

Office of the West Bengal Clinical Establishment Regulatory Commission

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Case Reference: WBCERC/EMID/20/2026-27

Present: Shri Binod Kumar (IAS) Vice Chairperson

Dr. Sukumar Mukherjee,

Dr. Makhan Lal Saha

Sri. Sutirtha Bhattacharya, IAS (Retd)


Mr. Pradip Pradhan.....Complainant

Vs

Kolkata Kidney Institute.....Respondent/ Respondents

Heard on: April 30, 2026,

Judgment on: June 10, 2026.



BACKDROP

Mr. Debajyoti Pradhan, aged about 19 years old, had been suffering from chronic kidney disease (CKD). He was advised for kidney transplant. His mother agreed to voluntarily surrender one of her own kidneys for treatment of her son. The transplant surgery was conducted at the CE on March 6, 2026. Unfortunately there had been post operative complication for which he was again admitted on March 20, 2026 when curative surgery was done.

COMPLAINT

While he was under treatment at the CE after second admission he filed a complaint before the Commission alleging medical and hospital negligence. The consolidated demand raised by the complainant in his complaint dated March 24, 2026 are quoted below:-

- I) *“Immediately cease all attempts to prematurely discharge the patient;*
- II) *Commence free hemodialysis sessions (minimum twice weekly) with immediate effect;*
- III) *Initiate all necessary institutional and regulatory steps to arrange a replacement kidney under THOA at no cost to our family;*
- IV) *Provide the complete OT intraoperative video/ CD recordings of the surgery dated 06-03-2026;*
- V) *Furnish certified copies of all medical records, operative notes, anesthesia charges, BHT, nursing records, and imaging reports;*
- VI) *Provide a detailed written explanation from the operating surgical team on the cause, management, and current status of the suspected peri-transplant hematoma.”*

RESPONSE

Commission asked the CE to give its response. By a letter dated April 28, 2026 the CE gave their response. The salient features as revealed from the response are extracted herein under:-

- I) The patient was suffering from End Stage Renal Disease and was under regular dialysis for quite some time.
- II) Renal Transplantation was advised when his mother volunteered to donate one of her kidney.
- III) Appropriate counselling was done as patient as well as donor.
- IV) Ultimately after receipt of due approval the surgery was conducted on March 6, 2026.
- V) The surgery was uneventful; urine output was prompt and recovery was uncomplicated.

VI) On the 8th post operative day the patient was discharged on March 14, 2026 without any complication.

VII) He was hemodynamically stable, renal function was normal, urine output was normal and no haemaregic drain output was detected. From March 14, 2026 to March 19, 2026 there had been no complaint or follow up on the part of the patient.

VIII) On March 20, 2026 the patient approached the Emergency with acute pain and anuria. He was immediately provided medical attention. On examination it revealed that sub capsular acute haematoma was present with pseudoaneurysm near hilum and poorly perfused graft.

IX) The patient relatives were counselled.

X) The patient was advised for nephrectomy as life saving measure. Upon consent obtained, the same was done and the patient became medically fit for discharge. At the time of filling the response the patient was under care of the CE.

XI) As on that date outstanding amount reached up to Rs. 2,00,000/- subject to final adjustment and completion of the formality. The patient was reluctant to get discharged.

HEARING

We heard the complaint on April 30, 2026. The complainant was represented his representative who contended, the medical records required to be given at the time of first discharge was delayed in violation of Subsection (n) of Section 7 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. The patient was given only a discharge summary and not the other medical records. However, they admitted, after long delay of 21 days they got some of the records.

He would reiterate his demand as contended in the complaint dated March 24, 2026 extracted herein before.

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He would rely upon a Supreme Court decision in the case of Dr. Jacob Mathew reported in All India Reporter 2005 S.C page 3180, to support his demand. However, he did not have a copy thereof and assured the Commission that he would be giving a copy thereof.

The Commission also directed the CE to file a chronology giving details of communication and / or request from the complainant and their response to it.

We concluded the hearing and reserved our judgment awaiting copy of the Hon'ble Apex Court decision referred to above as well as chronology that the CE was obliged to provide.

By a letter dated May 15, 2026 the CE gave a detailed operative procedure that was done to the patient along with precedence from the medical journals. They also handed over a copy of the receipt given by the complainant receiving records from the CE.

OUR VIEW

We have carefully consider the rival contentions pleaded in the complaint and the response respectively. As observed hereinbefore, the complainant raised six demands seeking support from Subsection (n) of Section 7 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 and the Hon'ble Apex Court decision in the case of Dr. Jacob Mathew supra.

LAW IN QUESTION

To go into the facts of this case let us first decide the law relied by the complainant.

Subsection (n) of Section 7 of the said Act of 2017 would inter-alia provide:-

“that every clinical establishment shall immediately after coming into force of this Act, implement e-Prescription, maintain Electronic Medical Records and provide a set of all

medical records and treatment details along with the discharge summary at the time of discharge of the service recipient."

The said provision would inter-alia obligate the CE to maintain electronic medical records and *provide a set of all medical records and treatment details along with the discharge summary* at the time of discharge of the service recipient.

The complainant would contend, he received the discharge summary however, medical records were not provided at the time of discharge. However, he would admit, there had been delayed compliance after 21 days.

Section 7 would denote the conditions of enjoyment of license to be carried out by a CE. If there is any violation that would obviously deserve appropriate dealing by the authority.

In the instance case, there had been delayed compliance that we would be dealing hereinafter.

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DR. JACOB MATHEW

Let us now come to the decision of the Hon'ble Apex Court relied upon by the complainant in the case of Dr. Jacob Mathew supra. The complainant did not provide us a copy of the judgment however, we could download the said decision from the internet and have carefully perused the same.

In the case before the Hon'ble Apex Court a terminally ill cancer patient was taken to the CE on the fateful day when for about 25 minutes no doctor attended the patient. Subsequently Dr. Jacob Mathew came with Dr. Allen Joseph and arranged for oxygen support. However, there was no improvement of the clinical condition of the patient. Later on it transpired that the cylinder used for the purpose was empty. One Vijay Sharma arranged for another cylinder however, there was no arrangement to make the gas cylinder functional and in the

process 5-7 minutes were wasted and another doctor came and declared the patient dead.

The Judicial Magistrate First Class, Ludhiana held Dr. Mathew responsible for medical negligence and framed charges under Section 304A/ 34 IPC along with two accused persons. The criminal revision was filed by Dr. Mathew before the Hon'ble High Court alleging there was no specific allegation of any act of omission or commission by the accused.

The Hon'ble High Court dismissed the application.

Hon'ble Supreme Court while considering the Hon'ble High Court decision, relied on its earlier decision in the case of **Dr. Suresh Gupta -vs-Govt of NCT of Delhi and Anr. (2004) 6 SSC 422** where the Hon'ble Apex Court decided in the cases of like nature whether it should not be an offence termed as criminal negligence, it could be an act of tort for which a civil action would be appropriate to claim damages.

Hon'ble Apex Court revisited the said decision as also relied on its other decisions and decisions from abroad.

The Hon'ble Apex Court came to a conclusion, a professional may be held liable for negligence on one of the two findings:-

either he was not possessed of the requisite skill or he did not exercise his skill with reasonable competence in the given case. The Hon'ble Apex Court went further to add, a highly skilled professional may be possessed of better qualities but that cannot be made the basis or the yardstick for judging performance of the professional holding him liable for medical negligence.

In the result, Dr. Mathew was given appropriate relief by quashing criminal proceeding brought against him.

We have carefully gone through each and every observation of the Hon'ble Apex Court in the case of Dr. Mathew.

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Handwritten signature or initials.

We do not find any support that could help the complaint in the instance case.

APPLYING THE RATIO

The patient was suffering from end kidney disease and was under regular dialysis as appeared from the record. Treating team advised for transplant and transplant was done by taking one of the kidneys of the mother of the patient. Hence, it is case of related transfer.

The procedure for transplant of kidney would always go through a rigorous process of ROTO and this case was no exception.

After getting due approval from the authority the doctor performed the transplant. According to the medical records, the transplant was uneventful. The patient was discharged on the eighth day of transplant having no complaint. The patient was

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discharged on March 14, 2026. He attended Emergency on March 20, 2026. So it was a case of urgent acute rejection.

As per medical journals that the CE relied upon the chance of acute rejection at present is 7.9 per cent. Unfortunately in this case it has happened.

To save the life of the patient Nephrectomy was performed and the patient was fit for discharge as on the date of hearing of the complaint although the complainant did not want to get discharged.

DEMANDS

Let us now come to the demands:-

- I) Premature discharge:- The patient was admitted through Emergency on March 20, 2026. The patient became fit for discharge as on the date of hearing of the complaint on April 30, 2026 when more than one month have passed and

patient refused to take discharge hence, the first issue would not arise at all.

II) Hemodialysis minimum twice weekly:- Considering the unfortunate rejection we would appeal to the wisdom of the CE to give reasonable discount on regular process of dialysis if approached.

III) Replacement of kidney:- Further kidney transplant would depend upon medical decision of the expert. Even if such decision is taken it would be for the patient or his relatives to arrange for a donor. The CE has no role to play.

Law of the land would also not encourage such attempt by the CE. Hence, such demand cannot be acceded to. However, if it is feasible and the family could arrange for a donor the CE must give appropriate financial support to the complainant if they approach for such transplant at the CE.

IV) Video recordings of March 6, 2026:- Laws of the land would not allow making videography of private treatment area to preserve the personal liberty of the patient.

At the hearing, the CE would strenuously contend, it is not done within the country. The complainant also could not give any evidence to support his claim. Once the CE would contend, they did not do any videography, question of providing any video could not arise at all.

V) Certified copy of all medical records:- We have already held, Subsection (n) of Section 7 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 would definitely oblige the CE to provide all medical records . The CE has already contended having given all medical records. In case the complainant would require any further medical record not already supplied to him, he would write to the CE and CE would

provide the same, if available to them, within 24 hours from receipt of the requisition.

VI) Written explanation of operating surgical team:- The CE has given a detail chronology vide their letter dated May 15, 2026 backed up by the reference of medical journals. Copy of which must be supplied to the complainant, if not done earlier.

CONCLUSION

In the Hon'ble Apex Court decision in the case of Dr. Jacob Mathew supra the issue was whether the alleged Act would amount to criminal offence under Section 304A. While deciding on the issue earlier decision in the case of Dr. Suresh Gupta was considered and ultimately the Hon'ble Apex Court held that the medical professional must be appropriately qualified and skilled for the purpose. In the instance case it is nobody's case that the surgeon did not



have requisite qualification or skill. Error of judgment, if any, would not make the issue as medical negligence or a case tort against the doctor.

In any event, we are not at all concerned with the negligence on the part of the doctor, if any, that may be gone into by the appropriate body of expert.

We are concerned with the hospital negligence. Save and except delayed compliance and Subsection (n) of Section 7 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, we do not find any scope of interference.

We have already directed the CE by the foregoing decision to provide medical records, if not given earlier, as soon as it is specifically required by the complainant.

So far the delay in providing such records we feel that has not caused any prejudice to the complainant. The patient was

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discharged on March 14, 2026. Up to March 20, 2026 no complaint was made with regard to non furnishing of the medical records. As and when complaint was made the records were produced and there had been a delay.

We impose penalty of Rs. 10,000/- on the CE for delayed compliance.

The complaint is disposed of accordingly.

Sd/-

Shri Binod Kumar (IAS) Vice Chairperson

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

Dr. Makhan Lal Saha

Sd/-

Sri. Sutirtha Bhattacharya, IAS (Retd)

Authentic
Secretary
**West Bengal Clinical Establishment
Regulatory Commission**