

West Bengal Human Rights Commission  
Bhabani Bhavan, 2<sup>nd</sup> Floor, Alipore, Kolkata - 27.

814/WBHRC/Com/11-12

Date: 20/06/2013

Present ::

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|----|----------------------------|----------------|
| 1. | Justice Asok Kumar Ganguly | .. Chairperson |
| 2. | Justice N.C. Sil           | .. Member      |
| 3. | Shri S.N. Roy              | .. Member      |

1. This is to consider an application of Gukul Ch. Biswas wherein it is stated that in the dead of night (00.05 hrs.) of August, 2011, Police officers of Bagdah P.S. namely ASI Goutam Moyra, ASI Tapan Bouri and two other constables forcibly entered his house without any order of the Court and forcibly took away him and his two sons namely Tushar Biswas and Tapash Biswas. It is claimed by the petitioner that at the P.S. one Police kept him standing when his two sons were mercilessly beaten up by wooden and cane sticks. For such assault, his eldest son, Tushar Biswas lost his sense and fell down being totally naked. On the next day, it is also alleged, Upoprodhan Amalya Haldar and Kartick Baine, Karmadaksha, Bagdah Panchyat Samaty went to the P.S. and asked the reasons for the arrest of the two sons of the petitioner but no satisfactory reply was given by the Police authority. Moreover, after taking some signatures of the petitioner on blank papers, his two sons were released. Thereafter the petitioner got his sons Tushar Biswas treated at Bagda Gramin Hospital where his attending physician advised him for X-ray. It is claimed by the petitioner that Tushar Biswas still bears the sings of assault by the Police.

2. After receiving that petition, cognizance was taken by the Commission and S.P. North 24 Pgs was directed to enquire into the matter and to submit his report. The matter was enquired by the Addl. S.P. which was forwarded by the SP. to this Commission. It is admitted in the report that on the night of 13/14-08-11, ASI Goutam Moyra being accompanied by RT Officer S.I. Md. Abdul Gani, C/3773 Bablu Das and HG/4070 Motilal Das brought the petitioner and his two sons to Bagdah P.S. It is also admitted in the report

that there was no GD or FIR for bringing those three persons at the P.S. Subsequently, on 14.08.11 all the three persons were released from the P.S. It is also stated in the report that those three persons were arrested (vide Bagdah GDE No.1012 dt.14.08.11 and released vide GDE No.1013 dt.14.08.11). In the concluding paragraph of the report it is state as below :

“With regard to the allegation of assault and torture upon the sons of the petitioner as alleged in the petition and medical report to Tuishar Biswas treated at Bagdah Rural Hospital on 18.08.11 I am of the opinion that the allegation of custodial torture though could not be established clearly herein but it is quite evident that the petitioner and his sons were brought in Bagdah PS on the night of 13/14-8-11 without having any reference whatsoever and later released on the following day

Strict departmental action is being taken against the following :

1. ASI Goutam Moyra : Arresting Officer
2. SI Md. Abdul Gani : Night RT officer on 13/14-8-11
3. c/3773 Bablu Das : Do
4. HG/4070 Matilal das : Do
5. ASI Tapan Biswas : Duty officer on the night of 13/14-8-11
6. SI Nanda Dulal Debnath, who was holding the charge of O/C, Bagdah P.S. on the date of incident.”

In view of that the following witnesses were examined by the Commission :

- i. SI Md. Abdul Gani, since retired.
- ii. ASI Tapan Biswas
- iii. ASI Goutam Moyra and
- iv. The petitioner, Gukul Ch. Biswas.

3. It appears from the evidence of S.I. Abdul Gani that he had retired from his service on 31<sup>st</sup> January, 2013. He admitted that departmental proceedings have been started against

him and he had produced a copy of the charge sheet issued against him in connection with the said proceedings.

4. ASI Tapan Biswas stated in his evidence that departmental proceedings initiated against him is still pending. Although he stated in his evidence that he never assaulted Tushar Biswas and Tapas Biswas and the report of the Addl. S.P. Barasat submitted before the Commission was not correct, from the copy of the charge sheets submitted against him produced by the witnesses, it appears that amongst other irregularities he had assaulted those two brothers Tushar Biswas and Tapas Biswas.

5. ASI Goutam Moyra admitted in his evidence that he had arrested Tushar Biswas and Tapas Biswas from Bagdah Bazar on 14.08.13 as they were indulging in public nuisances. It is further admitted by him that there was no criminal case against those two brothers and they were neither armed nor intoxicated. He could not cite any name of any witness with whom those two brothers were allegedly carrying any altercation or arguments. He denied to have assaulted those two brothers at the P.S. along with Tapan Biswas. He also stated that the report of the Addl. S.P. was not correct but ultimately he admitted that departmental proceedings on charge of causing assault on Tushar and Tapas Biswas are pending against him. When the medical papers relating to the treatment of Tushar Biswas was drawn to the attention of the witness, he stated that the injured person attended the hospital on 18<sup>th</sup> Aug. 2011 although they were released on 14.08.11.

6. Gukul Ch. Biswas, the petitioner was also examined by the Commission. In his evidence he had corroborated the allegations made in his complaint filed before the Commission. He had also produced the copies of medical reports and treatment of Tapas and Tushar at Bagdah Rural Hospital and Bangur Instituted of Neuro Sciences. The witness had also produced the copy of medical reports of his son Tushar Biswas regarding MRI of Cervical Spine. He has claimed in his evidence that Tushar Biswas has not yet been recovered from those injuries received as a result of police assault. He had also claimed that he had seen both of his sons were being beaten up by ASI Goutam Moyra and ASI Tapan Biswas at the P.S. in his presence. As regards the delay of the treatment of Tushar Biswas, he narrated a sordid incident that had taken place in his family. Thus it is in his evidence that in the afternoon of 14.08.11 he was released from the P.S. and on the next morning Tanu Biswas, 9 years old son of Tushar Biswas died of drowning in the nearby pond for which Tushar Biswas could not be taken to the hospital for treatment immediately.

7. It appears from the injury report of Tushar Biswas issued from Bagdah Rural Hospital that he had injuries in the Cervical region and lower side region for which X-ray of those regions were advised and on the basis of that report there was prolonged treatment of Tushar Biswas at different hospitals including Bangur Institute of Neuro Sciences.

8. From the medical papers submitted before the Commission by the petitioner and from the evidence of police officials and also from the charge sheets issued against them, it is clear that there was reckless acts on the part of the Police officers and, in order to suppress their activities, they did not make any entry in the G.D. of the P.S. In this regard the findings in the enquiry report quoted in paragraph 2 ante may once be looked into. In the report of the Addl. S.P. Barasat, it is stated that the allegations of custodial torture, though could not be substantiated clearly, it was evident that the petitioner and his sons were brought to Bagdah P.S. on the night of 13/14-8-11 without having any reference whatsoever and later released on the following day. Although the Addl. S.P. Barasat was a bit hesitant to come to a clear conclusion that there was custodial torture upon Tushar Biswas and his brother, the medical evidence produced before the Commission which was again supported by the evidence of the petitioner who was also admittedly arrested along with his two sons and taken to Bagdah P.S., unmistakably established torture and assault upon Tushar Biswas. There is admittedly no case before the Commission that Tushar Biswas was assaulted or injured elsewhere. The painful fate of Tushar Biswas firstly at the hands of the police personnel at Bagdha P.S. without any fault of his own and secondly at the hands of God whereby his son Tanu died of drowning on 14.08.11 made the entire Biswas family shattered for which Tushar Biswas could not be taken for his treatment on 14.08.11

9. The materials before the Commission show that departmental proceedings have already been initiated against erring Police officers and, as such, the Commission eschews from making any recommendation in this regard. But, despite departmental proceedings having been initiated against those Police officials, the Commission thinks it a fit case for payment of compensations to Tushar Biswas including Tapas Biswas and the petitioner, Gulul Ch. Biswas since the human rights of the petitioner and his two sons were blatantly violated at the hands of those erring police official.

10. The Commission, therefore, recommends that

- i) a compensation of 15,000/- be paid to the petitioner, Gukul Ch. Biswas for his illegal arrest.
- ii) a sum of Rs.15,000/- be paid to Tapas Biswas for his illegal arrest and
- iii) a Sum of Rs.50,000/- be paid to Tushar Biswas for his illegal arrest and assault at the P.S.

11. The Govt. should inform the Commission within a period of two months from the date of receipt of the recommendations as to the action taken or proposed to be taken in this regard.

sd/-  
(S.N. Roy)  
Member

sd/-  
(Justice N.C. Sil)  
Member

sd/-  
(Justice Asok Kumar Ganguly)  
Chairperson

Dated Kolkata, the 20th June, 2013.

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Comments of the State Government will be uploaded as and when received.

Sd/- (20/06/2013)  
(J. Sundara Sekhar)  
Secretary & CEO