THE WEST BENGAL CLINICAL ESTABLISHMENT REGULATORY COMMISSION.

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Madhusudan Banerjee, Member

Dr. Makhan Lal Saha, Member.

Dr. Gopal Krishna Dhali, Member.

Prof.(Dr.) Debashis Bhattacharya, Member.

Dr. Maitrayee Banerjee, Member.

Smt. Madhabi Das, Member.

COMPLAINT ID: KOL/2017/000002.

Sarbani Das .....Complainant.

-versus-

Aurovindo Seva Kendra & others.....Respondents.

Date of judgment: 22nd December, 2017.

J U D G M E N T.

The case of the complainant, Smt. Sarbani Das, wife of the service recipient is as follows:-

2. On April 14, 2016 her husband was admitted at Aurobinda Seva Kendra under Dr. Tapan Kr. Das. He took admission there on telephonic advice of Dr. Das. After admission the patient underwent several blood tests and other investigation including chest x-ray as advised by Dr. Das. C.T. Scan of brain was also done on his advice. The patient was examined by several

doctors as referred by Dr. Das. After chest x-ray Dr. Das went through the plate and in the bed head ticket (at 9.50 am on 15-4-2016) recorded a findings "small opacity in right upper zone noted. Further investigation after the patient stabilizes". He further advised some more tests and USG. On April 20, 2016 the patient was examined and reviewed by Dr. Anupam Biswas and was discharged, with the discharged diagnosis "Reactive arthritis following acute gastroenteritis. Lichen planus. Left peripheral vestibular lesion". The draft of discharge summary was prepared and was signed by one RMO. In the discharge certificate, it was only noted reports are enclosed without noting the details of investigation done and its findings. There was also no advice about the treatment to be followed with reference to findings in the chest x-ray report. On 10th May, 2016 Dr. Das was again consulted on follow up visit, however, without advising follow up treatment with reference to findings of chest x-ray, he prescribed treatment for reactive arthritis for one month. On January 11, 2017 when Dr. Das was again consulted with chest complaint he advised for chest x-ray. The chest x-ray was done which revealed opacity in right upper zone of lungs. Then he was further advised for CECT Scan of thorax and subsequent investigation led that the husband of the complainant was suffering from stage IV carcinoma of right lung. It was contended by the complainant that for want of correct advice by Dr. Tapan Das, when the patient was discharged on April 20th, 2017 with reference to the findings of x-ray done at the hospital, no treatment for the disease of cancer from which the patient was suffering could have been provided, until it was discovered that he was suffering from stage IV lung carcinoma after 8 months.

3. n the other hand our attention has been drawn to the bed head ticket from the side of the doctors, more particularly to the clinical note at 9.50 am on 15/4/2016 and according to the Radiologist's report, since the chest x-ray had shown a fairly large opacity in right upper zone of lung, CT scan and FNAC were advised and same was duly intimated to the complainant with a note in the Bed Head Ticket. However, such advice was not followed and after a gap of 8 months, Dr. Das was consulted only on January 11, 2017.

4. The Commission has given its anxious and thoughtful consideration to the rival submission of the parties. The medical file has been perused.

5. Now, taking into consideration the case of the complainant on its face value and what appears from the medical file of service recipient, and accepting the same in their entirety, we find that it tends to make out a case, primarily of medical negligence. However, according to the first proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment Regulatory Commission (Regulation, Registration, Transparency) Act, 2017 which is read as follows,... *"Provided that any complaint of medical negligence against medical professionals will be dealt with by respective State Medical Councils beyond the scope of adjudication of this Commission"* our jurisdiction to adjudicate the issue is legally restricted.

6. Furthermore, the cause of action for deficiency in service, arose on the day, when the service recipient was discharged without any note regarding the findings of the chest x-ray, done at the said Clinical Establishment and advising proper follow up treatment. The patient was discharged and discharge certificate was issued on 20/04/2016, more than a year before the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 came into existence and the Commission was constituted. Therefore, any adjudication on the question of deficiency in service, which took place before the formation of the Commission, does not arise at all.

7. We have been informed, already the complainant has approached the West Bengal Medical Council against the doctors including Dr. Tapan Das for negligence in treatment and that gave rise to case no.0491-C/60-2017, dated 27/04/2017 and the Council is in seisin of the matter. Simultaneously, over the self same incident, an FIR has been lodged at the Lake Police Station.

Having regards to above, we are unable to proceed with this complaint for want of jurisdiction.

We make it clear that we have not gone into the merits of the case.

Sd/-
Justice Ashim Kumar Roy
Chairperson

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Dr. Makhan Lal Saha, Member.

Sd/-
Dr. Gopal Krishna Dhali, Member.

Sd/-
Prof.(Dr.) Debashis Bhattacharya, Member.

Sd/-
Dr. Maitrayee Banerjee, Member.

Sd/-
Smt. Madhabi Das, Member.

West Bengal Clinical Establishment Regulatory Commission ★ Kolkata-1

Authenticated

Secretary
W.B.C.E.R.C.
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