

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

Present: Justice Ashim Kumar Roy, Chairperson.

Smt. Sanghamitra Ghosh, IAS, Vice-Chairperson.

Dr. Sukumar Mukherjee, Member.

Dr. Abhijit Chowdhury, Member.

Dr. Madhusudan Banerjee, Member.

COMPLAINT ID: PAB/2017/000269

Sk. Asadulla.....Complainant.

-versus-

Chittaranjan Advanced Medical Referral Institute & others.....Respondents.

Date of judgment: 11th September, 2018.

J U D G M E N T.

The complainant Sk.Asadullah is the son of the service recipient, Billal Hussain aged about 66 years, who had been suffering from chronic cholecystitis with cholelithiasis, took admission at Chittaranjan Advance Medical Referral Institute, Burdwan on 28.10.2017 for undergoing cholecystectomy for removal of gall bladder stone. Subsequently, on the next day i.e. on 29.10.2017, in the afternoon, open cholecystectomy was done and on 5.11.2017, he was discharged. The patient underwent treatment and operation under Rashtriya Sasthya Bima Yojana.

2. Now, in his letter of complaint, it is alleged by the son of the service recipient that although his father was admitted at Chittaranjan Advance Medical Referral Institute, Burdwan for undergoing surgical operation under Rashtriya Sasthya Bima Yojana on 28.10.2017 and opted for microsurgery but Dr Balaram Ghosh, the concerned surgeon did open surgery. According to his allegations, due to fault in surgery, post operation pus was formed and oozing

out from the surgical site. However, when it was pointed out to the doctor, the patient party was told that there is nothing wrong and after some dressing on 5.11.2017, the patient was discharged. It was also alleged although if any treatment is done under RSBY in any empanelled nursing home, then in that case the charges for treatment are paid out of the fund provided under the said scheme but the nursing home authority insisted him for payment of Rs.22,000/- extra. After taking the patient back to home, his medical condition grossly deteriorated and pus continued to be oozing out from the operation site. On the very next day i.e. on 6.11.2017, they again took the patient to Chittaranjan Advance Medical Referral Institute, Burdwan but they refused to admit the patient and misbehaved with them. Thereafter, the patient was taken to Sun Hospital, where the patient party was informed by the concerned surgeon that what was oozing out from the operation site was not actually pus but stool since his intestine was perforated during the cholecystectomy. It was their further case that such gross error in operation was due to the negligence of Dr. Balaram Ghosh, the concerned Surgeon. After two more operations, second operation at Sun Hospital and the third operation at Life Line Nursing Home, the initial error in operation could have been repaired partially. It is claimed that the patient party had to spent nearly 2lakh 32 thousand for second and third operation.

3. In response to the above allegation, the concerned surgeon Dr. Balaram Ghosh filed his reply in the form of affidavit. According to him, on 28.10.2017, the father of the complainant, a man of 62 years, who was suffering from Chronic Cholecystitis with cholelithiasis, came to Chittaranjan Advance Medical Referral Institute and opted for Lap Cholecystectomy and preferred and choose him for his surgery. It was claimed that the surgery was uneventful and the patient was keeping well and accordingly with the permission of RSBY the patient was discharged on 5.11.2017. It is claimed on 6.11.2017 the patient party again brought back the patient to the nursing home, consulted him but preferred to get the patient treated at Sun Hospital under Dr. Bhaskar Ghosal, one of the reputed surgeon in Burdwan town. It was also claimed that Dr. Balaram Ghosh personally talked to both Dr. Ghosal and owner of the Sun Nursing Home, Mr. Abbas. It is claimed that the entire cost of treatment at Sun Hospital, Rs.1,56,120/- was paid by Dr. Ghosh and again he paid Rs.30,000/- and Rs.22,000/- a total sum

of Rs.52,000/- which was incurred for the treatment of the patient at Life Line Nursing Home and Aponjon Nursing Home.

4. During the course of hearing, the statements of Dr. Balaram Ghosh as well as the complainant Sk. Assadulla were recorded on oath.

5. In his statement made on oath the complainant, Sk. Assadulla, son of the service recipient admitted to have received a total sum of Rs.2,08,120/- from Dr. Balaram Ghosh.

6. It be noted, in its affidavit, the Clinical Establishment categorically stated that Sk. Billal Hossain, father of the complainant, was admitted on 28.10.2017, in Chittaranjan Advance Medical Referral Institute for Lap Cholecystectomy under Dr. Balaram Ghosh as preferred by the patient party. Such claim of the Clinical Establishment has been corroborated by Dr. Balaram Ghosh in his affidavit and it was categorically averred that the patient party opted for Lap Cholecystectomy and preferred his name for the said operation. Same was the statement of Dr. Ghosh, recorded on oath before the Commission and he categorically stated that on 28.10.2017 the patient Sk. Billal Hossain came to him for Cholelithiasis at Chittaranjan Advance Medical Referral Institute. The cross-examination of Dr. Balaram Ghosh was declined by the patient party, neither such statement of the nursing home and that of Dr. Balaram Ghosh was challenged nor disputed by the complainant. It further be noted that the complainant in his affidavit never claimed that he was referred to Dr. Balaram Ghosh for the said operation by the nursing home and, in fact, the complainant was completely silent in this regard.

7. In his oral statement, Dr. Balaram Ghosh stated as follows,

The patient Sk. Billal Hossain came to me for cholelithiasis at the Chittaranjan Advance Medical Referral Institute on 18.10.2017 and done operation by open method as Laparoscopic procedure failed. The patient was admitted in the Nursing Home CAMRI under RSBY scheme. The patient developed complication of faecal fistula on 4th post operative day. The patient was, however, discharged from the Nursing Home on 05.11.2017 after dressing and with drainage as the patient was in package of RSBY with advice for regular dressing and report to me as and when necessary. The patient was re-admitted at the Nursing Home Apanjan and then to Sun

Hospital, where the second operation was done. All the expenses of of the second operation at Sun Hospital, was borne by him. The patient required third and final operation for closure of Jejunostomy wound at the Life Line Nursing Home, and the patient was cured. He had borne all the expenses incurred for operation at Sun Hospital. He also paid Rs.52,000/- (Rupees fifty two thousand) in addition to that. He gave the prescription to the patient party on 6.11.2017 wherein he he described the nature of the operation done by him and the complication occurred at that time. The patient was referred to the Sun Hospital for necessary treatment as they refused to go to the Medical College and Hospital, Burdwan.

The complainant was given opportunity to cross-examine the Dr. Balaram Ghosh but that was declined.

8. We have given our anxious and thoughtful consideration to the contentions of the parties. Now on careful scrutiny of the medical file we are not in a position to rule out the possibilities of error in operation. However, if such error, is a mere error in conducting the operation or amounts to medical negligence on the part of the surgeon Dr. Balaram Ghosh who performed the operation, is an issue ought to be decided by the West Bengal Medical Council with whom he is registered. In this regard, it would be apposite to refer the first proviso to sub-Section (iii) of Section 38 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Act, 2017.

Furthermore, Dr. Balaram Ghosh being MBBS (DGO) with a diploma in Minimal Access Surgery awarded by World Association of Laparoscopic Surgeons is competent to perform Laparoscopy, as claimed by him, is also a question to be decided by the concerned State Medical Council. However, in the case at hand, although patient was admitted for Lap Cholecystectomy but finally he underwent open cholecystectomy.

9. In this case, the concerned surgeon, Dr. Balaram Ghosh both in his affidavit and in his statement recorded on oath made before the Commission admitted that the patient party chose him for performing the Lap Cholecystectomy. Similar was the stand taken by the Clinical Establishment. Their claims have neither been challenged nor disputed by the complainant,

who declined to cross-examine him. Instead, the case of the complainant against Dr. Ghosh was, although consent for Lap Cholecystectomy was taken by him but Dr. Ghosh performed open cholecystectomy. In his affidavit, Dr. Ghosh, however, claimed that while conducting the said operation it was found that the patient had rigid and tight abdomen and informing the patient party verbally, he converted the Lap Surgery to open surgery, Adhesionlysis with Cholecystectomy. This fact has also not been challenged nor Dr. Ghosh was cross-examined on this score. On top of everything, this is also a decision of a medical professional, now the question whether such decision was an error in judgment or a negligence in treatment is a matter to be adjudicated in an appropriate proceeding before the State Medical Council and not by this Commission as discussed above.

Although it is alleged that in spite of the fact that the patient was admitted for treatment for surgery under Rastriya Swastha Bima Yajona still the nursing home authority claimed an additional sum of Rs.22,000/- but except making that allegation, the same has not been established by any further facts. It is an admitted position that the patient party has received Rs.2.08 lakhs from Dr. Balaram Ghosh towards the expenditure incurred for repairing the damage caused to him due to the alleged wrong operation. However, for the first operation at CAMRI, the patient party had never incurred any expense, which was under Rastriya Swastha Bima Yajona.

10. Moreover, this is a case, the nursing home where the operation of the patient was done, is empanelled under Rastriya Swastha Bima Yajona. Thus, if there is any gross irregularity, like doctor not having specialized surgical degree, described as specialist laparoscopic surgeon by the Clinical Establishment and employed for specialized operation, then in that case the competent authority has to be approached for appropriate legal action.

11. Admittedly, the complainant has already moved the District Consumer Forum against the respondents, both the doctor and the Clinical Establishment for compensation and the case is still pending.

It is also an admitted position that entire expenses for rectifying the mistake in the operation in two other nursing homes has been borne out by the surgeon Dr. Balaram Ghosh. Since the patient party has been financially compensated and their prayer for further compensation is under adjudication, therefore, we do not propose to award any further compensation.

We, however, make it clear that every Clinical Establishment before employing any doctor for providing specialist care should have first satisfied that the concerned doctor possess requisite qualification.

This case is thus stands closed and disposed of.

Sd/-
Justice Ashim Kumar Roy
Chairperson.

Sd/-
Smt. Sanghamitra Ghosh, IAS, Vice-Chairperson.

Sd/-
Dr. Sukumar Mukherjee, Member.

Sd/-
Dr. Abhijit Chowdhury, Member.

Sd/-
Dr. Madhusudan Banerjee, Member.

Authenticated

W.B.C.E.R.C.
11/9/2018

ARSHAD HASAN WARSI
WBCS (Ex)
Secretary
W. B. C. E. R. C.