

WEST BENGAL HUMAN RIGHTS COMMISSION

File No.03/WBHRC/Com/2013-2014

Date : 26-08-2013

P r e s e n t

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

There were extensive news reports published in all the leading dailies from the city on 03-4-2013 that the previous day, in course of a scheduled law violation programme, organized by S.F.I., a bright young student aged 23 years, Sudipta Gupta, was arrested and that while he was being taken by the police in a private bus along with some other arrestees, he was brutally assaulted by the police near the Presidency Correctional Home; as a result, Sudipta Gupta succumbed to his injuries immediately thereafter. It was also alleged in the said news reports that another student Joseph Azam Hossain who was also arrested in connection with the protest movement received grievous injuries as a result of assault by the police and he had to be hospitalized in the Medical College and Hospital, Kolkata.

2. Considering the gravity of the allegations published in the aforesaid news reports, the Commission was deeply concerned

and directed the Commissioner of Police, Kolkata to cause an immediate enquiry into the matter by an officer not below the rank of Addl. Commissioner of Police and to send the enquiry report along with his specific comments to the Commission immediately. The Commission also constituted another team of investigation from its internal resources comprising the ADG & IGP and Registrar of the Commission to start immediate probe into this incident.

3. The Commissioner of Police got the matter enquired into by Shri Debasish Roy, Addl. Commissioner of Police – III and he forwarded his detailed report with his comments to the Commission. The Addl. C.P.-III stated in his report that in course of the scheduled law violation programme organized by S.F.I. on 02-4-2013 as a mark of protest against the decision of the State Government to postpone elections to students' unions of Colleges and Universities, 331 students/supporters including 22 women supporters/members of SFI were arrested u/s 151 Cr.P.C. while other supporters fled away. During the departure of the arrested S.F.I. supporters/members to the Presidency Correctional Home, another group of S.F.I. supporters numbering about 50/60 carrying flag and festoon wrapped sticks came on R.R. Avenue near Bhowanipore Tent in an agitated and violent mood. They became unruly and started throwing rotten eggs, brickbats to the

police personnel on duty and physically assaulted some police personnel with sticks. As a result, some police personnel sustained injuries on their persons. The mob also ransacked the vehicle No.WB 02N 3685 of Addl. O.C. of Amherst Street P.S. One S.F.I. supporter, namely, Joseph Azam Hossain also sustained injury on his right hand and he was shifted to Kolkata Medical College.

4. So far as Sudipta Gupta was concerned, he was arrested along with other supporters and was being taken to Presidency Correctional Home in a hired private bus bearing registration No.WB-11B-2782 of Route No.59. Two Home Guards were detailed for taking the arrestees including Sudipta Gupta to the Presidency Correctional Home. According to the Addl. C.P., the S.F.I. supporters who were inside the bus bearing registration No.WB-11B-2782 of Route No.59 had forced the driver and the conductors to stop the vehicle near Mohammedan Sporting Club ground on Red Road and since then those two conductors were sitting beside the driver in the front cabin and the Home Guards were also sitting in the front seat of the bus. It was further stated in the report that the two Home Guards were pushed out of the bus by the S.F.I. supporters in the bus near Thackeray Road leading to D.L. Khan Road. After being pushed out of the bus, the Home Guard, Biswajit Mondal started running behind the bus to

catch it up. In the meantime, two vehicles were approaching from the opposite direction and probably to allow safe passage to those vehicles, the driver of the said bus had swerved the bus little left further. It was during that time Sudipta Gupta who was hanging from the bus might have hit the lamp post since the CCTV which recorded, a few events displayed a vibration in the recording. In the CCTV footage, it was found that Home Guard, Biswajit Mondal was being assaulted by S.F.I. supporters and it was clear that he was not carrying any stick or lathi with him. The Addl. C.P. also mentioned the opinion of the Autopsy Surgeon given in the post mortem report. According to the Autopsy Surgeon "Death was due to the effects of HEAD INJURY as noted above; Ante-mortem in nature." On further clarification on the P.M. report the Autopsy Surgeon has observed, "Those injuries were caused by impact of the body including head with a hard blunt stationary substance or object and subsequent fall on a rough surface with face looking upwards or above. Multiple linear bruises or depressed comminuted fracture or incised looking lacerated wounds as caused by lathi, iron rod or glass respectively were not found over the body of the deceased."

5. Addl.C.P. also mentioned that he had discussed the issue with Director, F.S.L. and Scientific Officer, Dr. Sipra Roy who had examined the lamp post No.PCH/PWD/37 regarding the existence

of blood stain at the lamp post at which Sudipta Gupta was hit. The Addl.C.P. concluded that unfortunate death of Sudipta Gupta had happened due to the head injury by hitting on the lamp post.

6. The Commissioner of Police endorsed the findings of the Addl.C.P.-III and stated that the unfortunate death of Sudipta Gupta was caused due to injury sustained by him by way of hitting a lamp post while going towards the Presidency Correctional Home from the place of law violation i.e. R.R. Avenue and that the allegation of any police assault on Sudipta Gupta could not be substantiated.

7. The internal investigation team constituted by the Commission comprising the ADG & IGP of the Commission and the Registrar also held enquiries in the matter. According to their enquiry report, Sudipta Gupta was being taken to Presidency Correctional Home after being taken into police custody in a private bus No.WB-11B-2782, Route No.59 driven by driver, Raja Das. In the said bus, two Home Guards personnel were on duty to escort students. According to the investigation team, the bus after crossing the Alipur Bridge entered D.L. Khan Road /Thackery Road and near the Presidency Jail while negotiating a slight bend, the driver of the bus swerved towards left and Sudipta Gupta who was standing on the footboard and holding the railing of the bus door hit a lamp post (Lamp Post No.PWD-37) taking the impact

squarely on his head and fell down on road leading to profuse bleeding. He was shifted to SSKM Hospital where he succumbed to injuries immediately thereafter.

8. As regards the other injured student, namely, Joseph Azam Hossain, the investigation team found that after the initial arrest of the law violators, a group of students came to R.R. Avenue and began to hurl tomatoes and eggs at the policemen on duty which led the police to resort to lathi charge. In the melee that ensued Joseph Azam Hossain who was near the window of a bus sustained a deep glass fragment cut injury on his right wrist from the shrapnel of breaking glasses of the bus windowpane. The student was bleeding profusely and subsequently had to be hospitalized.

9. The investigation team also interviewed and recorded the statements of three S.F.I. activists present on 02-04-2013 in course of law violation programme, namely, (i) Ms. Dona gupta, (ii) Ms. Tanushree Mondal and (iii) Mrs Priyanka Kejriral. All the three above noted students corroborated each other's version, that on 02-04-2013, the SFI students/volunteers were lathi charged at R.R. Avenue and arrested and made to board the bus and were being taken to Presidency Correctional Home. There were no female policemen on duty as the bus was proceeding towards the jail and stopped enroute twice, first at Red Road and later before

Alipore Bridge. They stated that the policemen were abusive and near the jail gate they were lathi charged again and they had heard somebody crying out that his ear would be damaged; when they turned back they saw a student lying beside the lamppost and was bleeding. Dona Gupta and Tanushree Mondal stated that the police had lathi charged and hit the bleeding boy lying on the roadside while Priyanka Kejrilal said that she did not know how the injured person had sustained injury. After examination of the available materials including relevant video footage and police report, the investigation team held that the police contention that the deceased had dashed against the lamp post resulting in severe head injury leading to profuse bleeding and loss of blood was consistent and probable.

10. The Commission considered the report submitted by Addl. C.P. along with comments of Commissioner of Police, Kolkata and the report of the internal investigation team and decided to examine first Joint Commissioner of Police (STF), Kolkata and Joint Commissioner of Police (AP), Kolkata as they were reported to be the senior most police officers present at the site of law violation programme. The Commission also decided to examine the injured S.F.I. supporter, Joseph Azam Hossain.

11. Shri Rajib Mishra, IPS, Joint Commissioner of Police (STF) submitted before the Commission that he was in-charge of police

arrangement at Dorina Corssings and Metro where separate Trinamool programme was also being simultaneously held in front of the Metro Cinema. He further stated that he did not know what actually happened at R.R. Avenue site where S.K. Gajmer, Jt. Commissioner of Police (AP) was in supervisory charge.

12. Shri S.K. Gajmer, IPS, Joint Commissioner of Police (AP) admitted that he was in-charge of supervising police arrangements at R.R. Avenue. He stated that as the processionists had broken the police barricades, arrests had to be made. He stated further that police had arranged about twenty buses to take the processionists and the crowd was more than two hundred. He further stated that he had not seen any injured student on that day. He admitted that although there was arrangement for RFS vehicles, no RFS vehicle probably accompanied the bus on that day which was carrying Sudipta Gupta and other processionists. He could not explain why the bus carrying students including Sudipta Gupta stopped near Mohammedan Sporting Club on Red Road. He however, admitted that the distance between the law violation site at R.R. Avenue and Mohammedan Sporting Club is very negligible.

13. Joseph Ajam Hossain in course of his evidence before the Commission stated that he was a student of Bengali Honours reading in Berhampore Commerce College. On 02-4-2013 he came

to Kolkata to participate in the law violation programme organized by S.F.I. That day as they were proceeding towards R.R. Avenue police resorted to lathi charge to disperse the procession. He denied that any stones or missiles were thrown at the police and as a result of the lathi charge several persons were injured. He also sustained injuries on his legs, shoulder and back. They were being pushed into a bus standing near the place of occurrence. In the bus he was sitting near a window and as a result of continuous lathi charge by the police a glass pane of the window was smashed and the splinters entered into his right hand and cut his veins. There was profuse bleeding from his right hand and no assistance was forthcoming from the police and after sometime the police pushed him out of the bus without giving him any medical treatment. Seeing his condition one of the processionists, Debasish Roy and others from Murshidbad took him to the Medical College and Hospital where he was admitted, given immediate medical treatment and operated upon there. Next day he was taken to CMRI Hospital by the SFI supporters and treated there for sixteen days.

14. The Commission also examined Tapas Biswas, Addl. O.C., Hastings P.S., Kolkata. On the day of the incident, i.e., 02-4-2013 he was on duty at the Presidency Correctional Home. In his evidence, he stated that he saw one arrestee was falling from the

bus adjacent to pole No.37. He did not know how many students were in the bus. This incident took place at 2.45 P.M. The students approached him and requested him to arrange an ambulance immediately for taking the injured student to the hospital. He got the student lifted in his own vehicle and carried him to the hospital within 2/3 minutes.

15. Biswajit Mondal, Home Guard, Kolkata Police appeared before the Commission and stated in his evidence that on 2nd April, 2013 he was on duty in R.R. Avenue. He was asked by an officer to escort the arrestees in the bus bearing no.WB 11B 2782 along with another Home Guard, Abbas Ali. The bus was stopped near Mahammedan Sporting Ground on the Red Road. There were about 50/60 students in the bus. After some persuasion by him the students got into the bus and the bus left for Presidency Correctional Home. Some of the students were hanging from the bus. When the bus reached near the bridge approaching the Presidency Correctional Home, the students got down from the bus and they told him that they would go to the Correctional Home in a procession but they again got into the bus after discussion amongst them. He further stated that he was pushed out of the bus and he tried to follow the bus by running and watched one person falling down from the bus and as a result, there was uproar amongst the students. He also stated that he

was then assaulted by the arrestees as a result of which he lost his sense and was first removed to the SSKM Hospital and then taken to Belle Vue Clinic.

16. Raja Das, who was driving the private bus bearing no.WB 11A 2782 in which some arrestees including Sudipta Gupta were travelling, stated in his evidence that he obtained a license for driving heavy vehicles in 2010. He further stated that he had been driving the bus even before he got the license. When he had no license, he had also been driving the vehicle of Shibpur Police Line. According to him, there were 50 seats but about 70 students were packed inside the bus by the police. Only two Home Guards were accompanying the 70 students in the bus. Near Mahammedan Sporting tent on the Red Road he was asked to stop the bus by the students. When the students came back to the Mahammedan Sporting tent, only one Home Guard was accompanying the students. He further stated that he was not attacked or assaulted by the students or any one. He subsequently came to learn from the police that one boy fell down from the bus from the rear gate.

17. Jawed Samim, IPS, Special Addl. Commissioner and Jt. Commissioner of Police (HQ), Kolkata was also examined by the Commission and his evidence will be discussed in the following paragraphs at appropriate places.

18. From what has been discussed above, it is clear that SFI had scheduled a law violation programme near R.R. Avenue on 02-4-2013 as a mark of protest against the government decision to postpone elections to the students' unions of colleges/universities. According to the report of Addl C.P. that 331 supporters/members including 22 female students courted arrest and they were sent to the Presidency Correctional Home by buses requisitioned by the police. According to the evidence given by Driver, Raja Das about seventy students were packed in one bus in which Sudipta Gupta was being taken to Presidency Correctional Home. It is surprising that only two Home Guards were detailed for escorting the students to the Presidency Correctional Home. Jawed Samim, IPS, Joint Commissioner of Police (HQ) in his evidence before the Commission stated that in this particular case of law violation, two Constables were provided for taking each busload of arrestees. He also mentioned that there were substantial forces on that day. It is, therefore, surprising why seventy students were packed in one bus and sent to the Presidency Correctional Home under the charge of two Home Guards only. According to the evidence of Jawed Samim two RFS vehicles were provided for in the police arrangements to escort the buses carrying the students. However, in the evidence of the police officials as also the driver of the bus no where anybody could mention the presence the RFS vehicle. It

is admitted by all the witnesses that the bus no.WB 11B 2782 after starting from R.R. Avenue near Bhowanipur tent again stopped at Mahammedan Club ground on the Red Road. Saroj Kumar Gajmer, IPS, Joint C.P. (A.P.) in his evidence admitted that the distance from the Bhowanipur tent to Mahammedan Sporting Club tent is negligible; yet when the students came down from the bus, no police personnel were there to see what was happening and the entire group of students numbering about seventy was simply left to the charge of two Home Guards. It is also in the evidence of driver, Raja Das that when the students boarded the bus again near the Mahammedan Sporting Club tent only one Home Guard was there. What happened to the other Home Guard, Abbas Ali is not known and the senior police officers seem to be totally unaware of that.

19. Again it is in the evidence of driver, Raja Das, that he had been driving the bus even before he got the license and also the police vehicle in Shibpur Police Line. When the Commission wanted him to produce his license he agreed to produce the same and also his PAN CARD immediately. However, the said driver left this Commission without signing his deposition on 18-6-2013. The Registrar of the Commission reported the matter to the O.C., Hastings P.S. The said driver, Raja Das came back to the Commission on 20-6-2013 and handed over the photocopy of PAN

CARD to the Registrar of the Commission but he did not produce his driving license on the plea that the license was kept with the owner of the vehicle. The Commission finding that the stand taken by Raja Das rather strange and suspicious, directed the Registrar of the Commission to bring the matter to the notice of the Commissioner of Police, Kolkata and also of the O.C., Hastings P.S. for taking appropriate action. In spite of opportunities given to the Driver, Raja Das who drove the vehicle No.WB 11B 2782 carrying Sudipta Gupta and other demonstrators on 02-04-2013 he failed to produce his driving license before the Registrar of the Commission. Under the circumstances, the Commission recorded an observation on 08-7-2013 that on the day of the incident i.e., 02-04-2013 he was driving the aforesaid vehicle without any driving license.

20. The Commission thereafter decided to examine Jawed Samim, IPS, Jt. Commissioner of Police (HQ) and wanted to know from him about the details of this driving license of the driver, Raja Das. Jawed Samim admitted in his evidence that whether a driver had a valid license has to be checked by the Traffic Department when the bus was requisitioned for police duty. The Commission directed him to conduct an enquiry and submit a report within 10 days. He subsequently submitted a report that the bus no.WB 11B 2782 being driven by the driver, Raja Das was

requisitioned from the vicinity of the Central Bus Stand at Esplanade. It is clear from his report that the Sergeant, Tapan Das did not check the Driving License of Raja Das when the vehicle was requisitioned. Ultimately, it was found in the said enquiry report that Raja Das had a License No.WB-1120120161557 valid from 13-01-2012 issued from Regional Transport Office, Howrah. It was further found that his Driving License was for driving light Medium Vehicle, Non-Transport (LMV-NT). Thus, it is established that Driver, Raja Das did not have a valid license for driving the bus No.WB-11B-2782 in which Sudipta Gupta and along with other arrestees were being taken by the police to Presidency Correctional Home. Thus, it is clear that the police authorities were negligent on the following counts :

- i. About seventy arrestees were being taken in one bus being driven by a driver who did not have a valid license for driving the buses. The validity of the driving license was not checked by the Traffic Sergeant while the bus was requisitioned.
- ii. Although, two Constables were provided in the police arrangements for escorting each busload of arrestees from the site of the law violation programme i.e. R.R. Avenue to the Presidency Correctional Home, only two Home Guards were deployed and after Mahammedan Sporting Club Ground, the arrestees in the bus were left only under the charge of one Home Guard, Biswajit

Mondal. There was mention of two R.F.S. vehicles for escorting the busload of arrestees but their presence could not be confirmed by any of the witnesses in course of their evidence. It is also apparent that there was complete slackness of supervision as the bus carrying Sudipta Gupta and others stopped near Mahammedan Sporting Club tent which is very near the point from where the arrestees boarded the bus No.WB-11B-2782 near Bhowanipur tent. But no R.F.S. was to be seen and Jt. C.P. (A.P.) admitted in his deposition he was not at all aware of the incident.

21. As regards the injury suffered by Joseph Ajam Hossain, in the police report submitted by the Addl. C.P. no mention of lathi charge allegedly resorted to by the police has been mentioned. But in the report of the investigation team comprising ADG & IGP and the Registrar of the Commission, there was clear mention of lathi charge by the police when a group of 50/60 S.F.I. supporters/members allegedly threw tomatoes, eggs and brick bats to the police. It has been mentioned in the Addl.C.P.'s report that even the police were beaten by sticks which were carried by the processionists and the vehicle of the Addl. O.C., Amherst Street P.S. was damaged. Several policemen were injured. Under the circumstances it would be quite natural for the police, if what has been described in the report of Addl.C.P. is correct, to have resorted to a lathi charge to disperse the crowd. Again it is in the

evidence of Joseph Ajam Hossain that the police resorted to lathi charge in order to disperse their procession. He stated that he himself sustained injury on his legs, shoulder and on his back. He further stated in his evidence that he was sitting near a window and as a result of continuous lathi charge by the police a glass pane of the window was smashed and the splinters entered into his right hand, cutting his veins. The Commission recorded an observation during taking his evidence that the injury has left a deep scar on his right hand and the right hand was in a swollen condition and the witness could not move his right hand. It is also in the evidence of Joseph Ajam Hossain that he received no cooperation from the police and he was in fact, rescued from the place of occurrence at R.R. Avenue by one Debasish Roy and other from Murshidabad who took him to Medical College & Hospital. Joseph Ajam Hossain also mentioned that after day he was shifted to C.M.R.I. for further treatment. He further stated during evidence that he could not write by his right hand even now and he had incurred substantial expenses for his medical treatment to the extent of more than three lakhs and that he did not receive any financial assistance from the Government.

22. This has to be contrasted with the medical treatment that was arranged by Kolkata Police with regard to the Home Guard, Biswajit Mondal. According to the report of the Addl.C.P., Biswajit

Mondal was assaulted by the S.F.I. activists/supporters near Presidency Correctional Home. He was moved to SSKM Hospital and thereafter immediately shifted to Belle Vue Clinic for further treatment. Home Guard, Biswajit Mondal in course of his evidence before this Commission submitted a copy of his treatment record in the Belle Vue Clinic. From the discharge summary and certificate issued by the Clinic, it appears that he received medical treatment in the said Clinic from 02-4-2013 till 09-4-2013. At the time of admission, his complaint was alleged physical assault near Presidency Jail and blunt trauma over chest and abdomen. The said document shows that the diagnosis was also blunt trauma over chest and abdomen following physical assault. A series of tests were undertaken for him including C.T Scan, U.S.G. of abdomen apart from a large number of blood tests. Nothing abnormal was detected in C.T. Scan or U.S.G. of abdomen or other blood tests. As regards the treatment done in the clinic it is stated in the discharge summary that patient was treated conservatively and was consulted with Neuro Physician. It is clear from the aforesaid record of treatment of said Home Guard., Biswajit Mondal that nothing serious had happened to him and at best he might have been assaulted by arrestees by fists and blows. It is not understood what prompted the Kolkata Police authorities to admit this Home Guard in Belle Vue, a Super Speciality Clinic and

keep him there for treatment for a period of six days although the injuries he suffered were of a minor nature. Was it a ploy to create an impression all around that the Home Guard Biswajit Mondal was severely assaulted by the SFI activists in a bid to down play the incident of death of Sudipta Gupta in police custody ? We do not know the answer.

23. It is however, an admitted position that Sudipta Gupta died while he was in police custody. Although medical evidence and enquiry report suggest that his death could have been caused on account of his head being hit by a lamp post near Presidency Correctional Home, the unfortunate incident could be averted if the police authorities were more careful and meticulous in handling this programme of law violation. Sudipta Gupta was sent in a bus being driven by a driver who did not have a license for driving a bus; no adequate and proper arrangements for escorting the arrestees in the bus to the Presidency Correctional Home were made and no steps were taken to prevent the arrestees from hanging from the bus although the police authorities were squarely responsible for ensuring safety and security of all the arrestees since they were in police custody. If the police authorities were more alert, careful and went about their business in a professional manner this unfortunate incident of death could have been avoided. Thus, the life of a bright young man was cut

short in the prime of his life for no fault of his own. The Commission does not think that it is an incident to be trifled with.

24. After a careful assessment of the facts and circumstances of the case and materials on record as discussed in foregoing paragraphs, the Commission recommends that :-

i. A compensation amount of Rs.10,000,00/- (Rupees Ten Lacs) only be awarded to the next of kin of deceased Sudipta Gupta. The Commission is of the opinion that Sudipta Gupta was a bright young student and the entire life was ahead of him. It is of course true that monetary compensation can never compensate the loss of a human being. However, considering his young age and brilliant career the Commission thinks an amount of Rs.10,000,00/- be paid to the next of kin of deceased Sudipta Gupta.

ii. A compensation amount of Rs.3,00,000/- (Rupees three lacs) only be awarded to the injured student Joseph Ajam Hossain to meet the cost of his medical expenses.

25. The Commission has refrained from for looking into the investigation details conducted by the Detective Department, Kolkata Police in respect of Hasting P.S. Case No.86 dt.03-4-2013 u/s 304/114 IPC instituted on the complaint of Dona Gupta who was also travelling in the bus along with Sudipta Gupta on the

day of the incident since the matter is already under the consideration of the Hon'ble High Court.

26. The Government should intimate the Commission about the action taken or proposed to be taken on the recommendations mentioned in para 24 above within a period of two months from the date of communication.

sd/-
(**S.N. Roy**)
Member

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

sd/-
(**Asok Kumar Ganguly**)
Chairperson

Dated Kolkata, the 26th August, 2013.

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

Sd/-

(J.Sundara Sekhar)
(26/08/2013)
Secretary & CEO