

**THE WEST BENGAL CLINICAL ESTABLISHMENT  
REGULATORY COMMISSION.**

**Present: Justice Ashim Kumar Roy, Chairperson.**

**Dr. Sukumar Mukherjee, Member.**

**Dr. Abhijit Chowdhury, Member.**

**Dr. Madhusudan Banerjee, Member.**

**COMPLAINT ID: NPG/2017/000218.**

Mr. Abhijit Dutta .....Complainant.

-versus-

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

**Date of judgment: 17<sup>th</sup> January, 2018.**

**J U D G M E N T .**

The letter of complaint received from the service recipient, Abhijit Dutta, was to the effect as under:-

The complainant donated one kidney to Sukla Dey and on April 1, 2017 his kidney was transplanted on her at Apollo Gleneagles Hospital (in short 'Apollo') by Dr Mohan Chand Seal and his team. After transplantation he became sick and started suffering from chest pain, shortness of breathing, swelling in the operated area and abdominal pain. It is also alleged that he started losing weight day by day. Subsequently, when contacted doctors he came to learn

that for a cardiac patient, having three blockages in heart, donation of kidney is never advisable because that causes adverse health consequences to the donor. However, the doctors at Apollo certified him to be fit for donating kidney. It is claimed that the complainant had a massive heart attack on January 25, 2014 and was finally treated at Desun Hospital, Kolkata and it was detected he had two blockages 70% & 80% respectively and advised to undergo bypass surgery. Again on 11/09/2016, the complainant for the second time suffered another cardiac attack with chest pain and shortness of breathing and was again admitted at Desun Hospital, Kolkata when it was diagnosed that he was suffering from three blockages and again advised for angioplasty or bypass surgery. However, he neither had any angioplasty or bypass done. Thereafter, on July 7, 2017, he felt sick and went to Apollo for check up and informed Dr Mohan Chand Seal and his team about his sufferings. But the doctors opined that he was medically fit and there was nothing wrong if he has normal diet and continues his normal work. They further advised him that there is no need of taking further medicines and should come after 1 year for review and check up. Since there was no recovery from his illness, again on July 18, 2017 he had been to Apollo and on being insisted by him, the doctor advised for master check up. On August 14, 2017 he went to Apollo for master check up and from echo cardiography report, Dr. Anup Kumar Shaw attached to the Department of Medicine, Apollo opined that his condition of health is not at all good, prescribed medicines and referred him to nephrologist and cardiologist. He further alleged that even after his operation on April 2, 2017, he was permitted to smoke freely in the ward, although he was having high blood pressure and constipation. Thereafter, his daughter sent mails to Apollo complaining about wrong treatment in the hospital. Thereafter, on September 7, 2017 he received a call from the medical superintendent of Apollo and he was asked to come on September 9, 2017 but on that day he was kept waiting for three hours at Apollo but on the pretext of urgent meeting no doctor met him. Now his condition of health is getting deteriorated day by day but due to financial stringency he has no capacity to afford medicines. By now he has sold out all his assets including the ornaments of his wife. Thereafter, when he approached the kidney recipient and explained his distress, they became very rude and practically drove him out by neck.

2. The Commission upon receipt of the above complaint issued notice to the hospital and the doctors seeking their response and directed them to produce bed head ticket.

3. In their reply, it was first contended by Apollo that the hospital played no role in the initial selection of the donor. The recipient and the family initially was to select a recipient, either from their own family or any known person in case family donor was not available. The hospital then was to comply with all clinical and statutory requirements in the process of assessment of the donor. The entire medical file and other relevant materials were placed before the statutory authority and only after obtaining their permission, the kidney transplantation took place. The kidney transplantation was done on April 1, 2017 by Dr. Mohan Chand Seal and his team and it was uneventful and the patient was released in haemodynamically stable condition.

In addition to above, the clinical establishment in their reply also explained the entire process to be followed in case of kidney transplantation.

Where the living donor is not related to the service recipient, the service recipient is to apply to the Hospital citing the reasons why donation by a family member is not possible with supporting document(Annexure 1). Once the initial application (Annexure 2) is considered, the blood group and HLA Typing and cross matching report of the recipient and the prospective donor is reviewed by the consultant. After matching, the donor is called upon for a clinical evaluation by the Consultant in presence of his guardian/next of kin.

4. In this case, Mr Abhijit Dutta, the prospective donor appeared for such evaluation on January 18, 2017 along with his wife. Donor Clinical Examination Protocol was followed by the consultant and in Form (Annexure 3) as against the column "History of Present illness" and "History of past operation" it was noted 'NAD' ie. no abnormality was detected. The content of the form was explained in their own language to Mr Dutta and his wife and was duly signed by them. During the evaluation Mr Dutta remained silent about any past medical history. The risks involved in the surgery had been explained to them even at this initial stage. On January 18, 2017 the donor was asked to visit the hospital to complete the Donor History and Health

Evaluation and Psychological Assessment. During evaluation, in the Donor History and Health Evaluation Form (Annexure 4) duly signed by him he denied any history of smoking and had also not given any history of Hypertension or Heart Disease whereas he had allegedly undergone multiple Cardiology consultations in other clinical establishments and underwent a Coronary Angiogram in 2014. All these facts were deliberately suppressed by the donor and his family during the entire evaluation process for reasons of their own. During the Psychological Assessment done on the same day the donor reported no significant medical events in his past as evidenced by the Transplant Donor Psychological Assessment Form (Annexure 5).

After completing all such assessments, the donor appeared for the interview before the Hospital Internal Transplant Committee on January 18, 2017. During the interview all clinical reports of the donor was reviewed by the Committee. These include the Echo Cardiography 2 D and Colour Doppler Report dated January 06,2017 (Annexure 6) which were reviewed by the Consultant prior to placement in the Committee.

During the interview, which is recorded as per protocol, the donor had stated that he had no history of any chronic disease in the presence of his wife and daughter. A CD of the said recording is annexed (Annexure 7).

Post the interview, Cardiology clearance was taken on January 30, 2017 (Annexure 8).

Then the entire file with all medical reports of the donor and the recipient along with other required documents were sent to the Director of Medical Education and Chairman, Authorisation Committee, Department of Health, Government of West Bengal on February 09,2017 under cover of correspondence from the hospital (Annexure 9).

Permission was granted by the Health Department vide its Order No. CE/916-2001/M/507 dated March 17, 2017 after due verification process and interview (Annexure 10).

After receipt of permission, the surgeon scheduled the day of the Surgery. On admission certain tests were repeated for the donor which included ECG and ECHO and the same were

reviewed by the consultant (Annexure 11 & 12). A pre-anaesthetic check-up was also done as per protocol. The Report is enclosed for your perusal (Annexure 13).

The Surgery took place on April 01,2017 and was uneventful. The OT Notes are enclosed for your perusal (Annexure 14). The patient was discharged on April 06,2017 in a haemodynamically stable condition. Discharge Summary is enclosed for your perusal (Annexure 15).

The patient reported to Dr Seal on July 07,2017 for routine follow up where he reported no major complaints. His period of recovery had been explained to him by the doctor as documented in the prescription of even date (Annexure 16).

It is only after this visit that the donor started to complain of ill health which he claimed was caused by his earlier cardiac history and subsequent donor surgery. He also alleged that the hospital had not taken cognizance of his cardiac history and had gone ahead with the kidney donation. He was reviewed again on July 18,2017 and was seen by the Consultant. Based on his complaints he was advised a Master Health Check up on patient request (Annexure 17) which he had undergone on August 14, 2017. The hospital had made the same complimentary for him.

During the Health Check-up the patient for the first time declared history of Caronary Artery Disease and Hypertension and also his advanced smoking habit. ECG and ECHO Reports done in the course of the Health Check Up show findings as before (Annexure 18).

It was categorically contended that the donor has deliberately suppressed his medical history as would be evident from the contemporaneous record. He was medically assessed by a team of doctors prior to surgery and declared fit for such surgery.

The hospital strongly denied the allegation that the doctors allowed him to smoke in the ward which is totally against hospital protocol. The rooms are equipped with smoke detectors and would raise alarm if there was any smoking in the room.

The Apollo was not in any way involved in the interactions between the donor and the recipient patient family and makes no comment. However, the contemporaneous record shows that the complainant donated his kidney out of his free will and without any consideration as would be evident from the affidavits which were sworn before a 1<sup>st</sup> Class Judicial Magistrate.

5. During the hearing of this application the complainant, however, vehemently contended that he repeatedly told the doctors about his cardiac condition and that he has been suffering from three blockages since 2014 still he was told that there would be no adverse consequences if he donated the kidney. He further contends that the recipient shall take all the responsibilities for future consequences that he may suffer due to transplantation of kidney. Finally, the complainant however admitted that he only informed the kidney recipient and his family about his three blockages in heart and had handed over to them two discharge summary of Desun but such medical condition was not divulged either to the consultant of the Apollo or before the Authorization Committee on Human Organ Transplantation, Department of Health, Government of West Bengal or the discharge certificates of Desun were produced before them.

6. The Commission has given its anxious and thoughtful consideration to the rival submissions of the parties. It appears from the two discharge certificate produced by the complainant during hearing that he was suffering from three blockages, two blockages since 2014 and third blockage since 2016. Although, the complainant claimed that he informed the doctors at Apollo about such medical condition still they declared him fit for kidney transplantation but finally admitted such facts was conveyed to the kidney recipient and his family members and those discharge certificates were shown to them but not to the consultant at Apollo. He also admitted that before the Board also he had not divulged such facts. He has not disputed his signatures in the annexures which were submitted before the Board through the Apollo as also the facts noted therein. When the complainant was confronted with the two affidavits one sworn by him and another by his wife before a 1<sup>st</sup> Class Judicial Magistrate wherein he clearly declared that he was donating his kidney voluntarily and without any monetary consideration or otherwise being influenced and for humanitarian ground to save her

life, he has not disputed such averment. When his attention was further drawn to his averments in the said affidavits that he was explained in detail about the future medical complications that he might have suffered, he also did not dispute the correctness of the same.

From the facts as above, we are unable to hold that the complainant has been able to substantiate his case against the clinical establishment and accordingly, this complaint stands dismissed.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Abhijit Chowdhury, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Justice Ashim Kumar Roy  
Chairperson

*Authenticated*



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

