomy. Thereafter, on 14th April, 2017, when the service recipient went to ***Apllo Gleneagles Hospital*** for taking admission, he was informed by the hospital authority that Dr. Mahesh Goenka was not available and on that day if he intended to take admission then the operation would be done by some other doctor of the GI team. Since they desired the operation to be done by Dr. Goenka himself, the service recipient did not take admission and was advised to come on 18th April, 2017. Thereafter, on 18th April, 2017, the

Goenka and the hospital authority assured them that Dr. Mahesh Kumar Goenka shall himself operate the patient. However, after the operation was over on 18th April, 2017, the complainant came to learn that his brother was operated by a different doctor, Dr. Manik Lal Thakur and Dr. Goenka was not even present at the time of operation. He further came to learn that on that day instead of removal of two polyps only one polyp has been removed. Subsequently, when Dr. Thakur came on round, he was apprised of the report of Kothari Medical Centre and two polyps by the service recipient and the complainant. When Dr. Thakur informed them that on the next day, for the second time he had to undergo another polypectomy for removal of the second polyp. Having no option, the complainant and his brother (service recipient) had to agree with the advice of Dr. Thakur. On April 19, 2017, the service recipient underwent second polypectomy and the second polyp was removed. On 20th April, 2017 after the service recipient was discharged from the ***Apollo Gleneagles Hospital,*** then only, going through the medical papers, they came to learn intentionally the second polyp was not removed on the pretext that the second polyp could not be operated due to poor visibility.

It is alleged that this is a case of complete breach of trust, since the polypectomy was done by Dr. Manik Lal Thakur instead of by Dr. Mahesh Kumar Goenka. It was further alleged that the service recipient has to undergo anesthesia twice as also operated for twice, which amounts to intrinsic deficiency in service and for that reason the service recipient has been suffering from various side-effects and severe weakness.

2. Upon receipt of such complaint by the Commission, notices were issued against the Clinical Establishment and both the doctors viz. Dr.Mahesh Goenka and Dr. Manik Lal Thakur and they were directed to be present on that date fixed for hearing and to submit their reply in writing as also to produce the Bed Head Tickets.

3. In response to the notices issued by the Commission, Director Medical Services, ***Apollo Gleneagles Hospital*** submitted its reply in writing, which is already on record.

4. In the aforesaid reply, the Clinical Establishment categorically denied the allegations made against it and against the doctors.

The relevant portion of reply is quoted below:

"Colonoscopy preparation was done and he was taken for colonoscopy and polypectomy on 18th April, 2017 at around 8.22 pm. Rectal polyp was identified and polypectomy was done successfully. In view of sub-optimal result of colonoscopy preparation, visibility of colonic mucosa in proximal part was limited and the other polyp at hepatic flexure could not be visualized. The same was conveyed to the patient and a repeat procedure was planned on the next day. The patient was kept for extended fasting for better colonoscopic preparation and a repeat procedure was done on 19th April, 2017, afternoon. Second polyp was identified and polypectomy was done successfully. Polyps were retrieved and sent for histopatheological

examination on both occasions. Despite two procedures being done (including IV anesthesia), only one procedural charge and one anesthesia charge was taken.

It was never committed that the colonoscopy would be done by Dr. Mahesh Kumar Goenka. The procedure was performed by Dr. Manick Lal Thakur (MD from All India Institute of Medical Sciences; DM Gastroenterology, PGI, Chandigarh) who is a qualified, experienced and competent Gastroenterologist and Endoscopist.

The consent for colonoscopy and polypectomy was also taken for Dr. Manik Lal Thakur performing the procedure and hence there is no question of breach of trust or miscommunication."

5. During hearing, it was contended from the side of the respondent clinical establishment and the doctors that at ***Apollo Gleneagles Hospital***, the service recipient was admitted under Dr. Mahesh Goenka and his gastro team, not exclusively under him and the consent forms signed by Sri Pradeep Mukherjee on April 18, 2017 and April 19, 2017 prior to the procedure clearly cite the name of Dr. Manik Lal Thakur as the doctor performing the procedure. Then it was added that Dr. Manick Lal Thakur is a highly qualified and experienced Gastroenterologist and one of the members of the said team. He is an MD from All Indian Institute of Medical Sciences and DM Gastroenterologist, PGI Chandigarh. In this regard, the respondents referred and relied on the patient's admission form and admission note and the discharge records.

Going through the said two documents, we find it is true that the service recipient was admitted at ***Apollo Gleneagles Hospital*** under Dr. Mahesh Goenka and his gastro team and not exclusively under Dr. Goenka.

6. Next, it was contended from the side of the respondents that the procedures viz. colonoscopy and polytectomy was done on 18th April, 2017 and then on 19th April, 2017 by Dr. Manicklal Thakur after obtaining written consent from the complainant and the service recipient.

The said two consent forms were referred to us. We find that for the procedure done on 18/04/2017, the consent was given by both the complainant and the service recipient and on 19/04/2017 by the complainant himself and their signatures in the consent forms are in English.

At once, as a matter of abundant caution the attention of the complainant and service recipient was drawn to their signatures in the consent form and they have not disputed the same. However, without availing the opportunity of cross-examination of the respondents given to them by the Commission the complainant after the hearing was closed, addressed a letter to the Secretary of the Commission where amongst other, it was categorically alleged, taking advantage of their ignorance to read and understand English, the hospital authority duped them and obtained their signatures in the consent form without even verbally informing them that Dr. Manik Lal Thakur would perform the procedure.

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On the other hand, going through the petition of complaint and the letter referred above, we find a number of English words with correct spelling were used at the appropriate places. We are, therefore, not inclined to accept the contention of the complainant and hold that the procedure was conducted by Dr. Manik Lal Thakur with the clear knowledge and consent of the complainant and the service recipient.

It be added that the claim of the Clinical Establishment that despite two procedures and two anesthesia were done, no charges were levied and realised from the patient party for second procedure and anesthesia and such claim has not been disputed by the complainant.

6. The next question arises for decision whether there was any deficiency in service on the part of the hospital authority or on the part of Dr. Manik Lal Thakur in detecting the second polyp during the first colonoscopy done on 18th of April, 2017.

In this regard, from the side of the respondents, it is contended that the missing of polyp is quite common during colonoscopy due to poor preparation. They relied upon two reviews/literatures, namely, ***Colonoscopy: What are we missing? By James Church***, published in Surg Oncol Clin N Am 23 (2014) 1-9 and a review ***Predictors of Inadequate Bowel Preparation and Salvage Options on Colonoscopy by Ju Sung Sim and Ja Seol Koo*** printed and published in Clinical Endoscopy (journal) 2016; 49:346-349. No contrary authority was relied or referred from the side of the complainant.

7. Now going through the discharge summary issued by Kothari Medical Centre, we find that on colonoscopy one pedunculated polyp was found in rectum. While the colonoscopy report of that hospital shows that there were two polyps, one pedunculated polyp in the rectum and another sessile polyp near the hepatic flexure.

8. The medical reviews relied upon by the doctors, have been duly considered by the Commission. Those have not been disputed from the side of the complainant. Other authorities on the issues involved are also considered. The members with medical backgrounds actively participated in the deliberation and expressed their valuable views.

9. Good Bowel preparation is essential for an accurate colonoscopy. According to the standard procedure, colonoscopic preparation requires administration of enemas and purgatives. However, response to enemas and purgatives depends upon various intrinsic factors of that particular patient and it varies from patient to patient. We find from the medical records that on 18th of April, 2017, first colonoscopy was done at around 8.22 pm and before that at around 01:00 pm, the patient was administered one Domstal (Domperidone) tablet and one pack Peglec (combination of Polythelene Glycol with electrolytes) with one (01) litre of water and further advised to mobilize the patient. There is no dispute, the medicines advised and other advices given are in line of the standard procedure for Bowel preparation in colonoscopy. In this case no enema was given to the patient but the same is of no consequences, in as much as rectal enema is useful only to clear the lower abdomen and not the upper one. Enema does not enhance the visibility of the upper abdomen so poor

preparation cannot deem to be the outcome of non-application of enema. Whether the bowel preparation was adequate and complete or not, can only be ascertained during the procedure. In the above backdrop, if the second polyp could not be detected on the first colonoscopy, it cannot be said that was due to any deficiency in service either on the part of the Clinical Establishment or by any other person, on its behalf while providing medical service to the service recipient. Furthermore, no charge was levied for second colonoscopy.

10. In view of above, the Commission is of the opinion that the complainant has not been able to sustain the charge brought against the respondents, the Clinical Establishment and the doctors.

In the result, this complaint stands dismissed.

The certified copy of the order if applied for, be given to the parties.

Sd/-

Justice Ashim Kumar Roy,
Chairperson.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

It is authenticated.

10/11/2017

Secretary
W.B.C.E.R.C.
Kolkata-1

West Bengal Clinical Establishment Regulatory Commission ★ Kolkata-1