

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

**Present: Justice Ashim Kumar Roy, Chairperson.**

**Dr. Sukumar Mukherjee, Member.**

**Dr. Makhan Lal Saha, Member.**

**Dr. Madhusudan Banerjee, Member.**

**Dr. Debasis Bhattacharyya, Member.**

**COMPLAINT ID: SPG/2017/000119.**

**Mr. Chandan Patra.....Complainant.**

**-versus-**

**AurovindoSeva Kendra & others.....Respondents**

**Date of judgment: 11<sup>th</sup> April, 2018.**

**J U D G M E N T .**

The complainant Mr. Chandan Patra and his wife Piyali Patra (service recipient), both are school teachers. According to the case of the complainant, on August 27, 2016 she conceived for the second time. After second conception she was under regular treatment of Dr. Gitosree Mukherjee attached to ArovindoSeva Kendra. When they were informed by Dr. Mukherjee that tentatively, June 3, 2017 would be the expected date of delivery and any day after May 12, 2017, on expiry of 37 gestational weeks, the delivery might be done and according to her advice, all tests were completed. Suddenly on April 28, 2017, Dr. Mukherjee informed the complainant that she will be out of station after May 10, 2017 and asked them to arrange the treatment of the patient by any other doctor. They requested Dr. Mukherjee to get the delivery done 4 to 5 days before she was to leave Kolkata but she didn't agree. On being referred by Dr. Mukherjee, the complainant contacted Dr. Piya Roy and she agreed to do the



O.T. at EEDF. On last May 9, 2017 around 12.30 midnight, the wife of the complainant started feeling labour pain. At once, the complainant tried to contact ArovinDoSeva Kendra over phone, since none was receiving the phone calls and finally around 3.15 am, the complainant took his wife to the hospital and got her admitted. At that time, Dr. Purnendu Chakraborty, who was in charge of the ward, told him that there is no sign of labour pain and it was a false pain. (Subsequently, they were told by Dr. Piya Roy that Dr. Chakraborty had failed to realize that it was a true labour pain). Dr. Chakraborty then contacted Piya Roy and administered pain killer injection on her advice and fixed O.T. around 1pm on that day. (Subsequently, Dr. Piya Roy had informed the complainant before that there was no slot was available in the O.T). In the meanwhile, the patient was sent down to the general ward from female ward although there was no sign of relief from pain and the condition was getting aggravated, however, no doctor attended her. Around 6.30 am in the morning the patient started crying with acute labour pain and after seeing the patient, Dr. Purnendu Chakraborty requested Dr. Sudhindra Mohan Bhattacharya, who was there for attending his own patient, to examine the patient. Dr. Sudhindra Mohan Bhattacharya, after examining the patient told that there was profuse bleeding but the baby was still alive and emergency OT is needed. When the patient requested both the doctors to do the emergency OT but her request was not kept. Dr. Sudhindra Mohan Bhattacharya made an emergency call to Dr. Piya Roy and conveyed about the condition of the patient. Thereafter, Piya Roy came and arranged for OT but by that time 1 hour had expired and the patient was continuously bleeding. In the meantime, the complainant was informed that the heartbeat of the baby could not be felt and the head of the baby had come out rupturing the previous Caesarian Scar Site of his wife and umbilical cord has been torn. In the mean time, his wife lost 2½ltr blood and the heartbeat of the child was not available and there was no sign of breathing. The child specialist Dr. Bandana Homchowdhury tried to restore the heartbeat of the baby and advised for transfer of baby to Medica Superspecialty Hospital and accordingly, baby was shifted to ICU at Medica. At the time, the complainant was informed by the Medica that the baby was virtually dead and after keeping the baby in ventilation for 72 hours, finally Medica informed them that there is no chance to resuscitate and revive the baby. The wife of the complainant (patient) after remaining in ICU and HDU for considerable period

and after administration of 6 unit of blood and plasma, slightly recovered and returned home. It is alleged that Dr. Purnendu Chakraborty failed to realize the labour pain and treated the patient as if that was a false pain and not treated the patient in time properly. Dr. Piya Roy knowingly fully well that her patient in emergency condition has been hospitalized and such fact being repeatedly communicated to her did not attend her in time and also did not transfer the patient to any other doctor. Dr. Mukherjee after treating the patient for 8 months lastly disowned her responsibility and the hospital refused to allow OT on the pretext that there was no OT slot vacant. Thereafter, they again contacted Dr. Piya Roy, when the complainant was told that it would be high risk for his wife to conceive in future.

2. That upon receipt of the complaint notice was issued against the Clinical Establishment and the treating doctors seeking their response to the allegation made against them. The medical file of the patient was called for.

3. Accordingly, the Clinical Establishment and the treating doctors filed their respective affidavits and all three doctors appeared in person. The Clinical Establishment and Dr. Piya Roy were represented by their respective lawyers.

4. The Clinical Establishment denied that there was any deficiency in service on their part and contended as follows,

It is claimed the patient was admitted in their hospital on May 9, 2017 at 3.15 am under Dr. Piya Roy, a Consultant Gynecologist and Obstetrician and immediately transferred to Gynecological ward. As per protocol the consultant is to be informed immediately after the admission and in this case the operator over phone although made several attempts to contact Dr. Piya Roy but could not succeed. Thereafter, around 3.17am, the hospital authority finally was able to contact Dr. Sougata Pal, the husband of Dr. PiyaRoy, and Dr. Piya Roy was informed. Later on the hospital came to know from the floor medical officer on duty Dr. Purnendu Chakraborty, that he timely updated Dr. Piya Roy about the clinical status of the patient and he had made a call to her at 4.08am and later Dr. Piya Roy had called him at 4.11am. Still the consultant did not find it necessary to come to the hospital immediately. Thereafter there were few more calls between 6.45am and 7.15am from the RMO and also

another consultant Dr. S. M. Bhattacharya, who was present at the hospital for one of his regular case and intimated Dr. Piya Roy that the condition of the patient was deteriorating. At around 7.40am Dr. Piya Roy came to the hospital and straightway went to the OT and performed the procedure. The mother gave birth a female baby who was transferred to higher centre because of the poor condition of the baby, as recommended by the consultant Pediatrician. It has been denied that no OT was allotted to Dr. Piya Roy and as per the hospital records there was no scheduled surgery from 19.45 hours of 8-5-2017 to 7.10 hours of 9-5-2017 and the OT was free. The Aurobindo Seva Kendra has been running OT round the clock supported by adequate staff and usually emergency surgeries are available whenever considered necessary by the concerned Consultant. Since admission of the patient at no point of time the OT was requisitioned on emergency basis for the patient, Piyali Patra Sarkar until the OT took place around 7.40am when she was immediately accommodated. The first surgery on 9-5-2017 was a scheduled Caesarian section and same was conducted when other OT was vacant. As per the hospital policy emergency surgery/procedure is always given priority.

5. In connection with this case, Dr. Piya Roy, Dr. Purnendu Chakraborty and Dr. Sudhindra Mohan Bhattacharya also submitted their respective affidavits.

Against the affidavit of Dr. Piya Roy, Dr. Purnendu Chakraborty as also the affidavit filed by the complainant, the Clinical Establishment filed its reply in the form of affidavit.

6. We have very carefully considered the case of the complainant as it transpires from his affidavit and from the submissions made during the hearing, together with the cases of the Clinical Establishment, Dr. Piya Roy and Dr. Purnendu Chakraborty as transpired from their respective affidavits and submissions made during the hearing of the case. We have also perused the medical file of the service recipient and that of the child (both of Aurobindo Seva Kendra and Medica Sperspecialty Hospital).

7. This is case where the patient, Mrs. Piyali Sarkar was attending General Outdoor Patient Department of Aurobindo Seva Kendra with Post CS Pregnancy. The patient was under Dr. Gitasree Mukherjee. As Dr. Gitasree Mukherjee was not available during the time of delivery she referred the patient to Dr. Piya Roy and she attended twice to Dr. Piya Roy at

AurobindoSeva Kendra General Outdoor Patient Department. The Lower Segment Caesarean Section (LSCS) was planned on 15.05.2017 and the complainant booked bed on payment of Rs.1000 as advance.

On May 9, 2017 around 12.30 mid night the wife of the complainant started feeling labour pain. At once, the complainant tried to contact Arovindo Seva Kendra over phone, since none was receiving the phone calls and ultimately at around 3 am, the complainant took his wife to the Aurobindo Seva Kendra and got her admitted at around 3.15am.

After admission she was attended by Dr. Purnendu Chakraborty RMO who was on duty at the relevant time. At the time of admission, she was having significant pain in lower abdomen. She was 2<sup>nd</sup> gravida 36+ weeks pregnant. Dr. P. Chakraborty informed Dr. Piya Roy, Specialist Obstetrician and Gynaechology over phone under whom she was admitted. Dr. Piya Roy was told by Dr. Chakraborty that the pain could be "false labour pain" as the cervix of her uterus was closed when Dr. Piya Roy advised injection of analgesic-anti-spasmodic, Decolic and the advice was followed. Once again, at around 6.47 am Dr. Purnendu Chakraborty informed Dr. Piya Roy over phone that her pain has become more intense and he suspected impending rupture of uterus and urged Dr. Roy to come and evaluate the patient and Dr. (Mrs.) Roy advised only an analgesic injection, Tramadol. In the meanwhile, Dr. Sudhindra Mohan Bhattacharya, another specialist obstetrician, arrived at the Seva Kendra to do operation of one of his own case. Dr. Chakraborty appealed to him to examine Mrs. Patra. Dr. Sudhindra Mohan Bhattacharya confirmed the diagnosis of impending rupture and informed Dr. Piya Roy over phone for urgent intervention. At around 7.45 am in the same morning, Dr. Piya Roy operated the patient. By then, the impending rupture had become complete rupture of the uterus. The operation was complicated. Dr. Piya Roy did not find any fetal heart sound before operation and during operation Dr. Piya Roy found liquid and clotted blood in abdomen of the patient and earlier caesarian section scar was completely ruptured. She was resuscitated with plasma, blood transfusion and IV fluids. The patient recovered after long hospital stay and with additional cost. Almost an asphyxiated baby was given to Neonatologist for resuscitation. The baby was then transferred to Medica Superspecialty Hospital on 09-05-2017 for further



resuscitative measures as Aurobinda Seva Kendra had no such provision and she died after 3 days.

It is claimed (Para 7 of the affidavit dated 17.10.2018 of the Clinical Establishment), by the Clinical Establishment that at their nursing home, each discipline is manned by at least 2 Medical Officers having a qualification of not less than MBBS and having degree or experience in respective discipline of medical science. However, according to Dr. Purnendu Chakraborty, the RMO, as he was alone on duty at the material time, he called Senior Registrar-cum-Associate Consultant Dr. Sudhyanya Bhattacharya to come and assist Dr. Piya Roy, Dr. Sudhyanya Bhattacharya informed that he was busy and could not make himself available at that moment. Such claim of Dr. Chakraborty was corroborated by Dr. Piya Roy to the extent (Para 5 of the affidavit of Dr. Piya Roy 31.10.2017) on the night of 9.5.2017, Dr. Purnendu Chakraborty was the only Gynaecology RMO present at the nursing home and it is the further statement of Dr. Piya Roy in the said affidavit (Para 11) that she herself catheterized that patient after the anesthesia was done, as the other staff including the RMO Dr. Purnendu Chakraborty, were busy with other scheduled elective caesarean section being done by Dr. Sudhindra Mohan Bhattacharya.

8. The Members of the Commission having medical background have actively participated in the deliberation and furnished their valuable opinion on the issue.

9. Considering the case of the complainant and what transpired from the affidavit of the Clinical Establishment and the doctors involved in the treatment of the patient (service recipient) including Dr. Sudhindra Mohan Bhattacharya and the materials available from the medical file of the service recipient and their respective oral submissions, we have no doubt at least on the face of the allegations and without entering into the question whether same are correct or not, a prima facie case of medical negligence, of course tends to have been made out, however, having regards to the prohibition contained in the first proviso of sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017, we restrain ourselves from adjudicating the question in its proper perspective and giving our findings as to the same which is beyond our purview. Now, the only

question left for our consideration as to whether there was any deficiency on the part of the Clinical Establishment or not.

10. According to the complainant, at the time his wife started feeling delivery pain, he immediately tried to contact the Clinical Establishment over phone but did not get any response and then without any loss of time he rushed to the hospital and got his wife admitted there. Such facts have been categorically denied by the Clinical Establishment in their affidavit and it is claimed that they have the facilities of attending phone call throughout day and night (24x7). In this regard no further material is forthcoming to substantiate such allegation.

11. It is the case of the Clinical Establishment, Sri Aurobindo Seva Kendra, a 155 bedded hospital and is registered under Section 8 of the Companies Act, 2013, being a charitable and non-profitable institution which has not been disputed by the complainant. In their affidavit, the Clinical Establishment, amongst others, made following claims,

- a) The nursing home is equipped to take care of emergency situation.
- b) 125 visiting consultants, covering various discipline of medical science are available round the clock apart from their schedule outdoor chambers or visiting hours and on emergency call.
- c) Each discipline has multiple consultant to take care of emergency situation and in case of non-availability of one particular consultant, the RMOs are capable to handle the critical situation on any emergency before handing over the patient to the respective consultant under whom the patient is being treated.
- d) The nursing home has 24 hours "emergency service" and always manned by two experienced medical officers with minimum qualification MBBS and they have around 44 such medical officers. In this regard a list of medical officers have annexed, being annexure- 2 to the affidavit of the Clinical Establishment.

12. Coming back to the factual matrix of the case in hand and what we find from the materials on record, namely, from the affidavits filed by the clinical establishment that it is a 155 bedded hospital and regularly handles large number of obstetric cases including obstetric emergencies. Not only that it has 125 visiting consultants whose services are available round

the clock apart from emergency call, they have RMOs capable to handle critical situation during emergency. It is their further case that they have 44 medical officers with minimum qualification MBBS, employed by them (The list of those medical officers is annexed in the affidavit of the Clinical Establishment being annexure-2).

13. Now going through the annexure-2, we find that there are 2 doctors having qualification MBBS, DGO and another MBBS, MD (G & O) apart from Dr. Purnendu Chakraborty who, according to the Clinical Establishment, is an experienced doctor, working in their department of Gynecology and has 20 years of practice in the field. However, we find that when the patient was admitted with obstetric emergency, she was attended by Dr. Purnendu Chakraborty. Services of remaining 3 other gynecologists, who were employed by the said clinical establishment was not available for the patient. It is true, a senior consultant (Prof.) Dr. S.M Bhattacharya examined the patient and confirmed the diagnosis of impending rupture and informed Dr. Piya Roy for urgent intervention but no attempt was made by the clinical establishment to obtain his service in this critical situation or the service of any other senior consultant. According to Dr. Purnendu Chakraborty, the RMO, as we find from his affidavit affirmed on 30.10.2017, that after the service recipient was shifted to OT, he was assisting Dr. S.M. Bhattacharya who was doing caesarean section of his own patient. We further find, according to Dr. Purnendu Chakraborty before he joined S.M. Bhattacharya in the OT, he rang up another senior Register-cum-Associate Consultant Dr. Sudhyanya Bhattacharya to come and assist Dr. Piya Roy as he was alone on duty, a single doctor of Gynaecology and obstetrics department but he was busy and could not make himself available at that moment and after arrival of Dr. Piya Roy he was however released by Dr. S.M. Bhattacharya to assist Dr. Piya Roy. It was his categorical statement that he was single on duty doctor. Such claim of Dr. Chakraborty was corroborated by Dr. Piya Roy to the extent (Para 5 of the affidavit of Dr. Piya Roy 31.10.2017) on the night of 9.5.2017, Dr. Purnendu Chakraborty was the only Gynaecology RMO present at the hospital and it is the further statement of Dr. Piya Roy in the said affidavit (Para 11) that she herself catheterized that patient after the anesthesia was done, as the other staff including the RMO Dr. Purnendu Chakraborty, were busy with other scheduled elective caesarean section being done by Dr. Sudhindra Mohan Bhattacharya. Such claim of Dr.

Purnendu Chakraborty was dealt with by the Clinical Establishment in para-4 of their reply. Where it was denied that Dr. Sudhanya Bhattacharjee was asked to come and assist Dr. Piya Roy and blamed Dr. Purnendu Chakraborty for not referring the patient to any other consultant or informing the Medical Superintendent of the Hospital. The claim of Dr. Piya Roy that at the time of admission Dr. Purnendu Chakraborty was alone on duty (para-5 of the affidavit-in-reply of Dr. Piya Roy dated 31.10.2017) has been dealt with by the Clinical Establishment in its reply in paragraph 9. However such claim of Dr. Piya Roy was not at all been traversed. No material is forthcoming to show that beside the RMO, Dr. Purnendu Chakraborty, any other RMO attached to Gynaecology Department was available from the time of the admission of the patient till the operation was over. So far as the claim of Dr. Piya Roy, made in para 11 of her affidavit the same was dealt with by the Clinical Establishment in their affidavit-in-reply (para-14. However, the claim of Dr. Piya Roy that service of Dr. Purnendu Chakraborty was not available since he was assisting Dr. Sudhindra Mohan Bhattacharya has not been dealt with by the Clinical Establishment, except denying that in absence of any helping hand Dr. Piya Roy started cauterizing on her own. However, from the side of the Clinical Establishment no claim has been made that beside Dr. Purnendu Chakraborty any other senior Register/RMO associated with the Gyanecology Department was present at that relevant time. We also, from perusal of the record, do not find any such indications.

15. After delivery of the baby, since there was no NICU (Neonatal Intensive Care Unit) at Sri Aurobindo Seva Kendra on 9<sup>th</sup> May, 2017 itself, the baby was shifted to Medica Superspecialty Hospital for better management and was discharged on 12.05.2017 against medical advice.

(a) It appears from the discharge certificate that the baby was admitted there with the history as follows,

This late preterm baby was born by emergency LUCS at EEDF hospital, suffered severe asphyxia following Uterine Rupture, regained heart beats and few gasping breaths after prolonged and vigorous resuscitation (intubated and bag ventilation & cardiac massage and adrenaline boluses via umbilical line ) of >20 mins, then baby was retrieved by Medica NICU transport team on ventilator for further management.

(b) The course of events during hospital stay as noted in the discharge certificate are as follows,

This late preterm baby was born by emergency LUCS at EEDF hospital, suffered severe asphyxia following Uterine Rupture, regained heart beats and few gasping breaths after prolonged and vigorous resuscitation (intubated and bag ventilation & cardiac massage and adrenaline boluses via umbilical line) of >20 mins, then baby was retrieved by Medica NICU transport team on ventilator and put on life support. Initial ABG (after a bolus of NS, Ca gluconate) showed severe metabolic and respiratory acidosis, hence ventilator settings increased further along with fluid resuscitation, inotrope infusion, IV antibiotics, Ca gluconate, IV phenobarbitone, soda bicarbonate and other supportive measures. She was reviewed by Paed Cardiologist Dr. Anil Singhi, echo was done and also seen by Neurologist Dr. A. Ghosh, and an EEG was done S/o severe encephalopathy. Neuroimaging was suggested. Baby never improved, remained totally limp with no activity or movement of limbs and dilated & fixed pupils.

Parents were extensively counseled about the grave prognosis and the futility of continuing the life support. Now parents wanted to take the baby elsewhere in v/o severe financial constraints, in spite of being warned about hazards of transporting such a critically sick baby. Also neuroimaging could not be done because of this.

(c) This is a case of obstetric emergency of rupture of previous Caesarian Section scar where the intervention by the Specialist Obstetrician was delayed. The patient thus suffered serious adverse consequence of rupture of uterus. Although the Clinical Establishment has, as many as 3 other qualified gynecologists but at the time of emergency their service was not available. Due to the rupture of the uterus, the possibilities of future conception and delivery of live baby is undoubtedly diminished.

16. The above facts clearly makes out a case of deficiency in patient care service on the part of the Clinical Establishment and attracts the mischief of Section 38 (1) (iii) & (ix) of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017.



17. On the face of the above deficiency in patient care service, the question now left for our consideration, is to fix the quantum of compensation.

(a) Sri Aurobindo Seva Kendra is a charitable organization and providing Medicare facility for no profit. The relevant document filed in support of the same by the Clinical Establishment are already on record.

(b) We find that a total bill for Rs.60,632/- was levied by the Clinical Establishment for the treatment of the patient and Rs.23752/- for medicine, out of which Rs.15000/- and Rs.21377/- respectively has been paid. Therefore out of total bill amount of Rs.84384/- a sum of Rs.36377/- has been paid and Rs.48007/- has been discounted. A hospital bill for Rs.2300/- was levied for the treatment of the baby and the entire amount has been forgone, as communicated to the Commission by the Medical Superintendent of the Clinical Establishment, vide his letter issued under Office Memo No.SASK/MS/WBCERC/04/2018/06 dated 5.4.2018. In addition to above, a sum of Rs.106,449/- was spent by the complainant for the treatment of the baby at MedicaSuperspecialty Hospital.

Therefore the total amount spent by the complainant towards the treatment of his wife and the baby is Rs.145,201/-.

(d) We find from the Income Tax Return of Sri Aurobindo Seva Kendra, of last 3 years that the excess income over expenditure has been set apart for application to charitable purposes and without distribution of profit to its members. It appears during the year ended on 31.03.2017, 31.03.2016 and 31.03.2015, the excess income of the clinical establishment, over expenditure were Rs.6,23,08,365/-, Rs.4,82,56,323/- and Rs.2,93,33,199/- respectively. Therefore, the compensation awarded is not only commensurate with the nature of deficiency but also with the capacity of the clinical establishment.

18. Now considering the nature and extent of deficiency and the loss suffered by the complainant and the capacity of the Clinical Establishment and taking into account that it is a charitable organization, we are of the opinion the justice will be sub-served if a sum of Rs.1.5 lakh (Rupees One Lakh Fifty Thousand) is awarded as compensation.

It is directed that within 15 days from this date, the compensation amount be paid to the complainant by an account payee demand draft.

Before parting with, we make it clear we have not gone into the question of negligence in treatment by Dr. Piya Roy and Dr. Purnendu Chakraborty since the same were beyond our purview as provided in 1<sup>st</sup> proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017. The complainant shall have the liberty to approach the concerned medical council and other forum as available in law if so advised.

This case accordingly stands disposed of.

Sd/-

**Justice Ashim Kumar Roy**  
Chairperson.

Sd/-

**Dr. Sukumar Mukherjee, Member.**

Sd/-

**Dr. Makhan Lal Saha, Member.**

Sd/-

**Dr. Madhusudan Banerjee, Member.**

Sd/-

**Dr. Debasis Bhattacharyya, Member**

*Authenticated*

*[Signature]*

*20/4/2018*

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

