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Case No. 1128/25/11/2010-AD

NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION)

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FARIKOT HOUSE
COPERNICUS MARG, NEW DELHI - 110 001

Dated 23/02/2013

26 FEB 2013

To

THE CHIEF SECRETARY
GOVT. OF WEST BENGAL, KOLKATA

Sub: Complaint from

SUBHAS CHAKMA, DIRECTOR -
NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE,
C-3/44 I-C, JANAKPURI,
WEST DELHI DELHI - 110058

Sir/Madam,

I am directed to say that the matter was considered by the Commission on 18/02/2013 and the Commission has directed as follows.

These proceedings are in continuation of the earlier proceedings of the Commission on the alleged custodial death of one Haripada Barman on 18.11.2010 at Police Camp, Sayedpur, District Malda, West Bengal. This Police Camp is located in a rented room in a house in which the deceased was found. The initial police version was that one Mumtaz Ali had brought the deceased and confined him in a room with the consent of Constable Mithlesh Kamet. FIR No. 678/10 U/S 342/365/306/34 IPC was registered at Police Station Kaliachak on 18.11.2010 itself against four civilians and two Constables of Sayedpur Police Camp.

A magisterial inquiry on the death was conducted by a Judicial Magistrate and she concluded that though the dead body was found within the premises of Sayedpur Police Camp, the deceased was not in the custody of the police in relation to any case or offence committed by him and concluded that this was not a case of custodial death.

Keeping in view the fact that the dead body was found in the premises of Sayedpur Police Camp and two policemen of the Camp had also been named in the FIR, the Commission through its proceedings dated 16.07.2012 ordered issuance of a show cause notice to the Government of West Bengal.

Now the Commission has been informed that during the investigation of the case, no incriminating evidence was found against the two named policemen and a chargesheet has been filed in the Court against the remaining accused persons. Departmental action initiated against the two policemen has also been dropped. The show cause notice has been responded to by the Special Secretary to the Government of West Bengal, Home Department, Human Rights Cell, vide his letter dated 12.10.2012. Referring to the conclusion drawn by the Inquiry Magistrate, he says that the deceased was never in the custody of the police or any custody authorized by the Magistrate or the Court. However, he goes on to say as under :

"However, State Government may agree to pay compensation on humanitarian ground, if the Commission, having regard to the facts and circumstances of the case, so recommends".

The Commission has carefully considered the material on record. Technically speaking, the deceased

might not be in the police custody, however, the two Constables having knowledge of the confinement of the deceased in the room cannot be ruled out. They were dropped from the chargesheet 'since no substantive evidence could be found against them'. They were given benefit of doubt by the Investigating Officer. Even if the two Constables were not themselves involved in the Crime, their silence and negligence in reporting the illegal confinement of the deceased to their superior officers led to the ultimate death of the victim. In the facts and circumstances of the case, the Commission is of the view that the State Government must compensate the next of kin of the deceased.

Hence, the Commission recommends to the Government of West Bengal, through its Chief Secretary, to pay compensation of Rs. 1,00,000/- (Rupees One Lakh only) to the next of kin of the deceased the late Haripada Barman. The Chief Secretary is directed to submit compliance report alongwith proof of payment within six weeks.

It is therefore, requested that the compliance report in the matter be sent to the Commission latest by 13/04/2013, so that the same could be placed before the Commission.

Yours faithfully,

ASSISTANT REGISTRAR (JAW)

CC To,

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SHELAN CHAKRA, DIRECTOR
NATIONAL CAMPAIGN FOR PREVENTION OF TORTURE,
C-3/44 I-C, JANAKPURI,
WEST BENGAL, INDIA.
(Pin Code-110058)