

Office of the West Bengal Clinical Establishment Regulatory Commission

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Case Reference: ID- INT/NPG/2020/50

Present: Justice Ashim Kumar Banerjee (Retired), Chairman

Dr. Sukumar Mukherjee,

Dr. Makhanlal Saha,

Dr. Maitrayee Banerjee,

Smt. Madhabi Das.

Srabani ChatterjeeComplainant

- Versus-

Midland Nursing HomeRespondent

Heard on: September 10, 2020, February 24 , 2021, March 15, 2021 and
May 15, 2023.

Judgment on: May 22, 2023.

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BACKDROP

The complainant Shraboni Chatterjee is a resident of Ichapur, Netaji Pally, Post office Nababganj, Police station- Noapara, district, North 24 Parganas. On July 9, 2020 her son Subhrojit Chatterjee aged about 18 years had respiratory problem and weakness. Complainant along with her husband took their son to Kamarhati ESI hospital. Since the husband was having ESI facility they approached the said hospital at about 5.30 am in the morning. The hospital tested his sugar level when it was found to be on the high side. The said hospital referred the patient to Midland Nursing Home at Belghoria. The family reached there at about 10 am, it was alleged, they were kept waiting on the road for about 30 minutes. Despite repeated requests, the patient was not attended to. The complainant's husband called the police by dialing 100 when he was provided with the mobile no of IC Belghoria police station. He called the I.C. After such phone call the nursing home authority took the blood sample and immediately within three minutes, handed over a hand written report, the patient was covid positive. They refused to admit the patient and referred him back to ESI hospital. The patient went back to ESI hospital. They were sent to Sagar Dutta Hospital where there was no vacancy. They went back to ESI hospital again when they were referred to Calcutta Medical college. At about 1.30 p.m they reached Emergency. Calcutta Medical College also refused to admit the patient as there was no bed. At that juncture, the family revolted and refused to

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leave the hospital premises. The hospital ultimately admitted the patient at about 4 p.m. After a brief treatment the patient breathed his last at 9.45 p.m.

Although the complaint would relate to various Hospitals, we are concerned with only Midland Nursing Home that would be within our domain. On a proper appreciation of the facts, it revealed, when the patient reached Midland Nursing at 10 a.m Home neither the patient nor the patient party were allowed to enter the CE. They were kept waiting for about 30 minutes when the father of the patient called the police. The nursing home then took the blood sample, within a few minutes CE handed over a hand written report to the effect, the patient was covid positive. CE refused admission on that plea.

COMPLAINT

We received a copy of the written complaint given by the complainant to Belghoria Police station. After the office treated the said copy of the police complaint as formal complaint and registered as Case Reference INT/NPG/2020/50 the matter was placed for hearing immediately on September 10, 2020. On September 9, 2020 a copy of the said complainant was forwarded to Mr. Kalyan Ghosh, Manager of the CE over whats app in mobile number-6289011150. Mr. Ghosh asked for the Google Meet link that the office provided at 8.30 p.m on the same day, i.e, September 9, 2020.

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HEARING

On September 10, 2020 we heard the complainant. We also heard Mr. Sabyasachi Chatterjee, Learned Advocate, who appeared for the CE. Upon hearing we passed following order:-

“This complaint would relate to a very very unfortunate incident where a boy of hardly 18 years, died, practically without treatment.

The complaint would reveal, the patient was having high temperature. He was taken to ESI Hospital, Kamarhati, wherefrom he was referred to Midland Nursing Home. Midland Nursing Home did not admit the patient, kept him outside the premises and did not even offer the preliminary medical aid that was required to make the patient stable. Pertinent to note, the patient was in extremely critical condition. Someone from the hospital came out and took the blood sample and within a few minutes handed over a chit showing that the patient was Covid Positive and he was referred to a higher set up. He was taken to various other Government Hospitals ultimately, he was admitted in Medical College where he breathed his last.

We are concerned with only Midland Nursing home being a Private Clinical Establishment under our control.

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We have heard the complainant, the mother of the ill fated boy. We have also heard Mr. Jayanta Narayan Chatterjee, Learned Counsel, assisting the complainant.

According to the complainant, even if the patient was a Covid suspect he would deserve adequate preliminary medical aid when he was referred to the Nursing Home by the ESI Hospital with whom the Nursing Home was having a tie up. Such facility was not extended.

Mr. Sabyasachi Chatterjee, Learned Counsel, being ably assisted by Mr. A. Mukherjee appearing for the Nursing Home would, however, strenuously confront such allegation. Mr. S. Chatterjee, would contend, he did not receive copy of the complaint. We are not concerned with the same. It is his personal problem. We have tried our level best to serve the Nursing home. The Nursing Home was avoiding service. We could contact CMOH and ultimately one Mr. Kalyan Kr Ghosh contacted us over phone when we sent the notice along with the copy of the complaint that was received by Shri Ghosh yesterday at 4.07 p.m. We fail to appreciate, how Mr. Chatterjee could deny such receipt. Be that as it may, we have also sent a copy right now again through whats app.

We are prima facie of the view, the Clinical Establishment failed in their duty in giving at least, preliminary medical aid that they denied to the patient. Mr. S. Chatterjee, would submit, the nursing home was not a dedicated Covid



Hospital and they did not have the appropriate infrastructure to admit a Covid Patient.

Even if we give full credence to what Mr. S. Chatterjee, would say, we fail to appreciate, how they could refuse preliminary medical aid to a patient when he visited the nursing home in an extreme critical condition and particularly when he was referred by ESI Hospital with whom the nursing home was having tie-up.

We do not have any hesitation to prima facie hold the nursing home guilty of the offence. We wish to give them adequate opportunity to defend themselves. However, in the meantime, we would direct the nursing home authority to deposit a sum of rupees five lakhs with the Commission's Office within a week from date.

The complainant is granted liberty to file an affidavit giving details of her grievance restricted to Midland Nursing Home. Such affidavit may be filed within three weeks from date. The complainant would serve a copy of such affidavit positively, upon the Clinical Establishment with an additional copy to Mr. S. Chatterjee for his perusal. The Clinical Establishment would file their response, also through an affidavit, within three weeks thereafter. Rejoinder, if any, within two weeks thereafter.

We would also request the CMOH, North 24 Pgs, to make a local enquiry and submit a report to us in a sealed cover for our perusal.

Place this matter for hearing after completion of the pleadings and submission of the report by CMOH."

Soon after the order was passed on September 10, 2020 Mr. Ghosh called up the office of the Commission and asked for a copy of the order. He was assured, it would be sent in due course. The order was duly communicated by the communication that was sent to the CE immediately on the next day i.e. September 25, 2020 through the email id midlandnursinghomepvtltd@gmail.com, the mail id that was provided by Mr. Kalyan Kr Ghosh through whatsapp on September 9, 2020.

Despite communication of the said order the CE failed and neglected to deposit the said sum of Rs. 5,00,000/- as directed by the order dated September 10, 2020. The Commission, by its mail dated February 10, 2021, at 3:57 p.m sent a reminder to the CE that was not responded to. The Commission kept the matter for further hearing on February 24, 2021 and the notice of hearing was sent to the CE vide letter dated February 15, 2021. At that juncture, the CE replied by saying, they did not receive copy of the order. The Commission again forwarded a copy of the order dated September 10, 2020 vide mail dated March 9, 2021.

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On February 24, 2021 the matter was heard when CE did not appear. The office contacted Mr. Sabyasachi Chatterjee, Learned Advocate, who appeared on the last occasion. On being requested, Mr. Chatterjee was kind enough to be present over phone and informed, he had no instruction in the matter. Commission kept the matter again for final hearing on March 15, 2021 and informed the CE accordingly. The order dated February 24, 2021 is quoted below :-

“ This matter was heard by us on September 10, 2020 when we directed the Clinical Establishment to deposit a sum of Rs. 5 lacs. The said order was communicated to the Clinical Establishment on September 25, 2020 by E-mail sent at 12.45 P.M. on the said date. The Commission also sent reminder on February 10, 2021 through E-mail. Today, the matter has come up for final hearing when we understand from Mr. Jayanta Narayan Chatterjee, Learned Advocate appearing for the complainant, the CE has not yet deposited the said sum. We have contacted the representative of the CE over phone when he has expressed his inability to attend the hearing as according to him their advocate would be representing them. We have also contacted Mr. Sabyasachi Chatterjee, Learned Advocate who appeared for the CE on the last occasion. Mr. Chatterjee is kind enough to be present online. According to him, he has not yet received any further instruction to appear in this matter.

Facts remains, the Clinical Establishment has not deposited the said sum of Rs. Five lacs.

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We keep this matter for further hearing on March 15, 2021 and give last opportunity to the CE to deposit the said sum of Rs. 5,00,000/- in terms of our earlier order dated September 10, 2020.

We also make it clear, in case the amount is not deposited on or before the next date of hearing we would direct the CMOH, 24pgs (North) to suspend the licence of the CE."

On March 15, 2021 Ms. Mandobi Chowdhury, Learned Advocate, appeared for the CE and prayed for adjournment on the ground, they filed a revisional application before the Hon'ble Calcutta High Court. A letter of request sent for adjournment was considered and rejected. We heard the matter on merits.

CONTENTIONS

The complainant represented by Mr. Jayanta Narayan Chatterjee, Learned Advocate, made his submission reiterating the incident that was complained of in the complaint initially filed by the complaint in Belghoria Police station. Mr. Chatterjee, drew our attention to the affidavit filed by the complainant ventilating her grievance.

Mr. Kalyan Ghosh, was present online. According to Mr. Ghosh, they could not entertain the patient in absence of any vacancy. They strenuously disputed the assertion of the complainant that CE took blood sample and tested the same and handed over a covid positive report. Pertinent to note, the photocopy of the said

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report handed over to the complainant was filed before us along with the affidavit.

The said report is produced below:-

	EMERGENCY ASSESSMENT SHEET	Patient Name: <u>Suthira</u>
		Age: <u>5</u> Sex: <u>♂</u> Bed No. <u>1</u>
Address: _____		Reg. No. _____
Date: _____ Time: _____		
Brought By: _____		Informant: <u>5</u>
Name of the Doctor: _____		
History: <u>Patient adm come @ Sexas Respiratory Distress @</u>		
History of Allergy: _____		
General / Physical Examination:		
Vital Signs: Temp: _____	B.P.: _____	Pulse: _____ R.R.: <u>20</u> SpO2: _____
Systemic Examination:		
Chest: _____		
CVS: _____		
P/A: _____		
CNS: _____		
Local Examination: _____		


30 SEP 2022

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Investigations: Covid-kit

Management:

Covid-19 (+ve)

Refer to higher Setup. OR
any other hospital.

Advise:

Provisional Diagnosis:

On call findings (if any):

Signature & Seal of the Doctor
10/09/20

Patient Evaluation (Attendant briefed on the following)

Proposed Care Plan Y/N
Expected outcome Y/N
Possible Complication Y/N

Signature & Seal of the Doctor

Name and Signature of the patient/ patient's attendant

Attended

10/09/20

Registrar
M.R.D.M.C.H.

30 SEP 2020



Ms. Mandobi Chowdhury, Learned Advocate, would contend, since there had been no vacancy the patient could not have been accommodated hence, the CE was not

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at fault and there could be no penalty imposed upon the CE. She would pray for vacating of the interim order that we passed on September 10, 2020.

We reserved our judgment to be delivered in due course. Subsequently, we were served with an order dated March 17, 2021 inter-alia, staying the proceeding hence, we kept our judgment on hold. Very recently, we came across an order dated April 24, 2023 whereby the Hon'ble High Court disposed of the matter by directing the Commission to dispose of the complaint within 12 weeks from that date. Pertinent to note, we were not a party to the said proceeding. Parties to the said proceeding also did not communicate the said order to us. We accordingly placed the matter "For Orders" on May 15, 2023 upon notice to the parties.

On May 15, 2023 the complainant Ms. Srabani Chatterjee was present online. So was Ms. Mandobi Chowdhury, Learned Advocate appearing for the CE.

Ms. Chatterjee, would reiterate what she had stated before us on the earlier dates.

Ms. Chowdhury also did not add any further submission.

We directed the matter to appear for judgment on May 22, 2023.

OUR VIEW

We have considered the rival contentions. The facts remains, the patient went to the CE being referred by the Kamarhati ESI hospital. When the patient reached the CE it was bounden duty of the CE to examine the patient in the Emergency. The fact, that the patient was not allowed to go inside, is not in dispute. The CE would only

dispute covid positive report. Even if we give full credence to the same we would find no plausible explanation that the CE could offer refusing to examine and admit the patient. Pertinent to note, plea of absence of vacancy was taken for the first time at the final hearing on March 15, 2021.

There had been a specific assertion on the part of the complainant to the said effect through an affidavit. The CE was given opportunity to file counter that they did not avail. Mere verbal submission that too, on the final day of hearing, would not impress us.

Pertaining to note, when this judgment was kept pending, we were served with a copy of the order dated March 17, 2021 passed by the Hon'ble High Court where we find, a complete different stand was taken by the CE that would rather corroborate the complaint.

A young boy of 18 years was deprived of even primary medical aid. We were impressed by Mr. Chatterjee's contention, "the golden hour was lost."

We had prima-facie satisfaction on the complaint that we took into account while passing the order dated September 10, 2020. We do not find any scope to vacate the same.

RESULT

The order dated September 10, 2020 is confirmed. The CE is directed forthwith to



pay the said sum to the complainant by transferring the amount in her account upon sharing of her bank details.

We are conscious of the fact, no amount of compensation could bring the young man back. Our order of compensation is just to acknowledge the plight of the unfortunate parents who lost their child at the prime age.

The complaint is disposed of.

Sd/-

(*ASHIM KUMAR BANERJEE*)

We agree,

Sd/-

Dr. Sukumar Mukherjee,

Sd/-

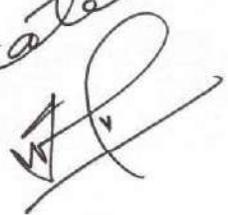
Dr. Makhanlal Saha,

Sd/-

Dr. Maitrayee Banerjee

Sd/-

Smt. Madhabi Das.

Authenticated


Secretary
West Bengal Clinical Establishment
Regulatory Commission