

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Makhan Lal Saha, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Maitrayee Banerjee, Member.

COMPLAINT ID: HGY/2017/000037.

Mr. Sudipta SahaComplainant.

-versus-

M.A. Gani Hospital & others..... Respondents.

Date of judgment: February, 2018.

J U D G M E N T .

In his letter of complaint, the complainant Mr. Sudipta Saha alleged as follows:

Since his mother Mrs. Kaberi Saha was vomiting frequently, she was taken to their house physician Dr. Shyama Prasad Dan, who advised blood test for Sodium and Potassium, and then considering the test report, he prescribed a few medicines. Since there was no recovery,

she was advised hospitalization by Dr. Dan. Accordingly, she took admission at Arambagh Sub-Divisional Hospital and since there was no improvement of her medical conditions and the treatment not being satisfactory, the complainant got his mother discharged on risk bond. Thereafter, the complainant took his mother to a consultant physician Dr. Dilip Sarkar, a local doctor, who advised for immediate admission at M.A. Gani Hospital, Arambagh (for the sake of brevity, hereinafter referred to as "**the said hospital**"). On March 27, 2017, she was admitted at "**the said hospital**" and underwent treatment under Dr. Dilip Sarkar. During her treatment, the complainant was informed that his mother was suffering from Urinary Tract Infection and on March 31, 2017, she was discharged after prescribing a few medicine. At "**the said hospital**", a psychiatrist, Dr. Abhijit Lahiri was also consulted and his opinion was obtained. Soon after returning home, her condition was further deteriorated and she started suffering from diminution of voice and weakness, fatigue and she virtually lost her mobility and physical strength to mover her limbs and once again Dr Abhijit Lahiri was consulted. Dr Lahiri opined that rapid administration of saline was the cause of her such condition. As the condition of the complainant's mother was getting worse day by day, on April 13, 2017 she was admitted at K.P.C. Medical College at I.C.U under Dr. S. Nandi where CT Scan (Plain) and then MRI of Brain (Plain) were done and the said report revealed Central Pontine and Extrapontine Myelinolysis and according to the doctors who treated her at K.P.C. Medical College, the patient had reduced to such condition due to rapid administration of saline in over dose. The mother of the complainant then was admitted at Apex Hospital under Dr. Susanta Bhattacharya and according to him also, the medical condition of the patient was deteriorated to such extent due to the rapid administration of saline. As the complainant was unable to bear the huge expenses of treatment, he was compelled to get her discharged. They belong to a middle class family and after incurring an expenditure of about Rs.5 lakh for the treatment of her mother, now the complainant is no more capable to bear any further expenses for her treatment. It is categorically claimed that now his mother has become completely physically disabled and unable to attend even nature's call and to move a few steps without any external assistance. It is prayed that his family be rescued from such mental and financial calamities.

2. Immediately, upon receipt of the above complaint, the Commission forwarded the letter of complaint to the Clinical Establishment and called for its response and also directed to deposit the Bed Head Tickets and the bill details.

Although the Clinical Establishment furnished the medical file of the service recipient and the bill details but did not submit any written reply. It be noted, at the time of hearing, the proprietor of the Clinical Establishment SK. Imdadulla, who appeared in person, was given further opportunities to submit his written reply but same was not availed of.

3. Since at the time of hearing of this case, it is claimed by the complainant that in his presence, the Bed Head Ticket of the hospital was noted by one staff Tahidul Hossain Khan, the Commission directed the proprietor of the Clinical Establishment to ensure the presence of the said staff and the treating doctor at the time of next hearing.

4. On October 13, 2017 the said staff Tahidul Hossain Khan, appeared before the Commission and with reference to the clinical notes recorded in the Bed Head Ticket of the service recipient, he did not dispute the claim of the complainant and admitted that the entire clinical notes including the drugs prescribed, was noted in the Bed Head Ticket by him as prompted by Dr. Dilip Sarkar. When his attention was drawn to the clinical note of the service recipient of March 28, 2017, which was to the effect **"13% NS- 2 bottles IV Stat"**, he claimed that same was not 13% but was 3% NS (Normal saline), but did not dispute it was noted 13% and not 3%.

Subsequently, on November 3, 2017, Dr. Dilip Sarkar appeared before the Commission and when his attention was drawn to the clinical notes recorded in the Bed Head Ticket of the service recipient, he admitted that on being asked by him, those clinical notes were written by Tahidul Hossain Khan, a staff of the nursing home, and then he signed. He, however, with reference to clinical note dated March 28, 2017 denied that he prescribed **"13% normal saline- 2 bottles stat"** or that the same was noted on his instruction. When a specific question was put to him by one of us (a member having medical background), he admitted even though in exceptional cases, 3% saline may be prescribed but same should be transfused under strict

medical supervision and he never used to prescribe such saline. He claimed that it was copied from his prescription but no such prescription was produced.

5. On November 10, 2017, the Clinical Establishment produced two nursing staffs, namely, Ms. Sipra Banerjee and Ms. Sandhya Ghosh.

According to Ms. Sipra Banerjee, she passed the G.N.M. Course from the N.R.S. Hospital in the year 1985. She submitted that after her retirement from Arambag Sub-Divisional Hospital, a State run hospital in the year 2015, she joined the "**the said hospital**" on a monthly salary of Rs.9967/-. She claimed that she was on duty at that hospital from March 27, 2017 to March 31, 2017 while the service recipient was treated there. When her attention was drawn to the service recipient's parameters assessment card she claimed that same was neither drawn and filled up nor signed by her. She also claimed that she had no knowledge about anything regarding infusion of 3 % saline to the patient and did not know how to administer 3% saline.

The another nursing staff Ms. Sandhya Ghosh stated that she joined "**the said hospital**" on November 1, 2017 on a monthly salary of Rs.5951/- only and she did not know about the treatment of the said service recipient. However, she could not produce her appointment letter (the service recipient was treated at the said hospital from March 27, 2017 to March 31, 2017).

6. Although an affidavit has been filed by Ms. Sipra Banerjee, staff nurse but not by Ms. Sandhya Banerjee.

In her affidavit Sipra Banerjee only stated that she was on duty at M.A. Gani Hospital ("**the said hospital**") between March 27, 2017 and March 31, 2017. It was further stated that she was involved in the treatment of the service recipient Mrs. Kaberi Saha.

7. It is pertinent to note that SK. Imdadullah, in response to the query, put to him from the side of the Commission, although claimed that he has regular RMO at his hospital but in spite of

repeated asking, neither he disclosed the identity of the RMO (his name, qualification, service record and other particulars) nor produced him in person before the Commission.

8. Before the Commission, at the time of hearing, the complainant reiterated his case as has been made out in his complaint and repeatedly urged that due to the wrong treatment meted out to his mother at M.A. Gani Hospital, she has become completely and physically disabled. It is submitted that the doctors have advised for further treatment for her recovery and restoration but as he is unable to bear huge expenses for her treatment, she is still remain unattended medically and suffering without any treatment and has become completely immobilized. The complainant claimed, adequate compensation may be granted so as to enable him to get her mother adequately treated medically.

On the other hand, the Proprietor of the Clinical Establishment denied that there is any deficiency in service and Dr. Dilip Sarkar is a reputed doctor of the locality and treated her to best of his ability but due to her old age and the ailments she was suffering from, her condition deteriorated. Lastly, it is submitted that the patient was admitted at their hospital on being advised by Dr. Dilip Sarkar and not as a direct patient at **"the said hospital"**. He further added that recording of clinical notes in the Bed Head Ticket by a group D staff was at the behest of Dr. Sarkar and he had nothing to do with the same.

Dr. Dilip Sarkar had personally appeared before the Commission and denied that due to his wrong treatment the mother of the service recipient has been reduced to her present physical state. He denied to have advised either 13% normal saline or 3% normal saline- 2 bottle stat. He reiterated that he never used to prescribe 3% normal saline.

9. Heard the parties at length. Considered their respective submissions. Perused the materials on record more particularly the medical file of the service recipient.

10. Now, going through the medical record of the patient including Bed Head Ticket of, we find that the patient was admitted on March 27, 2017 at **"the said hospital"** on being advised by Dr. Dilip Sarkar when she attended him at his chamber on the same day. On perusal of the

medical file of the patient, on September 15, 2017 (a date fixed for hearing), some specific questions were put to SK. Imdadulla, the proprietor of the said hospital and he submitted before the Commission that his staff Tahidul Hossain Khan and the treating doctor, Dr. Dilip Sarkar would be the best persons to clarify everything. Accordingly, we directed the presence of both the treating doctors and the said staff before us. However, on the next day of hearing (13/10/2017) although Tahidul Hossain Khan and proprietor of the said hospital were present but not the treating doctor. When the attention of Mr. Tahidul Hossain Khan was drawn to the medical records and going through the same he admitted the clinical notes in the BHT of March 27, 2017 (no time mentioned), March 27, 2017 evening and March 28, 2017 morning were written by him as was instructed and prompted by Dr. Dilip Sarkar, the treating doctor. With reference to the clinical note of March 28, 2017 (morning) more particularly to the note "*13% NS- 2 bottles IV Stat*" Mr. Tahidul Hossain Khan stated that it was not 13% but was 3% NS- (normal saline) without disputing that it was however noted as 13% NS- 2 bottle stat. On that day, we closed the hearing since the treating doctor was not available and directed the proprietor of the said nursing home to ensure the presence of both the treating doctor as also to disclose the identity of the RMO of the said hospital since we did not find any note in the BHT by the RMO. It be noted, in spite of our repeated questioning, the proprietor of the said hospital was not able to divulge the same and we conveyed to him on the next day if such information is not furnished to us, the Commission shall have no option but to hold that "***the said hospital***" was running without any RMO. On the next day (03/11/2017) Dr. Dilip Sarkar was present but in spite of our specific direction, the said group D staff Tahidul Hossain Khan and the staff nurses were not present and the particulars of the RMO was not disclosed. We drew the attention of Dr. Dilip Sarkar to the clinical notes in the BHT. When the Commission asked Dr. Sarkar, he admitted that the clinical notes were recorded by Tahidul Hossain Khan, a group D staff of the nursing home and copied from his prescription. He also authenticated such facts by endorsing the BHT in question. Without admitting the correctness of the note in the BHT "*13% normal saline 2 bottles stat*" and the same was noted on his instruction, he further disputed that "*3% normal saline 2 bottle stat*" was prescribed by him for

the patient, as claimed by Tahidul Hossain Khan and added that he never prescribed 3% normal saline. We again directed the proprietor of the said hospital to ensure presence of the group D staff who noted the advice in the BHT and the nursing staffs with their certificates. Thereafter, on the next day of hearing (10/11/2017) at the time when the matter was taken up for hearing neither the proprietor of "*the said hospital*" nor the nursing staffs and anyone else on their behalf was present although complainant was there. Consequently, we closed the hearing. However, after closure of the hearing, Mr. Imdadulla appeared with 2 nursing staff, Sipra Banerjee and Sandhya Ghosh and submitted that due to disruption of traffic, they could not be present in time. On his prayer, with the consent of the complainant and for ends of justice, we took up the matter for hearing and proceeded.

According to Ms. Sipra Banerjee, she passed G.N.M. Course from NRS Hospital in the year 1985 and joined Government Hospital and in the year 2015 she retired from Arambag Sub-divisional Hospital and joined M.A. Gani Hospital on a monthly salary of Rs. 9967/-. She claimed she was on duty from March 27, 2017 to March 31, 2017. Going through the medical file she submitted that the parameter assessment card of the service recipient was neither drawn, filled up nor signed by her. She further admitted that she had no knowledge about infusion of 3% saline to the patient and also did not know how to administer 3% saline.

The staff nurse Ms. Sandhya Ghosh stated that she joined the nursing home on November 1, 2017 on a monthly salary of Rs. 5951 only i.e. after the service recipient was discharged from the hospital.

We adjourned the hearing of this case, directing that both the nursing staff shall file affidavits disclosing their qualifications and the manner of their involvement in the treatment of the service recipient.

Although affidavit was filed by Ms. Sipra Banerjee but not by Ms. Sandhya Ghosh. In her affidavit, Ms. Sipra Banerjee only stated that she was on duty at "*the said hospital*" between March 27, 2017 and March 31, 2017 and she was involved in the treatment of the service recipient.

11. On January 1, 2018, after further hearing, we fixed the case for final order.

It be noted that in spite of several opportunities being given from the day one, on behalf of the said hospital no affidavit was filed in response to the case of the complainant. From the side of *"the said hospital"* the identity of the regular RMO was also not disclosed far less causing the appearance as desired by the Commission.

12. From the discussions as above and on the face of the materials, the following facts clearly emerges.

a. The service recipient was not a direct patient of *"the said hospital"*. Dr. Dilip Sarkar, a local doctor, examined her at his chamber and advised admission at *"the said hospital"* under him.

b. The claim of the complainant that in his presence, clinical notes in the BHT were recorded by one Tahidul Hossain Khan, a group D staff of *"the said hospital"*, has been admitted by both Tahidul Hossain Khan and Dr. Dilip Sarkar.

c. While the said group D staff Tahidul Hossain Khan claimed that as asked and prompted by Dr. Dilip Sarkar, he wrote the clinical notes in the BHT, according to Dr. Sarkar, the clinical notes were copied from his prescriptions by the said Tahidul Hossain Khan and then he signed. No prescription was produced before the Commission.

d. Several lapses were apparent on the face of the clinical notes. The word *"catheterization"* was written as *"cethetaration"*. A good number of schedule H drugs and the doses were noted in the BHT by the said group D staff without any supporting prescriptions.

e. The clinical notes of March 28, 2017, clearly manifests that on that day in the morning *"13% normal saline- 2 bottles IV stat"* was prescribed.

When, Tahidul Hossain Khan, who wrote the advice in the clinical note, was confronted, he claimed that same was not 13% but 3% NS- (Normal saline). However, Dr. Dilip Sarkar categorically denied that even *"3% normal saline- 2 bottles stat"* was prescribed by him. Dr.

Sarkar further stated that he never used to prescribe infusion of 3% normal saline in such manner. However, the clinical notes containing such advice although was not in the handwriting of Dr. Sarkar but he signed the same.

f. The patient monitoring chart bears no signature nor the said hospital disclosed by whom same were filled up and the only staff nurse, produced before the Commission by the Clinical Establishment, who claimed to be involved in the treatment of the patient, denied that the same was filled up by her.

g. The two (2) nursing staffs who were produced before the Commission, one of them Ms. Sandhya Ghosh joined on November 1, 2017, long after the service recipient was discharged on March 31, 2017. No registration certificate of this staff nurse was produced although sufficient opportunity was given.

The staff nurse Ms. Sipra Banerjee although claimed that she was involved in the treatment of the service recipient but when was confronted with the parameter assessment card of the service recipient, she divulged nothing therein was noted by her. She also stated that neither she filled up the chart nor signed it.

h. In spite of enough opportunity being given, the identity of the regular RMO attached to **"the said hospital"** or his particulars was not disclosed.

13. In the above backdrop, it can safely be held:-

Although the service recipient, the mother of the complainant, aged about 52 years was not a direct patient of **"the said hospital"** and was admitted there as referred by Dr. Dilip Sarkar, her treating doctor but there are severe deficiency in patient care service on the part of **"the said hospital"**. The conduct of **"the said hospital"** is also not free from irrational and unethical trade practice. In the case at hand, the clinical notes in the BHT were admittedly written by a group D staff not by the treating doctor far less by any RMO. In spite of several opportunities given to them, they did not disclose the particulars of the RMOs who were attached with **"the said hospital"**. Although Clinical Establishment claimed that there were

more than 4 nursing staffs, attached when the service recipient received her treatment at "**the said hospital**" but only two staff nurses were produced before the Commission. One of them Ms. Sandhya Ghosh claimed that she joined the said nursing home on and from November 1, 2017, a couple of days earlier she came before the Commission (she was produced on November 10, 2017). The only other nurse claimed to be involved in the treatment of the service recipient. She also denied her knowledge as to who filled up the patient monitoring card and claimed that she doesn't know how to administer saline. Therefore, it can very well be concluded that "**the said hospital**" was running without any RMO and adequate nursing staffs. Not only we find above deficiencies in the patient care service at "**the said hospital**" looms at large, we further find "**the said hospital**" was running completely abrogating the medical protocol. The clinical notes in the BHT used to be written by a group D staff, neither by any RMO nor by the treating doctor. Due to such practice prevailing in "**the said hospital**", in the present case, a very serious lapse in the patient care service has been occasioned which resulted in loss of mobility and disastrous medical condition of the service recipient. In the clinical notes of March 28, 2017, admittedly prepared by a group D staff, "**13% NS- 2 bottle stat**" was prescribed with other medicines including schedule H drugs. The said clinical notes was at the end was counter signed by Dr. Dilip Sarkar, the treating doctor. Although Dr. Sarkar claimed that 13% NS- 2 bottle stat was not prescribed by him and he never prescribes 3% NS, still he approved and endorsed the advice and signed but never corrected the such advice of infusion of "**13% NS- 2 bottle stat**". We further find from the clinical notes, thereafter, Dr. Sarkar visited the patient on March 29, 2017 and March 30, 2017 but never corrected such advice, on the other hand, in his own handwriting he noted "**Rpt all**" meaning thereby all previous advice including infusion of saline in the manner as prescribed to continue.

14. In the medical parlance, there is no concept of 13% NS- (Normal saline) and normal saline connotes a solution containing 0.9% Nacl, whereas a solution containing more than 0.9% Nacl is defined as Hypertonic saline. According to the medical protocol, Hypertonic solution can be used either alone or in combination with dextrose. Infusion of Hypertonic saline is usually reserved for severe Hyponatremia (where sodium level is found less than 115meq/L). However,

we find from the medical file of the service recipient that there is a Biochemistry report of examination of blood (dated March 28, 2017) amongst others for sodium and potassium and according to such report, the patient's sodium level was 124meq/L. Therefore, when the sodium level of the patient was not below 115meq/L and at 124meq/L, which is a case of mild to moderate Hyponatraemia, infusion of Hypertonic saline was not at all warranted. It would not be out of place to note that it appears from the clinical notes, the service recipient was prescribed for infusion of 13% NS- (Normal saline), which was admittedly written by a group D staff of **"the said hospital"** (Tahidul Hossain Khan) containing signature of the treating doctor, Dr. Dilip Sarkar but according to the said group D staff, 3% NS 2 bottles was infused in a day. On careful scrutiny of the clinical notes, we find that on the day of her admission i.e., March 27, 2017, **"IV Fluid NS:KL=1:1 (3 bottle in jet)"** was prescribed, thereafter, on the next day (28/03/2017), **"13% NS- 2 bottles IV stat"**, and then on the next 2 days i.e., on March 29, 2017 and March 30, 2017 infusion of saline was not omitted. On the other hand, in the clinical notes of March 30, 2017, it was noted **"Rpt all"**. Therefore, it boils down to the fact that during her stay in the hospital, the patient received **"IV Fluid NS:KL=1:1 (3 bottle in jet)"** for 1 day and **"13% NS- 2 bottles IV stat"** (assuming it was 3% NS- 2 bottles stat as claimed by Tahidul Hossain Khan) for next 3 days. Such infusion of Hypertonic saline in jet and above normal dose, where the sodium level in blood was 124meq/L reduced the patient in a disastrous medical condition from which she is now suffering from.

15. After infusion of such high dose of Hypertonic saline, she was discharged on March 31, 2017. After discharge, her condition started deteriorating in considerable extent and she not only became extensively weak but also started losing her mobility. In fact rapid administration of such high doses of Hypertonic saline that too without any medical supervision and on the advice of a group D staff, is the root cause her present physical condition. Subsequently, the service recipient was admitted at KPC Medical College, where MRI (Plain) was done and report reveals as follows:

1. Long TR Hyperintensity in central pons, bilateral symmetrical basal ganglia and thalamus, showing restricted diffusion favouring central pontine and extra pontine myelinolysis.
2. Leukoariaosis.

16. It appears from the discharge summary of the service recipient issued by KPC Medical College where she was admitted on 13.04.2017 with the history of aphasia, weakness and drowsiness and vomiting from 3/4 days before the day of admission. After 9 days on 21.04.2017, she was discharged with the final diagnosis, **Central Pontine and Extra Pontine Myelinolysis**. Medical study reveals a patient may suffer from **demyelination syndrome**, a disease of the nervous system, which impairs the conducts of the signals in the affected nerves and in turn the reduction in conduction ability, deficiency in sensation, palatal movement, cognition or other function depending on which nerves are involved. This is the exact medical condition the service recipient, the mother of the complainant is now suffering from.

17. We are afraid, what would have been our conclusion, if we assume the charge of adjudication on the question of medical negligence by Dr. Dilip Sarkar. It is for the concerned State Medical Council to address the issue and form its opinion, if of course, they are approached by the service recipient or anybody on her behalf.

The Commission is very much conscious about its limitation on the face of the prohibition contained in Second proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017. However, to reach to a just decision in the case, the Commission is compelled to address certain issues involving shortcomings, inadequacy and deficiency touching the quality, care and manner in which the professional service has been rendered by the treating doctor, Dr. Dilip Sarkar, without of course giving any findings on the issue of medical negligence by him.

18. At this stage, it would be apposite to refer the impression noted in the report of the Bangur Institute of Neurology, where the service recipient was examined medically, at the request of the Commission, *the patient had acute onset of neurological illness characterized*

acute extra paramedical features. This is further substantiated by MRI picture indicative of Central and Extra Pontine Myelinolysis which is caused by rapid correction of serum sodium level to normal level of slightly higher level. Though blood level of hyponatremia has been documented, no detail type and amount of fluid is not available.

The report was brought to the notice of the treating doctor as well as to the proprietor of the said nursing home but the impression noted therein was neither disputed nor challenged.

19. After discharge, the service recipient was again admitted at K.P.C. Hospital and then at Apex Nursing Home and was treated there. It appears not only, her physical condition has been impaired and she has lost her mobility associated with reduction in palatal movement, cognition and other nervous function only at the age of 52 years and unable to move without external support but for her treatment at **"the said hospital"** (M.A. Gani Hospital) and further treatment at K.P.C. Hospital and Apex Nursing Home, the patient party has already incurred an expenditure of about Rs.5.20 lacs which includes the charge of private nurse at the house and physiotherapist and medicines.

20. For the reasons stated above, and considering both the pecuniary and non-pecuniary loss suffered by the service recipient and her family members and the future expenses that is likely to be incurred for her restoration and rehabilitation and the extent of deficiency committed by the Clinical Establishment, we find that this is a fit case for awarding compensation.

We are of the opinion that if a sum of Rs.5 lakh (rupees five lakh) is awarded as compensation to be paid by the Clinical Establishment, M.A. Gani Hospital to the complainant that would subserve the justice. Such payment will be made within 2 weeks from this date by an account payee demand draft in favour of the complainant, Mr. Sudipta Saha. We further direct, in the meanwhile, the complainant with his surviving father and two sisters shall open a joint account with any nationalized bank nearest to his place of residence and upon receipt of the compensation amount, shall deposit the same in the said account. We make it clear that

not a single farthing shall be spent out of that compensation amount, except for the treatment and rehabilitation of the service recipient as long as she survives.

Before parting with, we direct the CMOH, Hooghly, to immediately ascertain how many nursing homes and diagnosis centre are functioning within his local limit with proper license and furnish a report to this Commission whether those establishments are running adhering to the condition of license or not. Such report must be submitted within 3 months from this date. In the mean time, regular inspection must be conducted so as to avoid these kinds of lapses in patient care service in future.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

Sd/-
Justice Ashim Kumar Roy
Chairperson

Authenticated

[Signature]

16/2/2018

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

