

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

File No **BHRC/COMP.** 268/10

Case of **late RAVINDRA KUMAR** (through **Ganauri Das**)

The matter relates to demise of one Ravindra Kumar son of Shri Ram Swaroop Das, resident of Warsaliganj, district Nawada at the All India Institute of Medical Sciences (AIIMS), New Delhi on 18.10.2009. The relevant facts may briefly be mentioned as follows.

Late Ravindra Kumar (hereinafter referred to as the deceased) was initially treated for heart ailments at the Indira Gandhi Institute of Cardiology (PMCH) Patna in February-April 2009. He was referred to the AIIMS for valve replacement. At the AIIMS he was advised to undergo surgery called "Double Valve Reconstruction (DVR) involving cost of Rs.1.46 lakhs vide estimate dated 6.4.2009. On 14.4.2009 he submitted papers viz. Income Certificate, Residence Certificate, Voter ID Card, Estimate Certificate etc. in the office of the Resident Commissioner, Bihar Bhawan, New Delhi seeking financial assistance for treatment from the Chief Minister's Medial Assistance Fund in terms of Resolution No.42 (14) dated 19.1.2007 (hereinafter referred to as the Resolution). The Designated Officer, namely, Shri S.K. Sinha, Accounts Officer, Office of the Resident Commissioner, New Delhi sent the papers to the District Magistrate, Nawada for verification. On 11.7.2009, Additional Collector, Nawada sent verification report to Shri S.K. Sinha. On 26.8.2009 the Competent Authority, namely, the Resident Commissioner sanctioned the amount of Rs.1.30 lakh by way of financial assistance to the deceased. Cheque for the said amount was also prepared on 2.9.2009. Handing over of the cheque, however, was withheld on the ground that the Income Certificate of the patient i.e. the deceased was wanting. Cheque was finally handed over on 10.10.2009 and submitted at the counter of the AIIMS on the same day. Intimation to that effect was given to the hospital management on 12.10.2009. On 18.10.2009 the deceased died.

The plea of the applicant who is the father of the deceased's wife i.e. his father-in-law is that condition of the deceased had deteriorated in the meantime for want of treatment. Had cheque been delivered and payment made to the hospital on time, and surgery done, life of the deceased could have been saved. For the careless and negligent conduct of the officials, deceased's wife and five year old son should be awarded monetary compensation and action should be taken against the officials.

Report was called from the Principal Secretary, Department of Health and the Resident Commissioner, Bihar Bhawan and they filed separate reports. In the report of the Resident Commissioner, factual matrix of the case as mentioned above was not denied. Thrust of the report was that the cheque was withheld because the patient's family income certificate was wanting which is mandatory. No sooner than the same was submitted on 9.10.2009, the cheque was delivered to the AIIMS (It may be mentioned that the Resident Commissioner simply sent the signed report of none other than Shri S.K. Sinha, the Accounts Officer).

The stand of the health Department is that the office of the Resident Commissioner, New Delhi has been authorized to sanction financial assistance for treatment in any recognized hospital in New Delhi under Health Department's resolution dated 19.1.2007 (supra). Nevertheless, on receipt of the application the matter was considered by the committee on 18.5.2009 in presence of (late) Ravindra Kumar and he was asked to submit papers viz. Income/Residence Certificates and the Estimate Certificate of the AIIMS in original. Ravindra Kumar later informed the office that he had submitted the originals in the office of the Resident Commissioner. Since the applicant had already approached the Resident Commissioner – which was in accord with the Resolution dated 19.1.2007 (supra) – the request could not be considered twice over as financial assistance cannot be given for the same purpose at two points. The Health Department thus claims that it had no role to play in this case and there was therefore no negligence on its part.

Upon consideration of the materials on record, in its speaking order dated 22.2.2011 the Commission took the view that it was a fit case for awarding compensation to the family of the deceased and taking suitable action against the concerned officials, particularly Shri S.K. Sinha, Accounts Officer, Bihar Bhawan. Notice was issued to the Government of Bihar through Principal Secretary, Department of Health as to why suitable compensation be not awarded to the family of the deceased. Notice was also issued – in view of the provisions of the section 16 of the Protection of Human Rights Act – to Shri S.K. Sinha.

Shri S.K. Sinha, who has since been transferred as Joint Commissioner of Commercial Taxes (Audit) Patna filed his show-cause, dated 18.4.2011. The Health Department through Director-in-Chief, Health Services also filed a rather cryptic response to the effect that there is no provision for payment of compensation in the resolution. The applicant also filed written statement enclosing documents therewith. On 1.8.2011 the matter was finally heard in presence of the applicant, his daughter Mamta Kumari i.e. wife of the deceased Dr. D. D. Gupta, Deputy Director, Health Services and Shri S.K. Sinha.

The plea of the Health Department that there is no provision for compensation in the resolution is fit to be summarily rejected. The resolution lays down the conditions of eligibility and the procedure for grant of medical assistance to persons above 'Below Poverty Line' (BPL) but having annual income of less than one lakh rupees from the Chief Minister's Medical Fund. Where the person fulfils the conditions, medical assistance is to be provided as a matter of course. There was no occasion for any default clause to provide for consequences of default by way of compensation. As a matter of fact, monetary compensation, if any, is awarded under the relevant provisions of the Protection of Human Rights Act which this Commission is enjoined to administer.

Shri S.K. Sinha in his submissions stated that at the time of submission of the application the deceased was orally told about the defects and asked to remove them. On 3.8.2009 the deceased filed affidavit stating that he had no source of income and he was fully dependent on his father but income cannot be assessed on the basis of affidavit and he was informed that in terms of the resolution of the Health Department, it was mandatory to submit his own income certificate. In the meantime the office put up the record before the Resident Commissioner and he sanctioned medical assistance of Rs.1.30 lakh. When the cheque was put up before him for his signature, he found that the income certificate available in the file was that of the patient's father and not of the patient. He then put up note before the Resident Commissioner suggesting that handing over of the cheque be withheld which was approved by him on 2.9.2009. The patient's representative was informed about it. Finally, on 9.10.2009 income certificate in the name of the patient was submitted and immediately thereafter the cheque was handed over to patient's representative Deep Raj on 9.10.2009 itself. The Officer thus took the plea that the delay in sending the money to the hospital was defective income certificate and, second, his objection/suggestion to withhold the cheque had the approval of the Resident Commissioner.

As mentioned above, there is little dispute about the factual matrix of the case. The claim of Shri S.K. Sinha that the 'defects' in the application were pointed out, however, is not borne out by the record. Indeed, on his own saying, it was done so 'orally'. The record on the contrary shows that the documents submitted by or on behalf of the deceased along with his application were apparently found to be in order. It is to be kept in mind that affidavit had been submitted in the meantime which apparently was accepted and treated as due compliance of the requirement. That is how the office after referring to the documents recommended that sanction of the Resident Commissioner for financial assistance of Rs. 1.30 lakhs may be obtained. On consideration of the office notes to that effect the Resident Commissioner approved the proposal. May

be, that the note did not have the endorsement of the Accounts Officer but the Resident Commissioner being the competent authority having sanctioned the amount of assistance, Shri S.K. Sinha as the Accounts Officer should not have intervened and sought modification of the order (dated 26.8.2009) on the ground that the patient's income certificate was wanting.

It was the specific plea of the deceased that he had no source of income of his own and he was completely dependent on his father. As a matter of fact, the income certificate which was granted by the District Magistrate in the name of the deceased mentioned the same amount i.e. Rs.29,000 as his family income which is the same as mentioned in the income certificate of the his father, Rs.29,000. Shri S.K. Sinha submitted that he insisted on submission of income certificate in the name of the deceased because there may be cases of the father having a meagre income and the son having substantial assets/income. The submission is in the realm of surmises and conjectures and not based on facts.

The Commission would observe that the object underlying the resolution of the Health Department is to provide financial assistance to the needy. Being a piece of beneficial policy decision – provisions whereof are to be liberally constituted – as in the case of 'beneficial legislation' – the resolution is to be interpreted and implemented in a manner that serves the object rather than defeats it. The commission would also observe that the term used in the resolution is 'family income' and in the case of joint family where the son is dependent on the father, the income certificate of the father could be treated as sufficient compliance of the requirement. There was affidavit to that effect and above everything, time was passing by. In any view, the Resident Commissioner being the competent authority having sanctioned assistance, the Accounts Officer should not have raised any objection. In the photocopy of the note/order sheet there is in fact an endorsement dated 2.9.2009 that "cheque no.064465 dated 2.9.2009 for Rs.1,30,000 had been issued". It is unfortunate that because of his insistence on 'strict' compliance of a provision of the resolution, a human life was lost and a young woman in her twenties and a young kid have become destitutes. The Commission is inclined to agree that had the cheque been delivered on time and money deposited with the AIIMS, and surgery performed on the deceased, his life could be saved.

As regards the Officer's plea that his objection to issuance of cheque was approved by the Resident Commissioner the Commission would observe that it is a usual phenomenon – unfortunate though it is – that whenever such query or objection is made, the matter is put on hold causing delay which sometimes proves counter productive and fatal – as in this case. What the Commission is not able to appreciate at the first instance is that the objection should have been

raised at all – in the attending facts and circumstances. The objection is reflective of typical bureaucratic functioning of a government department – which in the process, sometimes results in defeating the very objective of the proposed act.

The Commission is constrained to observe that the approach of the Officer, Shri S.K. Sinha, was insensitive and inhuman, and the Commission would find it difficult to condone his act of omission and commission.

The Commission is satisfied that the episode not only resulted in deprivation of the 'right to life' of the deceased but also violation of the human rights of his wife and child who have not only been deprived of the love and care of the husband/father but also forced into destitution. It is common knowledge that after marriage fathers usually take little care of their daughters. The deceased's wife and son therefore deserve to be awarded monetary compensation. In the facts and circumstances the Commission would quantify the amount of compensation at Rs.2.50 lakhs (two lakhs and fifty thousand rupees). The amount shall be paid by the State Government at the first instance with liberty to recover from the salary of Shri S.K. Sinha. The Government will also be at liberty to take suitable administrative action against Shri Sinha as may be considered appropriate.

Although as indicated above, the Health Department, in the instant case, had little role to play, being the nodal department for administering the resolution, the Commission would direct that the amount of compensation shall be paid by the Health Department on behalf of the State Government. In case of any administrative hitch like non-availability of head/fund for this purpose, the amount shall be paid by any other/concerned Department of the Government.

Compliance report be submitted to the Commission within eight weeks.

Copy of this order may be sent to the Principal Secretary, Health Department and Shri S.K. Sinha, the then Accounts Officer, Bihar Bhawan now posted as Joint Commissioner of Commercial Taxes (Audit) Patna, besides, of course, the applicant.

Justice S.N. Jha
Chairperson