

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: KOL/2018/000307.

Mr. Parth Sarathi Majumdar.....Complainant.

-versus-

Apollo ClinicRespondents.

Date of judgment: 26th June, 2018.

J U D G M E N T .

In his letter of complaint against Apollo Clinic, Bansdrani, the complainant Partha Sarathi Majumdar alleged as follow,

As advised by Dr. Mridula Chowdhury, the complainant got his semen analyzed on 26.06.2017 at Apollo Clinic, Bansdrani. It is his case that after obtaining the report she went to his doctor and had shown her the report, when Dr. Chowdhury stated the report was wrong since the report disclosed in one hand semen-Zero and on the other hand, semen-75 million. The complainant approached the Clinic for refund of the amount of Rs.350/- which they charged for the test but they declined.

The test report was enclosed with the letter of complaint.

2. Notice was issued against Apollo Clinic, Bansdroni and in response to that, they have submitted their reply in writing.

According to their reply, on 26th June, 2017 at about 12.30pm the complainant came to the clinic for analysis of his semen and given the semen sample of 2ml collected within the clinic premises. He was by that time 43 years old. The said sample was given by the complainant to the laboratory technician for test. The lab technicians asked all the clinical history like marital age and abstinence of sexual activity. He was married and had been in abstinence for the last 3 days. Accordingly, the sample was received for analysis. The sample of semen was produced at 1.10pm and examination started immediately by keeping it for incubation for a period of 30 minutes and all the examinations of analysis of semen completed by 2.15pm.

Semen examination was done through series of stages, namely, i) Liquefaction Test, ii) Semen Volume, iii) Chemical Test, and finally microscopic test like, namely, i) Sperm Count, ii) Sperm Morphology test, iii) Sperm Motility test and other abnormal elements.

All due diligence and standard care were taken for testing of complainant's semen. It is evident from the said analysis report that volume of the sample was 2ml, the sample was kept in the incubator for 30 minutes under the temperature of 37 degree Celsius. On chemical examination for fructose test, the same was found "Positive", which is normal and when negative then spermatozoa would have been non-viable. Total sperm count shown in the report as 75 million which is within normal range of 60 million to 150 millions. Progressively motile should be minimum of 60%, whereas the complainant had 40%. The quantity of sluggishly motile and/or slow moving sperm recorded as 25% and non-moving and/or non-motile sperm recorded as 35% in the report.

It is claimed that any medical professional can realize that "No viable spermatozoa seen" is replaced by "Total spermatozoa count", which might come from some pre-existing loaded format.

Although the test report was received by the complainant in June, 2017 but this case challenging the correctness of the report has been filed in January 2018 nearly 6 months after, without any explanation for such delay. It is claimed that this is clearly a sheer mala fide on the part of the complainant.

3. We have considered the content of the letter of complaint as also the reply filed by the respondent. The oral submissions of the parties were also duly considered.

4. It is true that nearly 6 months after the receipt of the report the complainant has approached this Commission and no explanation for such inordinate delay is forthcoming. According to the case of the complainant, it was his Dr. Mridula Chowdhury immediately looking at the test report told him that report was wrong. No prescription of Dr. Mridula Chowdhury commenting on the report was produced before us. It was not the case of the complainant that his semen count on microscopic examination 75 million as noted in the test report, was wrong or that due to such wrong report his treatment was misled and he had to suffer any harm. On the other hand, it is his case, under the head MICROSCOPIC EXAMINATION it was parally noted that "*no viable spermatozoa was seen*" and "*75 million*". In the reply, it was categorically claimed by the Clinical Establishment that since in the report, MORPHOLOGY OF SPERMATOZOA was shown Normal: 75% and Abnormal: 25% that makes it abundantly clear that spermatozoa cannot be non-viable and count was 75 million.

5. We do not find any reason to take a different stand from that of the stand of the Clinical Establishment. We find that in the report, the head MICROSCOPIC EXAMINATION has two parts, namely, "*No viable spermatozoa seen*" and "*75 million*". The printed portion of the report "*No viable spermatozoa was seen*" was pen through, while the "*75 million*" was not touched. The complainant claimed that it was Dr. Mridula Chowdhury who had pen thorough that part of the report. Therefore, it can rightly be said that according to Dr. Mridula Chowdhury on microscopic examination during semen analysis, the complainant was found having 75 million spermatozoa was correct correlating with other findings. Furthermore, when morphology of spermatozoa had shown 75% normal, coupled with other findings, the question of no-viable spermatozoa was seen, stands ruled out. We also do not find any justifiable reason

which made the complainant to wait for nearly 6 months to approach the Commission. It was also not divulged that due to such report what harm has caused to the complainant.

6. This application has no merit and stands dismissed.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Authenticated
J.K.
3/2/2018