

ODISHA HUMAN RIGHTS COMMISSION
2nd Floor, Toshali Bhawan, Satyanagar
Bhubaneswar-751007

OHRC Case No. 3444 of 2014

Shri Prabir Kumar Das, Advocate

... petitioner

ORDER

The petitioner Shri Prabir Kumar Das, Advocate & HR activist, Bhubaneswar in his petition dated 21.10.2014 alleged that a convict named Tek Bahdur Chhetri, who was lodged in the District Jail, Keonjhar had died on 17.10.2014 because of negligence of the authorities in providing him the required medical treatment.

The petitioner also alleged that though the deceased convict Tej Bahadur had cardio-vascular problem, it took more than a month, i.e., from 9.9.2014 to 14.10.2014 on the part of the district administration in taking a decision in regard to his shifting to SCB Medical College & Hospital, Cuttack for better treatment, for which the convict though shifted on 15.10.2014 after his condition deteriorated had died on 17.10.2014. The petitioner further alleged that though it is the responsibility of the State to provide proper medical care and treatment to the convict, Tek Bahadur, failure on the part of the concerned authorities of the State in rising to the occasion had claimed his life which amounts to violation of his Right to Life as guaranteed under Article 21 of the Constitution of India.

The petitioner apart from praying for taking appropriate action against the official found guilty/negligent also prayed for awarding a compensation of Rs.10 lakhs to the next of kin of the deceased convict Tej Bahadur.

Perused the letter of the Additional District Magistrate, Keonjhar dated 29.9.2014 addressed to the Chief District Medical Officer, Keonjhar in which the latter was requested to submit his specific views/recommendation for removal of Convict No.9002/A Tek Bahadur from the District Jail, Keonjhar to SCB Medical College & Hospital, Cuttack for his treatment so as to enable the Collector & District Magistrate, Keonjhar to accord necessary permission under Rule 1123 of Odisha Jail Manual as sought for by the Superintendent, District Jail, Keonjhar. Also perused the letter of the Superintendent, District Jail, Keonjhar dated 12.9.2014 addressed the CDMO, Keonjhar in furnishing such a report to the Collector & District Magistrate, Keonjhar in this regard. However, the CDMO, Keonjhar in its letter dated 11.10.2014 addressed to the ADM, Keonjhar recommended for shifting Tek Bahadur to the SCB Medical College & Hospital, Cuttack for his cardiological check up and treatment as he was found to be suffering from Rheumatic Valvular Heart disease.

Perused the report of the Collector, Keonjhar dated 28.10.15 wherein he has mentioned that the relevant file was put up before him on 5.9.14 for according permission for removal of the convict Tek Bahadur Chhetri to the SCB Medical College & Hospital, Cuttack, and he on the next day, i.e. on 6.9.14 desired a specific report from the CDMO, Keonjhar. However, he accorded permission for shifting the convict to the SCB Medical College & Hospital, Cuttack on the very day, the file was submitted to him, i.e., on 16.10.14. The Collector, Keonjhar has further mentioned that the Superintendent, District Jail, Keonjhar instead of making correspondence could have met him

personally or spoken over phone about the urgent need of shifting the convict to Cuttack and in that case, he could have accorded necessary permission then and there.

The Collector, Keonjhar has attracted the attention of the Commission to the relevant provisions of the Circular No.09 dated 14.9.2011 of the I.G. of Prisons & DCS, Odisha, Bhubaneswa which has been communicated to all the Superintendent of Jails. The said Circular says that **“On shifting of patient prisoner in critical cases to the Government Hospitals/Medical Colleges without awaiting for orders of the higher authorities should be strictly followed. If any negligence in the matter is noticed, the Superintendent of the concerned Jail along with the Medical Officers will be held responsible and disciplinary action as deemed proper will be taken against him.”**

The Collector, Keonjhar further held the view that Superintendent, District Jail, Keonjhar could have himself taken immediate steps to shift the convict without awaiting the permission from the District Magistrate, Keonjhar. The Collector, Keonjhar has stated that there was no delay at his level because the permission was accorded on the very day the file was put up to him with the specific report of the CDMO, Keonjhar. Also perused the earlier report Collector, Keonjhar dated 29.12.2014 in which he has stated that there being no negligence in providing treatment to the convict Tek Bahadul Chhetri, there was no question of any violation of Right to Life of the said convict and therefore, there is no justification of paying any compensation to the next of kin of the deceased convict.

Also perused the report of the Superintendent, District Jail, Keonjhar dated 3.8.15 along with the report of the Medical Officer, Jail Hospital, District Jail, Keonjhar which give a detailed account of treatment provided to the

convict Tek Bahadur Chhetri at Keonjhar as well as the status report as submitted by Shri Ajit Kumar Routray, Superintendent, District Jail, Keonjhar. The report shows that Superintendent, District Jail, Keonjhar requested the Collector & District Magistrate on 3.9.14 for according necessary permission for removal of the convict Tek Bahadur Chhetri to the SCB Medical College & Hospital, Cuttack as per Rule-1123 of Odisha Jail Manual. As the Collector, Keonjhar wanted the specific views of CDMO, Keonjhar for shifting the patient prisoner to Cuttack, a letter was issued by the District Office letter No.2046 dated 8.9.14 to the CDMO, Keonjhar in that regard. The Superintendent, District Jail, Keonjhar had himself requested the Collector, Keonjhar on 16.9.14 for according permission on the strength of the views of Dr. Dhaneswar Sethi, Senior Medicine Specialist, DHH, Keonjhar who examined the convict and advised to send the patient convict to the Cardiology Department of the SCB Medical College & Hospital, Cuttack for necessary check-up and in fact, such advice of Dr. D. Sethi, Senior Medicine Specialist was also endorsed by the CDMO, Keonjhar, who felt that the case of the convict is a genuine one for referral to the SCB Medical College & Hospital, Cuttack. However, at this stage, when the file was put up to the ADM, Keonjhar on 24.9.14, he wanted the CDMO, Keonjhar to give his specific views on the case of the convict and accordingly, a letter was issued to the CDMO, Keonjhar by the ADM, Keonjhar on 29.9.14 and on receipt of such a specific report from the CDMO, Keonjhar dated 11.10.14, the same was put up before the Collector, Keonjhar on 16.10.14, who on the same day approved the proposal for shifting the convict to the SCB Medical College & Hospital, Cuttack. The patient prisoner who was admitted into the SCB Medical College

& Hospital, Cuttack on 16.10.14 at 12 noon had passed away in the morning hours of 17.10.14 while under treatment.

It is seen from the xerox copy of the office note sheet that though the Collector, Keonjhar on 6.9.14 had observed that "specific views of CDMO himself is required", a letter in this regard was issued by the ADM, Keonjhar to the CDMO, Keonjhar only on 29.9.14, i.e. after expiry of 23 days and the CDMO, Keonjhar took ten days to furnish his specific views on the matter, i.e., on 11.10.14. As a matter of fact, the delay in this case was caused at the level of the ADM, Keonjhar as well as the CDMO, Keonjhar.

However, the Commission is convinced that in reality there was no slackness on the part of the Superintendent, District Jail, Keonjhar in providing treatment to the convict Tek Bahadur Chhetri as there was not a single instance of any delay in taking the convict to the District Headquarters' Hospital, Keonjhar for necessary treatment as and when such occasions arose. However, the Superintendent, District Jail, Keonjhar, who is himself well aware of the provision of the Circular No.9, dated 14.9.2011 of the I.G. of Prisons & DCS, Odisha, Bhubaneswar ought to have applied his mind and personally apprised the Collector, Keonjhar about the provision of the said Circular to avoid any delay in sending the convict Tek Bahadur Chhetri to the SCB Medical College & Hospital, Cuttack for his treatment and had this been done, the need for obtaining the specific views of the CDMO, Keonjhar would not have arisen.

As it seems, there was some delay in processing the file in the District Office, Keonjhar and if the Superintendent, District Jail, Keonjhar could have taken a little more care to hasten up the matter, things would have been different. Therefore, in the facts and circumstances of the case, the allegation

of negligence cannot be sustained against the Superintendent, District Jail, Keonjhar in this case.

The Commission observes that since the whole exercise was conducted in a routine manner, it led to delay in sending the convict to Cuttack for treatment. As it seems, the Superintendent, District Jail, Keonjhar did not imagine that it would take so much time for getting the specific views of the CDMO, Keonjhar. Nevertheless, the Superintendent, District Jail, Keonjhar, who was himself in know of the provisions of the Circular in question had failed to bring it to the notice of the Collector, Keonjhar.

Therefore, the Commission recommends that disciplinary action be initiated against Shri Ajit Kumar Routray, Superintendent, District Jail, Keonjhar, who was found to have not followed the instruction as issued by the I.G. of Prisons & DCS, Odisha, Bhubaneswar in its Circular No.9 dated 14.9.2011.

With the aforesaid observation, the case stands disposed of.

**JUSTICE B. K. MISRA
ACTING CHAIRPERSON**