

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.665 of 2018

Ram Bahadur Markanday @ Bahadur Markanday, Son of Late Punit Markandey @ Punit Muni, Resident of Village- Sher, P.S. Gogri, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Inspector General, Prisons, Bihar, Patna.
3. The Jail Superintendent District Jail, Khagaria.
4. The Jail Doctor, the District Jail, Khagaria.
5. The District Magistrate, Khagaria.
6. The Sub-Divisional Officer, Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Adv.

For the Respondent/s : Mr. Apurva Kumkar, AC to GA-4

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 10-09-2018

Heard learned counsel for the petitioner and the respondent-State.

The present writ application has been filed for payment of compensation of Rs. 3,00,000/- to the petitioner as his father namely Punit Markandey died in jail custody on 12.08.2001 due to lack of medical facilities and negligence on



the part of Khagaria jail authorities. Prayer has also been made for quashing of the order dated 08.06.2017 passed in Record No. BHRC/Comp-2919/2017 by learned Acting Chairperson Bihar State Human Rights Commission.

Since this case is having a chequered history, hence, the factual detail is necessary to be dealt with. Father of the petitioner late Punit Markandey was in custody in connection with a case registered under Section 395 of the IPC arising out of GR No. 666-A/71. He went into judicial custody (Khagaria Jail) on 13.07.2001 and died on 12.08.2001. The petitioner used to visit Khagaria Jail to meet his father, when his father complained about ill treatment on the part of the Jail Authority. Father of the petitioner died in Judicial custody on 12.08.2001 but any information regarding the illness or the cause of death was not provided to the petitioner, though his residential house is situated only 30KM away from the jail in question. At the time of death, the father of the petitioner was 76 years of age. Moreover, the father of the petitioner was a mason and was earning Rs. 150/- per day, hence, the petitioner claims compensation against his death in judicial custody due to medical negligence.

The petitioner filed a complaint being Complaint Case



No. 480-C/2008 in the Court of Chief Judicial Magistrate, Khagaria, as contained in Annexure-4. The petitioner filed a representation on 15.08.2001 before the Circle Officer, Barbatta claiming compensation of Rs. 10,000/- under the National Benefit Scheme, as contained in Annexure-5 and thereafter, on 17.08.2001 before the Respondent No. 4, The District Magistrate, Khagaria claiming Rs. 5,00,000/- as compensation against the custodial death of his father, as contained in Annexure-6. It is further submitted that from the medical certificate issued by the Jail Doctor, it appears that the father of the petitioner was treated for minor ailment on 02.08.2001 and 03.08.2001, but he was not treated just prior to death, which gets reflected from Annexure-7. From perusal of the Magisterial report dated 19.08.2001, post-mortem report as well as inquest report of the father of the petitioner, it appears that the cause of death is asphyxia due to heart and lungs disease, but the report of the jail doctor did not reflect that the father of the petitioner has been given medical assistance for heart and lungs disease, as contained in Annexures-8, 8/1 and 8/2.

The petitioner preferred CWJC No. 14161 of 2001 with similar relief as prayed for in the present writ application claiming compensation of Rs. 2,00,000/-. The said writ



application was disposed of by a Bench of this Court vide order dated 12.11.2009, as contained in Annexure-1, with a liberty to the petitioner to submit a representation before the Sub-Divisional Officer, Khagaria to conduct an inquiry whether the father of the petitioner died in the jail on account of medical negligence or not. It was also left open by the Court to put forward the claim of the petitioner before the Sub-Divisional Officer, Khagaria. The relevant portion of the order aforesaid reads as under:-

After hearing the counsel for the parties, this Court observes that the petitioner may file a representation before Sub-Divisional Officer, Khagaria, who will make an enquiry whether the father of the petitioner died jail on account of medical negligence or not. It will be open to the parties to put forward the claim before the Sub-Divisional Officer, Khagaria.

This application is disposed of in aforesaid terms.

Consequently, in terms of the direction of this Court an enquiry was conducted by the SDO Khagaria. The SDO vide order dated 31.07.2010, passed in Misc. Case No. 1/09-10, held that the father of the petitioner died in the night of 12.08.2001 and the petitioner was informed on 12.08.2001 vide Memo No. 1249, however, it was claimed by the petitioner that he came to know about death of his father through the daily newspaper



‘Hindustan’. The report of the resident doctor suggests natural death and he did not find any negligence and dereliction on the part of the Khagaria jail authorities. The District Magistrate and Executive Magistrate also conducted an inquiry and they also did not find any complaint against the jail authorities. Hence, the claim of compensation of Rs. 3,00,000/- by the petitioner was rejected. Thereafter, the petitioner filed second writ application being CWJC No. 16667 of 2012. The said writ application was dismissed vide order dated 09.12.2015 holding that the death of the father of the petitioner has not occurred due to negligence on the part of the jail authorities. However, the writ Court gave liberty to the petitioner to approach the appropriate forum for ventilation of his grievance in accordance with law. The relevant portion of the order aforesaid reads as under:-

“Considering the above, this Court on the basis of material on records does not find convincing material to hold that death of father of the petitioner had occurred due to negligence on the part of the jail authorities. The petitioner has placed reliance on the order dated 26.04.2011 passed in CWJC No. 383 of 2006. On going through the said order it appears that there was finding of negligence recorded by the authorities in treatment of the person for which the compensation was claimed. There is no such convincing material or fact finding



report on the record in the present case.

The writ application is dismissed.

Dismissal of this writ petition shall, however, not prevent the petitioner from approaching before the appropriate forum/authority for ventilation of his grievance in accordance with law.”

The said writ order was challenged by the petitioner in LPA No. 312 of 2016, as contained in Annexure 2/3. The LPA Court disposed of the appeal allowing the petitioner to raise grievance before the Human Right Commission in view of the liberty given by the writ Court. The LPA Court further observed that any observation made on merit shall not come in way of the authority in dealing with the matter. Thereafter, the petitioner approached the Bihar State Human Rights Commission, but the Acting Chairperson, Human Rights Commission vide order dated 01.08.2017, passed in File No.2919 of 2017 declined to intervene in the matter, since for the similar relief a bench of this Court had dismissed CWJC No.14161 of 2001. The relevant portion of the order reads as under :-

“From file it appears that the matter has already been decided by the Hon’ble Patna High Court vide CWJC No. 14161 of 2001 and the same was dismissed by the Court. The Commission has no power to intervene in such circumstances. Hence the matter is not maintainable in this Commission as well.

File is accordingly closed.



Petitioner be informed.”

Hence, the present writ application.

It is submitted by learned counsel for the petitioner that there was no reason for the father of the petitioner to die if the jail authority would have provided timely medical assistance to his late father. Moreover, the post-mortem suggests the cause of death due to Asphyxia. Hence, the petitioner deserves to be compensated for custodial death of his father.

Learned counsel for the respondents relying upon the counter affidavit filed on behalf of Respondent Nos. 1,2,3 and 4, submits that there is no proof that the father of the petitioner died due to negligence on the part of the Khagaria jail authority.

Having heard learned counsels for the parties, this is not in dispute that this is third round of litigation when the petitioner has claimed the same relief. For the first time the petitioner preferred CWJC No.14161 of 2001, which was disposed of vide order dated 12.11.2009, as contained in Annexure-1, with a liberty to the petitioner to file representation before the Sub-Divisional Officer, Khagaria, whereupon, the Sub-Divisional Officer, was supposed to conduct an enquiry to the fact whether the father of the petitioner died in jail on account of medical negligence or not. In pursuance to the same,



the Sub-Divisional Officer conducted the enquiry and came to a definite finding that the father of the petitioner had never made any complaint before the jail authority. The District Magistrate and Executive Magistrate also conducted an inquiry and they also did not find any negligence or fault on the part of the jail authorities. At the time of death, the father of the petitioner was 76 years of age. In second round of litigation, a Bench of this Court vide order dated 09.12.2015, passed in CWJC No. 16667/2012 came to a definite finding that there is no material on record to hold that the death of the father of the petitioner had occurred due to negligence on the part of the jail authorities and hence dismissed the writ application. This dismissal of writ application has further been upheld by the Division Bench vide order dated 23.03.2017, as contained in Annexure 2/3. Hence, this Court has no occasion to interfere. So far as other prayer with regard to setting aside the order of Bihar Human Rights Commission is concerned, learned counsel for the petitioner has not arrayed the Human Rights Commission as party respondent. Moreover, the petitioner moved the Human Rights Commission when he failed to get any relief from this High Court.

Hence, in view of the discussions made above, this Court finds no merit in the present writ application.



Accordingly, the writ application stands dismissed.

(Dinesh Kumar Singh, J)

Ashwini/-

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Uploading Date	
Transmission Date	

