

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.41921 of 2021  
(Through hybrid mode)**

***Rajendra Behera***

....

***Petitioner***

Mr. D.K. Sahoo, Advocate

*-versus-*

***State of Odisha and others***

....

***Opposite Parties***

Mr. S. N. Das, Advocate  
(Addl. Standing Counsel)

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER**

**22.07.2022**

**Order No.**

- 04.** 1. The writ petition was moved on 11<sup>th</sup> February, 2022. Mr. Sahoo, learned advocate appears on behalf of petitioner and had submitted, father of his client died in custody. Relief of compensation had been prayed for. On behalf of State, directions were obtained for filing counter. It was to be filed by 14<sup>th</sup> March, 2022. Instead, extension of time was prayed for on 23<sup>rd</sup> March, 2022 on submission that there were efforts to move the authorities for issuance of viscera report and final opinion on cause of death. In the circumstances, further extension to file counter was granted.
2. On 12<sup>th</sup> July, 2022, on behalf of State it was submitted that counter had been filed and there is reference therein to inquiry under sub-section (1-A) in section 176 of Code of Criminal Procedure, 1973 by Magistrate, as

is pending. There was record in order made that day that the counter does not disclose police report under section 174. State was required to answer as to how finding in the Magisterial inquiry would be relevant as contention in defence against the claim for compensation.

3. Today Mr. Das, learned advocate, Additional Government Advocate appears on behalf of State and submits, a memo has been filed disclosing in it, inter alia, **judgment dated 19<sup>th</sup> April, 2022** made by the First Division Bench of this Court in **W.P.(C) no.33492 of 2011 (Smt. Bishnupriya Pattnaik and another vs. State of Orissa and others)**. Also disclosed is, referred to in the judgment, Record dated 4<sup>th</sup> September, 2020 of proceeding in National Human Rights Commission (NHRC), New-Delhi, on interpretation of section 176(1-A).

4. In **Smt. Bishnupriya Pattnaik** (supra), Mr. Das relies on paragraph 10. Said paragraph is reproduced below.

*“10. In reply to the present petition, the Opposite Parties have placed a record of medical treatment of late Susanta Pattnaik including the Inquest Report and the PM Report. The proceedings of the SHRC have also been placed on record. Having carefully examined all these documents, the Court is unable to come to a conclusion different from that reached by the SHRC. Further, although the counter affidavit was filed way back on 23rd November 2015, there has been no rejoinder filed thereto by the Petitioners till date. There is no material on the basis of which this Court can come to a conclusion that the death of late Susanta W.P.(C) No.33492 of 2011 Page 5 of 5 Pattnaik was either due to any ill-treatment by the jail officials or due to negligence of the*

*jail officials in not affording any timely medical treatment for his condition.”*

He then relies on following passage from proceedings dated 4<sup>th</sup> September, 2020 in NHRC, reproduced below.

*“Inquiry shall also be held by Judicial Magistrate or the Metropolitan Magistrate in addition to the inquiries or investigations held by the police within the local jurisdiction where the offence has been committed. So the inquiry is the condition precedent to determine an offence and unless the inquiry is conducted by Judicial Magistrate or the Metropolitan Magistrate in cases where any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman in police or judicial custody, there seems to be no scope to determine that such incident of custodial death, disappearance or rape as the case may be, is an offence. Therefore, to give more sanctity to such inquiry, the power has been given to the Judicial Magistrate/Metropolitan Magistrate by inserting new amended provision in Section 176 Cr.P.C.”*

5. Paragraph 9 from counter filed on behalf of State is reproduced below.

*“9. That the post mortem over the dead body was conducted on 03.01.2021 at SCB Medical College and Hospital, Cuttack. In course of post-mortem over the dead body external injury was detected on the left side of back which was ante-mortem in nature and could have been caused by hard and blunt force impact and is non-fatal. The ligature mark detected on the neck of the dead body was ante-mortem in nature. As per the post mortem report, death of the deceased was caused “due to combined effect of asphyxia and venous congestion as a result of hanging”. However, the final opinion on cause of death is still reserved pending chemical examination of ‘viscera’ which has been sent to SFSL, Rasulgarh,*

*Bhubaneswar and the final opinion is still awaited. Copies of the inquest report and post-mortem report are annexed herewith as annexures-A/2 & B/s respectively.”*

6. In **Smt. Bishnupriya Pattnaik** (supra) the writ petition carried allegation that it was unnatural custodial death as a result of ill-treatment of the under trial prisoner. On the death, the State Human Rights Commission (SHRC) suo motu took cognizance. Upon perusal of the documents the SHRC concluded that there was no material to show there was any foul play in the death of Susanta Pattnaik. The SHRC by order dated 3<sup>rd</sup> August, 2009, closed the case. State had disclosed those documents by counter in the writ petition. Petitioners did not file rejoinder. In the circumstances, paragraph 10 in the judgment, relied upon by State. The case is clearly distinguishable on facts because all petitioners herein have said, inter alia, in paragraph 3 are as reproduced below.

*“That, the Opposite parties are represented through the state of Orissa the illegalities done in custody of the opposite parties and death due to assault in judicial custody and the report of postmortem made out a case for interference of this hon'ble court for appreciation of the fact and law involve in this case.”*

7. Above allegations of petitioners appear to be borne out by the post-mortem report. The deceased had been struck by hard and blunt force impact on left side of his back, the injury being non-fatal. Furthermore, ligature mark detected on neck of dead body was said to be caused as a result of hanging. State has not alleged suicide. These facts are completely

at variance with facts in **Smt. Bishnupriya Pattnaik** (supra), where there was clear finding that the under trial prisoner was a diabetic patient and died pursuant to consequential cardiac arrest after hospitalization and commencement of treatment. In this case the dead body was found in the jail premises.

8. Without expressing a view on whether opinion expressed by NHRC is of persuasive value or to be relied upon by the Court, it is seen from the opinion that thereby was said, purpose of inserting by amendment the provision [section 176 (1-A)] was that unless such inquiry was made there would be no scope to determine that an incident, inter alia, of custodial death may be or is/was result of an offence. The opinion appears to be correct since, the prosecution for establishing offence causing death is the State. Custodial death happens, when the under trial or the convict is in custody of State. Hence, there was necessity for this amendment, to initiate inquiry by the Magistrate for establishing whether there was any offence committed in relation to the death. What transpires is that pendency of Magisterial inquiry cannot be defense of State against the claim for compensation, when the death, not being natural, happened while the person was in custody.

9. Indication by the post-mortem report is that the under trial had been subject to some physical violence. The injury on his back was non-fatal.

State has also not alleged suicide though death was by hanging. It, therefore, points to the under trial having met death by involvement of some other person or persons. In the circumstances, there arises a presumption of negligence on the part of the jail authorities in maintaining peaceful environment in the jail. The First Division Bench of this Court by **order dated 30<sup>th</sup> September, 2021** in **W.P.(C) no.24882 of 2012 (Jambeswar Naik and another vs. State of Odisha and others)** had, in facts of that case, found on contributory negligence to award compensation of Rs.10,00,000/- (Rupees ten lakhs only) each to parents of two children, who had met accidental death in their school. **Jambeswar Naik** (supra) is being relied upon for assessment of amount of compensation at Rs.10,00,000/- (Rupees ten lakhs only) to be paid to petitioner within four weeks from date of communication, failing which the direction will stand modified to be that the compensation amount will carry interest at 5% per annum simple from 2<sup>nd</sup> January, 2021, till date of payment.

**10.** The writ petition is disposed of.

**(Arindam Sinha)**  
**Judge**

*Prasant*