

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHAWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-7**

O.H.R.C. CASE NO. 1850 of 2013

Smt. Jyotirekha Swain -

.... Petitioner

7th October 2015

ORDER

The petitioner Smt. Jyotirekha Swain, wife of late Sasikanta Mohanty, a resident of A/69, Sailashree Vihar, Bhubaneswar approached this Commission for payment of Rs.5 lakhs as her husband was drowned in Chilika lake near Satpada while coming in a tourist boat along with other tourists on 17-10-2012. According to the petitioner, her husband had gone for a cruise in Chilika lake near Satpada to have a glimpse of the dolphins swimming in Chilika lake. After cruising in Chilika lake when the boat was returning to Satpada jetty, suddenly the boat took a sharp turn, as a result of which Sasikanta Mohanty was thrown of the boat and fell into the waters of Chilika lake and got drowned. Frantic efforts were made to rescue the husband of the petitioner, but the boat operator did not care to rescue the deceased. On getting information about the incident from Brahmagiri Police, the family members of the deceased reached the site in the night. Police conducted a search operation in the morning in the lake and fished out the dead body of Sasikanta Mohanty, the namely the husband of the petitioner. Post-mortem was conducted over the dead body of the deceased. The petitioner sought financial assistance from the local Tahasildar as well as from the District Collector, but they did not listen to that. The petitioner was stunned to hear that the boat had no registration number, no insurance and was playing without having the mandatory life saving equipments in his boat. Police also informed the petitioner that the boat had no fitness certificate, route permit and there was no timing in operation of the boat. Thus, the petitioner could gather that the authorities did not care for the safety and lives of the tourists, who are ignorant of the state of affairs.

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It is alleged that hundreds of boats are plying without having any registration number, no fitness certificate, no insurance nor having any life saving equipments on boat like life jackets etc. It is also brought to the notice of the Commission that though several such mishaps had occurred, but surprisingly the authorities remain callous and have failed to enforce the mandatory provisions of law before allowing the boats to cruise in Chilika lake carrying tourists.

On receipt of this complaint, report from the Collector & District Magistrate, Puri was sought for by the Commission and also from the Superintendent of Police, Puri. The Collector, Puri in his report dated 3-9-2013 stated that 329 numbers of boats are registered as tourist's boats and they carried tourists from different destinations, but unfortunately the boat carrying the deceased Sasikanta Mohanty was not a registered tourist boat. As per the Police report, four numbers of accused persons were arrested and they have released on bail, but the boatman/driver could not be arrested as he had absconded and the boat in question also could not be seized as the same has been concealed somewhere else. On the alleged incident, two cases were registered by Brahmagiri Police, namely Brahmagiri PS case No.226 and 229 of the year 2012. Both the cases were registered under Section 304(A) read with Section 34 of the IPC and also under Section 282 of the IPC and all efforts are on to trace the absconding boatman. The report of the IIC, Brahmagiri PS dated 31-8-2013 reveals that one Asutosh Patra, son of Balamukunda Patra of village Niladri Vihar under Chandrsekharapur PS limits, Bhubaneswar lodged a report at Brahmagiri PS on 18-10-2012 and basing upon that report, Brahmagiri PS case No.226/2012 under Sections 280 and 304(A) of the IPC was registered relating to the death of one Sasikanta Mohanty, son of Golaka Bihari Patra of GA-169, Sailashree Vihar. Again on the written report of one Durga Prasad Mohanty, son of Golaka Bihari Mohanty of GA-169, Sailashree Vihar on 23-10-2012, Brahmagiri PS case No.229/2012 was registered under Sections 302, 120(B) read with Section 34 of the IPC and investigation was taken up. During investigation, it was ascertained that Brahmagiri PS case No.229/2012 is a

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true case under Sections 282, 304(A) read with Section 34 of the IPC against accused persons, namely Somanath Mohapatra, Asutosh Patra, Badrinarayan Das, Samarendra Paitala and accused boatman Dinesh @ Swadhin Jalli of Alupatana under Brahmagiri PS limits is liable under Sections 282 and 304(A) of the IPC, but no evidence is coming to substantiate the allegation under Sections 302 and 120(B) of the IPC. In Brahmagirii PS case No.229/2012, accused Somanath Mohapatra, Asutosh Patra, Badrinarayan Das and Samarendra Paitala were arrested on 30-5-2013 at 5:30 pm and were released on bail on the same day as the offences were bailable in nature. But so far accused boatman Dinesh @ Swadhin Jalli is concerned, he could not be apprehended as he had absconded from the village to evade Police arrest and he has concealed the boat in some unknown place to avoid seizure. Sources have been planted to trace out accused Dinesh @ Swadhin Jalli as well as the involved boat. The post-mortem report suggested that the death of the deceased was due to drowning and the drowning was caused as a result of negligent and rash driving of the boatman.

Perused the report of the Collector, Puri dated 1-5-2014 reiterating the facts as has been mentioned earlier with a further addition that awareness campaign has been arranged by the district administration frequently and tourists are being advised not to avail the unlicensed boats. Inland Water Transport Department and Police have been asked to monitor the licensing of the boats and to check fraudulent activities in the areas. It has also been pointed out by the Collector, Puri that Inland Water Transport Department is the licensing authority in respect of the plying of boats cruising in Chilika lake.

Thus, on analysing the materials on record, namely the report of the Collector, Puri and that of the IIC, Brahmagiri PS, the admitted fact emerges is that the deceased Sasikanta Mohanty, who had gone to visit Satpada on 17-10-2012 along with other tourists and after cruising in Chilika lake, returning to Satpada jetty because of the negligence driving of the boat by its boatman/driver, he fell into the waters of Chilika lake and drowned. His dead body was recovered the next day morning by Police from the waters of Chilika

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lake. The dead body was sent for post-mortem examination, which has also been admitted by the wife of the deceased. The IIC, Brahmagiri PS reports that the cause of death of the deceased was due to drowning and such drowning was caused as a result of negligent and rash driving of the boatman Dinesh @ Swadhin Jalli. The cases have been registered by Brahmagiri Police over the said unfortunate incident.

The consistent report of the Collector, Puri is that the deceased was cruising in Chilika lake along with other tourists in an unregistered tourist boat. It has been brought to the notice of the Commission that way back in the year 2011 precisely on 7-10-2011 the then Chief Secretary of the State had sent DO letters to all the Collectors of the State vide letter No.FE(Port)-45/11-8093/CS(Commerce) dated 7-10-2011 regarding implementation of various provisions of the Odisha Boat Rules, 2004 to ensure the safety and security of the passengers and cargo on board of boats engaged in Inland Water Transportation work in the State. By quoting Rule 3, 8, 9, 10, 15 and 34 of the Odisha Boat Rules, 2002 which has come into effect from 4-3-2004, the Collectors were instructed to authorise the Tahasildars at Tahasil level to ensure the effective implementation of the various provisions of the Odisha Boat Rules, 2004 specifically with regard to checking the plying of unlicensed boats within their local limits so that effective measures can be ensured in the matter of safety and security of the passengers dependent in Inland Water Transportation Sector of the State. The Collectors were requested to take timely follow up action on the matter and compliance be reported thereof.

But as it appears that despite enactment of the Odisha Boat Rules, 2004 and the letter of the then Chief Secretary addressed to all the Collectors of the State dated 7-10-2011, the officers concerned both at the cutting edge as well as at the district level much less the Collector of the districts have not woken up from their deep slumber. It is known to the entire world that Satpada under Brahmagiri Tahasil limits in the district of Puri is a tourist destination and everyday hundreds of tourists visit Satpada only to cruise in Chilika lake to see the dolphins. Neither the Tahasildar, Brahmagiri nor the tourist officer,

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Satpada and much less the district administration kept their eyes shut to the instructions of the Government. Their failure to check plying of unlicensed boats in Chilika lake without having valid registration number and without having boat worthiness certificate and other life saving equipments including life jackets are the reasons, for which at times there are instances where boats meet accidents and capsize in the deep waters of Chilika lake resulting in loss of precious human life and property. In a welfare State, it is the paramount duty of the State to protect the life and safety of its citizens. But in the given case, the report of the Collector, Puri reveals that Sasikanta Mohanty, the deceased along with other tourists were cruising in an unlicensed boat, for which the tragedy took place resulting in loss of life of a valuable citizen of the State. Thus, for the inaction of the instrumentalities of the State, the State is to indemnify the petitioner.

In a similar case, i.e. in the case of the boat tragedy which happened on 9-2-2014 in the Hirakud Reservoir while 114 families of Sambalpur including women and children were returning to Sambalpur from Tilia Ghat under Banharpali PS in the district of Jharsuguda, the boat was overloaded beyond its capacity. The boat was drowned around 4:30 pm, for which 31 persons died. In that incident, the State Government announced ex-gratia of Rs.1.5 lakhs out of the Chief Minister's Relief Fund to be paid to the next of kins of each person died in the incident, which is evident from the affidavit filed on behalf of the State of Odisha in the Hon'ble High Court of Orissa in WP(C) No.2833/2014. The Government in General Administration Department also by its Notification No.18696/CMRF dated 7-8-2012 prescribes financial assistance, i.e. ex-gratia payment to be made in death cases which are not covered under the State Disaster Response Fund (SDRF) and National Disaster Response Fund (NDSF) with effect from 16-6-2012. That notification of the Government says payment of Rs.1.5 lakhs to the deceased in a boat accident (normal time).

Thus, when in this case Sasikanta Mohanty was drowned in Chilika lake and when such an incident took place because the boat had no license and

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because of the negligence of the boat driver, i.e. the boatman, the petitioner is entitled to be provided with financial assistance, i.e. ex-gratia of Rs.1.5 lakhs under Section 18(a)(i) of the Protection of Human Rights Act, 1993.

Accordingly, copy of this order be sent to the Chief Secretary of the State, Principal Secretary to Government, Revenue & Disaster Management Department, Special Relief Commissioner as well as to the Collector, Puri for compliance of the recommendation of the Commission for providing financial assistance by way of ex-gratia of Rs.1.5 lakhs to the petitioner within two months of receipt of the copy of this order.

JUSTICE B.K.MISRA
ACTING CHAIRPERSON

7th October 2015