

Case of Mahendra Sharma

This proceeding has been initiated on the application of two journalists, Pushyamitra and Rupesh, about the death of one Mahendra Sharma of village Bharatpur within Lalganj Tilathi Panchayat of Supaul District. As per the application Mahendra Sharma used to earn his livelihood by working as labourer. In the aftermath of the Kosi flood, the opportunity of employment as labourer in the area considerably decreased. He spent two months in the relief camp. In the month of October he along with others was forced to return to the village. As there was no means of employment he was forced to beg. The applicants have stated that in Lalganj Panchayat about 900 persons did not get even the first instalment of government relief as their names did not find place in the Below Poverty Line (BPL) list or Above Poverty Line (APL) list. The case of Mahendra Sharma fell in that category. He did not have any land for cultivation or residence nor he was BPL card holder. On account of non-disbursal of even the first instalment of the government relief he was not getting any alms either and he started passing days in starvation. He was not having food even two times in a week. Gradually he became weak and by middle of December he was not in a position to move. He had his last meal on 25.12.2008. On 2.1.2009 he breathed his last. It has been alleged that the financial condition of his family was such that they could not arrange wood for cremation and he had to be buried. The applicants seek enquiry as to whether the death of Mahendra Sharma was really on account of starvation and if so for action against the guilty persons for violation of the directions of the Supreme Court as to "Right to Food".

Report was called for from the District Magistrate, Supaul as well as Secretaries of the Home and the Relief & Rehabilitation Departments. After reminder report was received from District Magistrate. The Department of Disaster Management has also sent letter enclosing copy of the said report of the District Magistrate. It may be mentioned here that the report of the District Magistrate is not an independent report. He has merely referred to and enclosed the report of the Block Animal Husbandry Officer addressed to B.D.O.-cum-Anchal Adhikari, Chhatarpur. It appears that the District Magistrate had called for report from the BDO who in turn passed on the enquiry to the Block Animal Husbandry Officer. In other words, no enquiry was made by the District Magistrate himself. The substance of the report is that Mahendra Sharma was a patient of asthma and his condition aggravated due to

high level of humidity during flood leading to his death. On his death a sum of rupees ten thousand has been paid to his wife under the Rashtriya Parivarik Labh Yojna and other relief materials have also been distributed.

Copy of the report was sent to the applicants and they have filed their rejoinder re-iterating their version as stated in the application and given some more details.

The havoc caused by the recent floods in the Kosi river is too well-known. There cannot be any dispute that the flood was a calamity and it resulted in death and disappearance of large number of human beings & cattle heads and widespread destruction of property. The death of Mahendra Sharma was clearly due to the vagaries of the flood and the resultant situation. Payment of sum of rupees ten thousand under the Rashtriya Parivarik Labh Yojna cannot be adequate compensation for the loss to his family members on account of his death.

Indeed, the allegation is that Mahendra Sharma died due to starvation amounting to violation of his right to food which is a facet of the right to live and therefore human right. According to the administration, as mentioned above, the death was due to natural causes. We are inclined to think in the facts and circumstances that Mahendra Sharma died in the situation alleged in the application. It may be pointed out that except a bald denial that he did not die of starvation there are no positive statements at all about availability at large of food and other relief items to Mahendra Sharma. It may be recalled that the applicants have made specific allegation that the name of Mahendra Sharma was not included in either BPL or APL list and that the first instalment of the government relief to persons in either list had not been released in the concerned Panchayat like other panchayats. If Mahendra Sharma had no land – residential or agricultural – and his name did not figure in BPL /APL lists, a doubt arises as to how he was able to make his (and his family members) ends meet. If it is a fact – as alleged in the application and not denied in the report – that Mahendra Sharma was landless and that relief items including food grains had not been released in the month of October, the possibility of Mahendra Sharma sinking into state of starvation cannot be ruled out – considering his physical condition as a patient of asthma which on the own saying of the District Magistrate, got aggravated due to high humidity level.

As a matter of fact, a case for compensation is made out on the report of the District Magistrate. As observed above, flood in the Kosi was a calamity which gave

rise to untold miseries and sufferings to the people. Even if we do not go into the controversy as to whether Mahendra Sharma died due to starvation, from the report it is clear that his death was the consequence of the flood. Admittedly, his asthmatic condition was aggravated on account of high humidity level in the aftermath of the flood. His death was thus connected with and the result of the Kosi flood. Having died on account of calamitous situation, the state, as a welfare state under its avowed policies is liable to pay compensation to the bereaved family members.

We must clarify that what we have observed above is the alternate ground for holding the state government liable. As observed earlier, we are inclined to accept the applicants' version that the death was due to starvation and, therefore, in any case, the government is liable to properly compensate the family members. Payment of rupees ten thousand was under another scheme and that has nothing to do with the deceased's and his family members' entitlement to compensation. In the facts and circumstances, we are of the view that compensation of rupees two lakhs would be just and proper.

We accordingly direct the State Government through the Secretary Department of Home to pay the sum of rupees two lakhs to the wife of late Mahendra Sharma within four weeks and report compliance.

Before we part with this file we must express our displeasure at the casual approach of the District Magistrate, Supaul. In our opinion, considering the nature of the allegation he should have made a personal enquiry. Instead, he chose to rely on a report of a Block Animal Husbandry Officer without getting the facts verified by some superior officer at the district level and arriving at independent findings of his own. We understand that in a case of death due to starvation the concerned District Magistrate is to be held personally responsible and therefore, having regard to the allegation that the deceased died due to starvation, the District Magistrate should have shown better discretion and caused a proper enquiry before submitting his report.

A copy of this proceeding may be sent to the Chief Secretary, Government of Bihar for information and necessary action.

Copy of the proceeding may also be sent to the applicants.

Justice S.N. Jha
Chairperson