

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** CD-2643/12

Case of **NARESH MAHTO**

This file was initiated as per order of the Patna High Court dated 20.6.2012 in Cr.W.J.C. No.488 of 2005 with respect to custodial death of Naresh Mahto – resident of village Pachamba within Tilauthu P.S. of Rohtas district (hereinafter referred to as the deceased). By the said order the High Court (Coram Hon'ble Mr. Justice Navaniti Prasad Singh) referred the matter to this Commission for "disposing of the matter including the claim of compensation in accordance with law" Along with the reference entire records of the case were also transmitted.

The deceased along with others figured as accused in Sasaram P.S. case No.488/98 under sections 302, 201/34 IPC giving rise to Sessions Trial No.468/99 in the Court of Additional Sessions Judge, Rohtas at Sasaram. On his arrest in connection with the said case he was admitted in District Jail Sasaram on 7.9.1998. He died as an under trial prisoner – while lodged in Sasaram Jail – on 24.5.2000.

It may be mentioned here that the deceased's wife Tetari Devi made a complaint to the Supreme Court of India sometime in October 2000 alleging that her husband had died due to negligence on the part of the Jail officials who did not arrange proper medical treatment. The Supreme Court called for report from IG Prisons and on receipt thereof sent the complaint to the Patna High Court "for suitable orders". On the direction of the High Court, the District & Sessions Judge, Rohtas submitted a detailed report dated 16.11.2002. On consideration of the matter, it appears, Cr.W.J.C. No.488/05 (Tetari Devi vs. State of Bihar & Others) was registered. On the judicial side the High Court called for records and state/officials filed their affidavits in course of time. Finally, as stated above, by order dated 20.6.2012 the matter was referred to this Commission.

The Commission called for report from I.G. Prisons and after the same was received, fixed the matter for hearing. On 31.10.2012 the matter was finally heard. Ms. R. Usha, Advocate (Amicus Curaie) argued the case of Tetari Devi who was also personally present, Sri U.K. Sharan, AIG Prisons appeared on behalf of Department.

Sri Sharan submitted that the deceased was properly treated for his ailments at all times and there was no lapse or negligence on the part of the Administration. He pointed out that soon after his admission in Sasaram Jail the deceased was sent to Mental Hospital at Kanke (Ranchi) on 9.11.1998 for treatment. He remained there until 7.7.1999. After his return to Sasaram Jail he was properly looked after and medicines were supplied as per the requirements and prescriptions. He referred to the entries in the Medicine Distribution Register of Sasaram jail to substantiate the plea. He further stated that the deceased was referred to Sadar Hospital, Sasaram for better treatment on 19.5.2000 but the Civil Surgeon did not admit him; instead he directed that he may be examined by a medical board and accordingly, he was sent back. On 20.5.2000 request was made by the Jail Superintendent to the Civil Surgeon for constituting medical board. After his condition deteriorated on 24.5.2000 the deceased was sent to Sadar Hospital but he died in course of treatment on the same day. Sri Sharan placed reliance on the magisterial enquiry report.

Ms. R. Usha submitted that there was gross negligence on the part of the Jail Administration in providing treatment to the deceased. She took a stand that the deceased had died inside jail on 23.5.2000 itself but the records were manipulated showing that the deceased died in hospital on 24.5.2000. She referred to the report of IG Prisons to the effect that post mortem was held on 24.5.2000 but the date was wrongly shown as 25.5.2000.

The only point for consideration is whether there was any negligence on the part of the jail and/or hospital administration in taking care of and providing treatment to the deceased. It goes without saying that it is the bounden duty of the state and its officials to take care of the life and safety of the person in custody, and where the person is suffering from any ailment, to provide him adequate and proper medical treatment – as he would have possibly received had he been a free citizen and not in custody.

The Commission is therefore not inclined to attach much importance to the controversy as to whether the deceased died on 23.5.2000 or 24.5.2000. The deceased admittedly died while in custody and therefore if it is found to be a case of medical negligence – notwithstanding the question of culpability inter se as between the jail administration and/or hospital administration – applicant Tetari Devi may be entitled to compensation. The Commission, accordingly, looked into the records.

The Medicine Distribution Register of Sasaram Jail – available with the record – is for the period 6.5.2000 to 28.7.2000. Register for the period prior to

6.5.2000 has not been produced. As per entries in the said register medicines are shown to have been supplied to deceased Naresh Mahto on 6.5.2000, 7.5.2000, 8.5.2000, 10.5.2000, 12.5.2000, 14.5.2000, 15.5.2000, 16.5.2000, 19.5.2000, 20.5.2000, 21.5.2000, 22.5.2000, 23.5.2000 and 24.5.2000. Interestingly, all the entries upto 16.5.2000 are the last entry of the day. Many of them are in different ink and handwriting. Ex facie, they appear to have been made in the available space before the entries of the next day apparently to show that the deceased was almost everyday being regularly supplied medicines with some omissions in between on 9.5.2000, 11.5.2000 and 13.5.2000 – to make the entries look natural. The entries of 19.5.2000, 20.5.2000 and 21.5.2000 are between different entries; that is to say, there are entries showing supply of medicines to other persons subsequent to the deceased on those days. So far as 22.5.2000, 23.5.2000 and 24.5.2000 are concerned, entry regarding the deceased is the first entry. Admittedly, the deceased's condition had deteriorated and apparently, medicines were rushed to him in the early hours of the day.

On perusal of different entries between 6.5.2000 and 24.5.2000 it appears to the Commission that whereas entries of 19.5.2000 onwards are genuine, the entries between 6.5.2000 and 16.5.2000 were made subsequently. It may be recalled that on 19.5.2000 the Jail Superintendent wrote to the Civil Surgeon, Rohtas seeking for "check-up at Sadar Hospital and admission and proper treatment in emergency". It prima facie appears that the jail authorities realized the gravity of the situation – warranting urgent care and treatment of the deceased – only on 19.5.2000 when a few medicines were given to the deceased and reference was also made to the Civil Surgeon. Unfortunately, the Civil Surgeon instead of admitting the deceased in the hospital directed that the matter may be put up before a medical board. On 20.5.2000 the Jail Superintendent, following up the matter, requested the Civil Surgeon to constitute the medical board. It may also be recalled that when the condition of the deceased had apparently deteriorated further, another request (SOS) was made to the Civil Surgeon for "hospitalization, proper treatment and investigation in emergency" on 24.5.2000 which was allowed this time but it was too late by then. Thus, it appears to be a case of proverbial "too late too little". In other words, the deceased was deprived of and denied proper treatment when, perhaps, he needed it most.

In this regard, the Commission would like to refer to the findings of the then IG Prisons in his report dated 26.3.2002 submitted to Assistant Registrar (PIL Cell) Supreme Court of India, as follows: –

"The conclusion drawn is that the hapless prisoner Naresh Mahto was a victim of utter-negligence on the part of the jail doctor of Sasaram District Jail as well as the doctor of the Sadar Hospital Sasaram. He was kept under so called "observation" in the jail Hospital (Sasaram District Jail) for months together unauthorizedly. The Civil Surgeon of Rohtas, Sasaram is also to blame for his cavalier approach to the whole matter, which ultimately led to an emergency situation for the prisoner. The jail Superintendent, District Jail, Sasaram is also not free from blame as he also did not act with circumspection and merely resorted to writing letters at the crucial stage when the prisoner was awaiting his death."

IG Prisons in fact made adverse comments regarding the recording of the court's order dated 24.5.2000 (granting permission for taking the deceased from jail to the hospital). In the report he stated that the Health Department had been requested to take disciplinary action against the doctors responsible for the death of the deceased.

The District & Sessions Judge vide his report dated 16.11.2002 (supra) also came to similar conclusions in these words:-

"... it appears to be a clear case of death in prison and documents were prepared after the death to justify that the U.T.P. died during treatment in hospital which fact does not appear coming out of the record and the letters and other documents."

The Commission does not wish to go into inter se culpability of the hospital staff and the jail officials and apportion the blame between them. That may be relevant for taking administrative action. So far as question of human right violation and compensation is concerned it matters little as to which of the two wings of the State and which officials of the two wings played more culpable role. The fact remains that the deceased died due to their negligence.

It is true that the deceased was suffering from mental ailment and as per the record, his behaviour was erratic. He was also not taking food on time. But as mentioned above, had he been a free man, the family perhaps could have taken better care of him. Further, not only the deceased but the family would have had the solace of the death taking place in the midst of family members. Having taken custody of the deceased but failed to take proper care, and left him to fend for himself (not literally, because he was not a free man), the state cannot shirk the liability. The deceased cannot be brought back to life but monetary compensation may give some comfort to his wife.

Having thus given due consideration to the facts and circumstances of the case, the Commission is of the view that it is a fit case for awarding compensation. The deceased died in the year 2000. His wife Tetari Devi approached the Supreme Court in October the same year. The matter has remained pending with the Supreme Court and High Court, and finally this Commission ever since. Considering the circumstances in which her husband died, and her trauma and ordeal during intervening period, and the length of the period intervening, the Commission is of the view that compensation of Rs. two lakh would be just and proper.

Accordingly, the Commission directs Secretary, Home (Special) Department to pay compensation of Rs. two lakh to deceased's wife, Tetari Devi, within a period of six weeks and submit compliance to this Commission.

Put up in the last week of December 2012 awaiting compliance report.

Copy of the order be sent to Secretary, Home (Special) Department and the applicant for compliance/information, as the case may be.

Let the entire record received from the Patna High Court vide letter no.12889 dated 15.9.2012 along with copy of this order be sent to the High Court for being put up before the Hon'ble Judge.

Date: 06.11.2012

Justice S.N. Jha
Chairperson