

**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/2017/000175.

Mr. Amit PoddarComplainant.

-versus-

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

Date of judgment: 22nd December, 2017.

J U D G M E N T.

The son of the service recipient, Amit Poddar approached the Commission against the Clinical Establishment, Apollo Gleneagles Hospital (in short "Apollo") and the treating doctor Dr. Susmita Roy Chowdhury, alleging as follows:-

1. No proper diagnosis in Apollo Hospital.
2. Delay in Bronchoscopy.
3. No proper communications from the hospital/doctors.

4. No sign of improvement after medicine, pharmacy bill in 7 days was around Rs.2 lacs including high price anti-infection and anti-clotting injections.

2. It is his further case that his father who was undergoing treatment for respiratory distress in Charnock for 7 days, under Dr. Saibal Mitra after CT Thorax, Dr. Mitra advised removal of the patient to a higher set up for EBUS. Accordingly, on July 12th, 2017 his father was removed to Apollo and was admitted in RCU (Respiratory Care Unit) under Dr. Susmita Roy Chowdhury. However, on the next day no EBUS was done and the patient was shifted to HDU (High Dependency Unit) in spite of being repeatedly asked by the complainant and his family members. In the afternoon, the complainant's family was informed that his condition has been deteriorated and was put on ventilation and Dr. Roy Chowdhury suggested bronchoscopy in intubated condition on the next day. On July 14th, 2017, as advised by Dr. Roy Chowdhury CT- Thorax-3D although was done first at Charnock and later in the evening, Bronchoscopy. The doctor never discussed with the complainant as regards to findings of CT-Thorax and the Bronchoscopy. The doctor informed the family that the part of trachea had become weak (tracheomalacia) which is causing intermittent respiratory distress.

On July 15th, 2017 the doctor recommended Tracheostomy which she postponed till 17th July by saying that the patient will be under observation for one day and on 16th July, 2017, there was no ENT doctor available for the said procedure and it said by the doctor that it will be done on 17th morning around 11 am. It is complained that his father was left to suffer on ventilator for two more days.

Tracheostomy was done on July 17th, 2017 around 4 pm by Dr. Sukrit Bose. It is complained that the doctor was uninformed on the patient's case till he arrived for the procedure. Once the procedure was through it was told by Dr. Bose that everything is fine he shall further brief the patient party on the next steps tomorrow.

It is complained that ventilator was not removed but was shifted from mouth to neck. It was stated by the doctor that as the patient was on ventilator

for last 4 days it cannot be removed immediately. But even after 24 hours of procedure ventilator was not removed. This continued till July 19th, 2017 as well. When confronted on the issue, the doctor said that the respiratory distress may be due to neurological cause. Thereafter, as the cost at Apollo started rising the patient party asked the doctor for shifting the patient to a different hospital. It was agreed to and the patient was shifted back to Charnock Hospital under care of Dr. Saibal Moitra on July 20, 2017. However, within 24 hours of shifting i.e., on July 21st, 2017 afternoon, the patient became very critical. The on-duty doctor informed that the patient has developed pulmonary embolism which is caused due to high blood infection and blood clotting. The patient on July 22nd, 2017 due to sepsis shock as per death certificate.

3. It is further complained that doctors of Charnock had apprised the complainant that such high level of infection may be result of keeping the patient on ventilator for long period. Lastly, it is complained that due to Apollo and concerned doctors negligence, the patient got infection while in Apollo and this was never informed to the patient party.

4. On the other hand, from the side of the Clinical Establishment all the allegation of the complainant was categorically denied. It be noted that in this case both the complainant and the Clinical Establishment filed their respective cases in the form of affidavit and also made their respective submissions at the time of hearing.

5. It is the case of the Clinical Establishment that the patient was initially admitted and treated at another Clinical Establishment and after his treatment at Apollo for a brief period, he was again transferred to said Clinical Establishment and was treated there where he finally breathed his last. However, no complaint has been made against the Clinical Establishment where the patient received first and last phase of treatment. The patient was diagnosed as was suffering from Tracheomalacia which is duly noted in the Bed Head Ticket on July 14th, 2017. Myasthenia Gravis was suspected but in spite of proper counseling by Dr. Sushmita Roychowdhury, Consultant Pulmonologist and the treating consultant, Dr. Ashok Sengupta, Consultant Pulmonologist and Dr. Sumitava Samanta,

Consultant Neurologist, investigations for Myasthenia Gravis was refused by the patient's son as documented and evidenced by his signature in the Bed Head Ticket (pg no.68).

6. The allegation of delay is totally baseless. Patient was admitted at 18:05 hours on July 12, 2017 in the Intensive Care Unit on BIPAP. The patient's sons were well explained that Bronchoscopy would be done electively after stabilizing the patient. Next day unfortunately, the patient had a sudden near respiratory arrest requiring intubation and mechanical ventilation. Hence virtual Bronchoscopy was done on 14th morning followed by Bronchoscopy with slow removal of endo-trachial tube in the presence of the patient's doctor relative the same afternoon and the diagnosis of tracheomalacia was explained to the patient's sons in the presence of the doctor relative and again discussed on three separate occasions on the same day, one of which was during the visit of Dr. Binani, the family physician of the patient who also explained the same to the patient's sons. There were several communication about the condition of the patient to his sons which would be evident from the note in the Bed Head Ticket (pg no.30,59,68).

It is submitted that non-improvement of the patient's condition was due to the reason of the patient party. They were repeatedly and clearly explained that the patient required further investigation to rule out Myasthenia Gravis but such suggestion was declined by the patient party. They also refused to give any consent for neurological investigations or MRI and desired that Tracheostomy to be done first and then the patient to be shifted to a hospital of their choice. The patient party was advised that neurological investigation as suggested by Dr. Sumitava Samanta, Consultant Neurologist, to be done urgently and before Tracheostomy. Since if there is evidence of Myasthenia, that could possibly be avoided. The family members of the patient declined such suggestion and same is noted in the BHT (pg no.68).

Regarding the allegation of high pharmacy bill, it was submitted that the patient had rising counts with six days ICU stay in another facility prior to admission in Apollo Gleneagles Hospitals and 2 events of invasive ventilation, one

of which was in another medical establishment. Hence high end antimicrobials were prescribed to cover MDR pathogens. The patient was prescribed low molecular weight heparin (referred to as anti-clotting injections by the complainant) in the prophylactic dose for prevention of Thromboembolism. Such medicines were essential to the treatment of the patient.

The patient was finally, on July 20th, 2017 was discharged from Apollo on request which is also documented and transferred to another hospital as chosen by the complainant in an ambulance with ventilator facility when he was in symptomatically well and clinically stable condition.

7. We have given our anxious and thoughtful consideration to the rival submissions of the parties. The allegation is partially one of medical negligence by the doctors and partially deficiency in service on the part of the Clinical Establishment. So far as the allegation of medical negligence is concerned, it is beyond our purview in terms of Proviso (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017.

Now from the medical file of patient, we find that the patient was looked after and was from time to time examined by a team of Specialist doctors under the primary care of a Consultant Pulmonologist. We find that the standard of care for recurrent respiratory failure was properly handled. A common observation of tracheomalacia in contrast to intracheal masslesia (observed in Charnock Hospital) was detected on bronchoscopy on 14th July, 2017 for which neuromuscular disease was suspected. All the specialists corroborated with the clinical diagnosis of suspected neuromuscular disease namely 'Myasthenia Gravis'. We also find from the note in the Bed Head Ticket that from the side of the treating doctor, the neurological investigation of the patient was repeatedly insisted upon but that was declined by the patient party. The patient party only agreed to Bronchoscopy and then Tracheostomy.

8. We find from the Bed Head Ticket that there are sufficient materials on record to show that there was regular communication between the treating doctors and the patient party.

In the above backdrop, we do not find that complainant has been able to substantiate his case. Accordingly, this complaint fails and stands dismissed.

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.



Authenticated
A handwritten signature in black ink, appearing to be "J. R.", written over the word "Authenticated".

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