

File No. CD/90/18

08/06/2021

This proceeding was initiated on receipt of intimation from the Superintendent, District Jail Bettiah relating to Under Trial Prisoner (UTP) Manager Mahto who was in custody of District Jail, Bettiah, stating that the U.TP. Manager Mahto fell seriously ill as such he was taken to MSK Hospital Bettiah for treatment, but he died during treatment on 24/7/2018.

Cognisance of above information was taken and required reports as per guidelines of NHRC were called for which had been received.

As per inquest report cause of death was not clear. In post mortem report LAO Case of death was withheld till submission of forensic science report. In forensic science report Zinc Phosphide was detected in contents of visceral organs, which is rat killer and is highly poisonous. On the basis of FSL Report, final cause of death is mentioned as Zinc Phosphide poisoning.

Learned Magistrate after enquiry has come to the finding that since death of U.T.P. Manager Mahto is due to Zinc Phosphide poisoning which is rat killer, as such as to how he received it, is a serious matter and in this regard, negligence of Jail Authority is apparent.

Even the Forensic Medicine and Toxicology Expert has categorically stated that negligence of Jail Administration is evident and needs to be investigated.

The Investigation Division of BHRC after analysis of materials available on the record, also opined as follows :-

- Based on the perusal of the records like inquest, magisterial inquiry report, PM report and expert medical opinion, we are of the view that the Under trial prisoner died due to ingestion of zinc phosphide which is a highly poisonous rat poison.
- However, the observations made by the Forensic Medical Expert and Judicial magistrate regarding the lapses on the part of Jail Administration regarding the

access of prohibited rat poison to a UTP in judicial custody is a serious matter which requires an internal enquiry by Jail Authority. Attention of IG prison can be drawn towards the same. So, that an internal enquiry is made to fix responsibility for the lapse.

In the meantime, a response has been received from wife of deceased UTP. As a response has received after receiving a report from Investigation Department, again an additional report has been called from Investigation Department, who, on perusal of the response reported that no new facts have been mentioned in the response. The wife has prayed for compensation. As such, the Investigation Department has reported that there's no need for further action.

In the meantime, a letter of Assistant Registrar (Law) NHRC in correlation with case No. 2396/4/9/2018 AD relating to custodial death of U.T.P. Manager Mahto has been received, which is kept at page 82-83/C from which it appears that the Commission vide order dated 10/05/2021 has passed following order " Issue reminder to the Chief Secretary, Government of Bihar, for submission of reply to the show cause notice within six weeks, failing which the Commission would be constrained to confirm its commendation, made under section 18(a) of Protection of Human Rights Act, 1993 for payment of monetary compensation of Rs. 3,50,0000/- (three lakhs fifty thousand only) to the NOK of the deceased under trial prisoner Manager Mahto".

It further appears from last two paragraphs of the above letters that finding the State Commission has taken cognisance prior to NHRC, as per of Section 36(1) PHR 1993, the proceeding was closed.

In view of the same, copy of order dated 10/05/2021 and earlier order 11/02/2021 passed in Case No. 2396/4/9/2018. Relating to custodial death of U.T.P. Manager Mahto were brought on the record. From which It appears that vide order dated 11/02/2021 NHRC has passed the following order ;

The instant proceeding shall be read in continuation to the proceeding dated 11/2/2021 wherein the commission observed and directed as under - "The Commission has considered findings of the investigation division and the reports available on record and observes that the UTP namely Manager Mehto S/o Late

Ganesh Mehto (aged 50 years) was admitted in Mandal Kara, Bettiah on 16/07/2018. During his admission in the jail he had a wound on his leg which he was undergoing treatment at the jai hospital. He was referred to SHC & MJKH, Bettiah on 23/07/2018 in unconscious condition where he died on the same day. As per the statement of the jail hospital authorities the UTP was not suffering from any major ailment. Final cause of death based on FSL report that the deceased died due to consumption of poison while in the custody. The magisterial enquiry in the instant case, was carried out by SH.Raj Kapoor, Judicial Magistrate, 1st Class cum AM, Bettiah, West Champaran who concluded that "the cause of death was presence of Zinc Phosphide in the visceral organ of the deceased Manager Mahto. Zinc Phosphide is used as a rat killer and is highly poisonous. The negligence of the Jail Authorities is apparent in the instant case as the deceased UTP got access to rat poison while in custody.

Having so observed, the Commission is of a view that the circumstance in which the UTP got access to the Zinc Phosphide while in the custody of Mandal Kara, Bathia is a matter of great concern and points towards the utter negligence of the jail authorities in discharging their duty. Since, safety, security and care of inmates who are under the case and custody of the prison is one of the prime responsibility of the State which it failed to person in the instant case and further there is a clear indication on the part of the jail officials, hence, the state is vicariously liable to compensate to the NoK of the deceased.

Having observed so, the Commission directs its Registry to issue show cause notice to the Chief Secretary, Government of Bihar, u/s 18(a) of the Protection of Human Rights Act, 1993 as to why monetary compensation of Rs 350,000 (Three Lakhs Fifty Thousand only) be paid to the NoK of the deceased prisoner who died due to lack of vigil & responsibility on the part of jail officials. The reply to show-cause notice be submitted within six weeks failing which, it will be presumed that the state has nothing to urge in the matter and is in agreement to proposed monetary compensation to the victim for the violation of his human rights.

Further NHRC vide order dated 10/05/2021 passed following order ;

The Commission observes that the requisite reports from aforesaid authority is still awaited. Issue reminder to the Chief Secretary, Govt. of Bihar, for submission of reply to the show cause notice within six weeks failing which the Commission would be constrained to confirm its recommendation, made u/s 18(a) of the protection of Human Rights Act, 1993, for the payment of monetary compensation of Rs 350,000

(Three Lakhs Fifty Thousand only) to the NoK of the deceased under trial prisoner Manager Mehto, Registry to transmit copy of last direction dated 11/2/2021 along with this direction.

From the above order, it appears after a detail discussions on materials available on the record that NHRC has found that since safety, security and health of inmates who are under care and custody of prison is prime duty of State which it failed to perform, hence the State is vicariously liable to compensate to NOK of the deceased.

Show cause notice was already issued to the Chief Secretary, Government of Bihar, as to why monetary compensation of Rs. 3,50,000/- be not paid. Even Reminder was issued. Thereafter since proceeding is pending for before BHRC, NHRC has closed the proceeding pending before it.

As discussed earlier, the state commission fully agreed with above finding arrived at by the NHRC, and found the state vicariously liable for death of deceased prisoner and liable to pay compensation to the NoK of the deceased. As such in continuance of earlier notice and reminder issued by the NHRC to the Chief Secretary, directed its Registry to issue show cause notice under section 18(h) of Protection of Human Rights Act, 1993 to the Chief Secretary, Government of Bihar, with a copy of this order as to why Rs 3,50,000/- be not paid to the NOK of the deceased under trial prisoner who died due to negligence and lack of vigil by the jail authorities.

Reply to Show cause notice be submitted within 8 weeks from its receipt, otherwise it will be presumed that the state has nothing to say and the State Commission shall be constrained to confirm above mentioned recommendation of monetary compensation to the NOK of the deceased.

The proceeding is closed. C/D if available be returned to Jail Authority.



Justice Vinod Kumar Sinha (Retd.)

Chairperson