

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(HC) 05 of 2024

1. Smt. Dimali Debbarma,
W/O Lt. Somnath Show @ Vicky@ Biki
aged about 23 years, resident of Bhati Abhoynagar
Cantonment Road, P.S. West Agartala, P.O. Agartala, West Tripura
 2. Sri Randhir Shaw (minor)
S/O Lt. Somnath Show @ Vicky @ Biki,
aged about 4 years resident of Bhati Abhoynagar
Cantonment Road, P.S. West Agartala, P.O. Agartala, West Tripura
(represented by his natural guardian, mother, petitioner No.1)
 3. Smt. Rekha Debi Shaw,
W/O Sri Ananda Show
aged about 60 years, resident of Bhati Abhoynagar Cantonment Road,
P.S. West Agartala, P.O. Agartala, West Tripura
- Petitioner(s)

V E R S U S

1. State of Tripura represented by the Secretary Home Department,
Government of Tripura, New Capital Complex, P.S. New Capital
Complex, P.O. Kunjaban, Agartala, District-West Tripura, PIN:799004
2. Inspector General of Prison, Prison Directorate, Dhaleswar, P.O.
Dhaleswar, P.S. East Agartala, Agartala, West Tripura, PIN:799007
3. Superintendent, Kendriya Sansodhanagar Tripura, Gakulnagar,
Bishalgarh, P.O. & P.S. Bishalgarh, District-Sepahijala, Tripura,
PIN:799102
4. Medical Superintendent, AGMC & GBP Hospital, Agartala, P.S. New
Capital Complex, P.O. Kunjaban, West Tripura, PIN:799006
5. Medical Officer, Bishalgarh Sub-Divisional Hospital, P.O. & P.S.
Bishalgarh, District-Sepahijala, PIN:799102
6. Superintendent of Police, Sepahijala District, Bishramganj.
7. Officer-in-Charge, Bishalgarh Police Station, P.S. Bishalgarh, District-
Sepahijala, PIN:799102.

..... Respondent(s)

For petitioner(s)	:	Mr. Sankar Lodh, Advocate Mr. S Majumder, Advocate
For Respondent(s)	:	Mr. Kohinoor N Bhattacharyya, GA Mr. Rajib Saha, Addl. PP Ms. P Chakraborty, Advocate

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT AND ORDER (ORAL)

17.12.2024

The writ petitioners approached this court with a prayer to call for the records lying with the official respondents and issue a writ of mandamus or in the nature thereof for directing a judicial inquiry for the custodial death of Somnath Show @Vicky @Biki in the Kendriya Sansodhanagar Tripura, Gakulnagar, Bishalgarh and to direct registration of the FIR in terms of the written complaint dated 18.01.2023 and also to pay Rs.50,00,000/- as compensation for the custodial death of the husband of the petitioner.

2. When the matter was taken up on 20th May, 2024 learned counsel for the petitioner submitted that the post-mortem report at page 62 and 63 reveal that there were ante-mortem injuries which, however, are not reflected in the medical report of the Kendriya Sanshodhanagar Hospital. Therefore, petitioners suspect that the deceased died due to custodial torture. Learned Public Prosecutor, thereafter, was asked to seek instruction and file counter affidavit.

3. Counter affidavit was filed thereafter by the respondents No. 1 to 3, inter alia, stating that the under trial prisoner, namely, Somnath Show attended the KST Hospital, OPD with complaint of nausea & vomiting and he was admitted to KST Hospital for better treatment. All routine investigations were conducted and reports were within normal range. On 9th June, 2022 his case was reviewed by the Medical Officer, Kendriya Sansodhanagar Hospital and he was found stable and medicines were prescribed. On 10th June, 2022 he was again examined by the Medical Officer, KST Hospital and his health

condition was found to be stable and he was advised Psychiatric consultation. On 11th June, 2022 visiting psychiatrist examined him and prescribed medicines. He was advised for discharge as his condition had improved. Thereafter, on 13th June, 2022 he attended the KST OPD with complaint of general weakness. The medical officer advised him medicines and kept him under observation. However, he was discharged after improvement of his health condition. On 16th June, 2022 he attended KST Hospital OPD with complaint of sleeplessness, generalized weakness with a localized small infection over left wrist and he was kept under observation of KST Hospital and treated in line of Drug Withdrawal Syndrome with soft tissues infection. Since there was no significant improvement under medical observation at KST Hospital, he was referred to Bishalgarh Sub-Divisional Hospital, Bishalgarh on the same day for further management. Subsequently, he was referred to AGMC & GBP Hospital from Bishalgarh Sub-Divisional Hospital after initial treatment on the same day. He was under treatment at the AGMC & GBP Hospital w.e.f. 16th June, 2022 till 17th June, 2022 when he ultimately expired during his treatment. The Medical officer, KST Hospital prepared a report on 21.07.2022 (Annexure-R/2).

4. Thereafter, on 18th June, 2022 Sri Tapan Kumar Das, Warden KST duly handed over the dead body of the deceased to his father, namely Ananda Saha and his younger brother namely, Bikash Shaw (Annexure-R/3). It is stated that at the time of admission in Kendriya Sanshodhanagar on 6th June, 2022 the Medical Officer prepared a proforma for health screening. In the said proforma, in para 1(a) on being asked as to whether he was suffering from any disease, it was answered as Opioid Dependence Syndrome. It indicated that while at the time of entering KST the under trial was suffering

from Opioid Dependence Syndrome which are a class of drugs of chemical components natural or synthetic that interact with nerve cells and have the potential to reduce pain.

5. On 17th August, 2022 the Associate Professor, Department of Medicine, AGMC & GBP Hospital submitted a report before the Medical Superintendent, of the said Hospital in connection with the treatment of the under trial. It was mentioned that he was provided treatment on 16th June, 2022 at the Emergency block with conservative management (shock patient with history of Opioid abuse) like oxygen inhalation, antibiotics, nebulization and parenteral fluids. During treatment several doctors had examined the deceased and adequate medical facilities were given to the deceased (Annexure-R/5).

6. Subsequently, the Tripura State Forensic Science Laboratory submitted a report on 5th September, 2022 before the Sub-Divisional Police Officer, Bishalgarh where it was mentioned “Negative for presence of common Organophosphorous, Organochloro, Carbamates and Pyrethroids groups of Pesticides, Benzodiazepines group of drugs and Ethyl alcohol” Annexure-R/6. One complaint was also registered before the Tripura Human Rights Commission vide Complaint No.24 of 2022 and after enquiry the Commission submitted a report dated 5th December, 2022 declaring that there is no violation of human rights of the deceased and his death was due to illness (Annexure-R/7).

7. The answering respondent further stated that after death of the under trial, Magisterial enquiry was conducted and statements of four witnesses were recorded. In the said report it is mentioned that the under trial died natural death. The respondent further stated that as per post mortem

report nothing abnormal was detected by the medical experts. The officer in charge of the Bishalgarh PS registered an unnatural death case bearing No. 2022BLG022 dated 20th June, 2022 under Section 174 CrPC. After investigation, SI Dhruba Ranjan Guha submitted final report which revealed that during investigation he examined all available witnesses and recorded their statements under Section 161 CrPC. On 13th July, 2022 he received post mortem examination report from the AGMC & GBP Hospital. The viscera of the deceased was also sent to Tripura State Forensic Science Laboratory for forensic examination report through SDPO, Bishalgarh on 21st July, 2022. On 20th October, 2022 Forensic Science Analysis report of the deceased was collected along with Histo Pathology report. The final opinion from the Medical Officer AGMC & GBP Hospital. Dr. Shantanu Das, Dr. Pradipta Narayan Chakraborty and Dr. Pulak Chakma showed that the cause of death in the present case is “Pulmonary Thromboembolism” and there is no associated poisoning. Accordingly, final report dated 30th October, 2022 in the Bishalgarh PS UD Case was submitted (Annexure-R/10 and R/11).

8. The learned counsel for the respondent State further submitted that during the treatment period of the under trial his family members were also informed by the authority of KST, Bishalgarh through the Officer-in-Charge, West Agartala Police Station by issuing a message. In spite of all measures taken by the jail authority of KST, Bishalgarh the Under Trial Prisoner Somnath Show died on 17th June, 2022 at 4.30 a.m. Copy of the death declaration issued by the concerned Medical Officer, AGMC & GBP Hospital is marked as Annexure-R/12.

9. It is further submitted that after post mortem and inquest examination of the deceased, the dead body was handed over to his family

members. The entire procedure for cases of unnatural death during custody were followed after institution of a UD case under Section 174 of the CrPC. No case of foul play or torture during custody causing death of the under trial was found. The report of the Forensic Sciences Laboratory and the Doctor's report opined that there was no case of poisoning and he died due to Pulmonary Thromboembolism. In such circumstances, after two years of the death without any sufficient explanation the writ petition has been filed for compensation and judicial inquiry.

10. After filing of counter affidavit learned counsel for the petitioner pointed out once again that the post mortem report revealed certain ante mortem injuries. Learned PP in reply submitted that a Magisterial inquiry was conducted in the UD case and a closure report was submitted on 30th October, 2023 before the learned Special Judge, Court No.2, West Tripura, Agartala. Learned PP was asked to seek instruction as to when the closure report was accepted and relevant records relating to the remand of the accused in connection with the West Agartala P.S. Case No.2022WAG079 dated 3rd June, 2022. Thereafter, an additional affidavit has been filed by the learned PP supported by another additional affidavit on behalf of respondents No. 1 to 3.

11. It states that the learned Special Judge, Court No.2, Agartala, West Tripura had by order dated 17th June, 2022 directed the Superintendent, Kendriya Sanshodhanagar, Tripura to submit a copy of the death certificate and post mortem report along with all connected papers. It is further reflected from the order dated 4th July, 2022 passed in the said PS case No. 79 of 2022 that a supplementary case record bearing No.833 of 2022 was received from Judicial Magistrate, 1st Class, Court No.1, Agartala, West Tripura and the case

was fixed on 18th July, 2022 for report. A report was also submitted by Superintendent, Kendriya Sanshodhanagar, Tripura on 18th July, 2022 with copies of connected papers. On 1st August, 2022 the Superintendent, KST submitted Post mortem report accompanied with compact disc containing video recording of process of post mortem examination in terms of the order dated 17th July, 2022. In the said order dated 1st August, 2022 the learned Special Judge quoted the portion of the post mortem report and also observed that some ante mortem injuries were found on the dead body of deceased Somnath Shaw but fact remains that as per arrest memo there were no injuries in his body and no injuries were also reported to have been suffered by him since after his production on 4th June, 2022 and before his death on 17th June, 2022. The learned Special Judge therefore directed a judicial inquiry to ascertain the cause of death of Somnath Shaw. Order dated 1st August, 2022 is Annexure-R/24.

12. The learned Judicial Magistrate 1st Class, Court No.5, Agartala initiated inquiry bearing No. Misc.(Inq. Proceedings) 993 of 2022 pursuant to the order dated 01.08.2022 passed by the Special Judge. During the course of inquiry, the judicial magistrate examined as many as 11 (Eleven) witnesses namely (1) Sri Srikanta Chakraborty, DCM, Sadar, (2) Sri Tapan Kumar Das, Warder, KST, Bishalgarh, (3) Sri Satrugna Sarkar, Head Warder, KST, bishalgarh, (4) Sri Shekhar Barman, Warder, KST, Bishalgarh, (5) Smt. Shikha Rani Das, WASI at GB TOP, (6) Dr. Dipayan Sarkar, Psychiatric at KST, Bishalgarh, (7) Dr. Salem Tharmawia Darlong, MO at KST, Bishalgarh, (8) Dr. Nirmalendu Das, MO at KST, Bishalgarh, (9) Dr. Pradipta Narayan Chakraborty, Asstt. Professor, Department of Forensic Medicine and Toxicology at AGMC & GBP Hospital, (10) Dr. Santanu Das, Jr. Resident at

AGMC & GBP Hospital and (11) Dr Pulak Chakma, Tutor, Department of Forensic Medicine and Toxicology at AGMC & GBP Hospital.

13. The learned Judicial Magistrate, by order dated 7th February, 2023 disposed of the inquiry proceedings with the following observations:

“On the basis of the inquiry Witness No.1, 2 and 5 stated that they have found black spot on the shoulder of left hand, elbow, wrist and lower portion of elbow. They have also found injury mark and abrasion from the lower portion of shoulder to lower portion of elbow of right hand. They also found one scratch mark on the left knee of Somnath Show.

Witness No.3 stated that he has found black spot on the shoulder of left hand to the lower portion of elbow. Witness No 4 stated that he has found black Injury mark at the both hands of Somnath Show from his shoulder to elbow.

From the testimony of Witness No.6, 7, 8 and related medical documents it is evident that the UT prisoner Somnath Show at KST was under treatment from 07.06.2022 to 11.06.2022 and on 11.06.2022 the patient was discharged from KST Hospital at 12:30 pm as there was no fresh complaint.

Witness No.8 stated that on 16.06 2022 again he examined the UT prisoner Somnath Show and on examination he found Opioid dependence syndrome along with weakness, lack of sleep and found one small infected wound at left wrist. It looked like small swelling and he referred the said UT Prisoner to Bishalgarh Sub-Divisional Hospital and subsequently Witness No.2 took the prisoner Somnath Show at GBP hospital Agartala being referred from Bishalgarh Hospital.

Witness No.9, 10, 11 stated that Cellulitis was present in both upper limbs (extending shoulder to hands) and left lower leg with blister. Right upper limb blisters were mostly ruptured and reddish colour body surface was exposed and blood mixed serous fluid discharging over it.

Cellulitis means inflammation of tissues which may be caused from Trauma infection from Tattoos. Blisters are part of Cellulitis. And following antemortem injury were present in the body:-

i) One scabbed abraded contusion measuring 01.5 cm x 0.8 cm was present in anterior aspect of left knee joint which was situated about 46 cm above heel. It was produced by hard and blunt force and age of the injury was 3 to 7 days in duration at the time of death.

It may be caused by fall or by impact of hard object.

ii) On dissection of hand extravasation was present in the scalp tissue over and area of 3cm x 2cm in the occipital region of head just in around the external occipital protuberance of head. It was produced by hard and blunt force and fresh in duration at the time of death. Brain was congested and oedematous. Other no abnormality was detected.

It may be caused by fall or during handling of body in the hospital as the injury was fresh. Both the antemortem injuries were small.

Witness No.9, 10, 11 further stated no hidden bruise/injury were present inside the body of Somnath Show.

Finally Witness No.9, 10, 11 based on the histopathology report, viscera analysis report and autopsy findings has opined that the cause of death in this case was pulmonary thromboembolism. There was no associated poisoning/intoxication.

I have carefully gone through the inquest report, postmortem report, viscera toxicological analysis report, histopathological examination reports, final opinion report, depositions of the witnesses examined in the inquiry and other related documents regarding the death of deceased Somnath Shaw from where it is found that deceased Somnath Shaw has died due to pulmonary thromboembolism and there is no associated poisoning or intoxication.

So, considering all the facts and circumstances I am of the considered view that there was no foul play or negligence on the part of any person either from the Kendriya Sansodhonagar or from the Hospital authority behind the death of Somnath Shaw. I have also found that Kendriya Sansodhonagar had rendered all the possible medical aid by providing treatment, by referring the patient to Bishalgarh Subdivision Hospital and then by shifting the patient UT prisoner to AGMC & GBP Hospital, Agartala. So, it can be concluded that UT prisoner Somnath Shaw has died due to pulmonary thromboembolism."

The said report was forwarded on 7th February, 2023 to the learned Special Judge, Court No. 2, Agartala.

14. The respondents have on the basis of these facts and the report of the judicial inquiry submitted that there is no foul play or negligence on the part of any person either from the Kendriya Sanshodhanagar or from the Hospital authority behind the death of Somnath Shaw. The ante mortem injuries found on the dead body of the deceased were caused by fall or during handling of the body in the hospital as both the injuries were fresh and were small. The KST Hospital had rendered all possible medical aid by providing treatment, and further referring the under trial prisoner to Bishalgarh and then by shifting him to the AGMC & GBP Hospital, Agartala. The under trial prisoner died due to pulmonary thromboembolism. Learned PP submitted that therefore, grievance of the petitioner for judicial inquiry has already been redressed. Since, there was no case of foul play or torture during custody no case of compensation arises.

15. Moreover, the petitioner has not undertaken due diligence while approaching this court. Whereas the respondent authorities had undertaken all

necessary safeguards and followed the procedure by instituting a magisterial inquiry under Section 174 CrPC and thereafter, the learned Special Judge, Court No.2, West Tripura had also conducted a judicial inquiry through the judicial Magistrate 1st class to inquire into the cause of death of the under trial Somnath Shaw. In those circumstances, none of the apprehension of the petitioners of suspected foul play is made out. Petitioner, on the other hand, has failed to bring on record these facts and the matter relating to magisterial inquiry as well as judicial inquiry where 11 witnesses were examined to the notice of this court. The writ petition therefore suffers from suppression of material facts also. The writ petition may be dismissed as without merit.

16. Learned counsel for the petitioner, Mr. Sankar Lodh submits that the petitioner did not get any opportunity to participate in the judicial inquiry conducted pursuant to the orders of the Special Judge in connection with West Agartala PS case No. 79 of 2022 in which the under trial Somnath Shaw was an accused. He further submits that the petitioner may be allowed liberty to challenge the order of the learned Judicial Magistrate 1st Class, Court No.5, Agartala whereby he has submitted a report that there was no foul play or negligence on the part of any person either from the Kendriya Sanshodhanagar or from the Hospital Authorities behind the death of Somnath Shaw.

17. We have considered the submission of the learned counsel for the parties at length. We have also taken note of the entire facts and circumstances and the documents placed from records as referred to hereinabove. The petitioners have approached this court for institution of a judicial inquiry in to the cause of death of Somnath Shaw who was an accused in West Agartala PS case No. 79 of 2022 pending before the learned Special

Judge, Court No.2, West Tripura. It is evident that the under trial was treated on certain complaints of illness at KST Hospital initially and then referred to Bishalgarh Sub-Divisional Hospital on 16.06.2022 and on the same day he was referred to AGMC & GBP Hospital, Agartala where he died during treatment on 17.06.2022 at AGMC & GBP Hospital. Therefore, under Section 174 CrPC a UD case was registered and a magisterial inquiry was also held. The magisterial inquiry did not find any suspected foul play after receipt of the post mortem report and the forensic science laboratory report. The FSL report did not show any case of poisoning. The doctors who conducted the post mortem at the AGMC & GBP Hospital opined it as a case of pulmonary thromboembolism. The said report was submitted on 30.10.2022. When the same was placed before the learned Special Judge, Court No.2, West Tripura taking note of the two ante mortem injuries in the post mortem report an inquiry through Judicial Magistrate 1st Class was ordered. The Judicial Magistrate 1st Class, Court No.5, Agartala thereafter instituted Misc.(Inq. Proceedings) 993 of 2022 and conducted a judicial inquiry in which 11 witnesses were examined including doctors from the KST Hospital and also the AGMC & GBP Hospital. After due inquiry and recording the statement of these witnesses the learned Judicial Magistrate was of the considered opinion that there was no foul play or negligence on the part of any person either from the Kendriya Sanshodhannagar or from the Hospital Authorities behind the death of under trial Somnath Shaw. On the other hand, the authorities at Kendriya Sanshodhannagar had rendered all possible medical aid by providing treatment to the patient initially at KST hospital, then at Bishalgarh Sub-Divisional Hospital and thereafter by shifting him to AGMC & GBP Hospital where he died on 17.06.2022 due to pulmonary thromboembolism. The said report contained in the order dated 07.02.2023 has also been duly

placed before the learned Special Judge, West Tripura on 13.02.2023. In such circumstances, the prayer of the petitioners for institution of a judicial inquiry has been already carried out much before the institution of the present writ petition on 17th April, 2024 about one year and 10 months after the death of the under trial Somnath Shaw. The family members of the deceased were duly handed over the dead body of the deceased way back on 18.06.2022. Thereafter, Magisterial Inquiry under Section 174 of the CrPC was done leading to submission of the report on 30.10.2022 before the learned Special Judge, West Tripura. Thereafter, by a judicial order the Special Judge ordered judicial inquiry which was duly conducted by the Judicial Magistrate, 1st Class, Court No.5, West Tripura.

18. In these back ground circumstances, when judicial inquiry has been held upon order of the learned Special Judge, Court No.2, Agartala, West Tripura it is not proper on the part of the petitioners to allege that they have been denied opportunity. The law has taken its course. The petitioners appear to be oblivious of these proceedings and have approached this court without making any mention of the judicial enquiry held to inquire into the death of the under trial Somnath Shaw.

19. We are, therefore, of the considered opinion that not only the grievances of the petitioners have been already redressed but no case of compensation arises on allegation of custodial death due to torture or foul play. It further appears that the Human Rights Commission has upon receipt of the complaint and the report of the investigating agency closed the matter treating it to be a matter of natural death of the under trial Somnath Shaw.

