

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Makhan Lal Saha, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: HGY/2017/000069.

Mr. Koushik Pal.....Complainant.

-versus-

B.M Birla Heart Research Centre & others.....Respondents.

Date of judgment: 2nd February, 2018.

J U D G M E N T.

The mother of the complainant (Service Recipient – Arati Pal), initially, was treated at B.M.Birla Hospital (for the sake of brevity herein after referred to as '**B.M. Birla**') for 5 days and then on May 7, 2017 her primary consultant, Dr. Shuvo Dutta referred her to Calcutta Medical Research Centre (for the sake of brevity hereinafter referred to as '**CMRI**'). Accordingly, she was shifted to **CMRI** on May 8, 2017 at around 2.30 am and expired there on the same day within 16 hours. Following her death, the

complainant (her son) has now brought this complaint against **B.M. Birla** and Dr. Shuvo Dutta alleging deficiency in service and negligence in detection/diagnosis, treatment and causing delay in referring the patient to a multispecialty hospital.

2. Upon receipt of the online complaint, notices were issued against Dr. Shuvo Dutta and the Clinical Establishment and their replies were sought for. The medical file of the service recipient was also called from **B.M Birla** and then from **CMRI**.

3. In response to the notice, Dr. Shankar Sengupta, the Medical Superintendent of the Clinical Establishment, **B M Birla** submitted a written reply and stated as follows:-

“Mrs Arati Pal was admitted in B M Birla Heart Research Centre on 3rd May 2017 at CCU with H/O of chest pain along with SOB (shortness of breathing) and fever for 3 days. She was a known patient of hypertensive and was having rheumatoid arthritis along with DMARD and suspected to have ACS (N STEMI). Her echo was normal and TROP/T and cardiac enzymes were critically elevated. She was planned to undergo CAG next day because of recurrent chest pain on maximal medical therapy but due to fever it was deferred and relatives were explained. She was treated for ACS and also covered with antibiotics in view of suspected infection because of fever and elevated total count. Urine and blood cultures were sent to identify the source, if any, and empirical antibiotics started till the culture reports came. During the course of treatment, the patient was seen by the physician for fever on 7th May 2017 from **CMRI** and necessary

advice was followed. On 7th May 2017 around 7.45 pm the patient progressively deteriorated during the next few hours and developed hypotension and was started on inotropes and vasopressors for the same. The patient was attended by Dr. Shuvo Dutta, Primary Consultant at 9.15pm on 7th May 2017 and considering the patient's condition in view of possibility of sepsis, causing hypotension, a decision to transfer the patient to a multispecialty hospital was made after discussion with the patient's relatives. Before the patient was transferred, she was monitored by the doctors of **B.M Birla** Hospital and was transferred to CMRI at 1.59am on 8th May 2017 for further management. In **CMRI** the patient was received in a state of shock with hypotension and was attended immediately by the primary consultant. Treatment of shock and other organ support in the form of ventilation was continued. Due to worsening renal function she was planned for SLED also but could not be done due to hypotension. However due to progressive organ dysfunction she could not be resuscitated and succumb to her illness. The patient expired on 8th May 2017 at 6.15pm.

Probable cause of death: ACS, Sepsis, multi-organ failure with background of Rheumatoid arthritis and immuno-compromised state due to DMRD”.

4. After receipt of the response from the Clinical Establishment and the medical file of the service recipient was made available to us, the case was taken up for hearing in presence of the complainant and Dr. Anirudda Bhattacharyay, Dy. Medical

Superintendent and others representing the Clinical Establishment and others who attended on its behalf.

5. During the hearing, the complainant elaborated his case of deficiency in service, negligence in diagnosis and consequent failure of providing proper treatment and delay in referring the patient to a multi specialty hospital against the Clinical Establishment, **B.M. Birla** and presented the factual background of the case and claimed sufficient compensation in accordance with law.

On the other hand, on behalf of the Clinical Establishment the charges were denied and the claimed that the whole allegations are frivolous and this complaint is not tenable and liable to be dismissed.

6. Heard the complainant as well as the concerned representative of the Clinical Establishment. Perused the medical file including Bed Head Ticket. Considered their respective submissions.

7. (a) On careful perusal of the discharge summary of the service recipient, available from the medical file we first find that under the heading '**course in hospital**' it was noted by her attending MO/SHO Dr. Tanmoy Chakraborty that '**patient was admitted with Acute Coronary Syndrome and was managed in CCU with Aspirin, Clopidogrel, Diuretics, LMWH, Trimetazidine, Statin, Antidiabetics, Nitrate, Antibiotics and other drugs. With conservative therapy the condition stabilized and in due course patient was mobilized progressively and was finally discharged in a stable condition**'.

Since the versions of Medical Superintendent., **B.M. Birla** in his reply and what has been noted by Dr. Tanmoy Chakraborty in the discharge summary under the caption '**course in hospital**' are at variance and manifestly contradictory, an explanation was sought for from the Clinical Establishment on this score.

(b) Secondly, the Clinical Establishment was asked to produce the fluid utilization chart, since from the medical file, the Commission found that a large quantity of IV Fluid was requisitioned on a single day i.e. on May 7, 2017 and for that the service recipient was charged.

(c) Thirdly, in response to the complainant's claim that no echo screening report was given to him with the medical file, from the side of the Clinical Establishment attention of the Commission was drawn to one echo report (dated May 3, 2017). We found that the echo was done by Dr. Ashok Giri and Dr. Giri noted his findings and recorded his impression and opinion thereupon. Dr. Giri signed the report and authenticated the same. In the report he described himself as "Head of Non-Invasive Department" with his registration number, but his medical qualification was not divulged.

Having regards to that, the Clinical Establishment was directed to intimate the Commission about the medical qualification of Dr. Giri and to produce the certificates.

(d) Fourthly, another Echo screening report (dated May 7, 2017 at 8.05pm) of the service recipient was made over to the Commission by Dr Shuvo Dutta. It be noted that decision to transfer the service recipient was taken on May 7, 2017 at around 9.15 by

her primary consultant Dr Shuvo Dutta. The Commission found that the said echo screening was done with a portable machine and the findings were recorded and interpreted with impression by one Ms. Chaitali. The said report also did not bear her designation and qualification and she authenticated the report by signing only her name, without surname. On our enquiry, we were told by the representative of the Clinical Establishment that she was an Echocardiography Technician.

The Commission directed her appearance in person and production of her certificate of qualification.

8. Subsequently, 3 affidavits were filed by Dr. Shankar Sengupta, Medical Supdt, **B.M Birla**, Dr. Ashok Giri and Manish Sureka, Head Finance, **B M Birla**. The contents of those affidavits have been carefully perused and the case of the Clinical Establishment is duly considered.

After filing of the affidavits as above, the Commission taking cognizance of the content thereof, proceeded further to arrive at its conclusion.

9. (a) In his affidavit Dr. Sengupta submitted that earlier, he filed a reply (dated May 15, 2017) where he mentioned that the patient's condition was 'instable' but in the discharge summary, doctor on duty Dr Tanmoy Chakraborty has mentioned the patient's condition 'stable'. It was further submitted that since Dr Chakraborty has left **B.M. Birla**, no affidavit could have been filed by him, however, a written clarification

was obtained from him, annexure 'A' to the affidavit and according to Dr. Chakraborty, the same was an error on his part.

(b) In the next affidavit, affirmed by Dr. Ashok Giri, Dr. Giri claimed that since January, 2017 he has been working as in-charge of Non-Invasive Department, Investigation Service at **B.M. Birla** and Non-Invasive Department includes the service of Echocardiography. Before the Commission, Dr. Giri produced his registration certificate issued by the Medical Council of India and the certificate of Postgraduate Diploma in Clinical Cardiology issued by Indira Gandhi National Open University. He claimed that he obtained his degree, *M.D. Physician* in the year 2001 from *St. Petersburg Medical Academy, Russia* and subsequently, after passing the prescribed course of study in the examination held in 2008 he was awarded Postgraduate Diploma in Clinical Cardiology by the Indira Gandhi National Open University. It is then contended that having possessed the Diploma in Clinical Cardiology as above, he is qualified to undertake Non-Invasive procedure viz, Echocardiogram/Colour Doppler Studies.

In addition to above, Dr. Giri in his affidavit further stated that Ms. Chaitali Kundu is one of the echocardiography technicians working in the department of Non-Invasive Cardiology and she is privileged to do echocardiography both in indoor patient department and outdoor patient department under the supervision of competent/expert/experienced doctors in this field. In an emergency situation, an Echocardiography technician is privileged to perform Echo Screening at bedside with

portable machine in presence of competent/expert/experienced doctors to show the 'monitoring and measurement' findings from the machine and record those as a provisional report only subjected to clinical correlations.

A resume of Ms. Chaitali Kundu was also enclosed with the affidavit and the same is reproduced below.

Training Certificate:

1. ECG technician in 2001
2. Medical Transcriptionist Course in 2000
3. Worked as Medical Transcriptionist in dept of NID (ECHO) 2008-2009
4. Worked as Cardiology Technician (ECHO) as from January 2010 to July 2011 under Dr. P.K. Tiwary
5. Joined B.M. Birla Heart Research Centre since August 2011 till date

Year of Services:

Year of experience in dept of NID (ECHO Lab) is 8 years

Special Membership:

Attending updated Echocardiography conference under WB Association of Echocardiography WBAE every year since 2012.

(c) In the third affidavit Mr. Manish Sureka, Head Finance, B M Birla Heart Research Centre expressed inability to explain the discrepancy between the quantity I.V fluid

indented and utilization because the bill copy could not be retrieved due to system failure.

10. Undoubtedly, *the* medical condition of the service recipient soon before her discharge from **B.M. Birla** noted in the discharge summary and that have been transpired from the written reply of the Medical Superintendent of **B.M Birla**, are on the face of the same, completely different, contradictory and conflicting and cannot stand together. The doctor issuing discharge summary not only emphatically stated that the condition of the patient was stable at the time of her discharge but also portrayed under what medical condition (Acute Coronary Syndrome) she was admitted in the hospital and how she was managed in CCU, medicated, mobilized and stabilized. Whereas, the Medical Superintendent of **B.M Birla**, in his written reply, vividly described, since her admission how the condition of the patient progressively deteriorated, turned critical and under what circumstances, apprehension, and reasons, it was decided to refer and shift her to a Multispecialty hospital for better management. In his affidavit also, the Medical Superintendent admitted that in his reply dated May 15, 2017 he mentioned that the condition of the patient was instable and the doctor issuing discharge summary, Dr Tanmoy Chakraborty in writing revealed that it was an error on his part to describe the patient stable.

Now from the clinical notes, we find at 7.45pm on 07/05/2017 Dr. Tanmoy Chakraborty himself explained and informed the son of the service recipient that his

mother was in critical condition. The vital parameters of the patient noted by Dr. Chakraborty at the relevant time depicts that she was truly critical. We further find from the clinical notes, recorded at 9.15pm that primary consultant Dr. Shuvo Dutta explained the condition of the patient to the members of the patient's family and advised for her shifting to a multispecialty hospital for proper management and referred her to **CMRI**.

In addition to above, the annexure 'A' to the said affidavit of Medical Superintendent, **B.M. Birla**, a document executed by the concerned doctor Dr Tanmoy Chakraborty, under the caption '**TO WHOM IT MAY CONCERN**' it was admitted at around 7.45pm on May 7, 2017 (the day when the patient was discharged) the condition of the patient was progressively deteriorated during next few hours and she developed hypotension and was started on ionotropes for the same and required shifting to a multispecialty hospital.

The above facts viz, describing a critically ill patient to be stable and justify the same, detailing how the patient was medicated, treated and managed and then mobilized and stabilized although the materials on records (noted herein above) portrayed actually that her condition was critical, amounts to gross deficiency in patient care service by the doctor through whom the Clinical Establishment is providing medical service to the service recipient. Neither the **B.M. Birla** can be excused nor absolved of its liability.

On the face of the above materials, the Commission is unable to accept, what has been conveyed to the Medical Superintendent of **B.M Birla**, by Dr Chakraborty by his purported explanation that it was an error on his part in describing an 'instable' patient as '**stable**'.

It is evident from the materials on record, that above lapse on the part of the Dr Chakraborty is not a mere clerical mistake. It is not a case where the letters '**in**' have been dropped inadvertently, if that be so, describing a critical and "**instable**" patient as "**stable**" would not have been proceeded by any description under what medical condition the patient was admitted in the hospital managed in CCU with drugs and stabilized and mobilized.

We, however, restrain ourselves from giving any findings whether such act of Dr. Chakraborty amounts to medical negligence or not on the face of the prohibition contained in *first proviso* to Sub-Section III of Section 38 of the West Bengal Establishment (Registration, Regulation and Transparency) Act, 2017.

We find that at **B.M. Birla** the discharge summary used to be noted in a printed form and the same is not only to be authenticated by MO/SHO but also by the consultant and a space is provided for the consultant to sign and authenticate such report. In the case at hand, however, the discharge summary was signed and authenticated only by MO/SHO Dr. Tanmoy Chakraborty and not ratified and authenticated by the primary consultant Dr Shuvo Dutta. Although at the relevant place

of the discharge summary, the name and registration number of Dr. Shuvo Dutta were printed out does not contain his signature. This is also a deficiency in patient care service.

11. The next question arises for our decision as to whether Dr Ashok Giri, who is under the employment of **B.M. Birla** as Consultant In-Charge of Non-Invasive Department and Ms Chaitali Kundu, ECG Technician are medically competent and qualified to perform non-invasive cardiological procedure and to provide their study reports.

12. So far as Dr Ashok Giri is concerned, we find that he obtained his MD from St Petersburg State Medical Academy, Russia, which is equivalent to MBBS degree in India. He got his registration from Medical Council of India, after clearing Foreign Medical Graduates Examination from National Board, New Delhi. It is claimed that Dr Ashok Giri after having passed prescribed courses of study has been awarded Post Graduate Diploma in Clinical Cardiology by Indira Gandhi National Open University and on the strength such Post Graduate Diploma in Clinical Cardiology, he has been holding the charge of Consultant in-Charge Non-Invasive Department at **B.M. Birla** Hospital and conducting non-invasive cardiological procedure. It is not out of place to mention that the Commission received two separate written communications from Medical Council of India and West Bengal Medical Council to the effect that the Post Graduate Diploma in Clinical Cardiology awarded by Indira Gandhi National Open University is not a

recognized Post Graduate Medical Qualification and, therefore, holder of such diploma is not entitled to practice *specialty concerned* and that diploma awarded by Indira Gandhi National Open University is not included in their schedule. The Medical Council of India in their above communication requested the Secretary of the Commission to take appropriate action in this regard.

The response of the Medical Council of India and that of the West Bengal Medical Council is quoted below in verbatim.

The response of Medical Council of India: (Letter No.203(1)(Gen.)/2017-Regn./165575 dated 04.01.2018).

Sub: Clarification regarding qualification of Dr. Ashok Giri, M.D. Physician, having Registration No.26824.

“It is to inform you that the postgraduate medical qualifications (Indian/foreign) which are included in the Schedules to the IMC Act, can only be considered deemed to be recognized medical qualification(s) for the purposes of registration of additional qualification and entitlement of its holder(s) to practice in the specialty concerned.

Further, as per Clause 7(2) of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, a physician shall not claim to be specialist unless he/she has special qualification in that branch.

As per the available records, the postgraduate diploma in Clinical Cardiology awarded by Indira Gandhi National Open University is not included in the Schedules to the IMC Act.

In view of above, you are requested to take further appropriate action in the matter at your end please.”

The response of West Bengal Medical Council:

“With reference to this mail I am to inform you that the medical qualifications, which are included in the Schedule of the Medical Council of India, are only the recognized qualifications for grant of registration by any State Medical Council. The qualification awarded by the Indira Gandhi National Open University do not appear in the Schedule of Medical Council of India. Hence, registration to such qualification holders cannot be granted for practicing modern scientific medicine (allopathic).”

Now in the view of the above communications received from the Medical Council of India and the West Bengal Medical Council, the Commission is of the opinion that the employment of Dr. Ashok Giri, in the post of Consultant-in-charge, Non-Invasive Department and engaging him for conducting non-invasive procedure and echocardiogram and to give a study report interpreting the data available from such procedure and on that basis decide the course of treatment is not only detrimental to patient care service but also completely unauthorized and illegal. This practice on the

part of the Clinical Establishment, **B.M. Birla** comes within the ambit of deficiency in patient care service, and amounts to irrational and unethical trade practice.

13. We find from the certificate produced by Ms. Chaitali Kundu, who was employed as Echocardiography Technician by **B.M. Birla** that she passed Higher Secondary Examination with Commerce background. Thereafter, she has pursued an **Electro Cardiography Technique Course** from **Society For School of Medical Technology**, Indian Mirror Street, Kolkata. Neither the said institute nor the paramedical course conducted by them, is recognized by the State Medical Faculty. Mere attending a few Echocardiography seminars and/or conference does not make any person properly qualified and trained to monitor the Electro Cardiography procedure to study the data and examine the vital parameters of the service recipient available from such procedure and then to give his/her opinion interpreting those data for next course of treatment. Therefore, appointing Ms. Chaitali Kundu in the post of Electro Cardiography Technician and engaging her to conduct non-invasive procedures and the case in hand, echo screening and to give a report, is not only detrimental to patient care service but also such practice on the part of **B.M. Birla** comes within the ambit of deficiency in patient care service and amounts to irrational and unethical trade practice.

Furthermore, in this regard, it would be pertinent to note that Dr. Ashok Giri in his affidavit stated that Ms. Chaitali Kundu is privileged to do echocardiography in IPD (Indoor Patient Department) and OPD (Outdoor Patient Department) under the

supervision of experienced doctors in this field. Even assuming what has been contended by Dr. Ashok Giri in his affidavit, is permissible in the medical field, still having regards to the facts, nowhere in his affidavit, Dr. Giri divulged the particulars of experienced doctors under whose supervision such echocardiography and screening was conducted by Ms.Chaitali Kundu and there had been no authentication of the report of echo-screening dated 07/05/2017 by any doctor, the contention of Dr. Giri merits no consideration. We also very carefully examined the Bed Head Ticket and more particularly the treatment provided to the service recipient at that particular point of time but we do not find any contemporaneous record in support of the fact that such echo screening was done under the supervision of any doctor far less under the supervision of competent/expert/experienced doctor in the field. The contention of Dr. Giri as raised in his affidavit to justify the performance of echocardiography by Ms. Chaitali Kundu is neither tenable nor acceptable.

14. It be noted that soon before the advice of shifting the patient to a multispecialty hospital by her primary consultant for better management at 9.15pm, the second echocardiography and screening was done by Ms. Chaitali Kundu at around 8.05pm on 7/5/2017 and the findings and study report played a very crucial role which persuaded Dr. Shuvo Dutta to arrive at a decision to refer and shift the service recipient, mother of the complainant to **CMRI**, holding that she had no major cardiac problem and

prevention and control of sepsis would be major consideration, where she died within 16 hours from her admission.

15. In this regard it is pertinent to note that although two study reports of echocardiogram of the service recipient at **B.M Birla** did not reveal that she had severe cardiac problem. The echocardiography report done at **B.M. Birla** on May 3, 2017 and May 7, 2017 showed that LVEF was 62% and 60% (according to the study report of echocardiography done at around 8.05pm on 7.5.2017) respectively. But soon after her transfer to **CMRI** another echocardiography study was done by a qualified doctor, MBBS, MD and his report clearly indicates that she had cardiac problems. The report revealed regional wall motional abnormality and LVEF was 46%. In this regard, it be noted that in the discharge summary, the service recipient was shown to be 'stable' and she was referred to **CMRI** for deterioration of her medical condition and that was due to sepsis and she had no major cardiac ailment but at **CMRI** immediately after her admission at 2.30am, the attending doctor urgently referred the patient to Dr. Shuvo Dutta, a cardiologist and her primary consultant at **B.M. Birla**. This referral to Dr. Shuvo Dutta, is obviously because her medical condition manifested severe cardiac problems.

16. It goes without saying that a qualified and trained technician can always carry out and perform a Non-Invasive procedure like Echocardiography, monitor the same and record the findings obtained from the system. But it is not permissible for such technician to interpret the findings and give an impression about the medical condition

of the patient. It is for a qualified cardiologist to interpret those findings and to give the impression out of that. However, in the present case, the Clinical Establishment, **B.M. Birla** entrusted Dr. Ashok Giri with the independent charge of Non-Invasive Department inclusive of conducting vital procedure like Echo Cardiogram, Colour Doppler Studies etc. as also an unqualified person as technician for conducting such procedure.

17. It be noted at the time of hearing, a copy of circular addressed to the **B.M. Birla**, the Clinical Establishment, by the Dy. ADHS (Admin), Sasthya Bhavan, was produced before the Commission. Going through the same, we find by such circular, issued in terms of the provisions of *The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, informing B.M. Birla* about certain guidelines and requirements to be followed for use of USG machine in Pre-natal Diagnostic procedure and that has nothing to do with any procedure relating non-invasive cardiological procedures. It also be noted that in the said circular Ms Chaitali Kundu was shown as a female attendant and not as an Echocardiography Technician. It has no bearing on the issue involved in the present case.

18. In the above backdrop, the deficiency in patient care service on the part of the Clinical Establishment looms large, and it is also apparent that the Clinical Establishment has also indulged in irrational and unethical trade practice in as much as a patient whose condition was actually critical, as is evident from her contemporaneous medical records and on his own showing, in the reply submitted by Medical Director of **B.M.**

Birla also. In the discharge summary she has not only been declared stable, but simultaneously a detailed summary was given showing how she, who was admitted at C.C.U, **B.M. Birla** with Acute Coronary Syndrome, was medicated, stabilized and mobilized progressively. In a case of a patient suffering from Acute Coronary Syndrome, the most important procedures Echocardiogram and Echoscreening, was done by an unqualified doctor and a person claiming to be an Echocardiography Technician. Therefore, we are of the opinion that this is a fit case for awarding compensation.

Each one of the Members having medical background quite actively participated in the deliberation and played a very crucial role in the decision making process.

19. Now, considering the nature of lapses on the part of the Clinical Establishment, the degree of deficiency in service and irrational and unethical trade practice coupled with the mental shock, pain, suffering and harassment already suffered by the complainant and other family members of the service recipient, we are of the opinion that it would be fully justified if a sum of Rs.20 lakh (rupees twenty lakh) is awarded as compensation to the complainant, the son of the service recipient, Mr. Kousik Pal.

The amount of compensation must be paid through a demand draft to the complainant by the Clinical Establishment, **B.M. Birla**, within 15 days from this day.

20. Before parting with, we remind the Clinical Establishment that according to the condition of license, the patient care service, the diagnosis, test, procedures both non-invasive and invasive, treatment both medical and surgical, to be done only by qualified

doctors, nurses and para medical staffs and their qualifications must always be recognized by appropriate statutory authorities and in terms of Section 38 (x) of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017, and to ensure the same. We, therefore, direct the Clinical Establishment to rectify forthwith, their above mistakes and be more careful in patient care service.

Let this order at once be communicated to the Licensing Authority to ensure the removal of the lapses and deficiencies by the Clinical Establishment in accordance with law.

Sd/-
Justice Ashim Kumar Roy
Chairperson

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Gopal Krishna Dhali, Member.

Sd/-
Dr. Makhan Lal Saha, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Dr. Maitrayee Banerjee, Member.

Authenticated

[Signature]
2/2/2018.

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

