

3
Office of the West Bengal Clinical Establishment Regulatory Commission

1st Floor, 32 B.B.D Bag, West Bengal, Kolkata – 700001.

Phone:- (033) 2262-8447 , Email: wbcerc@wb.gov.in Website: www.wbcerc.gov.in

Case Reference: ID- WBCERC/NPG/311/2025-26

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Sukumar Mukherjee

Dr. Makhan Lal Saha

Dr. Maitrayee Banerjee,

Smt. Madhabi Das.

Dr. Dipankar ChakrabartiComplainant

- Versus-

Charnock Hospital and Spandan Hospital, VIP Road.....Respondent

Heard on: January March 27, 2026

Judgment on: May 29, 2026.

BACKDROP

On September 2, 2020 at about 11.46 p.m the complainant took his 32 year old daughter, Ms. Debdatta Chakraborty, and reached Emergency of Charnock Hospital. As per the hospital record, the patient was in a

gasping condition. The Emergency doctor examined the patient and gave appropriate primary medical aid. The Emergency doctor advised referral to any other higher set-up where appropriate gastro set-up would be available. In short, Charnock refused admission on the ground that they did not have any gastro support. The patient was then taken to Spandan Hospital where the patient was admitted and treated for about two days. The patient breathed her last on September 4, 2020 at Spandan at 2.25 a.m.

COMPLAINT

Being aggrieved, the complainant, who is also a medical practitioner, filed a complaint before the Commission on December 5, 2022.

The Commission, upon perusal of the complaint, asked for response from both the hospitals. Charnock gave their response on December 13, 2022 whereas Spandan gave their response on December 17, 2022. We fixed this matter for further hearing on December 23, 2022.

BS

AL

HEARING

The matter came up for hearing before us on December 23, 2022 when the complainant was absent despite notice. We were constrained to take it up in his absence. We considered the complaint as well as the response given by the two hospitals. We did not interfere into the medical issues involved therein however, as we do in all cases, we examined both the bills raised by Charnock and Spandan respectively. We directed refund of Rs. 17, 438/- by Spandan.

The complainant filed an application for fresh hearing. According to him he had difficulty to appear on that day and asked for a fresh hearing. We considered his prayer and placed it for fresh hearing on January 30, 2023.

The order of disposal dated January 30, 2023 would appear form page 288-293 of the application made by the complainant.

At the hearing, the complainant contended, the patient was quite stable. She had beverage before coming to the hospital. Her condition was quite normal. She had “ **acute gastroenteritis**”. Since it was a covid period

the complainant was not allowed to enter the Emergency area. While he was waiting outside the patient was intubated without his consent.

According to Charnock, the patient was having saturation level at 44%. She was in a gasping condition and as a life saving attempt the patient had to be intubated. The patient was not admitted in absence of any gastro set-up therein.

According to the complainant, the Emergency Medical Officer who intubated the patient did not have sufficient experience or training to do intubation for which the condition of the patient deteriorated. We observed, such issue could only be dealt with by an appropriate body of experts. We permitted the complainant to approach the West Bengal Medical Council for that part.

The complainant contended, the patient was practically driven out of the Emergency. She was taken by ICU Ambulance that would require proper recording of the vitals at the moment of transfer of the patient to be handed over to the ICU ambulance driver that was not done by Charnock.

According to Dr. Suman Ghosh, representing Charnock, no such instruction was given to the Ambulance driver hence, they did not have any such record. They had case summary that had already been given to the complainant.

In case of Spandan, Dr. Partha Pratim Ghosh, present online on behalf of Spandan, briefed the Commission about the treatment given to the patient. According to him, when the patient died all medical records including X-ray plate were handed over to Dr. Chakraborty, the complainant. They could not evaluate the X-ray plate at that time or thereafter hence, no formal report on X-ray could be given to him. They did not have any digital record of such X-ray. In case X-ray plate was produced by the complainant they would give the report prepared by their Radiologist. In case of Spandan we had earlier directed refund of Rs. 17,438/- that had already been done.

The complainant was not at all satisfied with the order dated January 30, 2023. He made another application before us for review. We heard the review application on May 24, 2024. Referring to the earlier orders

dated December 23, 2023 and January 30, 2023, we observed, “ *we cannot sit on appeal over our own judgment*”. At the said hearing for the first time we came to know that the complainant was proceeding simultaneously before the Consumer Forum as well as West Bengal Medical Council. We dismissed the application for review.

Being aggrieved, he filed a writ petition being W.P.A no. 13586 of 2024 against the order passed by the Commission on the grounds mentioned in the writ petition. The Learned Single Judge considered the entire order and disposed of by judgment and order dated August 10, 2024. His Lordship inter-alia observed that aspects of medical negligence; deviation from usual treatment protocol; non-absorption of certain formalities by the doctors e.t.c would be dealt with by the West Bengal Medical Council whereas Consumer Forum would deal with the proceeding independently and in accordance with law keeping all points left open to be decided by the appropriate authority.

The complainant filed an appeal being F.M.A. no 1262 of 2024. The Division Bench heard the appeal and disposed it off by Judgment and

Order dated February 13, 2024. The Division Bench affirmed the order of the Learned Single Judge however, modified it to the extent that the complainant would be at liberty to file a fresh complaint before the Commission raising **only the issues which falls within the jurisdiction of the Commission.**

The complainant was still not satisfied. He filed a Special Leave Petition before the Hon'ble Apex Court being No. 32634 of 2025. The Hon'ble Apex Court, vide order dated January 19, 2026, dismissed the Special Leave Petition however, once again gave him liberty to file appropriate application before the Commission as directed by the Hon'ble High Court.

Pursuant to the liberty granted by the Division Bench of the Hon'ble High Court so affirmed by the Hon'ble Apex Court the complainant has now come up with a fresh application on the following issues:-

1. Spoliation of medical records
2. Perjury in Medical Documents
3. Lack of legal consent

4. Publicity affecting patient welfare

HEARING ON FRESH APPLICATION

We heard this matter on March 27, 2026. At the outset, we made it clear that out of the four issues raised in the application the issue of “perjury” would have criminal instinct. Hence, we refrained from dealing with such issue. The complainant proceeded with other issues. The complainant made elaborate submission on the basis of the fresh application as well as documents enclosed therein. Both the hospitals were also represented. They reiterated their stand that they had taken at the initial hearing before us.

APPELLANT’S CONTENTION

CHARNOCK

The complainant raised four issues:-

- 1) Inefficiency of the Emergency Medical Officer.
- 2) Absence of any triage officer.
- 3) Intubation without any consent and without any supervision of any experienced medical practitioner.

4) No gastro set-up despite advertisements made in their websites.

The first issue had already been raised before us earlier. The concerned RMO passed out his MBBS examination and was registered under West Bengal Medical Council vide certificate dated February 29, 2020 and the incident happened on September 4, 2020. Hence, on the day of the incident the concerned medical officer had requisite qualification to give Emergency aid to the patient. Pertinent to note, the incident happened when covid was in force having its second wave. At night there had been paucity of senior medical doctors available at the CE. The CE admitted that no formal triage officer was available at that time however, there was another doctor who was also present during intubation. The patient was deteriorating hence, no other option was available to the doctor who did the intubation with informed consent.

With regard to the gastro set-up the complainant would draw our attention to the advertisement appearing at page 321 whereby we find that such advertisement was dated June 13, 2022 whereas the incident happened on January 4, 2020. There was no gastro set-up in Charnock in 2020.

According to Charnock, whatever primary aid was required, they extended such support. There was nothing on record that there had been any injury to the patient during intubation. In any event, the complainant would be at liberty to raise such issue before the West Bengal Medical Council.

The complainant also contended that the bed-sided X-ray or Ultrasound was not available at Charnock as contended in paragraph 9 of their response given before the Consumer Forum. Charnock said, as the patient was in such a condition it was not possible to take her to Radiology unit for X-ray or CT Scan.

The complainant himself hired Ambulance to take the patient to other set-up. The complainant would also contend that no discharge summary was given however, such assertion was disputed by Charnock.

SPANDAN

The patient was taken by a hired Ambulance support arranged by the complainant. The patient reached Spandan at night. The patient was admitted at 11.46 p.m. on September 2, 2020. As per the admission

record the patient had been in gasping condition since noon. Pulse was 189, b/p 90/60, Spo2 78% as recorded at 11.15 p.m. The Emergency progress report and the initial assessment report at Spandan Emergency revealed:-

*“Gasping(acidotic breathing), p-84/min, feeble BP=?, Temp. 98°F
Chest-vbs+ pSO2-70% with 90 % (illegible)”*

At 11.30 p.m it was recorded in item no. 19 “next ABG after four hours” that would mean ABG was done at 11.30 p.m. or before.

At page 164 the ABG report would show that ABG was done at 11.46 p.m. whereas at page 58 it was recorded next ABG would be done after 4 hours from 11.30 p.m. At page 138 at the treatment sheet it was recorded the BP was 90/60 at 6.30 a.m. on September 3, 2020 and the diagnosis was **BP 90/60**. Pertinent to note, that was also the recording at the time of admission. At page 136 at 12.30 a.m. on September 3, 2020 ascitic tap done under local anesthesia whereas at page 97 it was recorded, tapping was done at 9.50 a.m. that would be totally contrary to page 136.

With regard to ECG that was done 7.49 a.m. on September 3, 2020 as appears from page 175. No ultrasound was made as would appear from page 130 and 138. At page 130 the investigation order was ECG, however, that is conspicuously absent at page 136. At page 138 bedside USG was advised at 6.30 a.m on September 3, 2020. X-ray was done however, no report was given.

Citing the anomalies in the medical records observed hereinbefore, the complainant would raise serious issues regarding irregularity in the treatment process. According to him, such irregularities would doubt the authenticity of the report. According to him, vitals might have been recorded afterwards, just to cover-up the deficiencies.

WRITTEN ARGUMENTS

We closed the hearing by giving further opportunity to all the parties to submit their written arguments particularly, in respect of the discrepancies that were highlighted by the complainant by the concerned hospital to remove the doubt in the mind of the Commission. Pursuant

to the liberty the parties submitted their written arguments that we have considered.

EXPERT OPINION

Our esteemed medical member Dr. M.L. Saha has evaluated the entire medical records including written argument of the parties. His opinion is extracted hereinafter:-

"Dr Dipankar Chakraborty Vs Charnock Hospital and Spandan Hospital.

This complain pertains to unfortunate death of one young lady Debdutta Chakraborty following treatment at Charnock Hospital and Spandan Hospital

This patient attended emergency of Charnock Hospital on 2.9.20 at 8.09pm . Patient was attended by on duty medical Officer Dr Suman Hazra. The clinical notes recorded in OPD case record revealed, Patient was brought in a gasping state with huge ascites, Nonalcoholic CLD and H/O severe anemia. Heart rate mentioned as feeble, BP is not recordable and SPO2 44%. Other finding recorded as Abdomen,

St

St

Distended, Ascitis (-+++ , Icterus +++, Pallor +++ . Clinical notes revealed patient was critically ill

Also recorded as No Gastroenterologist available at present.

Intubation done.

Inj Noradrenaline 20ml/hour, Inj Midazolam 2mg stat (Not mentioned given as IV or IM). Inj Atropine ,Inj adrenaline 1 amp stat.

Refer to any higher center for further management under the gastroenterologist opinion, MICU setup.

It appears from the complain, record and the reply given by the CE that Dr Suman Hazra is a fresh medical Graduate who has completed his internship in February 2020 and has no experience of working as house surgeon in any department. This is true that the incident happened at the time when availability of all senior doctors for duty was in question.

The primary treatment of that patient required was resuscitation, Intravenous fluid, Ventilatory support and other supportive treatment.

This immediate treatment was offered to this patient on arrival. The services of a gastroenterologist was not so essential at that point of time. Supportive treatment were offered to that patient for about 45 minutes before shifting the patient to the next CE.

During transfer patient was given a referral slip. Nothing is mentioned about the status of the patient at the time of exit from the ER of Charnock Hospital.

The reply given by the CE mentioned that the reason for referral was nonavailability of gastroenterologist. Patient with respiratory failure, and shock needs treatment by a critical specialist and not by a gastroenterologist. The CE has not mentioned regarding availability of critical care bed at Charnock Hospital on 2.9.20.

The initial resuscitation measures were taken at ER of Charnock Hospital as per standard guidelines Patient should have been admitted in critical care unit for further stabilization rather than referring him for non availability of a gastroenterologist. The patient should have been accommodated in a critical care unit at Charnock

BS

AL

Hospital rather than shrugging off the responsibility citing nonavailability of gastroenterologist.

Patient received at emergency of Spandan Hospital at 11.15 pm on 2.9.20 and vitals recorded as Pulse 58/min and SPO2 84%. Patient on ET tube, Ryles tube and on IV line. Patient got admission at Spandan Hospital in an intubated state and was admitted at Critical care unit under Dr Saumitra Das .on 2.9.20. at 11.30pm. Patient was put on supportive treatment . Ventilatory support, IV fluid, Anitbiotics, PPI Tab Eltroxin, Inj Noradrenaline and other supportive treatment. Patient was referred to Nephrologist and gastroenterologist. Patient was on supportive treatment at Spandan Hospital and was closely monitored and clinical condition is duly recorded at frequent intervals and ultimately patient was declared dead on 4.9.20 at 2.25am.

This critically ill patient was admitted at Spandan Hospital and necessary supportive treatment was offered and patient was closely monitored at Spandan Hospital till her death. There is no deficiency of services at Spandan Hospital.

The complainant has raised some issues regarding timing of notes and few reports not being done in time. In management of a critically ill patient bedside treatment like starting a IV line, analyzing the reports and resuscitative measures are more important rather writing elaborate clinical notes at that point of time. The few deficiencies mentioned by the complainant Dr Dipankar Chakaraborty have no bearing with the treatment and ultimate death of this critically ill patient.

The patient father being a doctor should have realized the deteriorating condition of this patient while being treated at home. This was unfortunate that the patient was brought in a gasping state at Charnock Hospital emergency with non recordable pulse and blood pressure. Patient's father Dr Dipankar Chakaraborty failed to recognize the critical condition of the patient. Delay in seeking treatment at hospital was the most important reason for her death."

OUR VIEW

We have considered the well thought view of our esteem medical

member Dr. M.L.Saha.

In respect of Charnock we are in full agreement with Dr Saha. The patient was received in a gasping condition. Considering the situation Charnock should have admitted the patient in the critical Care unit and could not have refused on the ground, gastro setup was not available.

We find fault with Charnock on this issue. It was the bounden duty of the clinical establishment to make the patient stable before sending her to an appropriate set up having gastro treatment.

In respect of spandan, we are also in full agreement with Dr Saha. Spandan received the patient when the patient had already started collapsing. Yet, they did their best whatever they could do in such a situation.

The complainant raised issues of irregularities in maintaining the medical records. While we give full credence to what he would say, we cannot brush aside the observation of Dr Saha that for a doctor the primary duty is to attend the patient, rather to maintain the medical records spick and span. The situation involved was such that there might

have been follies on the part of the treating team that did not ultimately result in the demise of the patient.

CONCLUSION

In respect of Charnock, we impose a penalty of Rs. 1,00,000/-.

In respect of Spandan, although we do not find any fault on their part with regard to attention given to the patient, the irregularities pointed out by the complainant would deserve some compensation to the complainant. we direct Rs 50,000/- on this count.

CAVEAT

We abundantly make it clear, the direction for payment of compensation of Rs 1,50,000/- as directed herein before would not debar the complainant to apply afresh before us in case he succeeds before the Medical Council, for appropriate compensation for the unfortunate death of his daughter at a prime age.

We further abundantly make it clear , observations, if any, in the foregoing judgment, must not debar any other appropriate forum



deciding on the treatment protocol and/ or the method of treatment in question.

RESULT

The complaint is disposed of accordingly.

Sd/-

(ASHIM KUMAR BANERJEE)

We agree,

Sd/-

Dr. Sukumar Mukherjee

Sd/-


Dr. Makhan Lal Saha

Sd/-

Dr. Maitrayee Banerjee

Sd/-

Smt. Madhabi Das

Authenticated

Secretary
West Bengal Clinical Establishment
Regulatory Commission