

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Makhan Lal Saha, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: PUB/2017/000217.

Mr. Swapan Kumar RanaComplainant.

-versus-

R.N. Tagore International Institute of Cardiac Sciences & other.....Respondents.

Date of judgment: 11th May, 2018.

J U D G M E N T .

It is the case of the complainant that his wife aged about 69 years, who was suffering from COPD and Asthma, was referred by South Eastern Rail Hospital, Kharagpur to R.N. Tagore International Institute of Cardiac Sciences, Mukundapur for betterment. Accordingly, on 24.07.2017 around 1pm the wife of the complainant was admitted at the said hospital under Dr. Aratrika Das, Pulmonologist under whom the complainant's wife was undergoing treatment in the OPD of the said hospital for last one year. She was also undergone some vaccination course as prescribed by Dr. Arakrika Das and Dr. Das was fully aware of the medical of the complainant's wife. On 24.07.2017, at the time of admission, the condition of the patient was quite stable except that she was suffering from COPD and Asthma. Initially she was admitted at General Ward and doctor intimated the complainant that his wife would recover within a short time and shall be discharged. However, from 27.07.2017, the condition of the service recipient

suddenly started deteriorating when complainant's son Palash Saha met Araktrika Das and he was assured by Dr. Das within a short time she will recover and some antibiotics have been changed. As the condition of the patient was deteriorating day by day the son of the complainant repeatedly met Dr. Das and requested her to take necessary steps for treatment but Dr. Das arrogantly ignored all their pleas and she did not change the treatment pattern and no senior specialized doctor was consulted. Actually the wife of the complainant was undergoing error method of treatment. It is due to Dr. Araktrika Das who was very casual towards the treatment of the complainant's wife, her condition deteriorated and led her to death. On 29.07.2017, the complainant with his sons had been to the hospital when they noticed that she was unable to speak properly. At that time, the wife of the complainant disclosed to him and his sons that she was facing great difficulty in swelling food and feeling acute burning sensation and pain even while drinking plain water at room temperature. She was also unable to bear the chilling temperature in the wall and to shift her in a non-AC room. She also asked for lukewarm water and the complainant's son requested the on-duty nurse for the same but they did not pay any heed to that. After about half an hour, when the lukewarm water was not brought by the sister and as the nurses were avoiding the request on one pretext or other, the elder son of the complainant went to the kitchen and managed the same. The wife of the complainant also restrained them to make any complaint to the RMO as she was apprehending if any complaint is made the service will be worse in their absence. On 30.07.2017, the son of the complainant contacted Dr. Araktrika Das and apprised him about the condition of the patient, when she informed him that she would not come to hospital as that was a holiday but the patient will be recovered shortly. On the next day, i.e. on 31.07.2017, the complainant and his daughter during the visiting hour had been to the hospital, they found that his wife was completely unable to speak and was not willing to take even plain water due to pain and burning sensation in her mouth. The complainant found her ulcer inside her mouth. In his presence, one nurse came to take blood sample and the nurse while forcibly removing the bungles the same, Sakaha Pala were broken in their presence. At this, his wife become much sentimental and depressed and told the complainant that she will never return home. On 01.08.2017, the complainant's son met Dr. Araktrika Das and solicited for her discharge.

When Dr. Das refused their request and informed them that she has started a new course of antibiotic. Dr. Das also told them that patient can only be discharged from the hospital on risk bond. When his wife came to know about this she became more upset and insisted them to shift her to any other hospital. Since her condition was deteriorating she requested the Chief Medical Super, Dr. Joydeep Bhattacharya for formation of a Medical Board and to see her wife to a non-AC room and Dr. Bhattacharya assured them that on the next day i.e. on 11.08.2017 she was shifted to ICU from general as her condition was critical and she stopped responding and only sometimes used to open her eyes. On the next day, the complainant's elder son met Dr. Das when she told him to pray to God and told him if he wanted then they might consult a senior consultant. Suddenly Dr. Das asked for consent for dialysis. Although the condition of her kidney was alright still his son gave his consent hoping that dialysis might save her life. However, her condition became very serious day by day. On the next day, in the morning they received a phone call from the hospital when the complainant was told that his wife needed another dialysis but they cannot assure whether she would be able to sustain the same. Finally on 13.08.2017, at 10.30pm she expired.

2. Immediately upon receipt of the complaint, notice was issued against the Clinical Establishment seeking their response and called for the Bed Head Tickets. Then the complainant filed his complaint in the form of affidavit and the Clinical Establishment filed their reply that too in the form of affidavit and matter was heard for number of days.

3. The Clinical Establishment and the treating doctor, Dr. Arakrika Das filed their reply in the form of affidavit denying each and every allegation made against them.

4. According to their case,

The patient, Smt. Pratima Rana was referred to R.N. Tagore International Institute of Cardiac Sciences, by the Chief Medical Superintendent, S.E. Railway, Kharagpur, with chief complaints of 'progressive dyspnea' and cough with expectoration' and she was admitted in the Emergency ward on July 24, 2014. Thereafter, the patient was admitted in the General Ward under the care of Dr. Arakrika Das giving the understanding of ongoing treatment.

At the time of admission, she had an existing history of Hypertension, apart from Chronic Obstructive Pulmonary Disease (COPD) and the submission of complainant that the alleged 'panic situation' at the hospital led to hypertension and therefore resulting to death of the said patient is incorrect, vexatious and is a figment of the complainant's imagination.

Dr. Arakrika Das is a highly qualified medical practitioner holding a MBBS from the University of Calcutta, M.D. from Mumbai University and has experience of over Twenty Four (24) years and is a senior consultant.

Reviewing allegation of medical negligence is beyond the scope of the power of this Hon'ble Commission, as provided under the proviso to sub-section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017.

Every General Ward room at R.N. Tagore Hospital is provided with an electric kettle, for the convenience of the patients and caters to their needs. The Clinical Establishment always takes utmost care to sensitize its very capable nursing staff about patient needs and that the needs of the patients are catered to with priority. The allegation of the complainant stating that his son had to obtain lukewarm drinking water from the kitchen is false and mala fide. Assuming but not admitting that the complainant had a grievance in connection with the temperature of available drinking water, the same was not brought to the notice of the floor coordinator, nursing coordinator, apart from informing the same to the patient and its family at the time of admission in any ward.

At the time of admission, the patient parties are always advised to remove all and any accessory or jewelry that maybe in possession of the patient so that the jewelry or accessory does not hinder with medical examination and/or administration of any drugs. Therefore, any patient retaining possession of any jewelry or accessory during the period of admission does so at their own risk and discretion and the understanding that the hospital shall not be responsible for loss or damage.

At all times in the ward a comfortable ambient temperature ranging between 22 degree Celsius to 24 degree Celsius is maintained. On being informed about a discomfort of any patient

with the temperature of the air conditioner, the staffs of the Clinical Establishment take appropriate measure and steps. The Clinical Establishment was not intimated about the discomfort of the said patient until October 10, 2017, when the kin of the said patient brought it to the notice of the Senior Medical Superintendent of the Clinical Establishment, Dr. Joydeep Bhattacharya, who, by the admission of the complainant took all steps necessary to provide comfort to the said patient.

Dr. Ariktrika Das always explained the entire clinical condition of the patient, to the satisfaction of the family of the said patient. Despite the same, as a matter of abundant caution, the Senior Medical Superintendent of the Clinical Establishment, Dr. Joydeep Bhattacharya decided to consult Dr. S. Mondal, a rheumatologist to rule out the possibility of any autoimmune disease.

On being approached, the Senior Medical Superintendent Dr. Joydeep Bhattacharya, was periodically and consistently in touch with the kin of the said patient and reporting to them the real time condition of the said patient, which includes the period subsequent to the sad demise of the said patient.

The said patient was put up on dialysis, after consulting and explaining to the family the high risk involved with dialysis, specific to the said patient and obtaining from the family consent for such dialysis.

In spite of highest standards in patient care service, being followed, the condition of the patient and her vitals continued to deteriorate and eventually led to her sad demise due to sepsis and multi-organ failure in pre-existing condition of Hypertension.

In the original complaint submitted before this Hon'ble Commission and received by the Clinical Establishment vide Memo No. WMID/2017/000217, no allegation was levied against it and therefore all the allegations made subsequently in the complaint on affidavit are the result of afterthought.

5. Heard the parties. Considered their respective submissions. Perused the complaint in the form of affidavit, the reply thereto from the side of the Clinical Establishment and the treating doctor, the medical file of the service recipient and other materials on record.

6. The members having expertise in the medical field have actively participated in the deliberation and gave their views.

7. Now, considering the materials on record, we find this is a case where the allegations are against both the doctor and the Clinical Establishment for deficiency in patient care service and medical negligence. So far as case against the Clinical Establishment is concerned we find same is based on disputed questions of facts except the allegations no further materials have been brought on record to establish the charge against the Clinical Establishment.

The case of medical negligence against a medical professional is beyond our purview and adjudication of the same by the Commission is not legally permissible on the face of the bar contained in first proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation & Transparency) Act, 2017.

For the reasons stated above, this case stands closed.

We however make it clear that we have not gone into the merits of the case relates to the medical negligence by the doctor. It shall be open to the complainant to approach the concerned State Medical Council for necessary relief if so advised.

Sd/-

Justice Ashim Kumar Roy
Chairperson

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Authenticated
