

National Human Rights Commission

Diary No	118243	Case / File No	1640/12/38/2013-AD
Victim Name	SAUKHI LAL KUSHWAH	Registration Date	13/08/2013

Action List (Click on Action given in blue color to view details)

Action No.	Action	Authority	Action Date	Due Date	Completion Date
20	Additional Information Called for	THE SECRETARY DEPARTMENT OF HEALTH, GOVT. OF MADHYA PRADESH, BHOPAL	13/03/2019	20/05/2019	
19	Additional Information Called for	THE SECRETARY DEPARTMENT OF HEALTH, GOVT. OF MADHYA PRADESH, BHOPAL	11/12/2018	03/03/2019	
18	Additional Information Called for	THE DIRECTOR GENERAL OF POLICE GOVT. OF MADHYA PRADESH, BHOPAL	11/12/2018	03/03/2019	04/02/2019
17	Additional Information Called for	THE SECRETARY MINISTRY OF LAW AND JUSTICE, GOVT. OF INDIA, SHASTRI BHAWAN DELHI	11/12/2018	03/03/2019	
16	Additional Information Called for	THE HOME SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NORTH BLOCK, NEW DELHI	11/12/2018	03/03/2019	30/04/2019
15	Additional Information Called for	THE SECRETARY MINISTRY OF HEALTH AND FAMILY WELFARE, GOVT. OF INDIA, NIRMAN BHAWAN, NEW DELHI	11/12/2018	03/02/2019	01/03/2019
14	Relief granted [Compensation, Disciplinary & Prosecution]	THE CHIEF SECRETARY GOVT. OF MADHYA PRADESH, BHOPAL	11/12/2018	16/02/2019	12/02/2019
13	Additional Information Called for	THE SECRETARY DEPTT. OF HEALTH, GOVT. OF MADHYA PRADESH, BHOPAL	31/07/2018	21/09/2018	
12	Additional Information Called for	THE DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS, GOVT. OF MADHYA PRADESH, BHOPAL	31/07/2018	21/09/2018	19/11/2018
11	Show Cause Notice Issued (Comments)	THE CHIEF SECRETARY GOVT. OF MADHYA PRADESH, BHOPAL	31/07/2018	21/09/2018	

1	2	3
---	---	---

Expand All Action List**Action****Action : Relief granted [Compensation, Disciplinary & Prosecution](Action No 14)**

Action Date	11/12/2018	Due Date	16/02/2019	Completion Date	12/02/2019
Authority	THE CHIEF SECRETARY, GOVT. OF MADHYA PRADESH, BHOPAL				
Proceeding	<p>These proceedings shall be read in continuation of the proceedings dated 31.07.2018 vide which the Commission observed and directed as under :</p> <p>“Pursuant to the directions of the Commission, the Investigation Division has submitted its report dated 04.07.2018, in which it is stated that “the Commission has received a complaint from Shri Amal Kanti Chakma, Complainants Coordinator, Asian Centre for Human Rights, which reveals that on 16.07.13, the deceased Saukhilal Kushwah was picked up by the police for interrogation to know the whereabouts of his son Kalmendra Kushwah, who was allegedly involved in a kidnapping and murder case. The body of the deceased was later found near Lahiti on 30.07.13 and the villagers alleged that deceased Sukhilal Kushwah died due to police torture (electric shock) and his body was dumped there. The complainant has demanded enquiry into the matter and compensation to the NOK of</p>				

the deceased.

The matter was placed before the Hon'ble Commission and the Commission directed to seek opinion of the Medical Expert on the Panel of NHRC of post mortem report and histopathological report as to whether the injuries sustained by the deceased caused/lead to his death. Accordingly, medical opinion was taken from Dr. Anil Aggarwal, Director, Professor Forensic Medicine, Maulana Azad Medical College, New Delhi. He has submitted his report which is as follows :

'I have gone through the case file pertaining to death of the following deceased :

Facts :

Deceased Saukhilal Kushwaha was picked up by the police on 16.07.2013 for interrogation to know the whereabouts of his son Kamendra Kushwaha, who was an accused in a case of kidnapping and murder and was absconding. He was subsequently called again on 18 July and 19 July. He was called also on 28 July, but he did not appear. His body was later found near Lahiti on 30.7.13. It was alleged by the villagers that he was tortured by electricity and when he died, his body was dumped there.

According to informant Dharmender Singh Kushwaha, he informed Shuakilal's wife, that his body was lying on the road. When she reached there, he told her that police tortured him and gave electric shock to him. He was taken to Satna but he died midway.

Two postmortems were conducted on his dead body – both by teams of doctors (but none of them forensic specialists). These reports showed following findings :

- i. First PM [by 3 doctors – MM Panday, KK Suryavanshi, Amar Singh.
- ii. Mild bluish tinge on nails
- iii. Small abrasion on left parietal region
- iv. No other injuries
- v. Second PM (by 3 doctors – CM Tiwari, SK Mirani, Arun Trivedi)
- vi. Hands pale
- vii. Skin wrinkled over both palms
- viii. Abrasion on left parietal region as mentioned in 1st PM report
- ix. Spleen enlarged
- x. No other external injuries

Based on negative viscera report for poisons, histopathology report, the doctors gave cause of death as possibly due to acute myocardial infarctions.

Questions asked from expert

Whether injuries sustained by the deceased were due to beatings/torture or not and whether the injuries sustained by the deceased caused/contributed to his death?

Opinion

I have gone through the papers related to the deceased, and I am of the following considered opinion :

First of all, I must mention the extremely poor quality of both postmortem reports both of which were done by 3 doctors each. Surprisingly, none of the 6 doctors is a forensic expert.

It appears that by employing more and more doctors, the police was trying to find a cause of death. What they could not get in quality, they tried to substitute by adding quantity. Like trying to give 6 rotten apples to a patient, instead of just 1 fresh apple. The situation is also similar to trying to get, say a brain surgery by employing more and more doctors none of whom is a brain surgeon. One can employ hundreds of doctors in such cases, and no one will ever discover the cause of death because none of them is a forensic expert.

This is a symptom of a larger ailment from which the entire country suffers. There is an acute dearth of forensic specialists and their work is supposed to be done by plain MBBS doctors or specialists in other branches (a surgeon and anesthetist were employed for postmortems in this case). As mentioned earlier, and to give a different example, it is like asking an eye surgeon to conduct a difficult heart operation. One can employ 6 eye surgeons to conduct a heart operation, thinking that more doctors will cover their lack of expertise in heart, but obviously this is not correct.

It is inconceivable, how in such a sensitive and vital case, where there was a clear history of electrical torture the police failed to send this case to a medical college. The case was ultimately sent to Gandhi Medical College, where it

should have been sent in the first instance.

The file shows a report by the doctor in Gandhi Medical College, who has not written his name anywhere. So, it cannot be determined who that doctor was. But what is most shocking is that the doctor has commented on the state of occlusion of anterior left descending artery. This is simply not possible after two postmortems. In such suspicious deaths, the doctors at the first PM itself, should have dissected all the 3 coronary arteries to see blocks. If that did not occur, the team of second PM should have done that. If none of the 6 doctors had dissected the arteries of heart during 2 postmortems. It is virtually clear that none of them did any postmortem and simply cooked up the PM report. This is not so far-fetched and inconceivable. In most such cases, where non forensic specialists are employed to conduct postmortems, they are known to indulge in this practice. But this case virtually proves it.

For histopathological examination small tissues from all chambers are sent for examination – never the complete heart. In fact even if the doctors wanted, they could not have sent it, because the heart had been dissected by both the teams of doctors by their own admission in the PM report. Both PM reports mention findings of heart, which means the heart had been dissected or did they write things like “both chambers empty” without opening the heart.

In such a gross cooked up report, it would be impossible to give any opinion.

It is quite clear that no attempt was made by any doctor to look at signs of electrocution at penis, anus etc. where electrical torture is most often given.

The NHRC is advised to initiate action against all involved and issue some kind of instructions that in such important cases, the bodies must be sent to medical colleges and forensic specialists for postmortems. If for some reason the first team did not comprise of forensic specialists, at least the second team should have included forensic specialists.

Any attempt at trying to find the cause of death by any specialist howsoever experienced is likely to end in a failure. It is crystal clear that both postmortem reports are cooked up.’

Investigation Division has submitted that ‘the opinion of the forensic expert is a severe indictment of the doctors who conducted the post-mortem examinations. It is clear that they wrongly manipulated the PMRs. The only inference it leads to is that there was a gross human rights violation which was sought to be covered up in the PMRs.

Commission perused and considered the report.

In the opinion of the Commission, a case of violation of the human rights of the deceased Saukhilal Kushwah has been made out. Let a show cause notice be issued U/S 18 (a) (i) of the Protection of Human Rights Act, 1993 to the Government of Madhya Pradesh, through its Chief Secretary to show cause as to why the Commission should not recommend monetary relief to the next of the kin of the victim.

The Director General of Police, Government of Madhya Pradesh is directed to take legal action against the erring police personnel of P.S. Kologawan, Satna who picked up the deceased Shri Saukhilal Kushwah and tortured him by giving electric shock and threw him in a village Kubri on 30.07.2013 where later he died.

The Secretary, Department of Health, Government of Madhya Pradesh is directed to take disciplinary action against the doctors who conducted post mortem examination of the deceased Saukhilal Kushwah and were responsible for preparing post mortem reports that were cooked up. “

Pursuant to the directions of the Commission, a report/reply dated 19.11.2018 has been submitted by the Under Secretary (Home), Government of Madhya Pradesh in which it is stated that as per the provisions the Government grants compensation in the cases of deaths due to lightning, snake bites and accidents. As per the opinion of the medical team the death of the deceased occurred due to heart attack and no police officer/official was found guilty in the matter.

Commission perused the report/reply as well as other papers on the record.

In the present case the opinion of the expert on the panel of the Commission was sought regarding the death of the deceased. The expert in his report has mentioned earlier, had pointed out about the extremely poor quality of two post mortems which were conducted by three doctors each. He has further pointed out that surprisingly in 6 doctors none was a forensic expert. At one place he has mentioned that it is inconceivable how in such a vital case where there was a clear history of electrical torture the police failed to send this case to a medical college. The case was ultimately sent to Gandhi Medical College where it should have been sent in the first instance. At other place he has stated that “what is the most shocking is that the doctor has commented on the state of occlusion of anterior left descending artery. This is simply not possible after two postmortems. In such suspicious deaths, the doctors at the

first PM itself, should have dissected all the 3 coronary arteries to see blocks. If that did not occur, the team of second PM should have done that. If none of the 6 doctors had dissected the arteries of heart during 2 postmortems, it is virtually clear that none of them did any postmortem and simply cooked up the PM report. This is not so far-fetched and inconceivable. In most such cases, where non-forensic specialists are employed to conduct postmortems, they are known to indulge in this practice. But this case virtually proved it.”

He has concluded that in such a gross cooked up report, it would be impossible to give any opinion.

The Commission places full reliance on the expert’s opinion and report submitted by the Investigation Division. i.e. “the only inference it leads to is that there was a gross human rights violation which was sought to be covered up in the PMRS”.

In the opinion of the Commission, a clear case of violation of the human rights of the deceased is made out and State Government is vicariously liable to pay monetary compensation to the next of kin of the deceased children.

Keeping in view the facts and circumstances of the case, the Commission recommends to the Government of Madhya Pradesh through its Chief Secretary, to pay compensation of Rs.3,00,000/- to the next of kin of the deceased. The Chief Secretary, Government of Madhya Pradesh is directed to submit compliance report along with proof of payment within six weeks.

In the present case the report of the expert draws attention of the Commission to one very important fact that there is an acute dearth of forensic specialists and their work is supposed to be done by plain M.B.B.S. doctors and specialists in other branches (an anesthetist). At one place he has mentioned that “I must mention the extremely poor quality of both post mortem reports. Both of them were done by three doctors each. Surprisingly, none of them were forensic experts”. At another place he has remarked “it is virtually clear that none of them did any postmortem and simply cooked up the PM Report. This is not so far fetched and inconceivable. In most cases where non-forensic specialists are employed to conduct postmortem they are known to indulge in the practice. But this case virtually proves it. That itself is a question mark on the quality of post mortems conducted in the country. It should be borne in mind that post mortem examination and medico-legal examination are not merely a formality. They are vital piece of evidence which can affect the investigation as well as the judgment of court adversely if not conducted properly.

The Commission would like to know whether the post mortems and medico-legal examination are conducted by the forensic experts in the country?

The Secretaries, Ministry of Health, Ministry of Home Affairs and Ministry of Law and Justice, Government of India are directed to submit a report whether the post mortems are conducted by the forensic experts in the country? If not what measures are being taken to appoint the forensic experts for conducting the post mortems and medico-legal examination and whether any guidelines have been issued regarding proper conducting of the postmortem examinations. Report be also submitted regarding the condition and facilities available for conducting the post mortems. A consolidated report in the matter be submitted within eight weeks.

No report has been submitted by the Director General of Police, Government of Madhya Pradesh and Secretary, Department of Health, Government of Madhya Pradesh as directed by the Commission vide its proceedings dated 31.07.2018. Let reminders be issued to them for submission of reports within eight weeks positively, failing which the Commission shall be constrained to take coercive steps U/S 13 of the Protection of Human Rights Act, 1993 for their personal appearance. Copy of the proceedings dated 31.07.2018 be transmitted to them.

Secondary Action List

Secondary Action No	Secondary Action	Secondary Action Date	Secondary Action Due Date	Secondary Completion Date
1	Grant of Compensation	11/12/2018	01/02/2019	

Complaint

Diary No	118243	Section	M-1
Language	ENGLISH	Mode	BY POST
Received Date	05/08/2013	Complaint Date	02/08/2013
Gist			

Victim

Victim Name	SAUKHI LAL KUSHWAH	Gender	Male
Religion	Hindu	Cast	Unknown
Address	NOT AVAILABLE,		
District	SATNA	State	MADHYA PRADESH

Complainant

Name	AMAL KANT CHAKMA, COMPLAINT COORDINATOR		
Address	ASIAN CENTRE FOR HUMAN RIGHTS, C-3/441-C, (2ND FLOOR), JANAKPURI,		
District	NEW DELHI	State	DELHI (110058)

Incident

Incident Place	SATNA	Incident Date	30/07/2013
Incident Category	ALLEGED CUSTODIAL DEATHS IN POLICE CUSTODY		
Incident District	SATNA	Incident State	MADHYA PRADESH
Incident Details			

Cause List

List No	Case / File No	Listing Date	Category
12	1640/12/38/2013-AD	03/05/2019	APPEARANCE
11	1640/12/38/2013-ad	05/03/2019	APPEARANCE
10	1640/12/38/2013-ad	05/03/2019	APPEARANCE
9	1640/12/38/2013-AD	03/12/2018	APPEARANCE
8	1640/12/38/2013-AD	13/07/2018	APPEARANCE
7	1640/12/38/2013-AD	02/06/2017	APPEARANCE
6	1640/12/38/2013-ad	06/06/2017	APPEARANCE
5	1640/12/38/2013-AD	15/09/2016	APPEARANCE
4	1640/12/38/2013-ad	30/06/2016	APPEARANCE
3	1640/12/38/2013-ad	29/04/2016	APPEARANCE

1	2
---	---