

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Gopal Krishna Dhali, Member.

Dr. Makhan Lal Saha, Member.

Dr. Madhusudan Banerjee, Member.

Dr. Maitreyi Banerjee, Member.

Smt. Madhabi Das, Member.

COMPLAINT ID: SPG/2017/000174.

Mr. Rathindra Nath Das.....Complainant.

-versus-

Red Plus Society Nursing Home & others.....Respondents.

Date of judgment: 26th June, 2018.

J U D G M E N T.

The complainant Rathindra Nath Das submitted his letter of complaint against Red Plus Society before the Commission making following allegations.

On April 26, 2017, at about 9:30pm the daughter of the complainant with severe burn injuries was admitted at M.R. Bangur Hospital, Kolkata. On the next day i.e. on April 27, 2017, at around 4pm after taking discharge from the said hospital, she was admitted at Red Plus Society, situated near Baghajatin Railway Station under Dr. Sudarshan Das for better treatment and the daughter of the complainant on May 3, 2017, at around 2:20am expired in the same morning.

According to the complainant, his daughter was shifted from M.R. Bangur Hospital to Red Plus Society on the advice of Dr. Nidarshan Das who assured the complainant that he was quite familiar with the said nursing home and he himself should take every care for her treatment. However, Dr. Das, very seldom and occasionally used to come to the nursing home in the evening and never took any proper care. Although the patient was admitted under Dr. Das but in spite of repeated asking, the day-to-day medical condition of the patient was never communicated to the complainant and his relations by him. The proprietor of the nursing home and RMO, Dr. Apurba Krishna Sinha never attended the patient. Neither the nursing home has adequate infrastructure nor any attempt was made to consult any specialist doctor although the consultation fees of the doctor was regularly cleared, and there was no outstanding. Initially, the medical condition of the patient was improving but due to lack of proper care and specialist doctors not being consulted, her condition deteriorated and she died. The wounds of the patient were not regularly dressed and even when her condition became critical, she was not shifted to the ICU. About 10 hours before her death, the blood pressure started fluctuating and she was gasping and became critical, still neither Dr. Nidarshan Das nor any specialist doctor attended her or consulted and in spite of repeated request by the complainant, the nursing home authority has not taken any steps in this regard. On May 3, 2017, at around 2:20pm the patient expired but her dead body was lying on the bed till 3pm on May 4, 2017 because there was mortuary in the nursing home and the nursing home authority could not make arrangements for post-mortem. After death of the patient, when asked by the complainant, the nursing home authority refused to hand over the treatment documents and the test reports. Dr. A.K. Sinha, Manager Biman Sarkar and other staff of the nursing home misbehaved with the complainant. The daughter of the complainant died due to wrong treatment and for want of care. The credentials of both,

Dr. Nidarshan Das, who was then the Deputy Superintendent of Budge Budge ESI Hospital and the nursing home is quite doubtful.

2. Immediately upon receipt of the letter of complainant, notice was issued against the nursing home, Red Plus Society seeking its response against the complaint made against it and to submit the medical file of the service recipient including Bed Head Ticket.

3. The nursing home authority submitted their response in writing. Dr. Rajib Pyne and Dr. Sourav Roy, the treating doctors submitted their reply in the form of affidavit, whereas Dr. Nidarshan Das and Dr. Apurba Kanti Sinha, the Secretary of the nursing home were examined on oath.

4. In their response, nursing home authority categorically denied all the allegations made against it. It is stated that the doctor under whom the patient was admitted was described differently at different places as Sudarshan Das/Nidarshan Das and this reflects mental instability of the complainant. Treatment sheet contained day-to-day detailed description of the findings and advice of the specialist doctors who visited her. Dr. Apurba Krishna Sinha is the RMO of the nursing home and remains at the hospital for 24 hours throughout the year. He used to attend every patient twice a day and in case of a critical patient like the service recipient, takes special care and allegation against him are baseless. The patient party was categorically informed that the hospital did not have any ICU set up, even then the patient was admitted there. The patient party was also counseled by the consultant doctor over the issue. The patient party was also fully informed about the non-availability of the mortuary. It is asserted by the hospital that the provision of a morgue in a hospital is not mandatory. The treatment sheet could not be supplied to the patient party since there was a police case and police seized all original medical papers. It is claimed that when the complainant himself

admitted that the condition of the patient improved initially that shows that treatment was in proper line. It would be evident from the treatment sheet that the wounds were regularly dressed as per the doctor's advice. The Jadavpur P.S. was informed about the patient's admission and investigation was initiated on that basis. Doctors and nurses all along had tried their best to save the patient. It is baseless to complain that no specialized doctor had seen the patient properly. Dr. Tirtha Roy, Surgeon, Dr. Rajib Pyne, General Physician and Surgeon, Dr. Sudipta Roy, Cardiologist and Intensive Physician, Dr. Sourav Roy, Anesthetic-cum-Critical Care Unit had visited the patient and gave their advice which would be evident from the treatment sheet. The nursing home was running under a proper and valid license.

5. The reply on behalf of the nursing home was submitted by its Secretary, Dr. Apurba Krishna Sinha and during the hearing he was also examined on oath. In his deposition Dr. Sinha claimed that they refused to admit the patient because they do not have any separate burn unit and on being insisted by the patient party finally she was admitted in a special cabin in aseptic condition with A.C. facilities.

However, he admitted that no burn patient be kept admitted for 7 days, in a hospital which is not equipped with the facilities for treatment of burn patients, since such patients are very much susceptible to infection. He admitted that there is no note in the Bed Head Ticket that patient party was asked by the hospital authority to shift her to any multispecialty hospital, since they didn't have any burn unit or ventilator. In the letter addressed to the nursing home by the patient party, it was noted by the nursing home authority that same could not be supplied without the permission of the police but there is no material to show that the permission of the police was thereafter sought for.

6. Dr. Nidarshan Das was also examined during the hearing. In his deposition, Dr. Das who was attached to ESI Hospital, Budge Budge, as Assistant Superintendent stated that he visited the patient at Bangur Hospital since she was her niece and considering her medical condition, he always advised her husband and brother to continue with her treatment at the said hospital. Since they were insisting to shift her to any other multispecialty hospital, he suggested if they so desired, the patient might be shifted to a multispecialty hospital like Desun or Peerless but never advised to shift her to Red Plus Society.

However, he did not disown his advice noted in the Bed Head Ticket of the patient, while she was undergoing treatment at Red Plus Nursing Home. He further admitted that he attended the patient at the said nursing home on 27th, 28th, 30th April, 2017 and on May 2nd, 2017 when he was contacted over phone by the nursing home authority, he gave his advice. He further admitted that on the very first day he attended the patient, he noticed that patient was admitted under him but he took no exception to that and there is no note in the Bed Head Ticket that he advised the patient party to shift her to any multispecialty hospital like Desun or Peerless. He also admitted that he was under the employment of ESI Hospital as Assistant Superintendent at the relevant time.

7. The two treating doctors, Dr. Rajib Pyne and Dr. Sourav Roy submitted their evidence in the form of affidavit.

a) Dr. Rajib Pyne in his affidavit stated that he is MBBS (Cal) and MS (Russia). On 27.04.2017 Sampa Mondal was admitted at M.R. Bangur Hospital with 60% (positive burn injury) and the patient party was informed that she was a high risk patient and chance of her survival is almost nil. Then the patient's relative Dr. Nidarshan Das formed a team of different doctors from different branches for her better treatment.

She was admitted at Red Plus Hospital which although have no ICU but have some machinery support for survival of the patient. Such fact was duly conveyed to the patient party. On the day of her admission her condition was reviewed by Dr. Tirtha Roy and Dr. Roy advised everything as per the medical protocol and also explained to the patient party the prognosis and unpredictable condition of the patient and in future because of his preoccupation, he would not be able to attend her. Then Dr. Das took over the charge of treatment of the patient following the advice of Dr. Tirtha Roy. On the request of Dr. Roy he also visited the patient and as per treatment protocol her electrolyte imbalance due to sepsis was corrected and respiratory distress was managed with nebulizer and BiPAP. The condition of the patient admittedly was improved initially. Not only the patient was regularly attended by the doctors at Red Plus Nursing Home including Dr. Nidarshan Das but her poor prognosis was also conveyed to the patient party and they were advised to shift the patient to any multispecialty hospital but such advice was not followed.

b) Dr. Sourav Roy in his affidavit stated that the patient with extensive burn injury was admitted at Red Plus Nursing Home on 27.04.2017 under Dr. N. Das, her relation after initially treated at M.R. Bangur Hospital. In the meanwhile she was examined by Dr. R. Pyne, Consultant Surgeon, Dr. Tirtaha Roy, Consultant Physician and Cardiology and Dr. Sudipta Roy. All those doctors opined that the medical condition of the patient was quite grave and unpredictable. On sixth day, i.e. on 02.05.2017 he examined the patient and found approximately 65% burn. Her wounds and blood report suggested severe sepsis in spite of high-end intravenous antibiotic being administered. The patient was under BiPAP which is a non-invasive mode of respiratory support to maintain oxygen saturation and ionotropic support to maintain her blood pressure. Although, all the doctors advised for her treatment at ICU/burn units but the patient party paid no heed to such advice. For better nutritional support he advised

total parental nutrition or Ryle's tube feeding as the patient has poor oral intake and intravenous fluid would not be sufficient to meet the increased nutritional demand with severe sepsis. He also advised to collect wound swab for culture and sensitivity test to identify the bacteria causing sepsis. The party always was counseled regarding the grave prognosis associated with 60% burn with sepsis.

8. It is true that a patient having 60% burn injury in medical field is a high risk patient and even on best possible treatment the mortality is as high as 60-70%. The extent of burn suffered by the victim demands that she should be treated in a burn unit. Initially after the incident on April 26, 2017 at around 9.30pm, the victim was admitted at M.R. Bangur Hospital in a cabin of burn ward and immediately after her admission, she was medically attended by the doctors and her treatment commenced and there is no allegation questioning the patient care service and her treatments. It appears from the discharge certificate issued by M.R. Bangur Hospital that it was the patient party, who got her discharged against medical advice even when she was receiving all necessary treatments. It has been categorically noted in the discharge certificate, even after explaining the poor condition of the service recipient, the patient party wanted to shift her to a nursing home.

According to the complainant the father of the victim, they took such decision as advised by Dr. Nidarshan Das. Although Dr. Das denied such claim of the complainant and asserted that he asked the husband and the brother of the victim to continue treatment at Bangur Hospital and when they declined to follow his advice, he suggested them to admit her in a multispecialty hospital like Desun or Peerless but they did not obey. However, during his examination before this Commission when Dr. Das was confronted with the medical records of the patient maintained at Red Plus Society, he was unable to dispute that patient was admitted at Red Plus Society Nursing under him

and he participated in her treatment forthwith after her admission. He further admitted that he attended the patient at the said nursing home not only on the date of her admission i.e. on 27.04.2017 but also on 28.04.2017 and 30.04.2017 and on May 2, 2017, he gave advice about her treatment to the nursing home authority over phone. We however find nothing on record or any notes in the medical file of the patient that Dr. Das observed in his note due to the medical condition of the patient, she should be shifted to a multispecialty hospital. On the other hand, after the patient, with 60% burn a high risk patient, was shifted from M.R. Bangur Hospital, where she was undergoing treatment in a burn unit, still Dr. Das undertook the treatment of such high risk patient at a Nursing Home, where there is neither a burn unit nor an ICU.

We are therefore, unable to accept the claim of Dr. Das that he was against the shifting of the patient from the burn unit of M.R. Bangur Hospital to Red Plus Society.

The advice of Dr. Das for shifting a high risk burn patient having 60% burn injury from a State run superspecialty hospital where she was receiving treatment in a burn unit to a hospital which has neither a burn unit nor an ICU, amounts to medical negligence or not is a question to be decided by the concerned State Medical Council as provided in the first Proviso to sub-section (iii) of Section 38 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017. Needless to mention, on the face of the aforesaid provisions, the adjudication on the question of medical negligence by a medical professional is beyond our purview and therefore, we are unable to proceed against Dr. Nidarsan Das. It goes without saying that the complainant may take appropriate action in accordance with law, approaching the concerned State Medical Council, if so advised.

9. We find from the treatment sheets and other materials on record that besides Dr. Nidarshan Das, the service recipient, a high risk burn patient, was attended and

treated by Dr. Rajib Pyne and Dr. Sourav Roy at Red Plus Society. Admittedly, the said nursing home has no burn unit and ICU, however, we do not find that there is any note or advice by those two doctors for shifting her to any other hospital having those facilities and more particularly the facilities for treating burn patients. Whether this amounts to medical negligence or not is a matter to be decided by the concerned State Medical Council, as adjudication as regards to such question is beyond our purview. The complainant, if so advised, may approach the concerned State Medical Council against them in accordance with law.

10. We find from records that one of the treating doctors, Dr. Rajib Pyne claims, describes and represents his qualification as MBBS (Cal) and MS (Russia). The Clinical Establishment, Red Plus Society, in its reply against the complaint, while claiming the patient was treated by Specialist Doctors, included Dr. Rajib Pyne, General Physician and Surgeon, as one of them. Dr. Pyne in his affidavit, also describes him MBBS (Cal), and MS (Russia). He in support of his qualification annexed the certificate issued by the Calcutta University and the updated registration certificate issued by the West Bengal Medical Council. The registration certificate issued by West Bengal Medical Council in 2001-2002 relates to his basic qualification MBBS (Cal). No registration certificate relating to his additional qualification MS (Russia) has been produced before the Commission. We find from the certificates annexed with his affidavit that Dr. Pyne has completed his post graduate Degree Course in the specialty of General Surgery at the post graduate department of State Educational Institution of Higher Education Ryazan State, I.P. Pavlov Medical University of the Federal Agency on the Public Health and Social Development.

In this regard, the Commission sought for following information from the West Bengal Medical Council,

- a. Whether Dr. Pyne Has updated his registration certificate for his additional qualification, MS (Russia).
- b. Whether the qualification MS (Russia) is a recognized qualification as per the regulation of your Council.
- c. Whether any doctor can use such qualification to describe his as a Specialist Surgeon.

The West Bengal Medical Council by an email dated May 17, 2018 gave the following answers against the above queries,

- a. As per the Register of Registered Medical Practitioners being maintained by the West Bengal Medical Council, qualification of Dr. Rajib Pyne is MBBS (Cal. University) 1997 only.
- b. No such qualification like MS (Russia) exists in the Schedule of the Medical Council of India.
- c. As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Chapter-7 (7. MISCONDUCT) under point 7.20, a physician shall not claim to be specialist unless he has a special qualification in that branch.

Therefore, Dr. Rajib Pyne is registered with West Bengal Medical Council as a qualified MBBS (Cal) and not for his purported qualification MS (Russia), which is not recognized by the West Bengal Medical Council. The qualification MS (Russia) not being there in the Schedule of Medical Council of India, the same cannot be used by any medical practitioner as his medical qualification. Lastly, Dr. Pyne cannot claim himself as a Specialist Surgeon since according to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Chapter-7 (7. MISCONDUCT) under

point 7.20, a physician shall not claim to be specialist unless he has a special qualification in that branch.

Although, the Commission is statutorily obliged to ensure that only duly qualified doctors are employed by the Clinical Establishment in patient care service but in the case at hand, there is no material before us, that Dr. Rajib Pyne is under the employment of Red Plus Society and it appears that he was referred by the treating doctor. Even then, it is incumbent upon Red Plus Society, to ensure at least, when Dr. Rajib Pyne treating any patient at their nursing home, is no represented himself as a Specialist Surgeon on the strength of his purported qualification, MS (Russia). As earlier pointed out, the Clinical Establishment in their affidavit stated that the service recipient was treated by Specialist doctors and one of them is Dr. Pyne. We are of the opinion, the stand taken by the Clinical Establishment is not tenable and on the other hand facilitate an illegal and unethical practice in violation of condition of license. The Clinical Establishment should not have allowed Dr. Rajib Pyne to treat any patient at their nursing home representing him a specialist surgeon holding MS (Russia) and such representation not only give rise to a penal action against Dr. Pyne but also against the Clinical Establishment.

The conduct of Dr. Rajib Pyne claiming him a specialist on the strength of purported qualification, MS (Russia) is a question beyond the purview of adjudication of this Commission but in the interest of justice ought to be addressed by the State Medical Council.

11. Now, only thing left for our consideration as to whether the Clinical Establishment, the Red Plus Society can said to be guilty for deficiency in patient care service.

The absence of burn unit and ICU facilities in any nursing home by itself is not a deficiency in service. In other words, it is not necessary that every Nursing Home must be equipped with burn unit and ICU. However, the Nursing Home, of course is liable for deficiency in patient care service, when in spite of not having burn unit, even an ICU admitted a high risk patient having 60% burn injury in their hospital and treated her there for long seven days until her death. It is evident from the records of the Nursing Home, Red Plus Society that they were very much aware that the said patient was shifted from M. R. Bangur Hospital, where she was being treated in a well-equipped burn unit. Although, now it is claimed by the Clinical Establishment, not only that they declined to admit the patient in their nursing home but compelled to do as insisted by the patient party and thereafter, all through suggested for the shifting of the patient to any multispecialty hospital having burn unit but from contemporaneous record of the case, we do not find any such remote indication to that effect. Therefore, undoubtedly the Red Plus Society is guilty of deficiency in patient care service, when without having any burn unit and ICU they undertook the treatment of a burn patient having 60% burn for nearly a week until her death.

It be noted here that the Members of the Commission, who have actively participated in the deliberation do not find that such deficiency caused the death of the patient in as much in a case where patient having 60% burn, the mortality is as high as 60 to 70%.

12. The Commission, having reached to a definite conclusion that the Red Plus Society, the Clinical Establishment, is guilty of deficiency in patient care service and therefore, liable for payment of compensation under Section 38 (iii) of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017, poses with the question of fixing the quantum of compensation.

Now, from Income Tax Return and other relevant papers filed from the side of Clinical Establishment, we find that the Red Plus Society is a charitable Institution registered under section 12A of the Income Tax Act and the excess income over expenditure is utilized only for charitable purpose and not for benefit of any individual associated with the Clinical Establishment. We further find during the last 3 assessment year, income of the Clinical Establishment, for the accounting year 2014-15, 2015-16 and 2016-17 are Rs.50698/-, Rs.26850/- and Rs.12,41,568.

We, therefore of the opinion, if a sum of Rs. 2Lac is awarded as compensation, that would be commensurate with the ends of justice.

The Clinical Establishment, Red Plus Society is directed to pay the compensation amount to the legal heir of the deceased by an account payee Banker's cheque within 15 days from the this date.

This case accordingly stands disposed of.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Maitreyi Banerjee, Member.

Sd/-

Smt. Madhabi Das, Member

Sd/-
Justice Ashim Kumar Roy
Chairperson.

Authenticated
[Signature]
29/6/2018

PAGE
13 OF 13

COMPLAINT ID: SPG/2017/000174

Secretary
West Bengal Clinical Establishment
Regulatory Commission