

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

Present: Justice Ashim Kumar Roy, Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Abhijit Chowdhury, Member.

Dr. Madhusudan Banerjee, Member.

Shri. S.K. Thade, IAS, Member.

COMPLAINT ID: KOL/2017/000265.

Mr. Debojit Kumar Ghosh.....Complainant.

-versus-

South Suburban Clinic & others.....Respondents.

Date of judgment: 26th June, 2018.

J U D G M E N T.

The case of the complainant, who himself happens to be the service recipient, as it emerges from his letter of complaint and the complaint in the form of affidavit is summarized below.

- (a) The complainant was suffering from fissure and fistula.
- (b) On November 30, 2017, he consulted Dr. N.R. Chakraborty and was advised for immediate operation.
- (c) As advised by Dr. Chakraborty, on December 4, 2017 he took admission at South Suburban Clinic Private Ltd and his operation was scheduled to be held on the next day i.e. on December 5, 2017.
- (d) December 1, 2017 as advised by Dr. Chakraborty, the complainant visited the nursing home and on that day, ECG, X-ray etc were done and blood was collected for some tests.

- (e) On the day of surgery (December 5, 2017), once again blood sample was taken for routine test at the nursing home.
- (f) At around 11am (December 5, 2017) the complainant was informed by one doctor of the nursing home and a nurse that on blood test, he was found HIV positive and intimating that only, both of them left the ward.

Subsequently, he was further informed by one attendant of the nursing home that his operation has been abandoned since he was found HIV positive.

- (g) Sometime, thereafter, Dr. Chakraborty came in the ward for his regular round, although he attended all the patients but not the complainant. When Dr. Chakraborty was about to leave, the complainant approached him and solicited for his future course of treatment but was told to wait.
- (h) On being so informed, he was quite traumatized, shocked and upset with his future.
- (i) In the mean time, there was a marked change in the attitude of the staff of the nursing home. They started serving food wrapped in medicated newspaper. He was humiliated and degraded.
- (j) One of the attending nurses told that there is no treatment for his medical condition and asked him to keep patience.
- (k) In the mean while his wife and brother were informed and they were equally traumatized and shocked.
- (l) Coming to hospital, his relations met Dr. Chakraborty, who asked them to get the complainant discharged from the hospital and taking him back to home.
- (m) Dr. Chakraborty also asked them to pay the hospital dues which has been spent for his treatment at the nursing home because for HIV patients no medical expenses shall be paid by the Medclaim Authority.
- (n) Then the wife and his brother got the complainant discharge from the Nursing Home on payment of Rs. 4478/-, the bill amount. However, no discharge certificate was issued.

- (o) Without the consent of the complainant, or by informed consent his blood was tested for HIV.
- (p) After returning home on the next day December 6, 2017, complainant approached the Integrated Counseling and Testing Centre of the Calcutta National Medical College and Hospital, commonly known as Chittaranjan Hospital.
- (q) At that centre, both the complainant and his wife, after necessary counseling were advised for HIV test.
- (o) Accordingly, tests were done and both of them were found non-reactive for HIV antibodies (Negative for HIV antibodies) and not HIV positive.
- (p) Once again on January 27, 2018 the blood sample of the complainant was re-tested and was found non-reactive for HIV antibodies (Negative for HIV antibodies) by the said centre and ruled out that he was HIV positive.
- (q) It is claimed that before HIV testing, no informed consent was taken from him which is mandatory under the National Guidelines for HIV testing issued by the National AIDS Control Organization, Pre and Post test counseling was not done and confidentiality was not maintained as regards to the purported test report by the Clinical Establishment.
- (r) Due to the wrong test report that the complaint was HIV positive, the complainant was completely upset about his future, he was collapsed, traumatized and shocked, he was humiliated and stigmatized and a suicidal tendency was developed.
- (s) The above fact clearly makes out a case of deficiency in patient care service coupled with unethical trade practice.

The complainant's claimed for a compensation of Rs.10 lakh.

2. The Clinical Establishment upon receipt of notice and being directed by the Commission submitted its response/reply in the form of affidavit. The said affidavit was affirmed by Dr. N.R. Chakraborty, on whose advice and under whom the patient was admitted at South Suburban Clinic. Dr. Chakraborty is also one of the directors of the said clinic.

3. (a) In the reply, while the case of the complainant was partly admitted but mostly denied.

The facts admitted.

(i) The complainant was examined by Dr. N.R. Chakraborty and he advised for surgery.

(ii) On December 4, 2017 the complainant took admission at South Suburban Clinic Pvt. Ltd. for a scheduled surgery on the next day i.e. on April 5, 2017.

(iii) Before admission the patient underwent sundry test at Pathotronics Laboratory and again in the morning of the surgery further blood sample was collected.

(iv) The test report was sent to the ward and the RMO and ward nurse informed that the patient was HIV positive.

(v) The RMO and the ward nurse informed the patient that he was HIV positive without permission of Dr. Chakraborty and before his arrival at the nursing home.

The facts disputed.

(i) Dr. Chakraborty after reaching Nursing Home, at around 12 noon, went to the ward routinely to examine the seriously ill and that was not a formal complete round. There was a seriously ill patient just 2 beds away from that of the complainant, who subsequently died.

Since, he was not informed by the ward nurse about the blood report of the complainant HIV positive, Dr. Chakraborty did not visit the complainant.

(ii) Dr. Chakraborty was informed that the complainant was found to be HIV positive, at O.T. around 12.30 PM by the nurses and asked whether any special precaution was required to be taken.

(iii) On being so informed, Dr. Chakraborty wanted to speak to the wife of the complainant but she was not available. Although a good number of colleagues of the

complainant were present but Dr. Chakraborty did not discuss anything with them and waited for his wife to maintain confidentiality.

(iv) The report was sent to the ward and it was the RMO on duty informed the complainant that he was HIV positive in serological screening test in presence of the ward nurse.

(v) Although the patient was informed about the test report without the permission of Dr. Chakraborty but there was no breach of confidentiality, since every patient is entitled to know about the test report.

(vii) After the arrival of the wife of the complainant at the hospital, Dr. Chakraborty discussed the matter with the wife of the complainant in total privacy and his brother was never present there as alleged.

(viii) Thereafter the complainant and his relations took the decision to get him discharged from the hospital, when Dr. Chakraborty was busy with his work.

(ix) At the reception the nurse Sikha Sen and Manager Sudeshna, since were not aware about the test report, they repeatedly asked the wife of the complainant why they have taken such decision.

(x) The allegation, the patient was humiliated in the ward and was told by a staff that operation has been postponed was not correct. The result of test was known only to Dr. Chakraborty and the laboratory people and the matter was discussed with the wife of the complainant in privacy.

(xi) The complainant embellished his case by claiming that his food was wrapped with medicine soaked news papers, since HIV is not spread either through food or utensil taking such steps did not at all arise and that was not the part of the clinical protocol.

(xii) The RMO only informed the complainant in the presence of nurse and thereafter only his wife was informed by Dr. Chakraborty. Therefore, there was no breach of confidentiality.

(xiii) The complainant got his discharge from the Nursing Home on his own which would be evident from the record and they left the Nursing Home hurriedly without taking the discharge certificate.

(xiv) The test was done using the kit obtained from Embay Enterprises, manufacturer Alera Medical Co. Ltd., Japan. The kit test merely determines whether the patient is positive or not. The test be wrong either false positive or false negative. If a person is deactive then more specific tests need to be done and that was clearly mentioned at the bottom of the report, which was emphasized by Dr. Chakraborty.

(xv) All standard clinic and hospitals, routinely screen patients not just for HIV but for Hepatitis-B and Hepatitis-C, a specific consent is required for conducting more detail test CD-4, cell count etc.

4. At the time of hearing of this application, the parties reiterated what they have stated in their respective affidavits, except adding a few words.

5. Thus the part of the complainant's case that has not been controverted from the side of the Clinical Establishment are as below,

On December 4, 2017 the complainant took admission at South Suburban Clinic Pvt. Ltd., as advised by Dr. N.R. Chakraborty under him, who is also one of the director of the said Clinic for operation of fissure and fistula scheduled to be held on the next day (December 5, 2017). Before his admission, several routine diagnostic tests, ECG, X-ray and blood were done at Pathotronics Pathology Laboratory, The Diagnostic wing of South Suburban Clinic Pvt. Ltd. After admission, on the day of scheduled surgery (December 5, 2017) in the morning, again blood sample was collected from the complainant for routine blood test. In the said routine pre-operative check up, he has been investigated and found to be HIV-1 and 2 reactive. The test was done at Pathotronics Pathology Laboratory, the Diagnostic wing of South Suburban

Clinic Pvt. Ltd. The report was sent to the ward and the news of HIV test reactive was divulged to the complainant (service recipient) around 11am on that day by RMO and a ward sister. Subsequently, the complainant got him discharged from the said nursing home and on December 6, 2017 approached the Integrated Counseling and Testing Centre, Calcutta National Medical College and Hospital (Chittaranjan Hospital) for HIV test, where his blood was again tested and found non-reactive for HIV 1 and 2 antibodies and the report was confirmed by a further test done on January 27, 2018.

Now, it is the case of the Clinical Establishment that test report was sent to the ward and the RMO and ward sister informed the patient that he was HIV positive without the permission of Dr. N.R. Chakraborty and well before he reached the nursing home and even then there was no breach of confidentiality in informing the patient the test report, since any patient entitled to know about his own reports. It is also disputed that Dr. Chakraborty without attending the complainant, left the ward and it is his specific case that was not a regular complete round and he had been to the ward to attend only a critically ill patient just two beds away from the complainant's bed, who died subsequently. It is his further case that Dr. Chakraborty came to learn that the complainant was found HIV positive at OT around 12.30pm from the nurses. Dr. Chakraborty discussed about the test report only with the wife of the complainant and not with his any other relations or his colleagues. The blood test report was only disclosed to the complainant and his wife and to none else.

6. In this case, according to the report of examination of blood of the complainant at the in-house pathological laboratory of the Clinical Establishment, the complainant was HIV 1 and 2 positive. But on the very next day December 6, 2017 the complainant's blood was retested at the Integrated Counseling and Testing Centre, Calcutta National Medical College and Hospital (Chittaranjan Hospital), it was reported that he was non-reactive for HIV 1 and 2 antibodies and then such report was confirmed by another test done about two months after on January 27, 2017. According to those two reports, the complainant was non-reactive to HIV 1 and 2 antibodies.



We find from the blood test report in question, that the consultant pathologist gave a special note in the report itself, that the serological screening test for HIV 1 and 2 of the complainant and found to be positive be correlated with clinical condition and be confirmed by ELISA/Western blot/PCR, meaning thereby such report was not final and conclusive.

However, despite the advice of the consultant pathologist, the screening test of HIV 1 and 2 has not been confirmed by ELISA/Western blot/PCR nor there is any material to indicate that such report was correlated with the clinical condition of the complainant, the patient. Without following the advice of the concerned pathologist, the diagnostic wing of the Clinical Establishment sent the report to the ward and overzealous RMO on duty and one ward sister at once conveyed the complainant that he was diagnosed HIV 1 and 2 positive and then by one ward attendant that his operation has been postponed as he was found HIV 1 and 2 positive and his such disease has not treatment.

The complainant claimed that on being so informed by the on duty RMO and the ward sister and his disease has not treatment, he was collapsed, mentally perturb, shocked, traumatized. Being upset with his future and with the anticipation of stigmatized, a suicidal tendency was developed but due to timely intervention and counseling by his wife, friends and colleagues, such a disastrous outcome was averted.

His state of mind, feelings, emotion, response and reaction on the face of the news that he was HIV 1 and 2 positive are fully commensurate with natural human emotions and feelings and quite common. There is nothing abnormal and embellishment. We do not have any justifiable reason to doubt and disown such claim of the complainant. It be noted that part of the complainant's case has not been dealt with by the Clinical Establishment far less disputed.

In one hand, Dr. Chakraborty in the affidavit filed on behalf of the Clinical Establishment has not disputed that RMO on duty and ward sister informed the patient, that he was found positive in serological screening test for HIV and claimed that such news was communicated to the complainant by the RMO on duty and the ward sister without his permission and before his arrival at the nursing home. On the other hand he however claimed that there was no breach of confidentiality and disputed the claim of the complainant that he was treated in a

humiliating manner and was told by a doctor and a nurse that his operation has been postponed because he was HIV positive and by one nurse to accept his fate as there was no cure for his disease, for the simple reason that the fact was known only to the laboratory and Dr. Chakraborty and Dr. Chakraborty discussed the matter with the wife of the complainant in a close room in complete privacy.

7. In the above backdrop, what boils down are enumerated below,

Firstly, the report of diagnostic wing of the Clinical Establishment that on serological screening test of the complainant's blood, he was found reactive for HIV 1 and 2 antibodies and thus positive, stand contradicted and nullified, when the complainant's blood was retested on the very next day on December 6, 2017 and on December 27, 2017 by the Integrated Counseling and Testing Centre, West Bengal State AIDS Prevention & Control Society, Department of Health & Family Welfare, Government of West Bengal, Chittaranjan National Medical College and Hospital and according to those two reports, he was non-reactive for HIV 1 and 2 antibodies.

Secondly, consultant pathologist in his report on the examination of blood of the complainant while giving his finding that the complainant was HIV 1 and 2 reactive, in the self-same report gave a special note to the effect "Please correlate with clinical condition and confirmation by ELISA/Western blot/PCR".

Thirdly, the advice of consultant pathologist was ignored and without following such advice, the diagnostic wing of the Clinical Establishment sent the report to the ward and the on duty RMO and a ward sister conveyed the complainant that he was found HIV 1 and 2 positive.

Fourthly, neither HIV pre-test counseling, as laid down by the National AIDS Control Organization in the guidelines provided in this regard, was followed nor any informed consent was obtained from the patient.

8. Now, considering the rival case of the parties and the materials on record, we find not only a wrong and faulty blood examination report showing that the complainant was HIV 1 and 2 reactive was given by the diagnostic wing of the Clinical Establishment but the deficiencies are

manifold. The consultant pathologist in his report gave a special note that serum screening report to be correlated and be confirmed by ELIST/Western blot/PCR but such advice was completely ignored and the result of blood test was communicated to the complainant without the same. It is the diagnostic wing of the Clinical Establishment with undue haste, sent the report to the ward ignoring the advice of the consultant pathologist. In turn, the overzealous RMO on duty and the ward sister communicated the same to the complainant/the service recipient without any loss and taking note of the advice of the consultant pathologist and ignoring the same. The Clinical Establishment in their affidavit affirmed by Dr. Chakraborty claimed that the report was communicated to the complainant without any permission obtained from him and before his arrival at the nursing home. If that be so, it is clearly a matter of insubordination and invites disciplinary action against the erring RMO and the ward sister. The concerned staff of the pathological laboratory is also liable for similar action. However, in the four corner of the affidavit there is no remote indication either any disciplinary has been taken against them for communicating the test report to the complainant without permission of Dr. Chakraborty or same is under contemplation. The Clinical Establishment in one hand claimed that report was divulged to the patient by the RMO and the ward sister without the permission of Dr. Chakraborty and on the other hand has taken a specific defence that every patient is entitled to know the result of the diagnostic test. Nobody is disputing such right of the patient but at the same time, none can be oblivious that according to the special note of the consultant pathologist the said serum screening report is not a confirmatory test and require some more specified test to reach to a definite conclusion that the patient was HIV 1 and 2 positive. Therefore the claim of the Clinical Establishment, since the patient has right to know the test of the result, the result was communicated to him is not at all tenable. In any event no report, more particularly a report declaring a patient is reactive to HIV 1 and 2, on the face of special note on the report itself that such serum screening report require further test for confirmation can be communicated to the patient merely because he has right to know the result of test. Knowing a conclusive report is one thing and communicating a report which requires further test to reach to a correct conclusion are not same. The defence of the Clinical Establishment is not only untenable at the same time this demonstrates its attempt to cover up

a wrong of its doctor and the nurses and consequently its own deficiency. Both the RMO and the ward sister as also the employees of the diagnostic wing of the Clinical Establishment are the direct employee of the Clinical Establishment and under their pay role, thus, the Clinical Establishment cannot claim any immunity from its liability. According to the NACO guidelines and the provisions of the Human Immune Deficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 which came into force much before December 6, 2017, makes it obligatory that no person can be forced to take an HIV virus test and informed consent of the person concerned is a must for conducting such test and that too after due counseling on all pros and cons. According to the statutes a HIV/AIDS patient cannot also be subjected to medical treatment without his consent. Even for epidemiological or surveillance studies, it is mandatory that person concerned shall be informed of the purposes of such studies. In this case, both the statutory requirements have been ignored and that is not only violation of mandate of law but amounts to a deficiency in patient care service. It be noted, in their affidavit the Clinical Establishment has not disputed the claim of the service recipient that neither there was pre-counseling before the blood for HIV test was collected from the complainant nor any informed consent was taken in writing, except justifying such lapse in other way. Furthermore, after the complainant having purportedly found HIV 1 and 2 negative, there is nothing on record nor there is any indication in the affidavit of the Clinical Establishment that there was any post-test counseling. In this regard, it would be apposite to add when on the next day i.e. on December 6, 2017 the complainant had his blood tested for ascertaining is HIV status, the blood was collected and tested after through counseling as is evident from the petition of complaint. Such claim has, however, not been disputed by the Clinical Establishment. We have already noted that the test report of the Clinical Establishment showing the complainant HIV 1 and 2 positive was found wrong on the very next day i.e. on December 6, 2017 when tested by the Integrated Counseling and Testing Centre, Chittaranjan National Medical College and Hospital and he was found Non-reactive for HIV 1 and 2 antibodies and then was confirmed nearly one and half months after a further test on January 27, 2018. Last but not least the approach of the pathological laboratory of the Clinical Establishment is quite casual if not callous. The staff of the pathological laboratory has not only

ignored the advice of the consultant pathologist but even knowing the grave consequences of the test report without consulting the doctor under whom the patient was admitted mere as a post office sent the report to the ward. The in turn action of the RMO and ward sister is equally faulty and casual. Furthermore, the approach of Dr. Chakraborty is not also appreciable. We do not have any hesitation to hold the above facts clearly makes the Clinical Establishment, South Suburban Clinic Pvt. Ltd. guilty of deficiency in patient care service.

The approach of the pathological laboratory of the Clinical Establishment is also very casual and in a routine way, the laboratory dispatched and communicated the report, showing that the patient was reactive for HIV 1 and 2 (although wrongly) to the ward, even though there was a special note at the end of the report, in the form of an advice of the Pathologist "Please co-relate with clinical condition and confirmation by ELISA/Western blot/PCR". This further establishes deficiency in patient care service on the part of the Clinical Establishment.

9. Now the only question left for our consideration is, what would be the quantum of compensation. The Clinical Establishment obtained a payment of Rs.4378/- from the complainant on account of bed charges and for medicines and diagnostic test including the wrong test before his discharge from the nursing home.

Of course, the news that he was reactive for HIV 1 and 2 antibody, had a great impact on the patient and his claim that after hearing such news he became mentally perturbed, traumatized, shocked and upset about his future cannot be at all ruled out and no material has been brought to the notice of the Commission to show that such claim of the complainant is not tenable. It is categorically claimed by the complainant after the information that he is HIV positive, was disclosed to him, the nursing staffs and other attending staffs in the ward became very apathetic towards him. It be noted nothing has been brought to our notice by the Clinical Establishment to dislodge such claim of the complainant.

10. This is a case, where on December 5, 2017 around 11am, the complainant, who himself is the patient, was communicated a wrong report of his blood test that he was HIV 1 and 2 positive. However, on the very next day his blood was once again tested at the Integrated Counseling and Testing Centre, Chittaranjan National Medical College and Hospital, Kolkata and

by grace of God he was found non-reactive to HIV 1 and 2 antibodies. Therefore, whatever mental trauma, anxiety and any other mode of suffering he had to undergo, lasted for a short span of time. Now, considering the amount spent by the complainant at the nursing home, where he took admission on December 4, 2017 together with the cost of litigation and taking into account the extent of mental trauma he had to suffer and its span, and the nature of deficiency in patient care service, we are of the opinion, if a sum of Rs.30,000/- is awarded as compensation that would sub-serve the ends of justice.

Accordingly, we direct the Clinical Establishment, South Suburban Clinic Pvt. Ltd. to pay a sum of Rs.30,000/- to the complainant, Mr. Debojit Kumar Ghosh by an account payee Banker's cheque within 15 days from this date.

10. Before parting with, as a note of caution, we direct that in near future the Clinical Establishment would be more careful in communicating the result of any diagnostic test which involves life threatening critical disease and also the diseases which has negative social impact merely on the basis of screening test, more particularly when the consultant pathologist conducting such test, is of the opinion and advises that his report is to be authenticated by further confirmatory tests.

Sd/-
Justice Ashim Kumar Roy
Chairperson.

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Abhijit Chowdhury, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Sd/-
Shri. S.K. Thade, IAS, Member.

Authenticated

29/6/2018.