

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

File No **BHRC/COMP.** CD –85/10

Case of **VIJAY YADAV**

The file relates to custodial death of Vijay Yadav, son of Sakaldeep Prasad, resident of Kataharibagh, Chapra – an inmate of Chapra District Jail – at Chapra Sadar Hospital on 12.3.2010. Relevant facts are as follows.

Deceased Vijay Prasad was remanded to District Jail Chapra as an under-trial prisoner on 1.12.2009. As he was ill he was shifted to Chapra Sadar Hospital and later referred to Patna Medical College Hospital (PMCH). On 27.1.2010 he was admitted in PMCH. The doctors attending on him referred him to the All India Institute of Medical Sciences (AIIMS) but, curiously, instead of keeping him in the hospital for medication/treatment, sent him back to Chapra Jail on 29.1.2010. On 4.2.2010, Superintendent, District Jail Chapra wrote to the Secretary Department of Health for permission/recommendation of the State Level Medical Board for treatment outside state. As the condition of the deceased was apparently deteriorating he was shifted to jail hospital on 18.2.2010. Reminder was also sent to the Secretary, Department of Health on the same day. On 3.3.2010 IG Prisons also sent a request letter to the Health Department for taking steps so that the deceased could be sent to AIIMS for treatment. On 9.3.2010 the Director-in-Chief Health Services directed that the deceased be produced before the Medical Board on 11.3.2010. He was not produced before the Board on the date fixed. Apparently his condition had worsened and he was in no position to be taken to Patna. As a matter of fact, as mentioned at the outset, he died on the very next day i.e. 12.3.2010.

In its preliminary order dated 9.8.2010 the Commission on consideration of the reports viz. the medical reports, the magisterial enquiry report etc. took a view that there was an apparent delay in sending the deceased to New Delhi for treatment in AIIMS, and called for report from IG Prisons. On consideration of the IG Prisons' report dated 26.11.2010 the Commission vide order dated 8.4.2011 found that delay was attributable to the Health Department and accordingly sought report from the Health Department. Copies of the IG Prisons' report and the Commission's order were sent to Principal Secretary, Department of Health for response. No report/response was filed by the Health Department and in the circumstances, fixing the matter for oral hearing, notice was issued to the Principal Secretary, Department of Health, IG Prisons and the family of the deceased.

The matter was finally heard on 17.11.2011 in presence of Shri B. Naik, Deputy Director (Pharmacy) representing the Health Department and Shri U.K. Sharan, AIG Prisons representing the Jail Department. None appeared on behalf of the deceased's family.

From the brief narration of events two things remain unexplained. First, that the deceased was sent back to jail from the PMCH after two days of so called treatment between 27.1.2010 and 29.1.2010. If the ailment was so serious as to warrant specialised treatment in the AIIMS, there was absolutely no justification in sending the deceased back to jail. It may not be out of place to mention that this is not the solitary instance of its kind. In many cases the Commission has found similar response by the PMCH doctors. Sending the deceased back to jail was clearly an insensitive act. Perhaps they wanted to somehow get rid of him. It is to be kept in mind that within two weeks of his return, the deceased had to be shifted to jail hospital.

The second situation which remains unexplained is the delay in shifting the deceased to New Delhi for treatment in the AIIMS. As seen above, on 4.2.2010 the Jail Superintendent requested Secretary, Health Department to take steps for the recommendation of the State Level Medical Board but apparently nothing happened. A reminder was also sent fourteen days after on 18.2.2010. Nineteen days thereafter on 9.3.2010 the Director-in-Chief asked for production of the deceased before the medical board on 11.3.2010. The deceased died on the next day. Delay in convening the medical board for examination of the deceased was clearly the result of red-tapism and bureaucratic hassles. It also reflects insensitivity on the part of the officials of the Health Department.

Considering the nature of the ailment, perhaps, the death of the deceased was imminent but had proper treatment been provided to him on time he could have lived for sometime more. The delay of 39 days between the return of the deceased to Chapra Jail (on 29.1.2010) and convening of the medical board on 9.3.2010 clearly proved fatal. The Commission is of the view that the deceased being in the custody of the State as under-trial prisoner, it was the duty of the concerned officials to take proper care of him and provide him a befitting treatment. Keeping any person in custody deprives him and his family the opportunity and chance of getting treatment of his choice, and the state cannot escape its liability where the person dies of neglect.

The Commission cannot sit in judgement over the acts of God but it can provide some succour to the deceased's family by awarding monetary compensation. In the facts and circumstances, the Commission would award

compensation of Rs.2.50 lakh (two lakh and fifty thousand) to the deceased's family/wife.

The Commission accordingly directs the State Government through Secretary, Department of Home to pay compensation of Rs.2.50 lakh to the next-of-kin of the deceased/his wife – within period of six weeks and submit compliance report.

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

Date:21.12.2011

Justice S.N. Jha
Chairperson