

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road

File No **BHRC/COMP.** 524/10: CD-40

Case of **late SAROJ TIWARI**

The matter relates to the custodial death of Saroj Tiwari son of Ambika Tiwari resident of village Aasnagar within Kanti P.S. of Muzaffarpur district.

Saroj Tiwari (hereinafter referred to as the deceased) figured as an accused in Kanti P.S. Case No.49/06 corresponding to Sessions Trial NO.659/09. He was admitted in the Shaheed Khudiram Bose Central Jail, Muzaffarpur as an under trial prisoner on 5.3.2006. He complained of ailments for which he was initially treated at the Jail Hospital from 8.6.2009. On 21.6.2009 he was referred to Shri Krishna Medical College & Hospital (SKMCH), Muzaffarpur. He was found suffering from anaemia and liver trouble which after further examination was diagnosed as Hepatitis B. Curiously, he was discharged from the hospital only after a week. He was again sent to SKMCH on 21.8.2009 but sent back to jail on 4.9.2009. On 17.12.2009 he was referred to PMCH where he was admitted on 22.12.2009. On 1.1.2010 he died.

On receipt of intimation about the death copies of reports as per NHRC's guidelines were called. The post mortem report mentioned that the cause of death was "disease of liver". The Judicial Magistrate who held enquiry in terms of section 176(1A) Cr.P.C. also came to the same conclusion. He found that the deceased was ill for a long time; he was sent to PMCH for better treatment but his condition continued to deteriorate and he finally died in presence of his family members on 1.1.2010. The Magistrate did not find anything suspicious about the cause of death.

Copies of the reports were sent to the family of the deceased for their response. The deceased's daughter and son, namely Mousomi Kumari and Nitesh Kumar filed response, enclosing documents therewith, claiming that their father died due to negligence in treatment and they should be paid monetary compensation for protecting their right to life.

The matter was heard on 2.8.2011 in presence of AIG Prisons, Shri U.K. Sharan appearing on behalf of the Jail Department, and the deceased's family represented by his aforesaid two children and his father.

It was submitted on behalf of the deceased that hepatitis-B takes about 60-150 days' time to develop from infection ordinarily caused by use of infected needle. The deceased being in judicial custody since 5.3.2006, it is clear that he

contracted the disease while in custody. It was submitted that the disease got aggravated because the deceased was not properly treated. It was pointedly submitted that there was no justification to discharge him from SKMCH where he was first admitted on 21.6.2009 only after a week. The condition of the deceased had apparently not improved which is clear from the fact that he was again sent to SKMCH after few weeks on 21.8.2009. Interestingly, on 4.9.2009 he was sent back to jail and again referred to SKMCH later. An application addressed to the District Magistrate, Muzaffarpur was filed before various authorities urging them to intervene in the matter for proper treatment of the deceased by one Bhavachandra Pandey 'Bhanu' on 3.10.2009.

It is significant to mention that on 21.8.2009 the Jail Superintendent vide letter no.3184 dated 21.8.2009 had asked the deceased's father, Ambika Tiwari, to look after the deceased in SKMCH where he was being treated. It was submitted that while the family members of the deceased including his minor children were attending on him in SKMCH (where he was sent again) they were asked to buy medicines and arrange blood. Photocopies the vouchers totalling Rs.10,072.37 spent on purchase on medicines have been enclosed with response.

There is no apparent explanation for the 'breaks' in treatment. Hepatitis B is no doubt a serious disease but it is not incurable. The Commission is of the view that is the duty of the state and its functionaries to take same care of prisoner – in the matter of his medical treatment – which as a free person he might have received. In other words, having taken custody of a person and kept him in prison, the state and its functionaries cannot leave him to fend for himself. If the state cannot provide proper treatment to him, it is clear that being a prisoner, completely in the hands of the authorities, he would die.

As regards the expenses incurred by the family of the deceased, Shri U.K. Sharan stated that the money spent on purchase of medicines etc. can be reimbursed. In this connection he informed the Commission that there is no shortage of fund in any jail; and, as a matter of fact, sometimes the funds remain unutilised and surrendered at the end of the financial year. He also stated that as sufficient fund is available, medicines are normally purchased by the administration and supplied as per the requirement; where medicines are not available – and they are purchased from the open market, the payment is reimbursed.

It is a sad reflection on the jail administration that though fund remains unutilised, inmates die for want of proper timely treatment. The generosity now being shown – offer to reimburse the amount spent in purchase of medicines from the open market – can be of no solace to the victim family where the bread

earner died an untimely death. Late Saroj Tiwari was 35 years old at the time of death and he has left behind two grieving children below ten years in age. The Commission is satisfied that is a fit case of grant of compensation to them. In the facts and circumstances, the Commission would quantify the compensation as Rs. two lakhs.

The Commission, accordingly, would direct the State Government through Secretary, Home (Special) Department to pay sum of Rs. two lakhs to the next-of-kin of the deceased prisoner Saroj Tiwari i.e. his aforesaid minor children and submit compliance report within eight weeks.

Copy of this order may be sent to Secretary, Home (Special) Department as well as the family of the deceased through his father Ambika Tiwari as the guardian of the deceased's minor children.

Justice S.N. Jha
Chairperson