

This proceeding has been registered on transfer from the National Human Rights Commission (NHRC). The matter relates to custodial death of an under trial prisoner Vishwanath Mishra in the Aadarsh Central Jail Beur, Patna on 26.3.2008

Report was called from the Jail Superintendent. On perusal of the report the Commission vide its decision dated 8.6.2009 observed as under-

“The doctor who held the post mortem opined that the cause of death was Septicaemia (infection). A Magisterial enquiry was also held by a Judicial Magistrate who in course of enquiry looked into the records and recorded the statements of the jail authorities as well as fellow prisoners. He found that the deceased was suffering from several ailments as per the medical records. On 24.3.2008 he had fever, loose motion and vomiting etc. On 26.3.2008 as he had breathing trouble, oxygen was provided; glucose was also administered. He was later transferred to PMCH. The magistrate noticed the fact that the deceased was taken to PMCH without the oxygen mask and any para medical staff. He took the view that had the oxygen mask been not removed and the para medical staff accompanied the deceased, he could have been saved by getting better treatment at PMCH. The Magistrate concluded that taking of the deceased without oxygen mask and the assistance of para medical staff in the ambulance can be said to be cause of death.

It would, thus, appear that the Magistrate did not give a clean chit to the jail administration. The opinion of the doctor in the post-mortem report about the cause of death (septicaemia) refers to the immediate cause of death in medical terms. Septicaemia is a phenomenon which occurs over a period of time and is preventable if proper treatment and care is provided to the patient.

In the facts and circumstances, the deceased having died while in custody, a prima facie case is made out for grant of compensation.”

Notice was issued to the Principal Secretary, Department of Home, Government of Bihar and IG Prisons as to why compensation should not be awarded for the custodial death of Vishwanath Mishra. IG Prisons has sent response vide his letter No. 2795 dated 29.7.2009. No response has been received from the Home Secretary.

In his report the IG Prisons has referred to the ailments of the prisoner and the treatment provided from time to time. It has been stated that on 24.3.2008 he complained of fever and loose motion for which he was treated by Dr. Nawal Kishore Singh. On 25.3.2008 he was treated by Dr.S.M. Azhar in the morning and Dr. Deepa Rani Singh in the evening. As he had breathing trouble oxygen was provided and his condition improved. On 26.3.2008 at 6 AM his condition suddenly deteriorated and he was referred to PMCH for treatment. IG Prisons has held that there was thus no lapse on the part of jail administration in providing treatment. However, in the concluding part of his report, the officer has virtually admitted that sending the prisoner to PMCH without para medical staff and the oxygen mask was an act of carelessness attributable to the then Jail Compounder Habib-ur-Rehman and the Sick Orderly. Habib-ur-Rehman has since superannuated from service and the Sick Orderly has been transferred to Bhagalpur. However, explanation has been called from him.

As noted in the decision dated 8.6.2009 (supra), according to the doctor who held the post mortem, the cause of death was septicaemia. The Commission observed that septicaemia is a phenomenon which occurs over a period of time and is preventable if proper care and treatment is provided to the patient.

More important aspect is that had the prisoner been removed to the PMCH with proper care, his death could be prevented as found by the Magistrate who had held the inquest, which is more or less the admitted position. The immediate cause of death thus was negligence on the part of the officials of the Beur Central Jail in taking the prisoner out of the jail without the para medical staff and the oxygen cylinder/mask. The fact that the doctors attended on the prisoner on 24.3.2008 and 25.3.2008 is hardly material. The act of taking the prisoner without due care and caution as aforesaid was clearly an act of negligence which led to and precipitated the death. The fact that the negligence was on the part of the lower functionaries like Jail Compounder or Sick Orderly does not compound the offence. The fact remains that the deceased was in judicial custody and therefore the State Government can not escape its liability to pay compensation.

In the facts and circumstances we are satisfied that the immediate and real cause of death of the deceased prisoner was negligence of the jail authorities and the IG Prisons cannot get away by taking the plea that the Jail Compounder has retired from service and the and the Sick Orderly has been transferred to another jail. We are satisfied that it is a fit case for grant of compensation. In the facts of the case we are of the view that compensation of Rs. one lakh will be just and proper.

We accordingly direct the State Government through Principal Secretary, Department of Home, Government of Bihar to pay compensation of Rs. one lakh to the next-of-kin of the deceased Vishwanath Mishra and report compliance to the Commission within four weeks.

Justice S.N. Jha
Chairperson