

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

File No **BHRC/COMP.** 1196/09

Case of **PRIYA RANJAN PRATAP SINGH**

This matter was finally heard in presence of applicant Uday Pratap Singh, Special Secretary, Home (Special) Ms. Preeta Varma, SP Saran, A.K. Satyarthi, the then SHO Derhni P.S. Md. Islam and chowkidar Ram Iqbal Rai on 9.12.2011.

The complaint of the applicant relates to an incident in which his son, Priya Ranjan Pratap Singh @ Jyoti Singh, died a homicidal death at village Sutihar within Derhni P.S. of Saran District on 4.8.2006. The incident gave rise to three cases. It is not necessary to mention the details. Suffice it is say that in the case lodged by the applicant viz. Derhni P.S. Case No.35/06 the police submitted final report 'true but no clues'. However, acting on the protest petition of the applicant, the magistrate conducted enquiry and cognizance was finally taken. When the matter was heard earlier on 15.9.2011 the Commission was apprised of the result of the cases. The veracity of the cases being sub judice in court the Commission would not like to go into the same.

In course of hearing, however, the applicant made a grievance that the ultimate outcome of the cases notwithstanding, the dead body of Priya Ranjan Pratap Singh was not handed over to the family; instead the body was stealthily thrown in the river. SP Saran admitted that this unfortunately was true. He referred to para 9 of the supervision notes of the then SDPO Sonapur dated 30.9.2006 in this regard. From the carbon copy of the report it transpired that the body was thrown in the river by chowkidar 4/16 Ram Iqbal Rai and chowkidar 7/2 Mewa Manjhi even though the identity of the body was known (on the basis of the driving license of the deceased which found mention in the seizure list). Observing that the chowkidar could not have disposed of the body on their own, without consent of any officer – in all likelihood the SHO, the Commission issued notice to the said two chowkidars as well as the then SHO Md. Islam. That is how Md. Islam, presently posted as Inspector (Special Branch) and chowkidar Ram Iqbal Rai appeared. The Commission was informed that chowkidar Mewa Manjhi has died.

Shri Md. Islam has filed a written defence in which it has been stated that the chowkidars had been given specific instruction to hand over the body of deceased Priya Ranjan Pratap Singh to the family members and there was no dereliction of duty on his part. It has also been stated that for the said incident, he was placed under suspension by the then SP and a departmental proceeding

was initiated against him in which punishment of stoppage increment of pay for six months equivalent to one black mark was awarded. The Range DIG Saran however set aside the order in appeal. Photocopies of the documents including extracts from the station diary entries have been enclosed with the written defence.

On consideration of the documents the Commission finds that vide Station Diary Entry (SED) No. 81 dated 5.8.2006 the dead body was handed over to chowkidars Sri Ram Iqbal Rai and Mewa Manjhi for getting post-mortem done at the Chapra Sadar Hospital with specific instructions that the body be handed over to his family members after the post-mortem. The Commission also finds that the officer was exonerated of the charge by the competent authority. In view of the station diary entries and decision of the competent authority exonerating him of the charge – which does not appear to be arbitrary or capricious, the Commission is of the view that it would not be appropriate to pursue the matter against the officer in the present proceeding.

So far as chowkidar Ram Iqbal Rai is concerned, he has not filed any written defence. When questioned about the circumstances in which he threw the body in the river he took the stand that the family members were not available and as it was getting late and the driver of the vehicle was in a hurry to leave, he threw the body in the river. On his own saying this was done at 5 PM.

The conduct of the chowkidar Ram Iqbal Rai cannot be condoned. He not only violated the direction of the superior officer, he also behaved in a very callous and inhuman manner. By his act of throwing away the body he denied the deceased the right to proper cremation – in keeping with the dignity, he also deprived the family members of similar right and opportunity to perform his last rites and cremate the body as per the beliefs, customs and traditions. The act amounts to violation of human rights within the meaning of Section 2(d) of the Protection of Human Rights Act, 1993.

It may be mentioned here that the two chowkidars had been placed under suspension along with SHO by the then SP, Saran. He however also made reference to the District Magistrate and as there was no response from the latter, the successor SP revoked the suspension after some time on the ground that there was dearth of chowkidars.

The Commission in this connection would like to observe that reference to the District Magistrate (for confirmation of suspension) was not at all required, for, the District SP has been delegated with the power of District Magistrate under the Village Chowkidar Act/Village Administration Act and it is settled law that where the delegee passes any order in exercise of the delegated power, he is

deemed to have passed the order on behalf of the delegator and the delegator cannot exercise the same very power again.

The plea of dearth of chowkidar may sound specious but considering the unpardonable conduct of the chowkidars, the successor SP should not have exercised discretion in their favour. Exigency of situation cannot override preservation of human rights. The Commission has no doubt in its mind that persons like Ram Iqbal Rai and Mewa Manjhi (now deceased) do not deserve to remain on the establishment of the state in any capacity, and SP Saran would do well to remove them from the rolls – sooner the better. In any view, under section 18 (a)(ii) of the protection of Human Rights Act, the Commission has power to direct suitable action against the person concerned.

The Commission is also of the view that it is a fit case in which the applicant as father of the deceased should be compensated for the violation of his and his deceased son's human rights. In the facts and circumstances, the Commission would quantify the amount of compensation at rupees fifty thousand.

The Commission normally directs the government to pay the compensation in the first instance and recover it from the salary etc. of the official who actually violated the human rights. In the instant case, no liberty can be given so far as Md. Islam is concerned – for the reasons already indicated above, and so far as chowkidars Ram Iqbal Rai is concerned, it may be difficult for the State Government to recover the amounts from him save by filing suit which may be very onerous and expensive exercise. But this in no way undermines the liability of the State. The actual violators were servants and agents of the State. There cannot be any doubt that for the acts of omissions and commissions by the servants and agents the State would be liable. Accordingly, the Commission would direct that the amount of compensation, as mentioned above, be paid to the applicant by the State Government. This should be done within a period of six weeks.

Matter may be put up put up in the first week of February 2012 awaiting compliance report.

Copy of this order may be sent to the Principal Secretary, Department of Home, Government of Bihar who shall ensure compliance of the order.

Copy may also be sent to the applicant and SP Saran at Chapra for information and further action, as the case may be.

Date:14.12.2011

Justice S.N. Jha
Chairperson