

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Abhijit Chowdhury, Member.

Dr. Makhanlal Saha, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: HGY/2017/000110.

Mr. Biplab Dhole.....Complainant.

-versus-

Apollo Clinic, Saltlake & others.....Respondents.

Date of judgment: January 19, 2018.

J U D G M E N T.

The complainant Mr. Biplab Dhole, the husband of the service recipient Moumita Dhole, appeared in person. His case against the Clinical Laboratory, Apollo Clinic, as it transpires from the content of the complaint filed in the form of affidavit and from his oral submissions is as follows:

Since his wife suffered a miscarriage in her first pregnancy, he became extremely cautious and careful when she conceived for the second time. Accordingly, at the early stage of her pregnancy on May 8, 2017 he took his wife to a gynecologist, Dr. Barun Chakraborty at Apollo Clinic, Saltlake (for the sake of brevity, hereinafter referred to as the "Respondent Clinic"). When Dr. Chakraborty, examined her and advised as many as 11 blood tests and medicines and considering urgency, he suggested him to get the blood tests done at the said Clinic on the same day without any further loss of time and to see him with the reports after a

week. As advised by the doctor, on the same day (08/05/2017) at the Respondent Clinic, the blood sample of his wife was collected for tests and he was charged Rs.10,030/-. The complainant immediately paid the bill amount in full, partly in cash and partly by debit card and he was told to come after a week and by that time the report would be ready and available. After a week, when the complainant contacted the Respondent Clinic over phone, he was told that the reports were not ready and he would be informed in time. Since no phone call was received from the respondent Clinic, he contacted them for another 3 occasions and finally 44 days after, when he contacted them again over phone, he was told by the concerned staff of the respondent Clinic that the report was ready and to collect the same. Then on June 21, 2017 he, with his wife went and collected the report and met the doctor. On receipt of the test reports, it was found that one test was missed and his wife was asked to come on the next day i.e. on June 22, 2017 for fresh sample. On June 22, 2017 a second sample was collected at the said Clinic and on this occasion on the very next day, the report was communicated to him at his e-mail address. The complainant was surprised to receive the report within a day and when inquired as to the cause of delay of 44 days in delivering other test reports, he was told that by mistake, the concerned staff of the clinic, who used to receive phone calls at the Clinic, without ascertaining correct position, made a wrong communication.

It is vehemently urged by the complainant that due to such inordinate delay in receiving the test reports, necessary treatment could not be started in time and as a result, she suffered another miscarriage. In his verbal submission, the complainant urged for sufficient compensation to be awarded for his mental sufferings and physical harassment.

2. The Clinic was represented by their learned Counsel Uday Sankar Sarkar and their centre head Gopal Mukhopadhyay was present at the time of hearing and they responded to the case of the complainant by filing reply in the form of affidavit.

3. On perusal of the affidavit in the form of reply filed from the side of the Clinic, we find the case of the complainant has not been disputed as far as the following facts are concerned.

- (a) The blood sample of Mrs. Moumita Dhole was collected by the Clinic on 8th May, 2017.
- (b) A sum of Rs. 10,030/-, the cost for such tests was paid in full on 8th May, 2017 itself by the complainant.
- (c) The report was delivered to the complainant 44 days after the sample was taken although he was told that report would be ready within a week.
- (d) One particular test for which blood was collected on 8th May, 2017 for which charges were realized in advance, could not be done by mistake.

4. Now, on a close scrutiny of the test reports which are on record, we find that test report of *Prolactine, Rubella IGM, Haemoglobin, Rubella IGG Antibodies* were ready on the very day, the sample was collected (May 8, 2017), at the pathological laboratory of the Respondent Clinic at Salt Lake, Kolkata. We further find that for the test of *Lupus Anticoagulant Screen-DRVVT, Anti Cardiolipin Ab IgG (ELISA), Anti Cardiolipin Ab IgM, Anti Phospholipid Antibody-IgG, Anti Phospholipid Antibody-IgM, Toxoplasma gondii IgM Antibody and Beta 2 glycoprotein 1 IgM (ELISA)*, the blood sample was sent to Ampath, Hyderabad and the reports shows the sample which was collected on May 8, 2017, at the Respondent Clinic at Salt Lake, was received at Ampath, Hyderabad on May 9, 2017 between 3.20pm to 3.33pm and the reports were authenticated on the same day i.e. on May 9, 2017, meaning thereby that those reports were ready on the very next day of collection of sample, except the test report of *Lupus Anticoagulant Screen-DRVVT* which was ready on May 12, 2017. The test of *Beta 2 glycoprotein 1 IgM (ELISA)* which was not done at the first instance, after collection of second sample at the Clinic at Salt Lake, Kolkata, was sent to Ampath, Hyderabad and received by them on June 23, 2017 and the report was ready on the same day.

5. According to the case of the Respondent Clinic, at the time of collection of sample, the complainant was specifically told that at least 7/10 days would be required for the reports and

asked to come and collect after 10 days. In their affidavit in reply, in paragraph 6, it was further stated after 7 days the complainant started enquiring about the status of the report over phone. But to maintain confidentiality of report and as it was quite difficult to track a report of any particular patient out of bulk tests reports the Respondent Clinic, generally, whenever receives any enquiry over phone, used to request the patient party to ascertain the correct position from the clinic with the receipt and to collect the report. It was the further stand of the Respondent Clinic that in the case at hand, the complainant was informed likewise, but it was the complainant who after 44 days came to the clinic and collected all the reports, except one, in respect of which no test was done due to the reason of Ampath, where sample was sent for required test but they overlooked. It is their further case immediately after detection of such mistake, the clinic at once took a fresh sample from the patient on June 22, 2017 and on the next day (June 23, 2017) the report was sent to the complainant at his e-mail address, which he supplied to the Respondent clinic on the second occasion. Therefore, there was nothing wrong on their part.

6. It needs no debate that after examining any patient, when the blood tests are advised by a doctor, the only logical conclusion would be, such tests are essential for the diagnosis of the disease and the medical condition of the patient and to take decisions about the future course of treatment and therefore the test reports are extremely urgent. We are not inclined to accept the contention of Respondent Clinic that from bunch of test reports, it is very difficult for them to track the status of the test reports of any particular patient, even when the medical reference number and bill number were made available to them. We find the receipts and the reports are all computer generated. Therefore, tracing out of status of any report cannot remotely be said difficult when particulars of bill are available. Furthermore, over the counter, only by taking note of the bill reference, the status of test reports is tracked by computer. However, the claim of the complainant that after 44 days, on 4th occasion over phone it was informed by the concerned staff of the Clinic that the report was ready, has not been disputed from the side of the respondent Clinic. The plea that to maintain secrecy, the Respondent Clinic never discloses over phone the status of test report, has no relevance in the facts and circumstances of the present case. It is no one's case that over phone the complainant wanted

to know the result of test and only sought for the information whether reports were ready or not. We fail to understand how does a disclosure to anyone far less to the patient party the status of the test report, to the extent whether the same is ready or not, has any bearing on the question of confidentiality of the test report. Moreover, the claim of the complainant that finally the test report was communicated to him over phone on his inquiry by the staffs of the respondent Clinic, has never been disputed from their side. In this case, the cost of test was fully realized by the clinical establishment in advance on the very first day i.e. on May 8, 2017 when the blood sample was collected from the patient party and the tests were not done at a concessional rate. We do not find any justification on the part of the Respondent Clinic, not to furnish this petty information to the complainant over phone. Of course, furnishing of such information to a service recipient, even over phone, is an essential duty of a service provider and includes service. It is claimed by the Respondent clinic that delay of 44 days in delivering the blood test report was due to the reason that the complainant never turned up at the clinic for collection of the same earlier. It is not disputed that the wife of the complainant suffered a miscarriage at her first pregnancy and when she conceived for the second time, the complainant to avoid any further complication and miscarriage, on May 8, 2017, rushed to Dr Barun Chakraborty, a consultant Gynaecologist and Obstetrician, at Apollo Clinic, Saltlake, (the Respondent clinic herein) and on his advice and as suggested by him, without any loss of time approached the Respondent clinic for blood test forthwith. The blood sample was drawn on the same day (May 8, 2017) and the charges in full were obtained simultaneously without any due. We do not find any lapse on the part of the complainant. The complainant was very much concerned to avoid any further miscarriage and soon after second pregnancy of his wife was detected, she was taken to a doctor and scrupulously followed the medical advice. On the same day as advised by the doctor, he approached the respondent clinic for blood test. Therefore, he cannot be blamed for causing any delay as alleged by the respondent Clinic. We, further, find from the test reports that total 4 tests were done at the laboratory of Respondent Clinic out of the sample of blood drawn on May 8, 2017, and the reports were ready on the same day. So far as, a few other tests are concerned, it is true, that same were done at Ampath, Hyderabad. We find the blood sample which was collected at Kolkata, was

received at Ampath, Hyderabad on May 9, 2017 and the reports were ready on May 9, 2017 and on May 12, 2017 (fully referred in detail in paragraph 4 hereinabove) respectively. In a case where test reports are available within a day or two, as in the present case, the Respondent Clinic has no valid reason or any justification to withhold the outcome of test from the patient party, even after realizing full charges and keep them awaiting for 7/10 days without any reason causing delay in commencement of the treatment in time. We strongly deprecate this practice of the respondent clinic and undoubtedly these amounts to a clear deficiency in patient care service and irrational trade practice. It is pertinent to mention here that Dr. Chakraborty when advised the blood test on May 8, 2017, he asked the complainant to meet him with the reports and along with the patient after a week. Such claim of the complainant has never been disputed by the respondent. There is another patent lapse on the part of the respondent Clinic in failing to perform one blood test for which the service recipient was charged in advance and to locate such fault nearly 1½ months after. In their affidavit in reply, we find that the respondent Clinic tried to shift the responsibility on Ampath and also claim that Ampath was a necessary party. We are not satisfied with the contention of the respondent Clinic. Apart from making a general submission, it has not been pointed out as to what difference would have been made if Ampath was impleaded as a party. Furthermore, the respondent Clinic has never been able to show when the blood sample was taken, the complainant was informed the missing test and some other tests would be done at their laboratory but at Ampath, Hyderabad. There was no such indication in the receipt also. The cost was realized by the respondent Clinic for those blood tests and if the tests are done at the Clinic of a third party without the prior consent of the service recipient for any fault occurring in the process as in the present case, the Clinical Establishment cannot be absolved from its responsibility.

7. On the face of above, we find that the respondent Clinic is very much liable for causing deficiency in service and adopting an irrational trade practice within the meaning of 38 (iii) of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017 and for payment of compensation to the complainant herein.

8. Now, considering the nature of deficiency in service occurred at the different stages and the irrational trade practice on the part of the respondent Clinic and more particularly the mental and physical harassment, anguish and agony suffered by the complainant and the service recipient, we are of the opinion that ends of justice will be best served if a compensation of Rs.50,000/- be awarded to the complainant.

The respondent Clinic is directed to pay the compensation amount to the complainant within two weeks from this date by an account payee demand draft.

Sd/-
Justice Ashim Kumar Roy
Chairperson

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Abhijit Chowdhury, Member.

Sd/-
Dr. Makhanlal Saha, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Authenticated.

[Signature]
19/1/2018



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