

File No. 3909/12
(Case of Rani Devi)

Applicant Rani Devi wife of Dharmvir Das, resident of Rani Sarai, P.S. Bakhtiyarpur, Dist- Patna has approached this Commission for suitable action against Dr. Siyaram Singh, Dr. (Smt.) Anjali Lal and Smt. Siya Devi (Dai) of Mahi Hospital, Barh. The case of the applicant is that she consulted Dr. Siyaram Singh and Dr. Anjali Lal for her medical problems and she was advised surgery of abdomen. The surgery was performed by Dr. Anjali Lal on 14.04.2012. She paid sum of rupees twenty thousand for surgery and fifteen thousand for other expenses. However no receipts were granted for the same. Her condition deteriorated after surgery and she consulted Dr. (Smt.) Anjali Lal a number of times after. As her condition did not improve, she went to other hospitals for consultation and treatment. Finally, she got herself examined in R P Golwara Memorial Hospital, Patna City. After tests another surgery was performed. In course of which "a big" tetra swab was found inside the abdomen wall which was removed. She thereafter also got examined in P.M.C.H. and the test confirmed that the tetra swab had been removed in the second surgery. Applicant claims that due to presence of tetra swab her whole body had developed infection endangering her life. She spent about 2.5 - 3.0 lakh rupees over treatment but she is still not cured.

Report was called from Principal Secretary, Health Department and Sr. S.P, Patna. No report was received from Health Department. Sr. S.P. Patna submitted the inquiry report of SDPO, Barh dated 02.03.2013. After the applicant submitted her response the matter was heard in her presence on 05.06.2013. SDPO, Barh Shri Raj Kishore Singh was present on behalf of Sr. S.P. Patna. After hearing them and perusing the documents on record the Commission took the view that a prima facie case for issue notice to Dr. (Mrs.) Anjali Lal under section 16 of the Protection of Human Rights Act was made out and, accordingly, notice was issued to her to file her written defence and appear for hearing on 03.07.2013. Dr. Anjali Lal appeared alongwith advocates Shri Arvind Kumar and Shri Lal Bahadur Pandey and the matter was finally heard in presence of applicant on 03.07.2013.

Dr. (Smt.) Anjali Lal did not file any written defence but her stand can be found from her response submitted to SDPO Barh on 26.12.2012 pursuant to notice, in course of enquiry by SDPO, Barh. The response of Dr. (Smt.) Anjali Lal is enclosed with the enquiry report of SDPO, Barh, referred to above.

Dr. (Smt.) Anjali Lal does not deny to have performed surgery on the applicant. According to her, she examined the applicant - who had come to Mahi Hospital for treatment - as doctor-on-call on 14.04.2012. She advised her to go to P.M.C.H. but the applicant's husband Dharmavir Das expressed her

inability; on humanitarian ground she performed the emergency operation (LSCL) to save life of the applicant and the foetus. The applicant left the hospital after ten days. She came to the hospital five-six times thereafter for examination of herself and acquaintances and she always helped her - once for by providing medicines on credit. As regards the complaint of the applicant about leaving tetra swab inside her abdomen, a plea has been taken that ultrasound was done on the applicant two times after surgery but nothing adverse was found. As regards expenses incurred over surgery/treatment, it is said that the applicant paid rupees nine thousand only to Mahi Hospital. Dr. Anjali Lal also denied to have misbehaved with the applicant or humiliated her because she belongs to a scheduled caste.

Learned advocates appearing on behalf of Dr. (Mrs.) Anjali Lal submitted that the second surgery in R P Golwara Memorial Hospital was not video-graphed nor any forensic test was done on the tetra swab said to have been found and recovered from the applicant's abdomen. In other words, they challenged the veracity of O. T. Note about the tetra swab being found and removed from the applicant's abdomen. They also took the plea that ultrasound was done on the applicant two times after the first surgery on 18.04.2012 and 03.09.2012, but the presence of tetra swab in the abdomen was not noticed. It is also submitted that tests must have been done before the second surgery in R P

Golwara Memorial Hospital but the tests reports have not been brought on record which could show the presence or other wise of the tetra swab prior to the surgery.

The defence of Dr. Anjali Lal suggests as if the applicant went to Mahi Hospital and she consulted her for the first time on 14.04.2012 and finding it to be case of emergency, surgery was done on humanitarian consideration. The record of Mahi Hospital - which are part of complaint - however shows that Dr. Anjali Lal had not only examined the applicant but also written prescriptions on 03.04.2012 and 08.04.2012 suggesting that the applicant was in touch with her and consulted her before. From the hospital records it also appears that the applicant regularly consulted Dr. Anajali Lal after the surgery between 24.04.2012 and 11.09.2012. The prescriptions of Dr. Anjali Lal dated 24.04.2012, 28.04.2012, 21.05.2012, 04.06.2012, 13.06.2012, 21.06.2012, 22.06.2012, 24.06.2012, 03.07.2012, 08.08.2012, 21.08.2012, 31.08.2012, 10.09.2012 and finally 11.09.2012 are part of the record. On 11.09.2012 she referred the applicant to P.M.C.H., Department of Surgery, O.P.D., "for needful". There is another advice - though scored out - as per which she recommended "Anand Hospital, Raza Bazar, Patna (Dr. Arvind)" mentioning the cell phone number for consultation/treatment. It is relevant to mention that from the records it appears that the applicant did visit Anand Hospital on 01.09.2012 and 03.09.2012

apparently on the advice of Dr. Anjali Lal. In between, it appears, the applicant had also consulted Dr. Agrawal Nursing Home, Patna City.

The documents/prescription/test reports available in the file leave no room for doubt that the applicant's condition was far from normal and there were complications. It is true that the reports of the ultrasound did not reveal the presence of tetra swab in the abdomen of the applicant but it is common knowledge and any person having elementary knowledge of ultrasound technology knows that ultrasound reports are not foolproof and the possibility of wrong and misleading reports – due mainly to human factor – can not be ruled out. It requires fair degree of deftness and expertise to make correct investigation and report. Thus if reports of ultrasound done on 18.04.2012 and 03.09.2012 did not reveal the presence of tetra swab, it cannot be conclusively said that tetra swab was not in the abdomen. A 'negative' evidence hardly proves anything particularly when there is 'positive' evidence like the presence of tetra swab.

All said, the fact is that a tetra swab found and removed from abdomen of applicant in the second surgery performed on 01.10.2012.

An omnibus and bald suggestion was made that the doctors of R P Golwara Memorial Hospital, Patna City made a false

O. T. Note in order to malign and tarnish the reputation of Mahi Hospital and Dr. Anjali Lal for professional reasons but there is not even an iota material/evidence to buttress the suggestion. The Commission finds no reason to disbelieve the veracity of the O. T. Note.

The suggestion that the second operation was straight way done in R P Golwara Hospital without any test etc. is not borne by the records. From the records it appears that the applicant went to consult doctors of R P Golwara Memorial Hospital on 19.09.2009 and different tests were held on 19.09.2012, 22.09.2012 and 24.09.2012 before the surgery was performed on 01.10.2012. As a matter of fact, the records of P.M.C.H. also somewhat lends credence to be applicant's case. She was admitted in P.M.C.H. on 04.10.2012. In the column 'clinical history/findings' in the Discharge Ticket dated 05.10.2012 it was mentioned that the applicant was subjected to two operations and the second operation was done for removal of tetra left in the first operation.

In the facts and circumstances it is established that a tetra swab was left inside the abdomen in course of the first surgery and since Dr. Anjali Lal had admittedly performed the surgery, she must be responsible for this act of negligence. The submission that she has been in the medical profession for twenty years and no such incident was reported earlier cuts little ice with

the Commission. The past record of Dr. Anjali Lal as a doctor is not at all relevant for deciding the complaint of the applicant.

The submissions made on behalf of Dr. (Mrs.) Anjali Lal having been rejected, the Commission would find her guilty of committing acts amounting to violation of applicant's human rights. It can not be denied that by reason of the surgery performed by Dr. (Mrs.) Anjali Lal, the applicant came to suffer physical and mental torture and agony; considerable amount of money must have been spent over treatment for post-surgery complications and second surgery. All this because of the negligence of Dr. Anjali Lal.

Coming to the question as to the action which should be taken against Dr. (Mrs.) Anjali Lal, the Commission is firstly of the view that apart from civil consequences, a criminal case should be instituted against her, and the Commission would accordingly direct Sr. S.P, Patna to get F.I.R. registered on the basis of the applicant's complaint and the prescriptions which are part of the complaint particularly those of R. P. Golwara Memorial Hospital, Patna City and ensure that the investigation is taken to its logical end.

Dr. Anjali Lal is a government doctor and member of the Bihar Health Service. She in fact is posted as Medical Officer in Barh Sub-divisional Jail Hospital. She admitted to be working for

Mahi Hospital, Barh as doctor-on-call. The Commission would direct Principal Secretary, Health Department to take suitable disciplinary/administrative action against her in accordance with law.

Having regard to the fact that the applicant came to suffer physical misery & torture and mental agony and, also, incur considerable expenditure over the treatment, the Commission is further of the view that Dr. (Mrs.) Anjali Lal do pay compensation of rupees one lakh to the applicant.

The complaint of the applicant is thus disposed of.

Copy of this order may be sent to (i) applicant, (ii) Principal Secretary, Health Department, Govt. of Bihar, (iii) Sr. S. P, Patna and (iv) Dr. (Prof.) Anjali Lal, Mahi Hospital, Patna.

04.07.2013

(Justice S. N. Jha)
Chairperson