

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

207

CWP-4191-2017 (O&M).
Date of Decision: 26.02.2024.

JASWINDER KAUR

... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

PRESENT Mr. Brijender Kaushik, Advocate, for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab, for the respondents.

VINOD S. BHARDWAJ, J (ORAL).

Prayer in present writ petition is for seeking directions to the respondents for conducting an enquiry into the untimely death of Sukhdeep Singh son of Harjap Singh, who was undergoing sentence at Borstal Jail, Ludhiana and also for compensating the petitioner on account of her son's untimely death.

Learned counsel for the petitioner contends that the petitioner is a senior citizen and a widow. Her husband expired on 16.09.2003 leaving behind the petitioner and her son late Sukhdeep Singh and daughter late Rupinder Kaur. Sukhdeep Singh was involved in one FIR No.345 dated 15.12.2009 registered under Sections 302/34 IPC registered at Police Station, Banga. Upon completion of the trial, he was convicted and

sentenced for commission of offence under Section 302/34 IPC for life vide judgment of conviction and order of sentence dated 27.05.2011. Thereafter, he was lodged in Borstal Jail, Ludhiana and was undergoing his sentence. He contends that Sukhdeep Singh was a well mannered boy and always followed the instructions of the Jail Authorities. He was released on parole in the last week of March 2016 and it is alleged that Sukhdeep Singh had then informed her that Borstal jail authorities were not providing him proper treatment and he was being discriminated, abused and beaten by the jail officials. He surrendered on completion of the period of parole on 10.05.2016. It is further argued by the counsel for the petitioner that she was informed by the Civil Hospital, Ludhiana about Sukhdeep Singh being admitted in the Hospital and when petitioner reached there, she was informed that he has died. No details as regards the cause of ailment or reasons behind the death of Sukhdeep Singh were given. The present writ petition has been filed for seeking conduct of an enquiry into the untimely death of Sukhdeep Singh and also for awarding compensation on said account.

Notice of motion in the present case was issued on 02.03.2017 and vide order dated 20.04.2017, an interim compensation of Rs.2.50 lacs was ordered to be disbursed to the petitioner which has undisputedly been released.

Reply by way of affidavit of Rahul Raja, officiating Superintendent, Borstal Jail, Ludhiana on behalf of respondents No.1 to 4 has been filed, wherein it has been averred as under:-

“2. That the true facts are that the convict was released on 6 weeks parole w.e.f. 28.03.2016 to 10.05.2016. During his parole, he got himself operated for perforation of appendix from outside hospital. On 10.05.2016, when the son of petitioner returned back after completing his parole and on 11.05.2016 he was referred to Civil Hospital Ludhiana under proper guard from where he was further referred to Government Rajindra Hospital Patiala for further management. He got treatment from 11.5.2016 to 13.05.2016 at Rajindra Hospital Patiala after which he was referred to PGI Chandigarh for further management. He was admitted in PGI Chandigarh from 13.05.2016 to 31.05.2016. It is further submitted that the son of the petitioner was shifted back to Civil Hospital Ludhiana on 01.06.2016 for nursing care. The son of the petitioner was frequently taken to PGI Chandigarh from 30.06.2016 to 05.07.2016 for routine tests and checkups. In the morning of 07.07.2016 the condition of son of the petitioner suddenly got deteriorated and was referred to PGI Chandigarh from Civil Hospital Ludhiana at 08.50 AM and on reaching PGI Chandigarh the son of the petitioner was declared brought dead on 07.07.2016 at 12:07 PM. It is wrong and denied that the son of petitioner was given beatings due to which he fell ill. The son of the petitioner was under treatment in various hospitals i.e. Civil Hospital Ludhiana, Govt. Rajindra Hospital Patiala and PGI Chandigarh w.e.f. 11.05.2016 to 07.07.2016 i.e. till the date of his death and during this period proper treatment and nursing care was provided by Jail Authorities to the son of petitioner. All the expenses on the treatment of the son of petitioner were borne by the jail authorities of Borstal Jail Ludhiana.”

It is thus evident that the deceased Sukhdeep Singh had undergone a surgery of appendix from an outside hospital and when Sukhdeep Singh returned after completing his parole on 11.05.2016, he was referred to Civil Hospital Ludhiana under proper guard from where he was further referred to Government Rajindra Hospital Patiala for further management. He received treatment from 11.5.2016 to 13.05.2016 at Rajindra Hospital Patiala whereafter he was referred to PGI Chandigarh and was then back to Civil Hospital Ludhiana. The allegations regarding not providing proper medical treatment at Civil Hospital have been strongly denied. The son of the petitioner was frequently brought to PGI for treatment. On 07.07.2016, condition of Sukhdeep Singh deteriorated and he was referred to PGI, Chandigarh, however, on reaching the PGI, Chandigarh, Sukhdeep Singh was declared 'brought dead.' A reference is also made to the post-mortem- report to substantiate that there was no negligence in providing medical treatment. The final cause of death was to be opined only on receipt of the report of histopathology examination.

The case came up for hearing on 02.08.2018 when the State was directed to place on record the entire treatment chart reflected in para 2 of the preliminary submissions of the reply dated 16.08.2017 filed by the officiating Superintendent, Borstal Jail, Ludhiana. The entire treatment chart, referrals, bed head tickets and discharge summary were thereafter attached. The same is extracted as under:-

"2. That above said case was fixed before this Hon'ble Court and Hon'ble Court passed the order dated 02.08.2018. The relevant part of the order dated 02.08.2018 is reproduced as under:-

Learned State counsel is directed to place on record the entire treatment chart of the petitioner, reflected in para 2 of the preliminary submissions of the reply dated 16.08.2017 filed by way of affidavit of officiating Superintendent, Borstal Jail, Ludhiana on behalf of respondent No. 1 to 4 is given below:-

That the convict was released on 6 weeks parole w.e.f 28.03.2016 to 10.05.2016. During his parole, he got himself operated for perforation of appendix from outside hospital. On 10.05.2016, the son of the petitioner returned back after completion of his parole and on 11.05.2016 he complained of pain at the operated site with hepatitis and was referred to Civil Hospital, Ludhiana under proper guard (the copy of his treatment record is attached herewith as an Annexure R-1) from where he was further referred to Government Rajindra Hospital, Patiala for further management (the copy of his admission record is attached herewith as an Annexure R-2). He was further referred to P.G.I. Chandigarh from Rajindra Hospital, Patiala on 13.05.2016. A copy of the referred slip is Annexed herewith as an Annexure R-3). He again admitted in P.G.I. Chandigarh from 13.05.2016 to 31.05.2016 (the copy of the treatment record and discharge summary is Annexed herewith as an Annexure R-4). It is further submitted that the son of the petitioner was shifted back to Civil Hospital Ludhiana on 01.06.2016 for nursing care and he remained there up to 30.06.2016 (the copy of the treatment record is Annexed herewith as an Annexure R-5). The son of the petitioner was

taken to P.G.I. Chandigarh for routine tests and check up from where he returned to Civil Hospital, Ludhiana on same day i.e. on 30.06.2016 (the copy of the record is Annexed herewith as an Annexure R-6). He remained admitted in Civil Hospital, Ludhiana from 01.07.2016 to 05.07.2016 (the copy of the record is Annexed herewith as an Annexure R-7). On 05.07.2016, he was again taken to P.G.I. Chandigarh for routine tests and check up (the copy of the record is Annexed herewith as an Annexure R-8). On 06.07.2016, he was referred back to Civil Hospital, Ludhiana for nursing care (the copy of the record is Annexed herewith as an Annexure R-9). In the morning of 07.07.2016, the condition of son of the petitioner suddenly got deteriorated and was referred to P.G.I. Chandigarh from Civil Hospital, Ludhiana at 08:50 AM (the copy of the referral and treatment record is Annexed herewith as an Annexure R-10). On reaching P.G.I. Chandigarh, the son of the petitioner was declared brought dead on 07.07.2016 at 12:07 PM (the copy of the record is Annexed herewith as an Annexure R- 11). The son of the petitioner was under treatment in various Hospitals ie. Civil Hospital Ludhiana. Govt. Rajindra Hospital Patiala and P.G.I. Chandigarh w.e.f. 11.05.2016 to 07.07.2016 ie. till the date of his death and during this period proper treatment and nursing care was provided by the jail authorities. (Detailed treatment Chart Annexed as Annexure 12) All the expenses on the treatment of

the son of petitioner were borne by the jail authorities of Borstal Jail, Ludhiana.

Keeping in view of the above, the short affidavit is submitted for further orders of the Hon'ble Court.”

The learned State counsel contends that there is no lapse on the part of the State and that Sukhdeep Singh had undergone a surgery for appendicitis from outside, which such fact was not informed by them at the time of surrendering. On coming to know about the same, the patient was admitted in the Hospital on the very next day of surrender on 11.05.2016 and remained under continuous treatment with the Civil Hospital as well as PGIMER, Chandigarh till the time of his death.

There is no rebuttal/rejoinder to the above said claim and the documents placed on record by the respondent State despite the entire documents having been filed in 2020 and four years have elapsed since then and establishing that prima facie there is no lapse or laxity on the part of the State.

Learned counsel for the petitioner, however, contends that final cause of death of Sukhdeep Singh has still not been conveyed and that the lack of determination of the reasons leading to such death throws light on the prima facie negligence committed by the respondents.

No other argument has been raised.

I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

The entitlement of a person to claim compensation from State on account of a custodial death emanates when there is a direct co-relation between death and negligence/misconduct while in custody. Mere occurrence of death, for none of the above reasons, does not per se entitle the claimant to seek compensation from the State.

There is absence of any prima facie material to establish that the medical treatment had not been provided. Further, there is also no material on record on the basis whereof it may prima facie be recorded that there had been a lapse by the respondent authorities. The contentions, per se give rise to disputed questions of fact which cannot be decided by this Court at this juncture and would require leading of evidence before a liability can be fastened. This Court refrains from commenting any further or examining the merits as it may have prejudice to the rights of the respective parties.

The present petition is hence disposed of at this stage granting liberty to the petitioner to file an appropriate petition, if so advised, before the Civil Court for establishing the negligence and for claiming compensation, if any.

The compensation of Rs.2,50,000/- disbursed to the petitioner in terms of order dated 20.04.2017 is however protected.

The period during which the present writ petition has remained pending before this Court, shall be taken into consideration by the Court in the event of filing of any such petition/suit by the petitioner for computing limitation.

Nothing stated herein shall be treated as expression on the merits of the case and the Civil Court shall decide the final outcome on the

basis of the evidence led by the respective parties. The expression recorded herein is solely for the purpose of consideration of the present writ petition and its maintainability.

February 26, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No