

Case Reference:INT/KOL/2022/175

Dr. Kishloy Roy Complainant

vs

AMRI, Dhakuria..... Respondent/ Respondents

ORDER SHEET

| Office Note | Order No. | Date | Order |
|-------------|-----------|------------|---|
| | 2. | 14/12/2022 | <p>This is an application for review of our order dated September 23, 2022. The CE is not happy with our order, they have come up in review on two fold grounds :-</p> <p>I) There was no delay as to the CT brain done for the patient as wrongly held by the Commission in the impugned order.</p> <p>II) Although no relief was claimed by the complainant on account of bill discount was given that was not even prayed for.</p> <p>We issued notice of hearing to the CE, the review applicant. Dr. Trithankar Bagchi and Dr. Biswajit Mitra represent the CE.</p> <p>We have also given notice to the complainant. The</p> |

complainant categorically made it clear through Mail that he had no faith in the Commission and as such he would not be participating at the hearing. Hence, we are constrained to hear and dispose of the application for review in absence of the complainant.

It is a common knowledge of all, the hearing authority, who has passed the order, cannot sit on appeal over its own judgment.

Review is permitted only in exceptional circumstances, that would inter alia include a situation when the aggrieved party was prevented from drawing attention of the hearing authority of a document or a fact that the aggrieved party did not possess at the time of hearing of the complaint.

In this backdrop, let us now consider the application for review. The complainant alleged hospital negligence that would also include delayed CT brain. At the time of hearing, Dr. Mohua Bhattacharjee, the treating doctor, was present. She admitted before the hearing panel, she advised CT brain that was done admittedly

after about 30 hours. Fortunately, the patient was otherwise clinically stable and no unfortunate incident happened because of such delay that we have considered at the time of hearing as would appear from the order impugned dated September 23, 2022. We however, imposed a penalty of Rs. 25,000/- considering the fact, that despite the clear written advice of the treating doctor the CT brain was not done. The complainant, at the hearing, categorically contended, when he visited the patient on the next day evening and enquired about CT brain the nursing staff present, was clueless. After the visiting hours when the complainant left the hospital and reached home he got a phone call that after he had left the CT brain was done. This categorical assertion of the complainant, was never controverted by any one of the representatives of the hospital present at the hearing or the treating doctor, as the case may be.

Dr. Bagchi would now draw our attention, it was documented by RMO in the medical records that the treating doctor had advised to hold back CT brain. Firstly, such fact was never told to us. Our attention was

never drawn to such alleged recording of the RMO. Even assuming it was true, Dr. Bhattacharjee did not confront the complainant, as observed hereinbefore.

We reject the contention of the review applicant on that score. This is nothing but an afterthought and as such, is rejected.

The second issue would relate to bill. The Commission, from time to time, issued various advisories and asked the CEs who were enjoying license under the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017, to follow the same in its true letters and spirit. In the past, we penalized this particular review applicant for violating such advisory while preparing the bill. Yet, they continue to violate the advisory.

As we do in all other cases, we also examined the bill. It is true, the complainant did not raise any issue yet, we felt it as our duty to examine the bill. However, we took a lenient approach. Since the amount was minimal. We did not impose any penalty. We fail to appreciate

why this CE, even after complying the order of discount, would raise such issue in the application of review. We reject the second contention.

In our view, this review application is nothing but an attempt to unnecessarily harass the complainant as well as burden the records of the Commission. We impose cost assessed at Rs. 5,000/- to be deposited with the Commission.

Before parting with, we would be failing in our duty, if we do not appropriately deal with the indifferent attitude on the part of the complainant.

The complainant initially got her mother Ms. Namita Roy admitted in another CE. He was not happy with the treatment and/or dealing with the patient in such case and accordingly made a complaint with us. We disposed of the complaint by directing refund of a sum of Rs. 7,980/- to the complainant. The complainant was not happy with the order. He had every right to take it to higher up. He did not do so.

The second complaint pertains to the same

complainant and same patient in another establishment. While making the complaint, the complainant made a statement which is quoted below:-

“At the outset let me inform that I am not confident if this case will be admissible in your honourable court after so many days of the event happening. Also frankly speaking I am a little hesitant to file this complaint going by my previous experience at your court.

However, being an optimistic person, I will still be putting across my case. Rest will all depend on circumstances.”

The paragraph, quoted supra, would indicate his dissatisfaction not only with the earlier order but also his hesitation to file a second complaint as according to him, his previous experience did not inspire him to file a second complaint. We ignored his comment, we continued to proceed with the complaint that resulted in the order dated September 23, 2022 in the instant matter.

When the review application was filed by the CE the complainant sent a mail. It is relevant to quote:-

*"I am appalled at the audacity and shamelessness of the hospital in question and the imprudence of WBCERC to accept a review asked for by the hospital of the verdict passed two months back. The very premise based on which the hospital was asked to pay compensation remains. They accepted on record regarding the delay caused. Whether that could have been life saving or not is out of question. It was the delay per se that was the fallacy committed by the hospital for which they were asked to compensate. If they really had an issue with the verdict why were they sleeping all these months while I was continuously sending mails to WBCERC and hospital keeping each other in loop and none felt any need to reciprocate. **By accepting the review as asked by hospital only shows the soft corner that the Commission possesses towards the said hospital and nothing else.***

I do not have the luxury of wasting any further time on the matter in the name of 'hearing' as I have well understood where this matter is heading."

The complainant would again express his dissatisfaction on the functioning of the Commission.

According to him, the Commission should not have entertained the application for review and by doing so, the Commission had shown a soft corner for the CE and he was definite about the outcome of the same and as such he did not wish to attend the hearing.

The complainant has failed to appreciate, the Commission is duty bound to dispose of all applications and/or complaints, whatever worth those are having, by giving adequate opportunity of hearing to both sides. Review application is no exception.

Use of language and expression of views, in our view, are contemptuous. We should have taken it seriously, earlier. We did not do so. This time, if we do not deal with it in properly we would be doing injustice to the duty that is cast upon us under the Act.

We impose a penalty of Rs. 100/-. The complainant must personally come and deposit the money with the Commission coupled with a letter of undertaking that in future, he would not be making such reckless allegation against the Commission.

The payment of penalty coupled with a letter of undertaking must be made within a week from the date of receipt of this order, by the complainant.

The review applicant has already paid the discount as indicated above. They would hold back payment of Rs. 25,000/- as directed, until the complainant complies our direction as above.

The amount of Rs. 25,000/- as directed by the order dated September 23, 2022 would be paid by the CE to the complainant upon hearing from us as to the compliance of our direction by the complainant indicated above.

We have also imposed a penalty of Rs. 5,000/- upon the CE for making this mischievous application for review. Such sum of Rs. 5,000/- must be deposited with the Commission.

The application for review is disposed off accordingly.

Sd/-

The Hon'ble Chairperson

| | | | |
|--|--|--|--|
| | | | Sd/- Prof. (Dr.) Sukumar Mukherjee – Member |
| | | | Sd/- Prof. (Dr.) Makhan Lal Saha – Member |
| | | | Sd/- Dr. Maitrayee Banerjee – Member |
| | | | Sd/- Sri. Sutirtha Bhattacharya, IAS (Retd)- Member |
| | | | Sd/- Sri. Tanmay Roy Chowdhury, IPS – Member |
| | | | Sd/- Smt Madhabi Das – Member |

Authenticated

[Signature]
ARSHAD HASAN WARS!
Secretary
W. B. C. E. R. C.