

WEST BENGAL HUMAN RIGHTS COMMISSION
Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 700/WBHRC/COM/2015-16

P r e s e n t

- | | |
|-----------------------------|--------------------|
| 1. Shri Naparajit Mukherjee | Acting Chairperson |
| 2. Shri M. S. Dwivedy | Member |

Brief Facts of the Case:

A news item appeared in the Times of India ,Kolkata on October 2, 2015 captioned as “Burtolla PS faces custody death FIR” by one Dwaipayan Ghosh, a reporter of Times of India Newspaper. West Bengal Human Rights Commission, on the basis of this news report took cognizance suo motu and issued notice to the Commissioner of Police, Kolkata on 06.10.2015 to submit a report within four weeks on receipt of the notice. The Spl. Addl. Commissioner of Police and Jt. Commissioner of Police, Crime, submitted a report vide Memo No. 392/CRS/DD dated 02.11.2015 which was received by the Commission on 24.11.2015 in which he enclosed the Post Mortem Report of death of one Bhusan Deshmukh, son of Dadaso Deshmukh who died in Burtolla PS lock-up on 25.09.2015. The Post Mortem conducted by the Head of the Department of Forensic Medicine (F.S.M.) of R.G. Kar Medical College & Hospital opined that “death of was due to the effects of above noted injuries , ante mortem in nature. Further information would be given after receipt of the FSL report” The Commission studied this report and ordered on 14.01.2016 to call for the

FSL report from the Joint Commissioner of Police, Crime, Kolkata Police by 28.02.2016. In between, on 15.12.15 a report was received from the CP, Kolkata vide his Memo No. 25304 issued from file No. R-3146/15/ID-747180 dated 11.12.15 in which he stated that following prima facie report of 25.09.15 of Spl.Addl. CP & Jt. CP, Crime, Kolkata further enquiry was conducted after receipt of the Post Mortem Report. The Asst. Commissioner of Police(II) North & North Suburban Division, Kolkata submitted a report before the Dy. Commissioner of Police, North Division on the basis of which Burtolla PS Case No. 327 dated 30.09.15 under Section 304/34 IPC was registered against the responsible Police personnel of Burtolla Police Station.

Subsequently, the case was taken over by the Homicide Squad, Detective Department, Kolkata Police. Investigation revealed that victim's native address was Vill & PO- Rahimatpur, Dist. Satara, Pune, Maharastra and he was working as goldsmith at Sinthi, Kolkata. National Human Rights Commission was also intimated about the custodial death. This report of Commissioner of Police(CP) Kolkata intimated that relevant documents including General Diary(GD) of Burtolla PS, Central Processing Unit(CPU) of CCTV footage installed in Burtolla PS were also seized and investigation was proceeding.

The report submitted by the CP to the Secretary General, National Human Rights Commission dated 25.09.15 regarding the custodial death of Bhusan Deshmukh, a copy of which was sent along with the Commissioner of Police report dated 11.12.15 informed that

the deceased Bhusan Deshmukh (28 years), son of Dadaso Deshmukh, original resident of Vill & PO- Rahamatpur, Dist. Satara, Pune, Maharashtra and staying temporarily at 12/3, Sambhu Nath Das Lane, Kolkata-2 PS- Sinthi was intercepted in front of 105, D.C. Mitra Street, Kolkata-6 for alleged possession of single shotter improvised firearm loaded with a live cartridge for which he could not give any satisfactory explanation rather tried to flee away and in the process he fell down on the road and sustained injuries for which he was medically treated at the nearby private "Recovery Nursing Home" on 20.09.15 itself. The single shotter improvised firearm loaded with the live cartridge was duly seized from the possession of the accused in presence of the two local witnesses and legal formalities like Memo of Arrest, Inspection Memo, Seizure Memo was done in presence of his local guardian-cum-employer, namely, Anil Patil. A case No. 319 dated 20.09.15 under Section 25(1A)/29 Arms Act was registered at Burtolla PS against Bhusan Deshmukh. On 21.09.15 the accused was medically treated at R.G., Kar Medical College & Hospital and produced before the Ld. ACMM, Calcutta who granted remand to Police custody till 29.09.15 for further investigation. It was learnt that Bhusan Deshmukh had come to Kolkata a decade ago and was working as a goldsmith at gold refinery and manufacturing work shop of Anil Patil at Sinthi. The accused was medically

treated on 22.09.15, 23,09,15 and 24.09.15 at R.G. Kar Medical College & Hospital.

On 25.09.15 morning at around 09:45 a.m. the accused suddenly complained of vomiting and loose motion, abdominal pain and breathing problem while lodged in the Burtolla Police Lock up. He was immediately removed at R.G. Kar Medical College & Hospital by SI Purusottam Mukherjee and admitted at the hospital at 1032 hrs. Around 1200 hrs on 25.09.15 information of hospitalization of the accused was given to Anil Patil as his condition was deteriorating and also instructed to inform his parents and relatives in Pune. The accused person, however, died at the hospital at 1050 hrs on 25.09.15 i.e. nearly 18 minutes of his admission at 1032 hrs in the hospital. Arrangements were made for conducting Judicial Inquiry and also Post Mortem Examination etc as per law.

2. This report was examined by the Commission and the Commission passed order on 17.03.2016 that names of officers responsible for the death of Bhusan Deshmukh and against whom case was started should be obtained by the Jt. Commissioner of Police, Crime, Kolkata. Meanwhile Jt. Commissioner of Police, Crime, vide his Memo No. 113/CRS/DD dated 17.03.16, received by the Commission on 21.03.16 submitted the FSL report in which it was stated that no poison could be detected either in viscera or in the blood of the deceased

Bhusan Deshmukh. On the basis of this FSL report Prof. Dr. Sobhan Kumar Das, Head of the Department of F.M.T., R.G. Kar Medical College & Hospital opined that cause of death as mentioned in the earlier Post Mortem Report stands and that death was due to the effects of the above noted injuries, antemortem in nature and in his opinion **injuries were very likely homicidal in manner.** On 05.04.16 Dr. Madhumita Basu, Ld. ACMM, Calcutta forwarded the Judicial Enquiry Report in connection with custodial death of Bhusan Deshmukh during police custody (PC) period at the lock up of Burtolla PS in connection with Burtolla PS Case No.319/2015 dated 20.09.15 under Section 25(1A)/29 Arms Act. This is a detailed enquiry conducted by Sri Rudra Prasad Ray, Ld. Metropolitan Magistrate, 20th Court, Calcutta on 28.03.16. In conclusion the Ld. Metropolitan Magistrate opined that SI Bikash Biswas of Burtolla PS was the I.O. of the case No. 319 dated 20.09.15 **was primarily responsible for the unnatural death of Bhusan Deshmukh and he also held the police of Burtolla PS who were on duty on 20.09.15 to 25.09.15 i.e. P.C. period of Bhusan Deshmukh responsible for making intentional delay in taking him for admission to hospital and concealment of actual facts.**

Another important fact came out during the Judicial enquiry of Ld. Metropolitan Magistrate to the effect that one SI Dinesh Kumar Shaw of Burtolla PS stated that on 19.09.15 between 20:30-21:00 hrs he(Shaw) was conducting round duty at Sonagachi beside Sitala Mandir and then in his presence SI Bikash Biswas detained Bhusan Deshmukh from the in front of a shop. SI Bikash Biswas took Bhusan Deshmukh to the police

van and asked the special Constable to keep him separately as he was an accused. Afterwards this SI Dinesh Kumar Shaw heard that Bhusan Deshmukh was released on the same night but on 21.09.15 he saw the said Bhusan Deshmukh in the police lock up and after enquiry he came to know that Bhusan Deshmukh was arrested in connection with an Arms Act case. He saw Bhusan Deshmukh in police lock up and most of the times he used to lie down. On 25.03.15 around 8:30 p.m. SI Shaw reached the PS when he found that one SI P.K. Rakshit was sitting in front of the Serista and found the accused Bhusan Deshmukh was nearly naked and when he enquired from the Sentry on duty, the on duty Sentry reported that Bhusan Deshmukh had been vomiting and passing loose motion.

In the Enquiry Report Ld. Metropolitan Magistrate further recorded that SI P.K. Rakshit stated during enquiry that SI Dinesh Shaw of Burtolla PS told him that he brought Bhusan Deshmukh and one Niranjana Gupta on 19.03.15 in connection with some petty case to the Police Station. SI Bikash Biswas wrote the petty cases of these two persons and that their names and father's name and addresses were changed and the name of Bhusan Deshmukh was changed to Bhusan Mondal, son of Debu Mondal of 23/4, Sambhu Nath Das Lane in the petty case. He also informed that from the CCTV footage it would be found that Bhusan Deshmukh was not brought from outside on 20.09.15 and was not released on the day before.

3. On receipt of the Judicial Enquiry Report, the Commission decided to discuss the matter on 17.05.2016 and it was decided therein to examine SI Bikash Biswas, SI P.K. Rakshit, Const. 9410 Partha Sarathi Mondal and Inspector Sri Bhagirath Ghosh, the then O.C. Burtolla PS, currently Court Inspector Sealdah Court, on June 24, 2016 under Section 16 of Protection of Human Rights Act.

A report was also called for from the C.P. Kolkata whether any departmental proceedings were commenced against the police officers and status thereof. Further C.P. Kolkata Police was directed to give a report on financial status of the deceased Bhusan Deshmukh.

On 24.06.2016 the Commission examined Inspector Sri Bhagirath Ghosh, SI Bikash Biswas, SI P.K. Rakshit and Constable Partha Sarathi Mondal and recorded their statements.

Meanwhile, a report was received on 29.07.2016 from the Commissioner of Police, Kolkata, Memo No. 14800/RPT dated 28.07.16 in which he replied to queries of the Commission and reported that Inspector Sri Bhagirath Ghosh, the then O.C. Burtolla PS was transferred immediately after the incident, SI Bikash Biswas, SI P.K. Rakshit, Constable 15444 Hrishikesh Mondal and Constable 9410 Partha Sarathi Mondal were placed under suspension with effect from 03.10.15. Departmental Proceedings were drawn up vide No. 112 dated 18.12.15 but all of

these Officers/Constables were released from suspension. The report also stated about the financial position of the deceased Bhusan Deshmukh to the effect that he was a bachelor and working in a Goldsmith shop of one Anil Patil of 2/C, South Sinthi Road, PS-Sinthi, Kolkata-50 and 12/3, Sambhu Nath Das Lane, Kolkata-102. His parents namely Dadaso Deshmukh and Smt. Kumala Dadaso Deshmukh were financially dependent on the deceased Bhusan Deshmukh.

4. In the statement to the Commission Inspector Sri Bhagirath Ghosh, erstwhile O.C. Burtolla PS, presently Court Inspector of Sealdah Court stated that he was posted at Burtolla PS on 20.09.15 as O.C. On this date Bhusan Deshmukh was arrested and brought to the Police Station by one SI Bikash Biswas. Bhusan Deshmukh was produced on 21.09.15 before the Ld. ACMM and after medical checkup at R.G. Kar Medical College & Hospital Ld. Court allowed police custody of the accused till 29.09.15. From 20.09.15 till the death of the accused Bhusan Deshmukh

Inspector Sri Bhagirath Ghosh was occupying the quarters of the O.C. on the top floor of the PS building. He stated that he had spoken to the accused Bhusan Deshmukh while in custody. Inspector Sri Ghosh informed that on 20.09.15 he had examined the accused at the Police Station on the way to his residence on the top floor of the Police Station. He(Bhusan Deshmukh) told the Inspector that he sustained injury while running at the time of apprehension. He was taken to private Nursing

Home, namely, Recovery Nursing Home from the place of apprehension where he was medically examined by Dr. Agarwal. Improvised revolver was recovered at the time of arrest from the place of arrest i.e. 105, D.C. Mitra Street, Kolkata. The O.C. admitted that normally after seizure of improvised revolver police would take the accused to Govt. hospital or doctor for examination.

SI Bikash Biswas erstwhile SI of Burtolla PS and now at Kasba PS stated that on 20.09.15 he was posted at Burtolla PS as SI. Around 1640 hrs on 20.09.15 he had apprehended Bhusan Deshmukh near 105, D.C, Mitra Street, Kolkata-6 on the basis of source information that two persons would be passing through the area. On seeing the police both the persons started running away and one fell in front of a motor cycle and sustained injury. However, the motor cycle did not knock him down. The person's name was Bhusan Deshmukh. The other person ran away and could not be apprehended. A loaded, improvised revolver was seized from the possession of the accused Bhusan Deshmukh and the time of incident is mentioned between 1655 to 1750 hrs. Following his arrest and seizure, a memo of arrest was made and he was taken for medical checkup to Dr. Agarwal at Recovery Nursing Home. On 21.09.15, he was examined at R.G. Kar Medical College & Hospital before production and the Ld. Court remanded him to police custody till 29.09.15. The accused was examined by doctors on 22.09.15, 23.09.15 and 24.09.15 at R.G. Kar Medical College & Hospital. On 24.09.15 SI Biswas reported to the PS

between 2 to 2.10 p.m. and left the PS on 25.09.15 between 2.30 to 3 a.m.(early morning). On 24.09.15 he did not interrogate the accused.

The SI Biswas claimed that Dr. Nikhilesh Ghosh had made biased P.M. report on the dead body of Bhusan Deshmukh. He did not have any hostile relationship with any doctors and had not reported about biased P.M. report of any doctor to his superiors. The accused Bhusan Deshmukh was limping from the initial stage of his arrest for which he was taken to Recovery Nursing Home.

He admitted that he should have taken the accused to Government hospital but as Recovery Nursing Home was nearby to the place of arrest he took him there. There was no instruction from the Police Commissioner to the effect that in such cases the accused be treated in a private nursing home. He admitted that it would have taken hardly 15-20 minutes from the place of occurrence to reach R.G. Kar Medical College & Hospital. At 1 a.m. on 25.09.15 SI Bikash Biswas spoke to the accused when he found that he was physically fit.

5. SI Pradip Kumar Rakshit presently posted at Tala P.S. in his statement to the Commission under Section 16 of Protection of Human Rights Act, stated that he was posted at Burtolla PS on 20.09.15 as SI. He was transferred out of Burtolla PS on 19.01.2016. On 19.09.15 one SI Dinesh Shaw told SI P.K. Rakshit that Bhusan Deshmukh and one Niranjana Gupta were brought to Burtolla PS on 19.09.15 in connection with some petty case. SI further stated that on 17.10.15 a CCTV footage was shown to him by I.O. of Homicide Section

in connection with the investigation of custodial death issue of Bhusan Deshmukh and from this footage he identified Bhusan Deshmukh before the IO of Homicide Section and had told him that Bhusan Deshmukh was brought to the Burtolla PS on 19.09.15.

6. Statement of Partha Sarathi Mondal, Constable was recorded on 24.06.16 who stated that he was currently posted as Constable in R.G.Kar Police Outpost. On 20.09.15 he was posted as Constable at Burtolla PS and transferred in January, 2016. He further stated that on 20.09.15 around 0030 hrs one special Constable namely Alam brought Bhusan Deshmukh and told that Bhusan Deshmukh should be kept in police lock up. He (Partha Sarathi Mondal) informed the matter to ASI Mondalbabu who was the duty officer and that Mondalbabu instructed him(Constable Partha Sarathi Mondal) to keep Bhusan Deshmukh in the lock up.. On 25.09.15 around 08:00 a.m. Partha Sarathi Mondal on duty found Bhusan smeared in stool when he informed this to ASI, in-charge of lock up and around 9.30 a.m. he was taken to R.G.Kar Medical College & Hospital.

7. **Findings of the Commission:**

The Commission took into account the reports submitted by the Sp. Addl. Commissioner and Jt. Commissioner, Crime, Post Mortem Report, FSL Report submitted by Dr. Nikhilesh Ghosh, Department of FMT, R.G. Kar Medical College & Hospital, Judicial Enquiry Report of Ld. Metropolitan Magistrate, 20th Court and statements of Inspector Sri Bhagirath Ghosh, SI Bikash Biswas, SI P.K. Rakshit, Constable Partha Sarathi Mondal as well as the final report

regarding departmental proceedings against the charged officers and financial status of the deceased Bhusan Deshmukh as submitted by Commissioner of Police, Kolkata and came to the following conclusion:-

The story given out by the officer in charge Inspector Sri Bhagirath Ghosh and the arresting officer SI Bikash Biswas that Bhusan Deshmukh, who was working in a Goldsmith shop, was arrested in front of a shop at 105, D.C. Mitra Street, Kolkata on 20.09.15 around 16:40 hrs on the basis of the source information and a single shotter firearm was seized. Police followed the procedure and made seizure and arrest memo in presence of his local guardian and subsequently a case No. 319 dated 20.09.15 under Section 25(1A)/29 Arms Act was started against Bhusan Deshmukh. On 21.09.15 the accused, following treatment at R.G. Kar hospital, was produced before the Ld. ACMM who remanded him to police custody for 5 days. On 22.09.15, 23.09.15 and 24.09.15 the accused was medically treated at R.G. Kar Medical College & Hospital but on the morning of 25.09.15 around 9.45 a.m. the accused complained of vomiting, loose motion and breathing problem. He was shifted to R.G. Kar Hospital at 10:32 hrs. The report of Commissioner of Police, Kolkata stated that around 12.00 hrs on 25.09.15 intimation of hospitalization of the accused was given to his local guardian and his parents at Pune. But his report admits that at 10:50 hrs on 25.09.15 he(Bhusan Deshmukh) had already expired. It is not understood that when the accused died at hospital at 10.50 hrs why the intimation about his hospitalization was given to his local guardian and his parents at 12.00 hrs.

The correct procedure would have been to intimate about his expiry rather than his hospitalization. The Judicial Enquiry by Ld. Metropolitan Magistrate, 20th Court Sri Rudra Prasad Ray has held SI Bikash Biswas, IO of Burtolla PS case No. 319 dated 20.09.15 as primarily responsible for the death of Bhusan Deshmukh and he has also held all the officers on duty on 20.09.15 to 25.09.15 as collectively responsible for the death of Bhusan Deshmukh. A very important fact has come to light from Judicial Enquiry Report as well as the statements of Sri P.K. Rakshit, Sub Inspector and Constable Sri Partha Sarathi Mondal who clearly stated that a special Constable namely, Alam brought Bhusan Deshmukh at 00.30 hrs on 20.09.15 in the Police Station and on orders of ASI Mondalbabu he put him in the lock up. From statement of SI P.K. Rakshit it is evident that there was ample evidence from CCTV footage that Bhusan Deshmukh was arrested on 19.09.15 and not on 20.09.15 at 16:40 hrs. The story of he being arrested in connection with a petty case is more credible rather than the story as given out by the police of arrest in connection with Arms Act on 20.09.15 at 16:40 hrs. The Commission is of the opinion that this accused was arrested in connection with a petty case in the Police Station on 19.09.15. Subsequently, probably due to some reasons known best to police, but kept concealed, he was beaten up and a case of Arms Act was recorded against him. On account of some injuries sustained at the Police Station following his arrest on 19.09.15 he was treated in a private Nursing

Home of Dr. Agarwal prior to his production before Ld. ACMM for police remand. During his internment in police lock up he being produced in R.G. Kar Medical College & Hospital on several dates as claimed by police but treatment was inadequate and his injuries aggravated and ultimately he succumbed to it.

It is very shameful that on the early morning hours of 25.09.15 the deceased was in a very distressed condition for nearly 3-4 hours but no attention or adequate medical relief was given to him. On the contrary he was allowed to suffer his agony in a very inhuman condition (he was smeared in stool and laying half naked in the police lockup) and then shifted to hospital only at 10:32 hrs where he died at 10:50 hrs.

There was thus a total negligence on the part of the police to provide him adequate medical relief although he was suffering from tremendous physical agony from the early morning hours of 25.09.15 for nearly 4/5 hours. It is also surprising, as revealed from the report of the Spl.Addl. CP & Jt CP, Crime that his local guardian was informed about his hospitalization at 12:00 hrs on 25.09.15 while he had already expired in the hospital at 10:50 hrs.

This speaks volume about incompetence, suppression of facts by the local Police Station. The role of O.C. is also very reprehensible due to reason that he was staying in the quarters allotted for the OC on the top floor of the Police Station and everything was going on under his very nose but he did not intervene timely and was keeping himself aloof he

being head of the Police Station. Had the O.C. intervened timely, the life of this person could have been saved.

Therefore, the Commission considered that the role of the Officer-in-charge was reprehensible and unbecoming of Police Officer on his rank. There was total shirking of responsibility and bad leadership, bad management of administration of Police Station. The Commission holds SI Bikash Biswas as primarily responsible & concurs with Ld. Metropolitan Magistrate's report.

8. **Recommendations of the Commission:-**

The Commission makes the following recommendations in this respect:

- I) Departmental proceedings already commenced against the charged Police Officers, namely, SI. Pradip Kumar Rakshit, Constable 15444 Hrishikesh Mondal and Constable 9410 Partha Sarathi Mondal should be concluded and results intimated to the Commission within next three months.
- II) Departmental Proceedings be drawn up against Inspector Sri Bhagirath Ghosh, the then O.C. Burtolla PS due to lack of supervision, lack of adequate control on affairs of Police Station and not keeping information about the state of affairs, specially in relation to an accused remanded to police custody by Ld. ACMM in his Police Station.
- III) Departmental Proceedings be drawn up against SI Bikash Biswas, IO of the case & he was the person who arrested the victim & was held primarily responsible by Ld. MM during Judicial enquiry.
- IV) A compensation to the tune of Rs. 2,00,000/=(Rupees Two Lacs) be paid to the parents of the deceased Bhusan Deshmukh as he was a very poor person and his parents were dependent on him financially.

The amount of Compensation be transferred to the Joint Bank Account of the parents of the victims Bhusan Deshmukh

authenticated by local D.M. or by any other suitable means as deemed fit and proper by the Home Department, Govt. of West Bengal.

- V) The Commission recommends that a Standard Operating Procedure (SOP) in the Police Station regarding duties of Police in respect of accused remanded to PC be drawn up, earmarking duties of officer-in-charge of the Police Station, Investigating Officers, the duty ASI, Sentry Constable so that such incidents do not recur. The Commission is ready to provide guidance and assistance in drafting the Standard Operating Procedure, if the Government so desires. The Commission is of the view that if such SOP is implemented incident of such nature could be avoided in future.
- VI) The fate of the Criminal Case No. 327 dated 30.09.2015 under Sections 304/34 IPC of Burtolla PS against police be intimated to the Commission & investigation be completed at the earliest.

9. Principal Secretary, West Bengal Human Rights Commission is requested to send a copy of this recommendation to the Chief Secretary, Govt. of West Bengal and who is requested to communicate an action taken report on the above recommendations to this Commission within 4(Four) months time.

Sd/-
(M. S. Dwivedy)
Member

sd/-
(Naparajit Mukherjee)
Acting Chairperson

Dated, 16th August, 2016

SDB