

**ODISHA HUMAN RIGHTS COMMISSION
TOSHALI BHWAN (2ND FLOOR),
SATYA NAGAR, BHUBANESWAR-751007**

OHRC Case No. 2025 of 2014

ORDER

20 March, 2015

The case is based on the complaint filed by Sri Biswapriya Kanungo and Sri Bijaya Kumar Panda , Advocates, Bhubaneswar alleging death of one Basanta Pradhan aged about 32 years on 28.6.2014 in Titilagarh Hospital due to custodial torture. They have mentioned that late Basanta Pradhan and two others of Hatapada, Titilagarh in the district of Bolangir were taken to custody by the Bolangir police on 10.6.2014 in a case of theft of a Mobile Phone. They were not produced before any Court and were subjected to physical torture. They have alleged that the case of death of late Basanta was directly attributable to such custodial torture and they have demanded compensation of Rs.10,00000/-to the family of the deceased apart from other criminal action against the erring police officer. One Sri Sandeep Mohanty, Member ,HRF,Bhubaneswar also submitted a separate petition (OHRC Case No.2024/2014) to the Commission on the self same allegation. Both the petitions were taken up together for consideration. The copy of the petition was sent to the DIG of police (NR), Sambalpur, as well as to the ADG, CID, CB, Cuttack, the District Magistrate , Collector Bolangir, and S.P.,Bolangir for their reports. Their reports were received in the Commission and we felt that it is a fit case where the Investigation Wing of the Commission

should conduct its own investigation and apprise the Commission about the facts. The ADG-cum-Director of Investigation of the Commission along with the DSP of police, Sri P.K.Tripathy ,and other supporting staffs proceeded to Bolangir and Titilagarh and submitted their report on 31.10.2014. The copy of the enquiry report of the ADG-cum- Director of Investigation of the Commission was given to the petitioners for their comments which have since been received. We have also heard Mr. Kanungo at length as well as the Director of Investigation, OHRC on 6.1.2015.

The facts of the case as revealed from the various reports referred to above are as follows:-

A Samsung Mobile Phone belonging to the wife of the Ex- IIC, Town P.S,Bolangir, Sri Tarique Ahammad was stolen on the night of 31.5.2014 , although there was no official record in this regard in the Bolangir Town P.S. On 10.6.014, the IIC of the P.S. Sri Tarique Ahammad, along with S.I. A.K.Pradhan, ASI, D.K.Dang, WSI, Lipika Naik ,and some Home Guards and Constables proceeded to Titilagarh P.S. on the information that the said Mobile Phone had been recovered. The team returned to the P.S. along with three persons namely, Md.Bilal Ansari, Md.Fazal and Sri Basanta Kumar Pradhan on the same night. A Station Diary Entry has been made to this effect on 12.6.2014 .As per the available police record of Bolangir Town P.S. it is an admitted fact that late Basanta Pradhan, Md.Fazal and Md.Bilal Ansari were detained in the P.S from the early hours of 12.6.14 till the evening of 13.6.14. Md.Bilal Ansari and Md.Fazal were released on 13.6.14 evening. Detainee Basanta Kumar Pradhan was released from

Bolangir Town P.S on 14.6.14 around 10.30 P.M. in a state of acute sickness.

Prior to his release, he had been taken to DHH, Bolangir on 12.6.2014 with injuries on left side of his thigh ,where he was treated by Dr. Girija Sankar Udgata .The said detainee was again sent for medical treatment on 14.6.2014 by policemen in civvies and Dr.T.K.Palit of Police Hospital, Bolangir treated him. Both the doctors have stated before the investigation team that the injuries on left thigh of Basanta Kumar Pradhan could have been caused by blunt force.

The investigation team of OHRC have come to the conclusion after going through the CDRs and collecting further evidence that late Basanta Kumar Pradhan was detained in Bolangir P.S. from the evening of 10.6.2014 till the evening of 14.6.2014. He was released on 14.6.2014 only after an undertaking was obtained by the police that the victim had not been subjected to any custodial torture.

The investigation team has further found during enquiry that the Bolangir Town P.S. staff coerced and intimidated the brother of the victim not to take him to any Govt. Hospital for treatment even after his release on 14.6.14. The victim returned to Titilagarh on the next day and consulted Dr. Ram Prasad Sahu on 18.6.14 and later consulted Dr.Bikram Sharma of Titilagarh on 21.6.14, who has stated before the Investigation team that he had observed gluteal abscess with pus discharge. He gave the opinion that “such type of complication followed by injuries could

be possible by assault with hard and blunt object.” On 28.6.2014 the condition of late Pradhan became serious and he was finally taken to the Sub-Divisional Hospital, Titilagarh , where he was declared dead. After the news of Basanta Pradhan’s death spread in Titilagarh a huge mob became violent and ransacked Local P.S, Titilagarh SDPO’s Office , Police Barracks and burnt Government properties. On the report of Satyanarayan Pradhan, the brother of the deceased , the police registered a case bearing Titilagarh P.S.Case No.144 dt.28.6.2014 U/s.341,342,506,302/34 I.P.C. It is reported that the investigation of Titilagarh P.S.Case No.144 dt.28.6.2014 relating to this case has been handed over to the HRPC and the matter is under investigation .

Md. Bilal Ansari ,another detainee has also stated that he was assaulted by the policemen during his detention at Balangir Town P.S. During the above period and he was treated by Dr.L.D.Sharma on 14.10.2014 and subsequently by Dr.Debasis Patnaik on 29.10.2014. He further had to take treatment in Seven Hills Hospital, Vizag as an OPD patient on 2.7.2014.

An opportunity was given by the Commission to Tarique Ahammad ,IIC,Bolangir Town P.S. to appear before the Commission on 23.12.14 at 11.30A.M. and to explain his conduct. In response to the above direction, the S.P.Bolangir in his letter dt.12.12.14 reported that the whereabouts of Sri Ahammad, who had been placed under suspension were not known. The investigation team of the Commission found during their enquiry that the P.S. had CCTV Cameras, one Camera was fitted in the Hazat room , two Cameras

in Central Hall and another in front of the Town P.S. and all of them are connected to the monitor of the CCTV in the chamber of the IIC. The team however, found that the hard disk of the monitor was missing. Since the IIC, Tarique Ahammad chose not to appear before the Commission and since no independent source of evidence such as recording of the CCTV was available to us, we are constrained to rely on the available reports of the police as well as the investigation wing of the Commission.

We would not like to influence the course of the investigation being conducted by the HRPC in P.S. Case No. 144 of Titilagarh P.S. Our concern at this point of time is only to access whether there was any human rights violation in the entire episode from 10.6.14 to 28.6.2014.

The investigation team of OHRC has conclusively established before us after making a thorough analysis of the evidence collected during their field visit that late Basanta Pradhan was detained in Balangir Town P.S. from the night of 10.6.14 till the night of 14.6.14 and that Md. Bilal Ansari and Md. Fazal were detained in the same P.S. from the night of 10.6.2014 till the evening of 13.6.2014. There was no F.I.R. in the P.S. on the basis of which these three persons were detained. No arrest was shown anywhere in the police records. Late Basanta Pradhan was taken to the DHH Bolangir on 12.6.14 and to Police Hospital on 14.6.14. The police records do not explain why it was necessary to do so. There is clear cut evidence that late Basanta Pradhan and Md. Bilal Ansari had been subjected to police torture during their detention

. This has been corroborated by none other than police personnel of Bolangir Town P.S itself. Bolangir police had obtained an undertaking from the victim late Basanta Pradhan on 14.6.14 that he had not been subjected to any torture . Designed that it was to cover the tracks of the police concerning custodial torture, such an undertaking has only acted as a smoking gun and brought out in sharp relief the criminal intention of Bolangir police in trying to cover up the blatant acts of such torture.

Our conclusion about custodial torture is not based on only such inferences. There is evidence collected from the doctors, who treated late Basanta Pradhan and Md.Bilal Ansari that they had been beaten by blunt weapon while they were in the Police Station. The two acts namely, the illegal detention of the three persons and the custodial torture inflicted on late Basanta Pradhan and Md. Bilal Ansari are enough to establish the fact beyond any pale of doubt that the Bolangir police did commit human rights violations in this case.

But the story does not end here. When late Basanta Pradhan was finally released on the evening of 14.6.2014 in the custody of his nephew and brother allegedly in abnormal state, he was “coerced and intimidated” by the Bolangir P.S. not to take any medical attention from a Government hospital. He was therefore, treated by two private doctors, Dr.Ram Prasad Sahu on 18.6.2014 and Dr.Bikram Sharma on 21.6.2014.

Postmortem of the dead body of the deceased Basanta Pradhan was conducted by four doctors namely,

Dr. Debasis Pattnaik, Dr. P.K. Naik, Dr. G.B. Sahu and Dr. S.S. Jena attached to Sub-Divisional Hospital, Titilagarh and they opined that the cause of death was due to Septicemia shock and resultant Cardio circulatory failure. They further noticed various injuries of ante-mortem nature, caused by hard and blunt objects on the person of the deceased. The age of the injuries was opined by the doctors as about 10 days prior to the date of postmortem i.e. 28.6.014. The S.P., Bolangir in his report dt. 1.7.14 addressed to the D.G and I.G of Police Odisha has opined that "it is not a case of death in custody, but torture in police custody cannot be ruled out". The Bolangir Police has been trying to take shelter behind the fig leaf that death of late Basanta Pradhan took place 14 days after he was released from Bolangir Town P.S. and hence it was not a case of "custodial death". But the finding of the investigation team of OHRC that he was coerced not to take any assistance from a Government Hospital and the Post Mortem Report stating that death of late Pradhan took place due to septicemia shock relating to injuries inflicted about 10 days prior to the death of the victim have unmistakably established the fact that the death was directly relating to custodial torture.

Custodial violence/torture and abuse of police power are not peculiar to our country, but it is widespread. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

Article 21 of the Constitution of India is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. This Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Life or personal liberty includes a right to live with human dignity. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures.

Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died are available. It is not unknown that because of the ties of brotherhood at times, the police personnel prefer to remain silent to save their colleagues and the present case is an apt illustration as to how one after the other police witnesses feigned ignorance about the whole matter and also had gone to the extent of removing the hard disc of the CCTV Cameras installed in the Hazat and other places of Bolangir Town Police Station. Despite

several judgments of the Apex Court of the country, there has been no noticeable change in the functioning of the police system in our country and the dictum of the Apex Court appears to have fallen to deaf ears. The vulnerability of human rights assumes a traumatic torture when functionaries of the State fails to protect the citizens. The law enforcers cannot take law into their hands to collect evidence or to unearth a mystery over the crime. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. Duty of care on the part of the State is strict and admits of no exceptions. In *Bhim Singh-V- State of J&K and others* (1985) 4SCC,677 the Apex Court held that illegal detention in police custody amounts to violation of the fundamental rights under Article 21 and 22(2) of the Constitution of India and for such violation of the valuable constitutional rights, the State is to pay monetary compensation by way of exemplary costs or otherwise. Reliance can also be placed in the judgment of the Apex Court in *Rudul Sah-V- State of Bihar and another* (1983) 3 SCR 508 and *Sebastian M. Hongray-V- Union of India and others*,(1984)1 SCR,904.

The macabre story of police torture in Bolangir Town P.S narrated above is a slur on the police which has a fiduciary responsibility to use the authority of the State only for the protection of life and liberty of its people and not against them. What makes it particularly odious is the fact that the IIC, Bolangir Town P.S. used such authority of the State for retrieving a stolen mobile phone belonging to his wife. When the solemn authority of

the State is abused for self-aggrandizement and vendetta with scant regard to the human rights of individuals, the resultant crime by the police assumes monstrous proportions which need to be visited with the severest deterrence.

The payment of compensation in cases of custodial torture/death is not to be understood as it is generally in a civil action for damage under the private law but in the broader sense of providing relief by an order of making monetary amends under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights. The compensation is in the nature of the exemplary damages awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort. **The State of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceeding (AIR 1993 SC, 196, Smt. Nilabati Behera alias Lalita Behera -V- State of Orissa and others).**

We have no doubt in our mind that this is a fit case where compensation needs to be paid to the hapless widow of late Basanta Pradhan Under Section 18(a)(i) of the Protection of Human Rights Act, 1993 and we recommend that an amount of Rs.3,00,000/- (Rupees three lakhs) to be paid to her. We further recommend that an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) be paid to Md. Bilal Ansari, who underwent custodial torture and illegal confinement in Balangir Town P.S.

from 10.6.14 to 13.6.14. We further recommend a compensation of Rs. 25,000/- (Rupees twenty five thousand) to be paid to Md. Fazal for his illegal detention from 10.6.2014 to 13.6.2014. The above recommendations be communicated to the Chief Secretary, Odisha and Principal Secretary, Home Department, Government of Odisha to furnish a compliance report with regard to the payment of the compensation awarded to the widow of late Basanta Pradhan, Md. Bilal Ansari and Md. Fazal within eight weeks hence. We also direct the D.G and I.G of Police, Odisha to expedite the disciplinary action against Sri Tarique Ahammad, Ex, IIC of Balangir Town P.S now under suspension and take the matter to its logical conclusion. We further direct the D.G and I. G of Police to send a status report of investigation being conducted by the State HRPC eight weeks hence.

Put up on 25.5.2015 awaiting reports.

SHRI B.K.PATNAIK
MEMBER

JUSTICE B.K.MISHRA
ACTING CHAIRPERSON