

**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. Maitrayee Banerjee, Member.

COMPLAINT ID: KOL/2017/000062

Mr. Tarun Kumar Jana.....Complainant.

-versus-

Dr. Lal Path Lab, Kolkata & others.....Respondents.

Date of judgment: 11th September, 2018.

J U D G M E N T.

The case of the complainant, as alleged against the Clinical Establishment, Dr Lal PathLabs Laboratory is as follows,

His brother, the service recipient, Shubrendu Sekhar Jana is a patient of renal failure and used to test his blood for urea, creatinine amongst others in every 2 weeks for better management. On March 27, 2017, his blood was tested at Dr. Dr Lal PathLabs Labs when it was found, urea serum 204.90 mg/dl (range 17.00-43.00) and creatinine 12.54 mg/dl (range 0.67-1.17). After 15 days on April 9, 2017 his blood was again tested for urea and creatinine at the same laboratory, Dr Lal PathLabs Labs but according to the said report, urea 36.40 mg/dl (range 17.00-43.00) and creatinine 1.46 mg/dl (range 0.67-1.17). Having noticed such gross variation of urea and creatinine

within 2 weeks in case of a patient of chronic renal failure, the complainant, his elder brother i.e. the service recipient and other members of the family, became surprised and immediately pointed out such facts to Mr. Newton Ghosh and demanded refund of the amount spent for such test but he refused to accept that there was any mistake in the test and declined refund. However, without any loss of time, on the next day i.e. on 10.04.2017, the service recipient got his blood tested for urea and creatinine at Binayak Imagine and Diagnostic Pvt. Ltd and according to the test result, serum urea 230 mg/dl and creatinine 12.94 mg/dl.

In his oral submission, the complainant alleged that the above second blood test report of Dr Lal PathLabs dated April 10, 2017 was completely wrong and erroneous. If relying on such wrong report, the service recipient would have persuaded his course of treatment he would have to suffer serious consequences and might die. It is claimed that this is a fit case for payment of compensation of Rs.5 lac.

2. Upon receipt of the complaint, notice was issued against the respondent-Clinical Establishment and other respondents.

3. The Clinical Establishment filed its affidavit disputing the case of the complainant and stated as follows.

a) Allegations are false and misleading.

b) The complainant not being the service recipient, this complaint at his behest is not maintainable.

c) Neither any case of deficiency in service nor that the report was given without testing, is not made out.

d) Provisions of Section 33 of the WBCERC Act envisage awarding o compensation where the service recipient either suffered any injury or death due to negligence or deficiency in providing service.

e) No case has been made out which falls within the ambit of Section 33 of the WBCERC Act.

f) The entire claim of the complainant is based on an assumption that alleged false report may affect his elder brother, without even trying to establish negligence, deficiency in service on the part of the complainant and in such scenario the complaint filed should be dismissed with heavy cost.

g) The complainant's case based on a report of a laboratory which is not NABL accredited and there is no authenticity.

h) On 09.04.2017 besides serum urea and serum creatinine, IIB, serum sodium and serum potassium were tested but the report for hemoglobin, serum were found to be accurate.

i) Although it is noted in the report if any test result is alarming or unexpected, the patient should immediately contact the laboratory for remedial action, but the service recipient instead of approaching Dr Lal PathLabs approached Binayak Health World which has no accreditation from NABL.

j) The test performed on 27.03.2017 at Dr Lal PathLabs, which shows creatinine 12.54mg/dl and urea 204.90mg/dl is true and needs no comment.

k) The test perform on 19.04.2017 showing urea 36.40mg/dl and creatinine 1.46mg/dl was done after a significant gap of 15 days which is enough to change the condition of the patient.

l) The test report of Binayak Health World which is not accredited by NABL is not at all trusted.

m) It is not correct that the complainant got seriously affected due to any fault on the part of Dr Lal PathLabs and that there was any deficiency in service and there is no medical proof.

n) The Dr Lal PathLabs is a well known reputed lab which shares considerable good will among the people of the society.

o) The Dr Lal PathLabs is not liable for payment of any compensation.

4. Heard the parties at length and considered their respective submissions. Perused the materials on record.

5. At the very outset, it be noted that already the complainant Tarun Kumar Jana filed a letter of authority executed in his favour by his elder brother, the service recipient, Subhrendu Sekhar Jana, which is already on record.

In the said letter of authorization, the service recipient stated that he is suffering from hypertensive nephrosclerosis and chronic kidney disease stage 5 and bedridden and his brother Tarun Kumar Jana is authorized to pursue the instant complaint on his behalf.

6. It is not disputed from the side of the Clinical Establishment, Dr Dr Lal PathLabslab, either in their affidavit or in oral submissions made during the hearing of this case that on March 27, 2017 at its Pathological Laboratory, the blood of the service recipient, the brother of the complainant, was tested for serum urea and creatinine and according to the test result, serum urea was 204.90mg/dl and creatinine serum 12.54mg/dl and on April 9, 2017, when once again the blood of the same person at the same pathological laboratory, were tested, within a gap of 14 days, the result revealed serum urea

36.40mg/dl and serum creatinine 1.46mg/dl. In fact, the pathological laboratory claimed that both the test reports were correct. However, it is the definite case of the Clinical Establishment, the blood test done on April 10, 2017 at Binayak Healthworld showing, amongst other serum urea 230mg/dl and serum creatinine 12.94mg/dl is completely unworthy of credence and cannot be trusted, since Binayak Healthworld is not an NABL accredited pathological lab. It is their further case, the disputed test done on April 9, 2017 showing blood urea 36.40mg/dl and creatinine 1.46mg/dl, when done after a significant gap of 15 days, such change is quite natural, in other word, a gap of 15 days is quite enough to change the medical condition of the patient. It was also contended that bottom of the report dated 09.04.2017, it was clearly mentioned..... "if the test results are alarming or unexpected, the client is advised to contact the laboratory immediately for procedural remedial action". However, the complainant without approaching the Lalpath , approached Binayak Healthworld which is not an accredited laboratory.

7. Now, going through the profile of blood parameters of CKD (Chronic Kidney Disease) of the service recipient found on test of his blood at Dr Dr Lal PathLabs Laboratory, we find there is gross disparity between the same. As noted above, according to the report of the blood test done on March 27, 2017 serum urea was 204.90mg/dl and creatinine 12.54mg/dl, whereas according to the blood test report done in any interval of 14 days, on April 9, 2017, the serum urea was 36.40mg/dl and serum creatinine was 1.46mg/dl. During the above period, from March 27, 2017 to April 9, 2017, the patient was not on haemodialysis. His haemodialysis was started twice a week on and from 16.06.2017. This is quite unlikely and unusual in case of a patient suffering from Chronic Kidney Disease that his blood parameters viz, urea and creatinine shall be reduced and tends to be normalize (serum urea level from 204.90mg/dl to 36.40mg/dl and creatinine level from 12.54mg/dl to 1.46mg/dl) by any form Of available

medical treatment within a span of 15 days. The figures of urea and creatinine depicted in the second test report of Dr Lal PathLabs is a surprise and this singular normalization of parameters like urea and creatinine cannot be explained by conservative treatment alone without dialysis. Here, in this case, dialysis was commenced twice a week on and from 16.06.2017, nearly 2 months after. From the side of the complainant no medical authority has been referred to justify such change in blood parameters in case of a patient suffering from chronic renal failure is possible within such short span and by what treatment.

So far as the report of blood test for serum urea and serum creatinine showing serum urea 230mg/dl and serum creatinine 12.94mg/dl done on the very next day i.e. on 10.04.2017 at Binayak Healthworld is concerned, same is more commensurate with the medical condition of the service recipient and the test report dated 27.03.2017 done at Dr Lal PathLabs. The said report cannot be ignored merely because Binayak Healthworld is not NABL accredited. It is true that accreditation by NABL has worldwide acceptance and especially valuable for international recognition and mutual acceptance of test result. It is only one of its kind that assess laboratories in India for quality and consistency in the result and the concept was developed to provide a means for third party certification of the competence of laboratories to perform specific type (s) of testing. However, in our country such accreditation is a voluntary and optional. In any event, for not having NABL accreditation does not make the result of test by such laboratory not reliable, acceptable and unauthenticated. We do not have any justifiable reason to discard the report of Binayak Healthworld in absence of any clinching material only on the ground that it is not NABL accredited. Furthermore, both the report of Binayak Healthworld dated 10.04.2017 and first report of Dr Lal PathLabs dated 27.03.2017 have almost similar findings. No authenticated material has been brought to our notice to substantiate that during the aforesaid period between March 27, 2017 to

April 9, 2017 the service recipient had undergone any such procedure or so medicated as a result of which there was such gross reduction of urea and creatinine level of the service recipient. In our country, no such treatment is available, which may yield such a drastic change, in absence of dialysis. Merely because allegedly the service recipient without getting the tests repeated at Dr Lal PathLabs, approached a different pathological laboratory that does not obliterate the responsibility of the erring Clinical Establishment, Dr Lal PathLabs. Undoubtedly, the test report of Dr Lal PathLabs dated 09.04.2017 as regards to the unit of urea and creatinine is wrong and amounts to deficiency in service.

8. Our above conclusion now boils down to the question as to the nature and extent of deficiency in service and consequential effect of the same upon the service recipient and the quantum of compensation which may be awarded.

It be noted in this case, the complainant claimed a compensation of Rs.5lakh on the ground of harm/injury suffered and giving a false report without testing blood. So far as the question of harm/injury suffered by the brother of the complainant, we find that according to the own admission of the complainant, that on the very day of test of blood i.e. on 9.4.2017, in the evening, the service recipient collected the report from the laboratory and after obtaining the report, he noticed the abnormality and after pointing out the same to the concerned laboratory staff, without any loss of time, on the next day i.e. on 10.4.2017, he got his blood tested from another pathological laboratory and got a correct report. Except alleging in the letter of complaint that due to such wrong report, the service recipient suffered harm and injury, the nature of harm suffered by the service recipient has not been elaborated. The complainant at the time of hearing also given sufficient opportunity by the Commission to explain the same but he could not communicate what kind of harm and injury his brother suffered due to this wrong report within a day. This is not one of such case, where the biochemistry report exhibits

the result of test parameters are much above the normal range, and consequently traumatized the service recipient and led him to deep anxiety. It also be noted, on the basis of wrong report, the course of treatment of the service recipient has also not altered and modified. The report had played no role in decision making process of the treatment of the service recipient. However, in the case in hand, the report shows gross reduction of blood parameters and tending towards normal range, of course which is, an indication of betterment of medical condition of the patient. If not, that wrong report gave a sigh of relief to the service recipient but that certainly has not traumatized him. In fact, we also unable to find out what harm has caused to the service recipient. But the fact remains the biochemistry report dated 9.4.2017 of the service recipient issued by Dr Lal PathLabs is wrong and undoubtedly amounts to a deficiency in service. The complainant claimed a compensation of Rs.5lacs. However, during the hearing, he was requested to justify the same and here also no answer. The complainant only submitted it is for the Commission to decide.

It is alleged by the complainant, after obtaining the report, when his brother tried to apprise the concerned staff of the laboratory about the suspected mistake, the said staff not only attended his grievances but also misbehaved with him. This allegation, however, been categorically denied by the learned counsel of the Clinical Establishment and their representative. It is also pointed out with reference to the wrong report by the learned counsel of the Clinical Establishment that at the bottom of such report, it has been categorically printed that if test results are alarming or unexpected, client is advised to contact the laboratory immediately for possible remedial action, but without acting in terms thereof, and giving the pathological lab to do the needful with some ulterior motive, lodged this complaint claiming an exorbitant compensation of Rs. 5lacs. Since none of the parties were able to establish their such case, we are not entering into those disputed question of facts. We find the service recipient approached for his blood

test on self and not referred by any medical professional. Two prescriptions of the service recipient filed by the complainant, are of dated 17.08.2016 and 22.02.2017, but none of them contains any advice for test of urea and creatinine.

In their affidavit, the Clinical Establishment Dr Lal PathLabs claimed that it is engaged in the business of providing quality diagnostic healthcare services throughout India. We find Dr Lal Pathlabs used to widely circulate their credential in various media to attract clients. Therefore, it is not only desirable but it is obligatory on part of the Dr Lal PathLabs to do the test with utmost efficiency and care without any compromise with the performance. All precautionary measures to achieve the correct result must be scrupulously followed.

So far as the blood test is concerned, there must not be any compromise with the performance and there must not be any latitude and every diagnostic centre should be more careful and cautious in holding the tests. It is advisable to be on safe side and to avoid any future complications and as a matter of abundant caution, every pathological laboratory at the time of collection of blood, should collect past history of the patient and his identity and more particular on those cases where tests are not referred by any medical practitioner.

It is noteworthy that in this case, the tests for urea and creatinine, done on 27.03.2017 and 09.04.2017 at Dr Lal PathLabs on self advice and without any advice by a doctor. Two prescriptions of the service recipient filed by the complainant, are of dated 17.08.2016 and 22.02.2017, but none of them contains any advice for test of urea and creatinine. Now, without entering into the question, between the two rival version which one is correct, whether that is of the complainant or that of the diagnostic laboratory, on the available materials, it can safely be held beyond any shadow of doubt that the blood test report of Lal Pathlab dated 09.04.2017 is wrong. However, on the complainant's own admission, his brother, the service recipient immediately after

obtaining the said wrong report became suspicious and on the very next day got his blood tested from another pathological laboratory and obtained a correct report. Since the wrong report showed decrease of creatinine and urea level of blood of the service recipient which is an indication of improvement and recovery of medical condition, it can reasonably be well presumed that such test report, at least, has not traumatized him. It also be noted that on the basis of the wrong report the course of treatment has also not been altered.

In the above backdrop, the question of deficiency in service on the part of the Clinical Establishment, cannot be ruled out.

9. It is the cardinal principle that when the question of fixing the quantum of compensation arises, the authority awarding compensation, is to first assess the nature and extent of harm and injury suffered by the service recipient on the available materials. We have hereinabove elaborately discussed the consequence of such wrong test report upon the service recipient and therefore no further discussion is necessary. We find from the record that for wrong report, the Clinical Establishment charged Rs.730/- from the brother of the complainant. This is a case where complainant in person appeared before the Commission on two days of hearing without any professional support. The complainant although claimed a compensation of Rs.5 lakh but at the time of hearing, was completely unable to justify the quantum of compensation so claimed.

Now, we are of the opinion that it would be sufficient if a sum of Rs.5000/- (inclusive of charge for the test paid by the service recipient and litigation cost) be awarded as compensation.

The compensation amount is to be paid to the service recipient by Dr Lal PathLabs within 15 days from the date of this order.

10. Before parting with, it would be apposite for us to note that although finally abandoned and not pressed, a plea was taken from the side of the Clinical Establishment that the service recipient was impersonated by another while giving blood on 09.04.2017 for test of urea and creatinine and therefore, the result of test of such blood did not match with that of the service recipient. In the above backdrop, although we are not giving any findings on that but we cannot ignore such a situation. If it is actually happening, that is quite alarming and mischievous. We are therefore of the opinion that every pathological laboratory to be on safe side to adopt necessary measures to secure the identity of the person from whom blood is collected so as to avoid any consequences.

Sd/-

Justice Ashim Kumar Roy
Chairperson.

Sd/-

Dr. Sukumar Mukherjee, Member.

Sd/-

Dr. Gopal Krishna Dhali, Member.

Sd/-

Dr. Makhan Lal Saha, Member.

Sd/-

Dr. Madhusudan Banerjee, Member.

Sd/-

Dr. Maitrayee Banerjee, Member.

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

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