

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: WMID/2017/000160.

Mr. Mahadeb Maity.....Complainant.

-versus-

Barik Nursing Home.....Respondents.

Date of judgment: 26th June, 2018.

J U D G M E N T.

Complainant is the husband of the service recipient, Pratima Maity. Initially the complainant filed a complaint in writing against the Clinical Establishment Barik Nursing Home, Midnapur, the treating doctors and another and then he presented his case in the form of affidavit. The case of the complaint is summarized below,

The complainant's wife, after having labour pain (went into labour) around 11am on 27.04.2017 was admitted at Barik Nursing Home as a patient under Janani Suraksha Yojana. At the time of admission, Dr. Uttam Barik, the owner of the nursing home assured the complainant that it is a case of normal delivery and would take hardly 2-3 hours. At around 1pm his wife gave birth to a male child. The child was delivered by Episiotomy and under Anesthesia with the aid and assistance of the nurses of the said nursing home and no doctor was present at

that time. During the delivery there was profuse blood loss and the wounds were repaired by giving 4 stitches. The loss of blood caused acute Anemia to the patient. Thereafter on 29.04.2017 at around 10am, she was discharged. Although, no doctor was present at the time of delivery or attended the patient at any time still, the discharge certificate was signed and issued by Dr. M. Chakraborty and one Satabdi Maity signed in Janani Suraksha Yojna Card. On and from May 2, 2017, the complainant's wife started suffering from high fever and stitches were bloated and swelled and when consulted a local doctor, it was reported that the stitches have been infected. Immediately, she was removed to Barik Nursing Home and about 8pm she was admitted there. However, her condition getting deteriorated. At that time, Dr. Barik informed the complainant that they have no Gynecologist at their nursing home and the patient will be attended by a physician. Having no option on 04.05.2017, the complainant's wife was removed to Rai Nursing Home. At the said nursing home, she was treated by Dr. A. Samanta and she was again operated and at the treatment of Dr. Samanta, infection reduced and healed up and on 10.05.2017, she was released. This wrong treatment has caused immense distress to the complainant's wife and due to the infection and major operation and having high doses of medicine has become extremely weak and lost her mobility and is bedridden for the last 6 months.

2. Immediately, upon receipt of the complaint, the Commission issued notice against Barik Nursing Home, seeking their response and called for the medical file of the patient including Bed Head Ticket.
3. The Clinical Establishment first submitted a formal reply and then a reply in the form of affidavit. The case of the Clinical Establishment is one of denial of allegation and their further case goes like this.

The patient Pratima Maity on 27.04.2017 was referred from Sabang Hospital to Midnapore Medical College and Hospital, however without going there with labour, she came to the nursing home at around 11am and took admission under Dr. Madhusudan Chakraborty under Janani Suaksha Yojana. At around 1pm she gave birth to a male child on normal delivery. As the mother and

the baby were recovered and otherwise stable on 29.4.2017, they were discharged. It is claimed that since this was a case under Janani Suraksha Yojana, the patient party as not charged for the treatment and cheque for Rs.1000/- was handed over to them as per norms. The baby was attended and treated by a pediatrician at free of cost. For medicine, no charge was levied and no extra money was taken from the patient party. Subsequently on 02.05.2017 at 8pm in the evening the patient (mother) came to the hospital with high fever and she was examined by Dr. M. Chakraborty and was admitted in the nursing home. As advised by Dr. Chakraborty on the next day i.e. on 03.05.2017 she was examined by one gynecologist who advised for some blood tests. After obtaining blood test report it was found she was having very low hemoglobin and the transfusion of blood was needed. Accordingly, she was advised to shift to Midnapore Medical College and Hospital. It is now learnt that instead of taking the patient to Midnapore Medical College and Hospital, she was taken to a private nursing home at Debra and got cured. After some days, the husband of the patient being accompanied by some other persons, had been to the nursing home and started creating nuisance and claimed Rs.10 lac as compensation. As they did not fulfill their demand, the complainant started maligning the nursing home in social media.

It is claimed that Barik Nursing Home is the only nursing home located within the three blocks, Sabang, Pingla and Narayanganj and they used to serve people under Janani Suraksha Yojna and Rastriya Swastha Bima Yojna. In every month, number of normal delivery at their nursing home is around 150.

4. At the time of hearing the medical file of the patient was carefully perused by the Commission and the statement of the owner of the nursing home, Dr. Uttam Barik and Dr. Madhusudan Chakraborty, the treating doctor was recorded on oath.

5. From the examination of Dr. Barik and Dr. Chakraborty, following facts having great bearing in the just decision of the instant case, has been elicited and enumerated.

a) Dr. Barik, the proprietor of the nursing home, is a BHMS (Cal) and registered with Council of Homeopathic Medicine and Dr. Chakraborty is attached to their nursing home. When his attention was drawn to the Janani Suraksha Yojna Card and to the signature of one staff nurse Satabdi Maity dated 29.04.2017 the witness admitted that said Satabdi Maity has left her job sometime in the year 2016 and on April 29, 2017 she was not attached with their hospital. He admitted that Moumita Mula, a office staff had, by mistake, signed as Satabdi Maity. Dr. Chakraborty is in their pay role. On the second occasion, the patient was admitted in the nursing home with the diagnosis that she was suffering from anemia with vulval oedema.

In his cross-examination, he admitted that in DORB dated 04.05.2017, there is no reference of doctor under whom the patient was treated between 02.05.2017 to 04.05.2017. Although particulars of few medicines were noted as advised or treatment given in case of DORB, but those were the medicines which the patient had received during the stay in hospital. This is also not signed by any doctor because at the relevant time when the patient was discharged, Dr. M. Chakraborty was not available. The discharge certificate dated 04.05.2017 did not bear signature of any doctor. Since there was no remission of the fever, the patient party asked for DORB. It is not true that on 04.05.2017 till 10am, doctor was not available. It is also not true that the patient was in serious condition with high fever at the time of discharge.

b) Dr. Madhusudan Chakraborty is an MBBS from North Bengal University and is registered with West Bengal Medical Council. On April 27, 2017 one Pratma Maity was admitted under him at Barik Nursing Home. She was referred by Sabang Rural Hospital to Midnapore Medical College & Hospital. After her admission she was shifted to labour room and was examined by witness and medicines were prescribed and then the witness left for his lunch. In the mean time labour progressed and duty sister Gita Manna delivered the baby with Episiotomy and after returned to the Nursing Home the witness at labour room clamped the cot and delivered the placenta and repaired the Episiotomy with cot gut. Since the post delivery was uneventful both the mother and baby was



discharged on April 29, 2017. After a few days, the patient again came back with high fever and Episiotomy wound was swollen and reddish, medicine was prescribed. While undergoing treatment got her discharge on DORB.

He does not know Satabdi Maty. Arati Paria is a female attended attached to the Nursing Home and at the time of delivery she was present in the labour room but did nothing. At the time of discharge, although patient was complaining pain but she had no fever except some pallor. He never met the patient party and in the pay roll of the Nursing Home.

When his attention was drawn to the signature of Satabdi Maity at page 15 of the affidavit of the complainant, where his signature was also appearing, he again re-iterated that he does not know any Satabdi Maity and when he signed, the space where the signature of Satabdi Maity is present was blank. On the previous occasion who was present before the Commission was Gita Manna and not Satabdi Maity.

6. This is a case where wife of the complainant, a primi gravida was admitted at Barik Nursing Home in advanced stage of labour as emergency. She gave birth to a male child on the same day, 27.04.2017 at around 11am. It was claimed from the side of the Clinical Establishment, since the post delivery was uneventful, both the mother and baby were discharged on April 29, 2017. After discharge, the patient was readmitted at the said nursing home on May 2, 2017 with high fever and episiotomy wounds swollen and inflamed. After 2 days, the patient party got her released on DORB and then she was treated at Rai Nursing Home after healing of infection on May 10, 2017.

7. On perusal of the medical file of the patient and considering the medical file of the patient and the statement of the proprietor of the nursing home and Dr Madhusudan Chakraborty, we have no doubt a case of deficiency a patient care service has been made out.



8. The deficiency in patient care service is manifest on following counts,

a) No medical file relating to the treatment of the patient has been maintained at the Clinical Establishment (Barik Nursing Home) in accordance with statutory requirements.

i) Dr M Chakraborty, under whom the patient was admitted, stated before the Commission, at the time of delivery he was not present in the labour room and baby was delivered by Gita Manna. However, the treatment sheet is silent by whom episiotomy was conducted.

ii) The bed head ticket produced before the Commission by the Clinical Establishment is composed of two parts. The first part, relates to the particular of the patient and the provisional diagnosis and the remaining part relates to the outcome of discharge, final diagnosis, principle complications and associated diseases and in case of delivery the particulars of the baby. Although first part contained initial of the admitting doctor but his designation is not noted. Similarly, the next part although contained the sex of baby, weight and delivery time and type of delivery but the space provided for noting the outcome of discharge, final diagnosis, principle complications and associated diseases also left blank and did not contain any signature of the doctor with designation and registration number.

iii) In the DORB dated 04.05.2017, there was no reference of the doctor under whom the patient was treated between 02.05.2017 to 04.05.2017 (See. statement of Uttam Barik).

iv) The discharge certificate dated 04.05.2017 did not contain signature of any doctor (See. statement of Uttam Barik).

v) The Janani Suraksha Yojana Card contains three signatures. Signature of the patient, signature of staff nurse and signature of the treating doctor.

While confronted with the initial signature under the seal of Dr M Chakraborty, disputed the same as of him. In this regard, he also noted in the card before the Commission that the signature of him.



The other signature was that of on Satabdi Maity, who has been described as staff nurse. Dr Barik admitted that the said Satabdi Maity has left her job sometime in the year 2016 and on April 29, 2017, she was not attached with his nursing home. He further admitted that the office staff Moumita Mula signed as Satabdi Maity.

vi) The DORB was not signed by any doctor as Dr M Chakraborty was not available at the time of discharge.

b) Dr Madhusudan Chakraborty, in his statement on oath, admitted that patient Pratima Maity was admitted under him at Barik Nursing Home and after her admission she was immediately shifted to labour room. He examined the patient, prescribed medicines and then left for his lunch.

It is beyond our comprehension, how a doctor under whom a patient in advance stage of labour was admitted, left her at OT (Labour room) when she was under the progress of labour in the hands of sister and when no other doctors were available.

It appears from the affidavit of Dr Barik and Dr Chakraborty that Dr Chakraborty left nursing home around 12.45pm for lunch during the progress of labour and the patient gave birth to the child around 1.02pm (as noted in Janani Suraksha Yojana Card).

This conduct of Dr Chakraborty undoubtedly amounts to deficiency in patient care service and whether it also amounts to a medical negligence by a medical professional is a matter to be adjudicated by the concerned State Medical Council (See. the first proviso to sub-section (iii) of Section 38 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017). Since admittedly Dr Chakraborty is in pay roll of Barik Nursing Home therefore, such approach of Dr Chakraborty does not absolve the Clinical Establishment of its primary responsibility in patient care service.

c) From the affidavit of Dr Barik and Dr M Chakraborty and from their statement recorded on oath, it does not appear that besides Dr M Chakraborty, there is any

other full time RMO attached to the said nursing home. No explanation is forthcoming how by a single RMO, the 24 hours treatment of the patient are covered and monitored.

9. Having regards to above, we find this is partly the case of medical negligence and partly deficiency in patient care service coupled with non maintenance of the medical records as required under the law.

10. Now the complainant's remedy for negligence in treatment lies before the Medical Council and the complainant shall have the liberty to approach the Medical Council if so advised.

11. Admittedly, the service recipient was treated at the nursing home under Janani Suraksha Yojana and the complainant did not have to pay the cost of her treatment. However, after discharge, due to the infection suffered by the wife of the complainant, she has to be treated at Rai Nursing Home and then she recovered. The complainant claimed for that he has to spend about Rs.41,000/- but only a bill of Rs.13,295/- of Rai Nursing Home has been filed before the Commission. Now, having regards to the cost, the complainant has to incur for further treatment of his wife and the litigation cost, we are of the opinion, it would be enough if a sum of Rs.15,000/- be awarded as compensation and in addition to that a sum of Rs.15,000/- be paid as a penalty.

While the amount of compensation shall be paid to the service recipient and the penalty amount shall be paid also by a banker's cheque to be drawn in favour of West Bengal Clinical Establishment Regulatory Commission Fund. Both the amount shall be paid within 15 days from this date.

We, however, of the opinion that the gross irregularities in maintaining the medical records do invite penalty and the licencing authority is the appropriate authority to do the same. Accordingly, this order be communicated to the CMOH, Paschim Medinipur for enquiry and on findings of guilt to impose penalty in accordance with law.

We make it clear that the CMOH, Paschim Medinipur must not be swayed by our above observation on the question of irregularities and shall independently reach to his conclusion within one month from communication of this order.

The CMOH, Paschim Medinipur, is further directed to ensure that all the Clinical Establishments situated within his local limit, are running strictly adhering to the conditions of licence.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Authenticated
3/7/2018