HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.87/2018

1. **Smt. Nandita Kapali Dey**,
   wife of late Chandan Dey,
   daughter of Sankar Kapali,
   Near Nabagram H. S. School,
   P.S. Airport, Mohanpur, West Tripura

2. **Mr. Nayan Dey**,
   son of late Chandan Dey,
   c/o Nandita Dey
   Near Nabagram H. S. School,
   P.S. Airport, Mohanpur, West Tripura
   (The Petitioner No.2 being Minor, aged 4 ½ years, is represented by her natural guardian i.e. her mother, the Petitioner No.1)

---- Petitioner(s)

Versus

1. **The State of Tripura**,
   (To be represented by Principal Secretary, Home Department, Govt. of Tripura)
   New Secretariat Complex, Agartala, West Tripura, PIN-799010)

2. **The Principal Secretary**,
   Department of Home, Govt. of Tripura,
   New Secretariat Complex, Agartala,
   West Tripura, PIN-799010

3. **The Director of Prisons**,
   Govt. of Tripura, Dhaleshwar, Agartala,
   West Tripura, PIN-799007

4. **The Superintendent**,
   Kendriyra Sansodhanagar,
   Bishalgarh, Tripura, PIN-799102

---- Respondent(s)

For Petitioner(s)	: Mr. K. Nath, Advocate
For Respondent(s)	: Mr. D. Bhattacharjee, G.A. Mr. J. Debbarma, Advocate
Date of hearing and Delivery of judgment	: 20.01.2020
Whether fit for reporting	: **YES**

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order (Oral)

Heard Mr. K. Nath, learned counsel appearing for the petitioners as well as Mr. D. Bhattacharjee, learned G.A. and Mr. J. Debbarma, learned counsel appearing for the respondents.

[2] The controversy, as unfolded in this writ petition, emanates from a shocking incidence relating to the death of an inmate [the convict] in Kendriya Sansodhanagar, Bishalgarh.

[3] The petitioners are the wife and son of the said inmate namely, Chandan Dey. It will be appropriate to have a glimpse how Chandan Dey was incarcerated in the said Sansodhanagar. Chandan Dey was charged for rash and negligent driving causing death and after trial he was convicted under Section 304A of the IPC. In terms of the said conviction he was sentenced to suffer rigorous imprisonment for 1(one) and 6(six) months vide the judgment dated 08.02.2017 delivered in case No.GR-1299/2006.

[4] Firstly, Chandan Dey [the convict] reported illness on 10.04.2017 and he was under treatment of the medical officer of Kendriya Sansodhanagar from 10.04.2017 to 07.06.2017. During that time he was administered the medicine for fever and bodily pain. On 09.06.2017 again Chandan Dey reported pain in his left knee with swelling. He was again advised to take some medicine. But in the afternoon, his condition deteriorated alarmingly and he was taken to the Bishalgarh Sub-Divisional Hospital. The medical officer of Bishalgarh Sub-Divisional Hospital who attended Chandan Dey had immediately referred him to AGMC & GBP Hospital at Agartala. Chandan Dey was transported to the said hospital and on that very

date he was diagnosed as a case of DM, DKA AKI Japanese B Encephalitis and on 20.06.2017, the Standing Medical Board of the AGMC & GBP Hospital was persuaded by the confronting state of health to refer Chandan Dey to SSKM Hospital, Kolkata for better treatment but Chandan Dey was not taken to Kolkata till he had expired on 23.06.2017 at 9.40 pm at Male Medicine Unit-II of AGMC & GBP Hospital.

[5] It appears from the records produced by the respondents that Chandan Dey was brought to the jail on 08.02.2017 and thus, he was hardly in the said jail for about 4 (four) months. But till 20.04.2017 he was hail and hearty. May it be noted that on 19.06.2017, the Standing Medical Board while forming the opinion to refer the patient (Chandan Dey) to SSKM Hospital for further investigation and treatment had occasion to observe that "such types of facilities are not available in the State for treatment of the patient." In such circumstances, a note was moved on 21.06.2017 where the approval was sought to communicate with the Prison Department, Government of West Bengal to provide accommodation to the inmate (now the patient) at Alipore Central Jail. It went up to the Minister (Jail Department). It is not understandable what role the Hon'ble Minister could probably play in such administrative matter. It was not related to any policy-change.

[6] It further appears that on 22.06.2017 the letter for accommodation at Alipore Central Jail was sent but no response was available on records. Simultaneously, it has been reflected that the advance of Rs.1,00,000/- was sought from the Government. From a posthumous communication dated 08.08.2017 what has surfaced, can be had from the passage, is reproduced under:

> **"That, on receiving the referral certificate of patient convict Chandan Dey on 20.06.17 issued by the Standing Medical Board, AGMC & GBP Hosptial, Agartala the authority was informed giving Note No.1 of file No.F.II-3/KST/BLG/2017 dated 20.06.2017 with a request to sanction of Rs.1,00,000 (one lakh) for the treatment expenditure of patient convict at SSKM Hospital, Kolkata. The authority was also requested to take an approval of the Director General of Correctional Home/I.G Prisons, Government of West Bengal for the accommodation of patient convict Chandan Dey at Alipore, Central Correction Home for his better medical treatment at SSKM Hospital. Accordingly, the authority had communicated a letter addressed to the Director General/Inspector General of Prisons and Correctional Services under letter No.F.II-3/KST/BLG/ Con/2017/3270-74 dated 22.06.17 for the accommodation of convict patient Chandan Dey for his medical treatment at SSKM Hospital. But, on 23.04.17 at about 9.40 PM (night) the patient convict had expired during his medical treatment at AGMC & GBP Hospital, Agartala (ICU)."**

That displayed how the administration had dealt a medical emergency.

[7] The petitioners have suffered unfathomable damage for lack of alacrity and for failing in the duty. From 20.04.2017 the inmate was complaining of fever and the Medical Officer at Kendriya Sansodhanagar took his illness, as it now surfaces, quite casually. When his immunity system was on the verge of total collapse on 09.06.2017, he was referred to the Sub-Divisional Hospital at Bishalgarh where the doctor immediately shifted Chandan Dey to the speciality hospital namely, AGMC & GBP Hospital at Agartala. Chandan Dey was attended from 09.06.2017 to 19.06.2017 in the said hospital. When the condition reached a critical state, the Standing Medical Board had observed that the inmate was suffering from DMDK, DKA, AKI Japanese, B Encephalitis and no treatment facilities were available in that hospital and hence the petitioner be referred to the SSKM Hospital at Kolkata. No evaluation is available on, what treatment was provided from 09.06.2017 to 29.06.2017 for the diagnosed disease.

[8] The administrative insensitivity as demonstrated is grossly shocking. For purpose of having the advance of Rs.1,00,000/- and for taking approval for accommodation of the inmate in the Alipore Central Correctional Home, the authority waited completely ignoring the medical emergency and they allowed Chandan Dey to die at Agartala.

[9] Mr. D. Bhattacharjee, learned G.A. and Mr. J. Debbarma, learned counsel appearing for the respondents have submitted that whatever the best possible action could have been taken by them they had taken. There was no carelessness and insensitivity. All steps were taken to preserve the life of the inmate. But the reply filed by the respondents narrated a different version particularly, in para-20 where it has been stated by the respondents as under :

> **"The State of Tripura is not equipped with the investigation and treatment of Japanese B Encephalitis. As such, patients are required to be shifted to Kolkata for proper investigation and treatment."**

[10) If this is the foundational observation of the respondents, they are also accountable and responsible to answer why they had kept the inmate at Agartala since 09.06.2017 till he expired in the hospital. But there is no answer. They had, most casually and demonstrating sheer negligence and least respect for life push the file for approval by the authority including the Hon'ble Minister of the concerned department.

[11] It is really shocking that a Central Jail does not have a fund of Rs.1,00,000/- to meet the emergency of such nature. They had to push the file for approval or sanction of expenditure to the tune of Rs.1,00,000/-. So far the accommodation at Alipore Central Correctional Home is concerned, this court is of the considered opinion that the custody could have been lawfully created by the

alternative mode in the circumstances, when the said inmate was to be taken from the intensive care unit-II (ICU) to the referral hospital. His stay at the Alipore Central Jail might not have been required immediately. But nobody in the authority was there to take action as required in the said circumstances.

[12] The apex court in ***Re-Inhuman Conditions In 1382 Prisons*** reported in ***(2017) 10 SCC 658*** has lamented about the sub-human conditions or inhuman conditions in the prisons. Death of the inmate illustrates how the life of a prisoner is valued in the prison of this country.

[13] In that case, the apex court after collecting data from the prisons from all over the country had observed that providing medical assistance and facilities to inmates in jail needs no reaffirmation inasmuch as right to health is paramount in the spectrum of human rights and all State Governments have constitutional obligation to make it a reality for all, including the prisoners. The apex court has further observed that experience in Karnataka, West Bengal and Delhi in respect of the medical facilities in prisons do not meet minimum standards of care. The apex court thus drew an inference on analyzing the data as placed before it by the concerned authorities that human right to health is not given adequate importance in prisons. That factor has been identified as one of the causes of unnatural deaths occurring in prisons. The State Governments have been directed to study the availability of medical assistance to prisons and to take remedial steps wherever that is necessary.

[14] This court has noticed how a valuable life has come to an end for lackadaisical attitude, sheer insensitiveness and casual bureaucratic approach in combination with a gross negligence in

sanctioning a paltry amount of Rs.1,00,000/- for saving a life. Chandan Dey was supposed to be in the jail perhaps less than 1(one) and ½ (half) years. But after few months of his incarceration, he had to lose his life for such negligence.

[15] This court is in complete agreement with the submission that the authority of Prison Department has completely failed to provide the required medical assistance to the inmate. It was their sole responsibility to extend all kinds of medical care and assistance when someone was ill in the jail. They were under obligation to provide best quality medical assistance. The prisoners have their human right and for conviction and sentence that right cannot be deemed as non-existent as a whole by the bureaucrats who are managing the administration of the prisons. The well being of the inmates has been left with them. This is a case where this court is of the opinion the State should be saddled with a liability for death of the said inmate and be directed to pay a lump sum compensation which would however not deter the petitioner to seek the other action available to them for realizing the damages. Having considered the fact, which is undisputed, that the inmate [Chandan Dey], was the sole bread earner, and that the petitioners do not have any source of earning.

[16] The respondents are directed to pay a sum of Rs.10,00,000/- to the petitioners within a period of 2 (two) months from the day when a copy of this order shall be furnished to the respondents. If the amount is not paid within a period of 2 (two) months, as stipulated, the said amount shall carry interest at the rate of 6% per annum from the day of the order till the payment is made. It is reiterated that the petitioners are at liberty to take further action

at law which might be available to them for realizing the further damage, if they are so inclined.

[17] Before parting with the records, the prison department is directed to review the entire procedure for attending the ailing inmates and to set up an efficient medical unit at least in the Kendriya Sansodhanagar within the shortest possible time but by any rate not later than 3 (three) months from the day when the respondents will receive a copy of this order.

[18] Further, the prison department shall keep in their hand sufficient amount of money to meet the emergency. The appropriate authority in the State Government shall authorize one of the officers preferably the Superintendent of the Kendriya Sansodhanagar or the chief functionary in other jails to take the decision in the face of such emergency. They should be given the power to take action to meet the emergency and to defray the required expenditure.

[19] Having observed thus, this writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

[20] The records as produced by the learned GA appearing for the respondents are returned.

JUDGE

Amrita