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: INT/KOL/2023/030

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Sukumar Mukherjee,

Dr. Makhan Lal Saha,

Dr. Maitrayee Banerjee,

Sri. Sutirtha Bhattacharya, IAS (Retd)

Smt. Madhabi Das.

Mr. Sailendra Nath Patra .....**Complainant**

- Versus-

Apollo Multispeciality Hospital .....**Respondent**

Heard on: March 15, 2023 and May 3, 2023.

Judgment on: May 22, 2023.

BACKDROP

Complainant Mr. Sailendra Nath Patra got his 21 years old son Surrendra Nath Patra admitted at the CE on September 27, 2022 for chemo-therapy. Pertinent to note, the time of admission would relate to durga puja the annual festive season in Bengal, which is considered to be National festival and everyone was busy to enjoy the festive season. He died on the Maha Astami day i.e October 3, 2022 while under treatment of Dr. P.N Mahapatra, Oncologist attached to the CE.

Complainant filed a complaint alleging hospital negligence as well as questioning treatment protocol that would be outside our domain. The basic reasons for filling the complaint, would appear from the written complaint dated December 26, 2022 addressed to the hospital followed by a formal complaint before the Commission on February 16, 2023.

CORE ISSUE INVOLVED IN THE COMPLAINT

i) The patient relatives were not allowed to stay with the patient. They were not even allowed to visit him.

ii) The patient, time to time, made grievance that he did not get appropriate service from the CE. He was quite hale and hearty on October 02,2022.

iii) The patient could not eat food provided to him.

iv) The nursing staffs were in the festive mood and did not respond to the call bell pushed by the patient from time to time.

v) In the morning of October 2, 2022 the patient called the nursing staff many times however, they did not extend appropriate service. Even the junior doctors did not render due treatment as required by him.

vi) Treatment was given by keeping the patient in bed No 523 that was not equipped with appropriate gazette required for treatment resulting in the death of only earning member of the family.

vii) He sent Whats app messages complaining that despite call nobody was coming near him. His phone was locked. During puja time the nursing staff were busy with mobile surfing. After his death, the power bank was returned but the charger was not returned. CCTV footage, if examined, would definitely reveal the truth.

viii) Oxygen was not provided at the appropriate time.

ix) On October 03, 2022 At about 8.28 am the complainant was informed, the patient had been given tea and after taking tea he became sick. Second call came at 8.46 am expressing regret that they could not save the life of the patient.

Elaborating the issues as narrated above, the complainant contended in the complaint, during festive season no doctor was available. Even the nursing staffs were eager to leave to attend puja. Even the admission scheduled on September 24, 2022 (wrongly typed as October 24, 2022) could not be done due to non availability of bed. It was earlier planned, Dr. Mahapatra would give discharge to the patient on the Maha Astami i.e October 3, 2022. Unfortunately, the patient

died on the said date. The complainant got the mobile phone back that was locked. The complainant expressed doubt, someone from the CE, locked the phone. The patient died due to wrong treatment.

RESPONSE

On receipt of the complaint the Commission forwarded a copy to the CE vide e-mail dated February 22, 2023 inter-alia, asking for medical records as well as response from the CE. CE submitted response on March 9, 2023 giving details of treatment that were given to the patient. The relevant extract is quoted below:-

"Though the hospital is sympathetic to the feelings of the parents, the patient was a known case of Germ Cell Tumour (predominantly teratoma) thorax. The diagnosis was based on CT Guided Biopsy of Right Lung Mass reported on 03.09.2022 which was suggestive of Germ Cell Tumour with predominantly teratomas component, Plain Chest CT (07.09.2022), Serum AFP Report (2941 ng/ml on 29.08.2022), Beta HCG (0.6 m/u/ml on 29.08.2022) and Whole Body PET CT (reported on 01.09.2022) which were performed at Apollo Hospitals, Chennai. The mass in the thorax was in the right hemithorax including the mediastinum (13 cm) and left thorax (7.5 cm).

The mass on the right side abutted the anterior and mediastinal pleura, on the right pulmonary artery, superior vena-cava. Right upper, middle and lower lobes

bronchi were compressed by this mass causing partial collapse of the upper and middle lobe and complete collapse of the lower lobe.

At the time of evaluation at Apollo Hospitals, Chennai the patient had high total WBC Count (11380), predominantly neutrophils (N69 L26). A repeat WBC Count on 03.09.2022 showed a count of 12760, predominantly neutrophils (N79 L 13). This was clearly indicative of infection and the fact that the patient was unwell at the time of his evaluation at Chennai.

He was admitted at AMHL, Kolkata for his first cycle of chemotherapy from 07.09.2022 to 13.09.2022, prior to the above admission. In fact, at the time of the instant admission at AMHL Kolkata, the patient complained of shortness of breath, sweating and cough with pleural effusion.

The above facts are contrary to the statement of the patients that the patient was strong and healthy and that the reports of investigations conducted at Apollo Chennai were normal Copies of the PET CT Report, CT Guided Blopsy and CT Scan and relevant Pathology Investigation Reports of the patient are enclosed herewith for your perusal. (Annexure 01- Annexure 05). "

HEARING

The Commission fixed the complaint for hearing on May 15, 2023 when the parties were heard and the judgment was reserved.

RIVAL CONTENTIONS

COMPLAINANT

The complainant was accompanied by Mr. Chandan Chakraborty Learned Advocate. The complainant reiterated what he had already stated in his complaint dated December 26, 2022 and February 16, 2023.

Ms. Jasadhara Ghosh, Vice President, Apollo represented the CE, Dr. P.N. Mahapatra, the treating Oncologist, was present online to assist the Commission at the hearing.

According to Ms. Ghosh, the treatment was duly given as would appear from the medical records produced before the Commission. She would deny each and every allegations made by the complainant. Dr. Mahapatra, while giving the inputs of the treatment would, however, support the complainant and thereby contradicting the response given by the CE, wherein it was contended, " *at the time of the instant admission at AMHL Kolkata, the patient complained of shortness of breath, sweating and cough with pleural effusion.* "

We concluded the hearing and kept it for judgment.

FURTHER HEARING

When the matter was pending under consideration by the Commission the CE wrote a letter dated March 18, 2023 inter-alia, praying for amendment of their response by contending, the statement made by CE in their earlier response quoted supra, would relate to the first admission of the patient and not the last admission that ultimately resulted in his death. However, they still contended, the underlying disease was severe as noted in the discharge summary of both admissions and investigations. Pertinent to note, the complainant however, contended that the investigation conducted at Apollo, Chennai, resulted in a positive direction that would raise doubt in the mind of the parents as to whether the patient was properly treated or not at Apollo, Kolkata.

The CE, by a further letter dated March 24, 2023, requested for a further hearing and an opportunity to make a clarification.

In the letter dated March 18, 2023 they prayed for adducing further oral or documentary evidence that was however, not prayed for in their subsequent letter dated March 24, 2023. We placed the matter for further hearing on May 3, 2023

when we permitted Apollo to place it on record their clarification as contended in the letter dated March 18, 2023 and March 24, 2023 . We also permitted the complainant to have copy of all medical records submitted by Apollo, from the Office of the Commission.

We finally concluded the hearing and kept it for judgment.

OPINION

At the hearing Dr. Sukumar Mukherjee, our esteemed member of the panel, had a detailed interaction with Dr. Mahapatra on the treatment issue. Dr. Mukherjee also perused the medical records produced by CE.

On consideration of the entire scenario Dr. Mukherjee submitted his written opinion that is quoted below:-

"The above mentioned patient was admitted in Apollo Multispeciality Hospitals Kolkata under care of Dr. P. N. Mahapatra, Senior Consultant Medical Oncology for his second cycle of Chemotherapy.

The patient was diagnosed case of Germ Cell Tumour (predominantly teratoma) thorax predominantly on right side based on CT guided biopsy of right lung mass being reported on 03/09/2022. The mass in the thorax was in the right hemithorax invading the mediastinum (13 cm and left thorax (7.5 cm). The mass on the right side abutted the anterior and mediastinal pleura, on the right pulmonary artery, superior vena-cava. right upper, middle and lower lobes

bronchi were compressed by this mass causing partial collapse of the upper and middle lobe and complete collapse of the lower lobe.

Therefore the disease was progressive and locally invasive, though first cycle of chemotherapy was uneventful but the patient became worse following second chemotherapy during 27 Sept 2022 and 03 October 2022. The inevitable consequence of such progressive disease is worsening hypoxia leading to convulsions, hypotension and ultimate death on 03 October 2022 at 9 AM.

Comments:

1. Unable to comment on scientific issues relating to death under WBCERC regulations.

2. Progressive hypoxia due to invasive mass is presumably the major factor for this catastrophy; infection could be an added factor for morbidity and even morality.

3. There is no post mortem examination in this patient to analyse further.

4. It is extremely unfortunate that there was no record of counselling of the patient on admission and on day to day basis.

5. The complainants of the patient regarding laxity of patient care in the ward mainly timely O2 therapy, patient's attention and unacceptable food could not be verified (no video recording or records).

6. However, loss at young age is unacceptable but nature of the disease severity could not be denied."

OUR VIEW

We have considered the rival contentions contained in the complaint as well as response submitted by the parties respectively. The patient was suffering from Germ Cell Tumour that could be detected on September 3, 2022. He was advised Chemo-therapy. The first cycle of chemotherapy was uneventful however, the patient's condition became worse following the second chemo-therapy on September 27, 2022 and October 3, 2022. According to Dr. Mukherjee, since the medical issue would be outside our domain and there was no post mortem examination done to find out the actual cause of death it would be difficult for us to comprehensively come to a decision on the treatment protocol. In this circumstance, it would be apt for us, to wait for a decision from the West Bengal Medical Council being the appropriate legal body to decide on the treatment protocol, if approached.

We permit the complaint to approach the West Bengal Medical Council questioning the treatment protocol. In case he is successful therein, he would be at liberty to approach us again afresh.

HOSPITAL NEGLIGENCE

It is true, medical negligence and hospital negligence would be overlapping each other. The complainant would rely upon whats app messages from the patient that the nurses were not adhering to his command. On the services rendered, the complainant would also express doubt as to the mobile phone episode. They got the mobile phone and the power bank returned however, the charger was not made available. The phone was locked by someone as complained by the complainant.

These are issues that would be very difficult to address at this stage in absence of appropriate evidence.

The treatment area is outside CCTV coverage. There is no reason why we disbelieve those whats app messages sent by the young man who breathed his last. It would also be difficult for us to identify those nurses who did not adhere to the command particularly, when the patient is no more to identify the erring nurses. In any event, those are trifle issues compared to the major issues pertaining to treatment protocol. Once the complainant would come back from the West Bengal Medical Council we would definitely keep it in mind and give waitage to those issues at the time of final adjudication of the complaint that might come to us subsequently.

BEFORE WE PART WITH

We have already decided to wait for a final decision of the medical issues by the appropriate authority. We have already decided to reserve our decision on the hospital negligence, yet we cannot overlook glaring contradictory stand of the CE on the condition of the patient at the time of admission.

If we look to the response dated march 9, 2023 we would find a categoric statement that the patient complained of shortness of breath, sweating and cough with pleural effusion. When we heard this matter on March 15, 2023 Ms. Ghosh stuck to such statement of Apollo made in the letter dated March 9, 2023. The letter dated March 18, 2023 came after nine days of hearing that would not only ask for clarification to be recorded but also pray for adducing further oral and documentary evidence in support of their case. Such stand was diluted in the letter dated march 24, 2023 when they no more insisted on the earlier stand as contained in the letter dated March 18, 2023.

We have no hesitation to hold, this is nothing but an afterthought.

The complaint would relate to death of a very young patient. The hospital, while dealing with the same in the response, must be serious in discharging their responsibility towards the Commission by giving the actual state of affairs.

The second admission never recorded the condition of the patient as narrated in the letter dated March 9, 2023. Even if we give credence to the statement of

Apollo that it was made by mistake, the circumstances would not permit us to overlook and condone such mistake.

We impose a compensation of Rs. 50,000/-. The CE is directed to pay such sum to the unfortunate parents. The complainant is directed to share his bank details with the CE so that money could be sent to his account at once. It is made clear, payment of Rs. 50,000/- as directed above, would have no bearing on the subsequent complaint.

The complaint is disposed of accordingly.

Sd/-

(ASHIM KUMAR BANERJEE)

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

Dr. Makhan Lal Saha,

Sd/-

Dr. Maitrayee Banerjee,

Sd/-

Sri. Sutirtha Bhattacharya, IAS (Retd)

Sd/-

Smt. Madhabi Das.

Authenticated

Secretary
West Bengal Clinical Establishment
Regulatory Commission