

The applicant Anil Kumar Keshri of Henry Bazaar, Motihari, has approached the Commission for compensation. The case of the applicant is that on 17th July, 1997, the Motihari Police made indiscriminate firing at the demonstrators in course of which a bullet hit his right chest when he was going to the Bank for preparing bank draft. He sustained grievous injuries and was treated in the hospital for several months and lakhs of rupees were spent on treatment. He also underwent surgery but without success and he suffered disability in the right hand. The police recorded his statement but no FIR was lodged. He filed a case (Complaint Case No. 848/97) in the court of C.J.M. but the accused are not appearing in the case despite coercive orders regarding attachment etc. against them. He claimed compensation but he was advised to move the Human Rights Commission. The applicant has stated that in the incident three persons fell victim to the police action – two of them were granted compensation of rupees seven lakhs by the Government of Bihar but in his case, the sum of rupees three thousand only was paid by the District Magistrate, East Champaran. The applicant claims to be holder of red card i.e. a person Below Poverty Line (BPL). In the reminder application he has further mentioned that as a result of injury suffered by him in the incident he is suffering from 'obstructive jaundice' which has become cancerous. He has no money to buy medicines. He has a family of wife and four small children and there is none to look after them. He is somehow, surviving by virtue of donations and help by the traders of Henry Bazaar, Motihari.

In support of his case the applicant has enclosed several documents such as medical prescriptions, test reports, the order of the District Magistrate sanctioning compensation of rupees three thousand under the Bihar State Unorganized Labour Accident Grant Scheme, a copy of the ration card etc.

On 21.4.2009 report was called from the Home Department, Government of Bihar. Vide letter no. 3351 dated 21.5.2009, the Home (Special) Department directed the District Magistrate/ SP East Champaran to submit report. SP East Champaran submitted report to the State Government sending copy thereof to the Commission on 28.10.2009. The Under Secretary, Home (Special) Department, Government of Bihar vide his letter no. 9390 dated 19.11.2009 informed the Commission that whatever decision is taken by it, the same will be complied with by the State Government. Along with the letter, the aforesaid letter of the SP dated 28.10.2009 was enclosed.

Earlier on 17.11.2009, the Commission had passed an order directing the District Magistrate and SP of East Champaran to submit their independent

reports. However, in view of the above mentioned subsequent communication from the State Government dated 19.11.2009, the Commission is of the view that disposal of the proceeding need not await the receipt of report from the District Magistrate. It is clear that the stand of the State Government (in the letter dated 19.11.2009) is upon consideration of the report of SP and the attending facts and circumstances.

It is clear that in the facts and circumstances the State Government does not wish to contest the proceeding and – if I may say so – for good reasons. The fact that the applicant sustained bullet injury in course of firing does not appear to be in dispute. There is nothing in the SP's report to suggest that he was one of the agitationists. The report in fact states that the local enquiry corroborated the applicant's version of getting enquired and becoming handicapped. As mentioned above, three persons including the applicant were hit by bullets two out of whom were paid compensation of rupees seven lakhs. The applicant too was paid compensation but of a paltry sum of rupees three thousand. Had he been on the wrong side, he would not have been paid any compensation by the District Magistrate. If, thus, it is a fact that the applicant sustained grievous injuries in course of random firing by the police, there cannot be any doubt that he should have been paid unreasonable compensation by the State.

From the documents kept in the file it appears that the applicant's ailment has been diagnosed as 'obstructive jaundice'. Among other documents, the CT Scan report of the Kathmandu Medical College Hospital contains the following findings:-

1. Enhancing intra luminal polypoidal mass in distal common bile ducts/o Distal CBD cholangiocarcinoma
2. Distended gall bladder with dilated intra and extra hepatic bile ducts and mildly dilated main pancreatic duct
3. Hepatomegaly
4. Enlarged intra abdominal lymph nodes (sites as mentioned above)
5. Small amount of ascites noted
6. Right pleural effusion (minimum)

The documents suggest that the applicant suffered 40% disability and the 'obstructive jaundice' has now become cancerous, and therefore the applicant is in urgent need of money for treatment. As a matter of fact, as stated by him, having spent a large sum of money in course of treatment over a period of time, he has little left to support his family and he is dependant on financial help by the local trading community. If all this is the result of an incident in which the applicant was hit by a bullet fired by the police – for no fault of his – he must be adequately compensated. The Commission is accordingly satisfied that the

applicant has made out a case for compensation and it was unreasonable on the part of the authorities to ask him to move the Human Rights Commission for award of compensation rather than paid the same of their own.

Be that as it may, the Government letter dated 19.11.2009 (supra) states in clear terms that the decision of the Commission will be implemented. As indicated above, the decision is a conscious decision taken on consideration of the attending facts and circumstances. Being satisfied that the applicant unwarrantedly sustained injury in a police action for which he was not to be blamed - resulting in his present plight, the Commission hereby holds that the applicant is entitled to compensation of rupees three lakhs. The amount be paid to him within six weeks from today.

Let copy of the order be sent to the Home (Special) Department in response to letter no.9390 dated 19.11.2009, besides the applicant.

Put up after six weeks awaiting compliance.

Justice S.N. Jha
Chairperson