THE WEST BENGAL CLINICAL ESTABLISHMENT
REGULATORY COMMISSION.

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Makhan Lal Saha, Member

Dr. Gopal Krishna Dhali, Member

Dr. Maitrayee Banerjee, Member

COMPLAINT ID: HOW/2017/000090.

Mr. Chandan Kumar Set.....Complainant.

-versus-

Kothari Medical Centre & others.....Respondents.

Date of judgment: December 15, 2017

JUDGMENT.

In this case the complaint was filed by Mr. Chandan Kumar Set, son of the service recipient, Ms. Annapurna Set who expired while undergoing treatment at Kothari Medical Centre, Kolkata, alleging unethical trade practice and deficiency in service.

2. The complaint was filed on 29th May, 2017, before disposal of the case, the complainant Chandan Kumar Set expired on August 7, 2017.

3. Thereafter, the brother of complainant Mr. Tapan Kumar Set moved the Commission for his substitution in place of his deceased brother and after hearing the parties and for ends of justice such prayer was allowed.

4. It is the case of the complainant:

"His mother Ms. Annapurna Set aged about 92 years, on 24th March, 2017 was admitted at Kothari Medical Centre, Kolkata. Since her admission and till she died on 30th March, 2017, all through she was in ICU with ventilatory support. She was never in coma but was in her full senses at least, till the visiting hour was over on 30th March, 2017, that was the last time when the complainant and his other relations met her.

Although cause of death, in the death certificate was noted, due to sepsis and other complications but until 10am of 31st March, 2017 the complainant was not informed that she was in serious condition by her treating doctor Dr. Ranabir Bhaumik.

It is the further case of the complainant during her stay in the hospital whenever his other relations met her, it was never seemed that her condition was serious or critical. She always wanted to return home and expressed that she was feeling hungry.

On 30th March, 2017 at around 11pm,when the complainant contacted ICU over phone nothing adverse was reported. On the next morning, i.e. on 31st March, 2017 at around 8.30am when the complainant again contacted ICU he was only informed that her BP had dropped but he was never told that either her condition was deteriorating or critical or serious. Neither he was asked to come to the hospital. At around 10am on 31st March, 2017, the complainant accompanied

by his brother had been to the hospital and met Dr. Bhaumik, for the first time he was told that condition of his mother was quite serious and she may not survive more than two hours.

It is alleged the credibility of the concerned doctor and the hospital come into question when on the same day i.e. on 31st March, 2017 blood sample was drawn at 8.35am and 7/10minutes before her death at around 12.13pm. It is absolutely ridiculous that her blood test report was received at around 13.49pm, one and half hour after her death. Unnecessarily on everyday her blood sample was collected ignoring the question of her survival without life-supporting system.

Lastly, it was alleged even after she was declared clinically dead around 12.20pm, the ventilator was removed nearly after one hour at around 01.20pm."

5. Following the receipt of the complaint at once notice was sent to the clinical establishment and the treating doctor. That was duly responded by the clinical establishment and the doctor and the copy of the bed head tickets with the bills and blood test report were furnished to the Commission.

6. According to the medical file, on 24th March, 2017 Ms. Annapurna Set was admitted at Kothari Medical Centre, Kolkata under Dr. Ranabir Bhaumik in a gasping condition with fever, shortness of breath, unresponsiveness for 2/3 days. Her pulse was 44 per minute, BP 80/40mmHG. Immediately on admission she was put on ventilatory support.

7. The day to day clinical findings of the service recipient during her stay in the hospital are as follows:

On 25th March, 2017(10.30am) according to Dr. Ranabir Bhowmik - Grave prognosis to be explained to the patient party. ECHO revealed LVEF 30%. USG

abdomen- Cholelithiasis. On 25th March, 2017 at 1am patient condition deteriorated due to dislodgement of Endotracheal tube which was repositioned and patient improved. On 26th March, 2017, at 12.30pm patient condition improved as per the medical record. On 26th March, 2017 at 2.30pm, Dr. Ranabir Bhowmik once again noted- poor prognosis of the patient to be explained to patient party. On 26th March, 2017, patient has artrial fibrillation for which Injection Amiodarone was prescribed. Seen by Cardiologist Dr. M.K. Das on 27th March, 2017 at 11am and advised some medicines. On 27th March, 2017 there was a plan to wean off the ventilation but such attempt not materialized and patient was again put on ventilator. A later clinical note of 27th March, 2017 revealed she was better. On 29th March, 2017 at 10am there was a plan for extubation for withdrawal of ventilator support. Weaning process started from 10.30am and the clinical note recorded at 11.30am, revealed failure of weaning and patient was again put on SIMV mode on ventilator. On 30th March, 2017, patient was referred to Dr.Hindol Dasgupta for consideration of weaning and he advised for extubation with PS and BIPAP. On 31st March, 2017, at 3.30am patient condition deteriorated.

On 31st March, 2017, at around 3.50am in the early morning, the blood test was advised for Urea, Creatinine, Sodium, Potassium. The blood report reveals that the sample was collected at 8.35am, received at the laboratory at 8.36am and the report was ready at around 10.26am. It be noted although test was advised for Urea, Creatinine, Sodium and Potassium, but the sample sent in the morning, was tested only for Sodium and Potassium. The requisition for testing Urea and Creatinine was done subsequently out of another blood sample drawn at 12.13pm.

8. Admittedly, the patient aged about 92 years was admitted in the hospital in gasping condition and was put on ventilation. It appears from the clinical note of 25th March, 2017 and 26th March, 2017 the treating doctor noted down the deteriorating condition of the patient with a further note to apprise the patient party about her condition. However, from the side of the complainant, it is claimed that nothing was communicated to him as to the serious condition of the patient. The clinical establishment has not been able to produce any contemporaneous record to controvert the same. Therefore, it can safely be concluded that the critical condition of the patient was never conveyed to the complainant or to anyone.

9. On careful perusal of the bed head ticket of the service recipient, we find, on 30th March,2017 between 10am to 12pm, amongst other, blood test for Calcium and Magnesium was advised. Thereafter blood sample was drawn but the same was not tested for Calcium and Magnesium. Similarly, on the next day i.e. on 31st March, 2017 at about 3.50am blood test for Urea, Creatinine, Sodium and Potassium was advised. According to the blood test report, sample was drawn at 8.35am but from the test report generated at 10.26am, we find no test was done for Creatinine and Urea, except for Sodium and Potassium.

The above facts, the blood test advised for a critically ill patient, was not done, even though blood sample was collected after such advice, undoubtedly, amounts to a clear deficiency in service.

10. Next we find from another blood report, (generated on 31st March, 2017 at around 13.50pm) that on the same day at around 12.13pm, a second blood sample was drawn and the report came on the same day at around 13.49pm. It appears from such report that this time the blood was tested for Calcium and

Magnesium (advised on 30th March, 2017 between 10am and 12pm) and for Creatinine and Urea (advised on the same day i.e. on 31st March, 2017 in the early morning at around 3.50am).

This shows the blood sample was drawn for the test of Calcium and Magnesium after about 24hours and for Creatinine and Urea after about 8 hours, from the time of advice and the report was generated after about 1½ hours of the death of the patient, the mother of the complainant. The above facts on record, on the face of it depicts a clear case of deficiency in service.

11. At this stage, it would be apposite to refer the condition of the service recipient, on 31st March, 2017 on and from 11am was critical, as it transpires from the ICCU Consultant Notes. The same is reproduced below,

At 11am on 31st March, 2017, the patient developed gradual onset of Bradycardia with heart rate 30 per minute. BP-?, SpO2-? CPR (Cardiopulmonary Resuscitaiton) started according to ACLS protocol with Injection Adrenaline and Atropine IV and patient was referred to a cardiologist.

At 11.10am on 31st March, 2017 persistent bradycardia, heart rate 31 per minute, CPR continued, injection Adrenaline and Artropine IV stat and MgSO4 two ample advised.

At 11.15am on 31st March, 2017 showed a record of PEA (Pulseless Electirical Activity) and CPR, Atropine IV, Adrenaline was advised to continue.

At 11.30am on 31st March, 2017, the patient was in *asystole*. The same medication was advised to be given.

At 12.20am on 31st March, 2017, the patient was declared clinically dead.

12. Now taking into consideration, the second blood test report generated on 31st March, 2017 at 13.50pm and the clinical findings of the service recipient on 31st March, 2017 (as noted herein before in Paragraph 11),

We find that at around 11am, the patient developed gradual onset of bradycardia with heart rate 30 per minute. At 11.15am, there is a further note *PEA (*Pulseless Electrical Activity). At 11.30am, the patient was on *Asystole (*a cardiac arrest rhythm in which there is no discernible electrical activity on the ECG monitor). Therefore, the patient was virtually dead, if not earlier but on and from 11.30am. However, from the blood test report generated at 13.50pm on 31st March, 2017, filed by the complainant with the letter of complaint, it is evident that the blood sample was drawn at 12.13pm and she was declared clinically dead at 12.20pm. Therefore, the blood sample was drawn barely 7 minutes before she was declared dead and about 43 minutes after she was found *asystole*.

It be noted when we drew the above facts to the notice of the Dr.Rajesh Chattopadhyay and Dr. Shamit Samanta, both representing the clinical establishment, seeking their clarification, both of them tried to cover up this misdeed claiming that the same was clerical mistake and no other satisfactory and plausible explanation was forthcoming. At this stage, it further be noted according to the complainant, in their presence blood sample was drawn from the service recipient about 7/10minutes before she was declared dead. We find no reason to disbelieve the complainant Mr. Tapan Kumar Set, the son of the service recipient, who was present at her bed side at the time of her last breath and according to whom, 7/10minutes after the blood sample was taken, his mother was declared dead. When no other explanation is forthcoming from the side of the clinical establishment, far less any satisfactory and plausible explanation, the

plea of the clinical establishment that the time of taking of sample noted in the blood test report was a clerical mistake, is not at all credible and acceptable.

The above facts of drawing blood from a patient who is already on asystole and a few minutes before she was declared clinically dead and charging the patient party for such tests is, of course, a clear instance of unethical trade practice.

13. Furthermore, from the material on record, we find that the condition of the patient was not regularly communicated to the patient party, namely, his sons although, the condition of the patient was critical from the very beginning and despite the hospital authority was from time to time contacted by the patient party with great anxiety. This is also a patient deficiency in service.

14. We, however, on careful perusal of the medical files and considering the medical treatment provided to the service recipient during her stay in the hospital, are of the opinion that the above deficiencies on the part of the clinical establishment or caused through whom the clinical establishment rendered services to the patient cannot be said to be the cause of her death.

15. In the result, we find the Clinical Establishment viz, Kothari Medical Centre is guilty for deficiency in service and unethical trade practice in terms of the provisions of sub section (iii) of section 38 of the West Bengal Clinical Establishments (Registration, Regulation, Transparency) Act, 2017, in patient's care service, on the following counts:

a) The blood tests for calcium and magnesium was advised on 30th March, 2017, between 10:00 am to 12:00 noon and the urea and creatinine on 31st

March, 2017 at around 03:50 am, but such advice were not followed and no test was done, out of the sample drawn on 30th March, 2017 and first sample drawn on 31st March, 2017, at 08:15 am.

b) The blood tests which were not done out of the sample drawn on 30th March and 31st March, 2017, ignoring medical advice, was finally done out of a sample drawn, when the patient was already asystole and 7 minutes before she was declared clinically dead.

c) Despite the fact that the patient was clinically ill from the very beginning and the patient party although contacted the hospital authority but the condition of the patient was not communicated to the patient party, far less on regular interval as medical protocol deserves.

16. The representatives of the clinical establishment were duly apprised of the consequences of such deficiencies in service and unethical trade practice. They were also apprised of the fact for the above reasons, the clinical establishment is liable for compensation, when Dr. Rajesh Chattopadhyay left it to the discretion of the Commission.

Now, after having regards to the nature and extent of deficiency in service and more particularly the unfair trade practice followed by the Clinical Establishment, by taking blood from a patient who was virtually dead and after she was declared on asystole and considering the capacity of the delinquent clinical establishment, we are of the opinion that it would be conducive for ends of justice, if the clinically establishment is directed to pay a compensation of Rs.100,000/- (Rupees One lakh) to the complainant on substitution, Tapan Kumar Set, son of the service recipient (deceased Annapuran Set).

Such compensation shall be paid by an account payee banker's cheque within 10 days from the date of communication of this order.

Sd/-

Justice Ashim Kumar Roy
Chairperson

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Dr. Makhan Lal Saha, Member

Sd/-
Dr. Gopal Krishna Dhali, Member

Sd/-
Dr. Maitrayee Banerjee, Member

Authenticated

West Bengal Clinical Establishment Regulatory Commission ★ Kolkata-1

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