

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

File No **BHRC/COMP.** CD – 108/10

Case of **LALAN RAI**

This file relates to custodial death of Lalan Rai son of Sohrai Rai – resident of village Bara Basantpur within Ara Mufassil P.S. of Bhojpur District (hereinafter referred to as the deceased) – an inmate of District Jail Ara, on 8.9.2008. The factum of death was reported to the National Human Rights Commission (NHRC) which was registered as case no.1642/4/6/08-09. The NHRC later transferred the matter to this Commission for disposal on 25.5.2010.

The relevant facts are as follows:-

Deceased Lalan Rai was admitted in the Ara District Jail as convict prisoner on 6.1.2003. On 25.4.2003 he was transferred to Buxar Central Jail and re-transferred to Ara District Jail on 14.10.2003. As per the report submitted by the Prisons Inspectorate dated 29.9.2011 and the statement of witness no.2 at the magisterial enquiry – on 24.10.2003 he fell ill and was admitted in the jail hospital. On the recommendation of the jail doctor he was sent to Ara Sadar Hospital for special treatment on 6.11.2007. He was sent back to jail on 12.11.2007 but was again sent to the Sadar Hospital on 3.7.2008. He was sent back to jail on 13.7.2008 and again taken to the Sadar Hospital on 19.7.2008 from where he was referred to Patna Medical College & Hospital on 7.8.2008. On 19.8.2008 he returned to jail and was kept in the jail hospital. After only two days on 21.8.2008 he was again sent to Sadar Hospital. On 3.9.2008 he was referred to PMCH for treatment. It is said that while steps were being taken to arrange the vehicle, escort party etc. for travel to Patna, on 8.9.2008 he died.

Copies of the reports including the post-mortem report and the magisterial enquiry report were sent to the deceased's family for their comments/response. The deceased's wife Rajkumari Devi submitted application alleging negligence on the part of the jail and hospital administration in providing proper medication and treatment to the deceased leading to his death, seeking suitable action and punishment to the guilty.

On consideration of the report the Commission vide its order dated 23.11.2010 – reiterated in the order dated 27.7.2011 – observed that the reports prima facie suggests that prisoner Lalan Rai died due to negligence which may warrant compensation to the deceased's family. Notice was issued to Secretary, Home Department and IG Prisons as well as deceased's wife Rajkumari Devi for hearing. The matter was finally heard in presence of the deceased's wife/son and Shri U.K. Sharan, AIG Prisons on 20.12.2011.

On behalf of the Jail Department it was submitted that the deceased was suffering from a fatal disease called Progressive Muscular Atrophy for which he was being treated in the National Institute of Mental Health and Neurosciences, Bangalore since prior to his admission in jail. Inside jail he was properly looked after and given proper medication. As and when required he was taken to Sadar Hospital and once to PMCH. On the advice of the doctors of Ara Sadar Hospital arrangement was being made to take him again to PMCH but he expired. There was thus no negligence on the part of the Jail Administration.

On behalf of the deceased's wife – applicant Rajkumari Devi, submissions made on behalf of the Jail Administration were controverted. It was submitted that the administration did not look after the deceased either in the matter of treatment or general care. It was the family of the deceased which looked after the deceased from their own efforts after paying for the services. The family in fact also often purchased medicines or paid for the medicines made available by the Hospital Administration.

The dispute as to whether the deceased was being taken care of by the Jail Administration or by the efforts of the deceased's family and the family paid for the medicines notwithstanding, the Commission is not able to appreciate as to why the deceased was made to shuttle between jail hospital and Ara sadar hospital as also PMCH almost at regular intervals like a shuttle cock. The deceased undoubtedly suffered from grave ailment and if his condition was deteriorating – in view of the nature of the disease – it is not at all understandable as to why he used to be sent back to jail or jail hospital. Clearly, the facilities in the jail hospital are far inadequate compared to the sadar hospital and therefore in the normal course, as a prudent person would do if he were to be treated in hospital – he should have been allowed to stay at least in the sadar hospital. Similarly, it is not understandable as to why the deceased was kept in PMCH only for 12 days between 7.8.2008 and 19.8.2008. It is a matter of common knowledge – and the reports are also to the same effect – that persons are referred to bigger hospital for better/specialised treatment. Surely, the disease like Progressive Muscular Atrophy could not be treated in the jail hospital or even the sadar hospital.

Moreover, when the deceased was referred to the PMCH for the second time, his condition must have aggravated and therefore the Administration should have shown more diligence and taken prompt steps in shifting him to PMCH. Instead, his shifting got delayed because of the official hassles which simply manifests the indifferent attitude of the administration. If the ailment of the deceased was so grave and fatal, in all fairness, the administration should have helped the deceased in securing bail to him and his release from custody. This Commission has observed in similar cases that a person in custody deserves the

same care and attention and treatment as he would in ordinary course would have received had he not been in custody. It may be recalled that the applicant was getting specialised treatment in a reputed hospital outside state namely National Institute of Mental Health and Neurosciences, Bangalore.

The Commission is of the view that it would be in the ends of justice to award compensation to the deceased's wife which may be a small solace and somewhat mitigate her hardships caused by the premature death of her husband. In the facts and circumstances, the Commission would quantify compensation at Rs. 2 lakh (rupees two lakh).

The Commission would accordingly direct the State Government through Secretary, Department of Home to pay compensation of rupees two lakh to the deceased's wife Rajkumari Devi within six weeks and submit compliance report.

File may be put up in the first week of March 2012 awaiting compliance.

Copy of this order may be sent to Secretary, Home Department for compliance and deceased's wife – applicant Rajkumari Devi for information.

Date:23.12.2011

Justice S.N. Jha
Chairperson