

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 1894/1998

Reserved on: March 14, 2011

Decision on: May 13, 2011

NINA RAJAN PILLAI & ORS. Petitioners
Through: Mr. CA Sundaram, Senior Advocate
with Ms. Manali Singhal,
Ms. Rohini Musa, Mr. Santosh Sachin, Mr. Zafar
Inayat and Aakarsh Kamra, Advocates.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. KTS Tulsi, Senior Advocate with
Mr. K. Sultan Singh, Advocate for R-2 to 7.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

13.05.2011

Introduction

1. Mr. Rajan Janardhan Mohandas Pillai (hereafter 'Rajan Pillai'), a businessman of Singapore, died in the Deen Dayal Upadhyay Hospital ('DDU Hospital'), New Delhi on 7th July 1995 while he was in judicial custody, lodged in the Central Jail, Tihar, New Delhi. In order to ascertain the relevant facts and circumstances leading to the death of Rajan Pillai, the Lieutenant Governor ('LG') of the National Capital Territory of Delhi appointed a Commission of Inquiry consisting of Justice Leila Seth, a former Chief Justice of Himachal Pradesh High Court by a notification dated 27th July 1995 under Section 3 of the Commission of Inquiry Act, 1952. The report of the Leila Seth Commission of Inquiry ('LSCI') dated 25th February 1997, *inter alia*, dealt with the question

whether in the death of Rajan Pillai, there was negligence on the part of any authority. The findings in this regard by the LSCI have been made the subject matter of this writ petition filed on 20th April 1998 by Ms. Nina Rajan Pillai, the wife of Rajan Pillai, and their two sons.

2. The writ petition, *inter alia*, seeks a declaration that the Respondents, i.e., the Union of India in the Ministry of Home Affairs ('MHA'), Respondent No. 1, the Government of National Capital Territory of Delhi ('GNCTD') through its LG, Respondent No. 2 and the officials of Tihar Jail, Respondent Nos. 3 to 6, have violated the right to life, dignity and equality of Rajan Pillai, which ultimately led to his death in judicial custody. The writ petition seeks corrective action against Respondent Nos. 3 to 7 in light of the findings of the LSCI. A direction is sought to the appropriate authorities to honour and implement the recommendations of the LSCI in regard to the remedial measures for providing adequate medical care for prisoners in jails. One other prayer is for a direction to Respondent Nos. 1 and 2 to pay appropriate exemplary compensation to the Petitioners taking into consideration all relevant factors including but not limited to "the income of the deceased, the heinous nature of the wrong inflicted, and the life expectancy of the deceased".

3. In response to the petition, Respondent No. 2 informed the Court, *inter alia*, that the LSCI had held Dr. Hira Lal, Medical Officer, Tihar Jail and Dr. Venkatasubbaiah, Medical Officer, Tihar Jail, Respondent Nos. 6 and 7 respectively, to be negligent in the performance of their professional duties. It was stated that the report of the LSCI has been accepted by Respondent No. 2. The action taken report on the recommendations of the LSCI and a letter dated 17th/18th September 1997 recommending initiation of departmental proceedings against Respondent Nos. 6 and 7 was enclosed with the affidavit.

4. On 5th December 2005, a detailed order was passed by this Court, the operative portion of which reads as under:

"I was inclined to relegate the Petitioners to the remedy of a regular

civil suit. However, Mr. Sundaram the learned Senior counsel appearing for the Petitioner submits that the findings of the Leila Seth Commission may be treated as conclusive decision on facts so far as the purposes of the Writ Petition is concerned. To this effect, Mr. Tulsi the learned Senior counsel appearing for the Respondents is also in agreement. The objection as to disputed questions of facts, therefore, would no longer deter this Court from exercising its extraordinary powers under Article 226 of the Constitution. Mr. Tulsi has emphasized on the repeated use in the petition of words 'brutality' and 'conspiracy'. It is his contention that to venture into these disputed questions of fact would render at naught the findings of the Commission. Since Counsel are agreed that the findings of the Commission may be treated as conclusive of the factual matrix, this factor would also not deter the Court from entertaining this Writ Petition. This also applies to Mr. Tulsi's arguments pertaining to the findings of the Commission that death was a natural sequel of the life-style of the deceased including his alcoholism. Mr. Sundaram states that this conclusion is not borne out from the Report of the Commission.

There has been vast increase in the filing of Writ Petitions claiming compensation on account of injuries, or death, based on the observations inter alia in *Nilabati Behera (Smt.) @ Lalita Behera (through the Supreme Court Legal Aid Committee) vs. State and Others (1993) 2 SCC 746*, *D. K. Basu vs. State of Bengal (1997) 1 SCC 416*, *P.A. Narayanan vs. Union of India & Others 1998 3 SCC 67*. I had occasion to grant compensation to the widow of the deceased in custodial death in *Smt. Kamlesh vs. Govt. of NCT of Delhi & Ors. 2004 I AD (DELHI) 1* and in *Raj Kumar vs. Union of India 124 DLT (2005) 218*. The attempt to support ordinary civil jurisdiction with writ jurisdiction needs to be curbed.

It is my understanding that when compensation is granted under Article 226 of the Constitution, it may not be fully compensatory for injuries suffered and sustained. Therefore, liberty is normally granted to the heirs of the deceased to initiate any other legal proceedings to cover the entire gamut and extent of claims. Mr. Sundaram submits that it would not be correct to see the focal point or fulcrum of this Writ Petition as a mere claim for damages; that is only one of the prayers contained in the Writ Petition. It is further submitted that even if damages are granted, the Petitioner is desirous of placing them at the disposal of a Trust which has been established with a view to alleviate the suffering of widows facing similar predicaments. So far as other prayers are concerned, it is the contention of the Petitioner that prison reforms have already started. Mr. Tulsi joins in to state that the recommendations of the Commission have been substantially implemented. The matter

requires detailed consideration.

Rule.”

5. An application had been filed by Rajan Pillai’s mother seeking impleadment in the writ petition. The said application was disposed of on 5th December 2005 by the following order:

“The normal principle of the law is that the Petitioner/Plaintiff is *dominus litus*. By way of this application, the mother of the deceased seeks to be impleaded in this Writ Petition. Learned counsel for the applicant on her behalf states that if any compensation is eventually awarded in these proceedings and that compensation is diverted totally for charitable purpose, the applicant/mother of the deceased will not have any subsisting grievance. Mr. Sundaram reiterates that the Petitioner is firmly resolved in donating all the proceeds awarded in this Petition to charity.

In these circumstances, it is ordered that the counsel for the applicant shall be heard when this Writ Petition comes up for Final hearing. Since the applicant has not been impleaded, counsel for the Petitioner undertakes to inform the applicant as well as her Advocate on record as and when the case is listed for Final hearing.

Learned counsel for the applicant clarifies that the filing of this application and its disposal as above shall not be used in any wise or manner in the proceedings filed by the applicant which are presently pending in the High Court of Madras, pertaining to the Estate of late Rajan Pillai.

With these observations, the application stands disposed of.”

6. The writ petition came up for hearing thereafter on 27th September 2010. It has been heard on various dates. Pursuant to what transpired at the hearing, an additional affidavit was filed by Respondent No. 2 on 1st December 2010 about the further requirements for improving the facilities for medical treatment of prisoners in the Tihar Jail.

7. The scope of the present writ petition now stands confined to the reliefs prayed for in light of the findings of the LSCI, which have been accepted by

both sides to be “treated as conclusive of the factual matrix”. In the above context, this Court proceeds to first examine the report of the LSCI. The facts narrated hereafter are as found in the report of the LSCI.

The background facts as narrated in the report of the LSCI

8. Rajan Pillai, an Indian national was living and conducting business in Singapore. He was also the Chairman of the Britannia Group of Companies. Rajan Pillai had as his principal partner a group of investors led by Mr. F. Ross Johnson, the former President and Executive of R. J. R. Nabisco Inc. The disputes between them led to the Commercial Affairs Department of the Government of Singapore commencing criminal prosecution against Rajan Pillai between March and August, 1993. The proceedings concluded on 10th April 1995 with Rajan Pillai being convicted under Sections 409 and 420 of the Penal Code of Singapore on various counts for criminal breach of trust and cheating. On 10th April 1995, soon after the order of conviction was pronounced, and the case was to be taken up for arguments on the question of mitigation of sentence at 2.30 p.m., at the request of the counsel for Mr. Pillai, the case was adjourned to 11th April 1995, 9.30 a.m. However, Rajan Pillai left for India on 10th April 1995 itself. This led to the Court at Singapore issuing non-bailable warrants for the arrest of Rajan Pillai. It was informed that he had absconded to Bombay. Thereafter, the Interpol, New Delhi, a wing of Central Bureau of Investigation (‘CBI’) received a copy of the warrant of arrest asking it to trace and detain Rajan Pillai for extradition. The CBI did not find Mr. Pillai at his Bombay address.

9. On 15th April 1995, the Petitioner, Ms. Nina Rajan Pillai, filed an application before the Sessions Judge, Greater Bombay for grant of anticipatory bail to Rajan Pillai. When the said application was rejected, she filed a writ petition before the Bombay High Court which was dismissed on 19th April 1995. On the same date, i.e., 19th April 1995, the High Commission of the Republic of Singapore made a request to the Ministry of External Affairs, Government of India to assist it in securing the provisional arrest of Rajan Pillai for the

purposes of extradition. The CBI was unable to trace Rajan Pillai. On 28th April 1995, he appeared in person before the Additional Chief Judicial Magistrate, Trivandrum and surrendered. He also filed an application for bail. The Magistrate granted him interim bail till 5th May 1995. Rajan Pillai gave his address as 27/874, Vanchiyoor, Thiruvanthapuram. Thereafter, the Kerala High Court took up the case *suo moto* and called for the records. A larger Bench was constituted and the High Court quashed the bail order of the learned Additional Chief Judicial Magistrate on 22nd June 1995. However, Rajan Pillai did not surrender before any Court thereafter.

10. On a consideration of a formal request received from the Republic of Singapore for extradition of Rajan Pillai under Section 4 of the Extradition Act, 1962, the Government of India appointed Mr. M.L. Mehta (as he then was), Metropolitan Magistrate-cum-Commercial Civil Judge, Delhi as the designated Magistrate under Section 5 of the Act by a notification dated 2nd June 1995. On 1st July 1995, Mr. Mehta issued a non-bailable warrant of arrest under Section 6 of the Extradition Act directing the CBI to arrest Rajan Pillai. The CBI arrested Rajan Pillai on the night of 3rd/4th July 1995 from Room No. 1806, Le Meridien Hotel, New Delhi. Thereafter, Rajan Pillai was produced in the Court of Mr. Mehta on 4th July 1995 at 10 a.m. The matter was taken up about an hour later and Rajan Pillai was remanded to judicial custody. He was then taken to the Central Jail, Tihar, New Delhi. He arrived at Central Jail No. 4 at 1.22 p.m. on 4th July 1995.

11. Though Rajan Pillai was in India since 10th April 1995 and various applications were filed on his behalf, none of them adverted to his ailments. On 4th July 1995 when he was produced before Mr. Mehta an application was filed in which it was stated that Rajan Pillai was an old patient of liver dysfunction and cirrhosis (with previous G. I. bleed and endoscopic sclerotherapy of esophagus varices), portal hypertension and that he had been under “constant medical treatment” for this ailment; further the disease requires regular medical monitoring. In support of this averment a photo copy of the latest available

medical certificate from Escorts Heart Institute dated 17th April 1995 was also filed. In the same application, it was stated that “the ailment of the accused has aggravated and on 3/7/95, he vomited blood and on 4/7/95, he passed blood with the stool”. It was pointed out that these signs were the “signals of the utterly critical condition” and that he needed immediate medical attention. The application further stated that “sophisticated non-invasive surgery” which was required was available only at the Escorts Heart Institute and as such, he needed to be admitted to the said hospital; and in case immediate treatment was not provided “it can even turn fatal.” Attached with the said application was a certificate dated 17th April 1995 of Dr. RR Kaslival of the Escorts Heart Institute. It was certified by the said doctor that Rajan Pillai was a follow-up case of liver dysfunction and cirrhosis and required careful monitoring of hepatic and cardiac functions as there could be deterioration at any stage. Along with this certificate, a discharge summary of the Escorts Heart Institute dated 13th November 1992 was enclosed.

12. Mr. Mehta issued notice on the said application and posted it for the reply of the CBI and arguments on 5th July 1995 at 2 p.m. While remanding the accused in judicial custody, Mr. Mehta directed the Superintendent, Central Jail No. 1, to provide necessary medical treatment as per rules as Rajan Pillai was complaining of ailments. This was incorporated in the remand warrant. It was also stated that the legal interview for about five hours be allowed on 4th July 1995 with Rajan Pillai’s counsel.

13. Mr. Mehta also wrote an urgent confidential letter to the Resident Medical Officer (‘RMO’), Central Jail, enclosing a copy of the application for medical examination/treatment. The letter stated that Rajan Pillai should be examined with regard to alleged ailments and possible availability of treatment for the said disease be explored. The RMO was directed to submit a detailed report on 5th July 1995 at 2 p.m. in confidence and in the mean time to provide Rajan Pillai with the required treatment. A copy of this letter was also endorsed to the Superintendent, Tihar Jail.

14. The report of the LSCI notes that Mr. Mehta did not receive any report from the RMO in response to his aforementioned letter dated 5th July 1995. This despite the fact that his letter reached Central Jail No. 4 on the evening of 4th July 1995 where it was received by Mr. Sanjay Gupta, Assistant Superintendent, Central Jail No. 4. Before the LSCI, Mr. Sanjay Gupta admitted receiving the letter and stated that he had sent the letter through the persons who were escorting Rajan Pillai and 19 other prisoners to the hospital in Central Jail No. 3 where the RMO's office was also located. He stated that he adopted this course since the dak office was closed at 6.00 p.m. However, before the LSCI, the three escort officers/warders who accompanied the prisoners including Rajan Pillai stated that they did not receive the letter for delivery. Mr. Sanjay Gupta stated that he did not take any receipt of the letter from any of the three warders and he did not remember to whom he had actually handed it over. However, an endorsement was made on the copy addressed to the Superintendent to the effect that the other copy had been sent to the RMO's office.

15. The RMO, Dr. SP Barua, stated before the LSCI that he did not receive the above letter of Mr. Mehta but a communication was received from the CBI regarding his opinion about Rajan Pillai's treatment to which he promptly replied within half an hour on 5th July 1995. Rajan Pillai was brought to Central Jail No. 4 at about 1.22 p.m. on 4th July 1995. He was brought to the 'chakkar' at about 3.00 p.m. His lawyers came to meet him at 4.20 p.m. and left at 6.02 p.m. The legal interview took place between 5.00 p.m. to 6.00 p.m. His lawyers stated before the LSCI that Rajan Pillai looked dejected on the evening of 4th July 1995 and "appeared to be in reasonable health". After the legal interview with the lawyers, Rajan Pillai was taken to Dr. Sudhanshu in the observation ward de-addiction Centre. Dr. Sudhanshu examined Rajan Pillai at 6.35 p.m. and referred him to the Medical Officer in Central Jail No. 3 hospital.

16. Dr. Sudhanshu stated before the LSCI that Rajan Pillai informed him about "the history of cirrhosis of liver and complained of haematemesis". A referral

slip to this effect was prepared. Rajan Pillai was then sent from Central Jail No. 4 in a van with 19 other prisoners to Central Jail No. 3 hospital at 7.15 p.m. Dr. A. Venkatsubbaiah (Respondent No. 7 herein) was the Medical Officer on emergency duty in Central Jail No. 3 hospital at 7.30 p.m. He found Rajan Pillai's general condition 'within normal limits', i.e., he did not have any fever, he was not dehydrated and his blood pressure and pulse were normal. Although these were not recorded in the prescription written at 7.35 p.m., Respondent No. 7 prescribed certain medicines including diazepam at bed time. In an affidavit filed before the LSCI, Respondent No. 7 admitted that Rajan Pillai had told him that he was suffering from hypertension and was taking propranolol and that he had an attack of 'haematemesis' in 1992 and was diagnosed as having cirrhosis and was treated by non-invasive surgery at the Escorts Hospital. Rajan Pillai requested that he be sent to Escorts Hospital for treatment of haematemesis which he sustained on 3rd July 1995. According to Respondent No. 7, he asked Rajan Pillai to consult the Medical Officer In-charge of Jail No. 4 Hospital on 5th July 1995 in the O.P.D. The LSCI noted that there was nothing on record to show that the medicines prescribed by Respondent No. 7 were actually given to Rajan Pillai and were consumed by him.

17. Thereafter Rajan Pillai was brought back to Jail No. 4 at about 8.13 p.m. and was lodged in the *mulahiza* ward, i.e., Ward No. 3 in Cell No. 1. *mulahiza* ward is a place where a new inmate is kept till the *mulahiza* or medical examination is completed. It is only after the medical examination is done and the physical condition, weight etc. recorded that an inmate is lodged in a ward. If no doctors are available on evening duty for this purpose, the *mulahiza* would be done the morning of the following day. On the morning of 5th July 1995, Rajan Pillai was taken to the Court for being produced there as per the directions of Mr. Mehta. Therefore his *mulahiza* could not take place. He was taken there at 9.18 a.m. in a jail van escorted by head constable. He was placed in the Tis Hazari lock up at 10.20 a.m. He was permitted to have an interview with Ms. Nina Pillai and her brother. At about 2.00 p.m. he was produced

before Mr. Mehta.

18. In its reply to Rajan Pillai's application seeking medical treatment, the CBI took the stand that the application was not in good faith. The CBI stated that the records of the hotel Le Meridien from where he was arrested indicated that Rajan Pillai had been consuming liquor. The articles recovered from him at the time of his arrest did not reveal that he was suffering from alcoholic liver cirrhosis. It was stated that medical treatment would be made available to him in the jail itself.

19. On the other hand, counsel for Rajan Pillai produced a certificate dated 4th July 1995 of one Dr. Peter Goh from the National University of Singapore. It stated that Rajan Pillai had been a patient of the Department of Surgery, National University of Singapore since August 1992. The certificate further stated:

“His main problems are alcoholic liver cirrhosis and portal hypertension complicated by esophageal varices. He has had two life threatening hemorrhages from the varices (Ist episode on 8/8/92) in the last three years which were managed by I/v somatostatin and Endoscopic Sclerotherapy. These episodes were complicated by liver failure.

Presently he is on a chronic sclerotherapy program which includes three monthly endoscopic reviews with variceal sclerotherapy and continuous maintenance therapy on Tab Propanolol 40 mg. bd. He will need to have lifelong maintenance treatment to avoid another bleeding episode. The only other alternative is Surgery.

The patient was last reviewed in October 1994 and is now overdue for endoscopic review and treatment of his varices. He is also on regular ultrasound screening of the liver for the early detection of hepatoma as cirrhotic have a high risk of developing liver cancer.”

20. Mr. Mehta heard the arguments on 5th July 1995 regarding the request of Mr. Pillai for medical examination and set the matter down for disposal on 6th July 1995. The Petitioner and her brother met him again at 3.20 p.m. and he

was sent back to Central Jail, Tihar at 5.10 p.m. He reached Central Jail No. 4 at 6.06 p.m. The Court on 5th July 1995 ordered that he be detained henceforth in 'B' class in the jail. Since Rajan Pillai returned to the jail only in the evening of 5th July 1995, again the *mulahiza* could not take place on that date. He was again lodged in the *mulahiza* Ward, despite the 'B' class order. There was a direction to produce Rajan Pillai on 6th July 1995 at 2.00 p.m. He again left Jail No. 4 at 9.07 a.m. on 6th July 1995 and so the *mulahiza* was again not done. On 6th July 1995, the CBI produced the statement of Dr. RR Kasliwal (who had issued a medical certificate dated 17th April 1995) in which he stated that he had not examined Rajan Pillai on that date but had given a certificate on the basis of the discharge summary of 1992 of the Escorts Heart Institute. Dr. Naresh Trehan, Executive Director of Escorts Heart Institute certified that Rajan Pillai had been admitted there on 10th November 1992 and discharged on 13th November 1992 and had not returned thereafter for a follow up. In response to letters written by the CBI, the Medical Superintendent (M.S.) of Safdarjung Hospital, New Delhi stated that treatment of cirrhosis of liver was available in the Safdarjung Hospital, LNJP Hospital and GB Pant Hospital. Dr. SP Barua, RMO Central Jail Hospital also replied stating that Central Jail had no facility for such treatment but GB Pant Hospital and AIIMS had facilities for treatment being super speciality hospitals. Though the letters of both the M.S. of Safdarjung Hospital and Dr. Barua were available with the CBI they were not produced before Mr. Mehta. At the hearing, Mr. Mehta appears to have asked Rajan Pillai about the nature of his ailment in response to which Rajan Pillai did not say anything except mentioning that he was taking propanolol.

21. By a detailed order dated 6th July 1995, Mr. Mehta rejected the application for medical examination filed by Rajan Pillai. He held that from the history of the case and the circumstances in which he was arrested, it appeared that Rajan Pillai was no longer a permanent or serious patient requiring any immediate hospitalization or check up. He was permitted to continue his prescribed medication while in detention. Mr. Mehta further observed that the professional and morally bound doctors at the jail hospital and the easily accessible court

“will always be concerned about the permissible and required medical treatment as and when situation warranted”. The bail application was then adjourned to 11th July 1995 as counsel expressed their inability to argue the matter on account of non-availability of the copies of the documents on which reliance was being placed by the prosecution.

22. Rajan Pillai left for Central Jail No. 4 from the Court at 4.45 p.m. and reached the jail at 5.40 p.m. on 6th July 1995. He was met in the Court premises by Petitioner No.1 and her brother. He ate only one sandwich and drank a lot of water and was unwell and depressed after hearing about the rejection of his application. The brother of Petitioner No.1 went to the Tihar Jail at 7.30 p.m. to give Rajan Pillai some food but he was not permitted to do so. Mr. George Kutty informed the LSCI that he met Rajan Pillai at about 7.30 p.m. and accompanied him to Ward No. 9. There he requested other inmates to provide Rajan Pillai the necessary help as he was unwell.

23. The ‘B’ class inmates lodged in Ward No. 9 stated before the LSCI that on 6th July 1995 at about 8.30 p.m., Rajan Pillai was brought there and showed a cemented platform to sleep on. Rajan Pillai had brought four or five bottles of Bisleri with him. Mr. George Kutty gave him a ‘Lungi’ and he was provided with one or two blankets. Mr. Prithi Pal Singh, one of the inmates stated before the LSCI that he found Rajan Pillai restless and going to the bathroom frequently. He also noticed white spots below Rajan Pillai’s knees on both legs. Though the fans were working they were rather ineffective and Rajan Pillai was restless and moving from side to side. Mr. Rama Koti, another inmate deposed before the LSCI that Rajan Pillai was disturbed, was unable to walk and talk and his whole body was swollen which was not the case earlier on 4th July 1995. Mr. Koti stated that Rajan Pillai’s legs were like elephant legs and the whole night he was restless and visited the bathroom very frequently without wearing his slippers. Two other inmates corroborated the above statements. They did not call anyone as they did not realise that Rajan Pillai’s condition was serious. It was presumed that he was restless because he was in

jail.

24. On the morning of 7th July 1995 when the barrack was opened for counting the inmates, all the inmates except Rajan Pillai came out to participate in the counting. Rajan Pillai remained lying on the cemented floor bed. The Munshi of Ward No. 9 of B class jail stated that when he visited the Ward No. 9 at 7.00 a.m., he found that Rajan Pillai had high temperature. He was unable to understand what Rajan Pillai was saying and called Mr. George Kutty. Mr. Kutty stated that Rajan Pillai should be sent to an outside hospital as his condition was serious. Assistant Superintendent Mr. Prem Chand gave directions to the Ward Munshi to take Rajan Pillai to the hospital for check up. Thereafter Rajan Pillai was taken to the observation ward/ hospital in Jail No. 4 by Mr. Rama Koti and another inmate to the hospital in Ward No. 12 of Jail No. 4 which was at a distance of 200-300 sq. yds. An OPD ticket was prepared and the doctor gave directions that Rajan Pillai be admitted to the general ward of the hospital in Jail No. 4. Dr. Hira Lal in the OPD dispensary examined Rajan Pillai who informed him that he was running high fever and could not sleep at night. After examining Rajan Pillai, Dr. Hira Lal examined 30 to 40 other inmates at the *mulahiza*. He also examined 100 other inmates as OPD patients and completed his entire work at around 12 noon.

25. The records shown to the LSCI revealed that Rajan Pillai was given an injection of Calmpose at 10.30 a.m. on 7th July 1995. He was also given a Capsule of Cephalexin and a tablet of accemol as per the prescription of Dr. Hira Lal. Dr. Hira Lal diagnosed his case as one of high grade fever and psoriasis with itches all over the body. He advised diazepam injection; tablet Acemol; Capsule Cephalexin and Syrup Gotmin. The LSCI noted that Dr. Hira Lal was unable to explain why he prescribed injection Calmpose in the OPD ticket whereas in the admission and summary record sheet he prescribed diazepam injection. At about 12.30 p.m. he had a formal round of the ward. On enquiry, Rajan Pillai told Dr. Hira Lal that he was feeling better. It was stated that Rajan Pillai's temperature had come down to 99.8°C but no such

entry was made in the admission and summary record sheet. The ward was locked between 12 noon and 3.00 p.m.

26. When the lawyer Mr. Pradeep Dewan met Rajan Pillai at around 4.45 p.m. at Jail No. 4, he found that the latter had very high fever. The Superintendent Dr. A. K. Singla was informed about this. He advised cold sponging and for the doctor to be informed immediately. Respondent No. 7 then arrived from the Jail No. 3 hospital at 5.36 p.m. Rajan Pillai was made to lie down on a bench. He sent the Jail vehicle to arrange for Rajan Pillai to be taken to the hospital. Mr. Pradeep Dewan stated before the LSCI that he had asked the Superintendent to send Rajan Pillai to Escorts. However, the Superintendent told him that he had limitations and could send Rajan Pillai only to the DDU Hospital. Mr. Dewan deposed that the doctor who had come to examine Rajan Pillai did not have any life saving apparatus. Mr. Dewan offered that the Petitioners' car be used to take him to the hospital but was told that it was not permissible. The ambulance finally arrived at 5.50 p.m. Rajan Pillai was put on a stretcher and into the ambulance. The ambulance left Jail No. 4 at around 6.00 p.m. with Respondent No. 6 and one Mr. Khatri, a pharmacist.

27. The events thereafter as recorded in the report of the LSCI read as under:

“The record shows that it (the ambulance) left at 6.10 p.m. Dr. Venkatsubbaiah says that during the journey white froth slightly tinged with blood started coming out of the mouth of Mr. Rajan Pillai, due to the jerking of the ambulance. He further says that at the time he examined Mr. Pillai, he was not bleeding externally and started to bleed from the mouth in the ambulance. The stretcher had been placed on the floor of the ambulance and he was holding it, as it was moving about inside and Mr. Pillai's condition kept deteriorating. There were no facilities for medical treatment inside the ambulance which was driven at about 50 k.m. per hour.”

28. The driver of the ambulance Mr. Ravinder Kumar deposed before the LSCI. According to him, the stretcher on which Rajan Pillai was placed consisted of two long wooden poles and a durri and when the stretcher was placed on the floor, since Rajan Pillai was heavily built, the stretcher touched the floor of the

van.

29. On 2nd January 1996 and 9th January 1996, the LSCI inspected the ambulance van that was used to carry Rajan Pillai to the hospital. The LSCI noted that “the ambulance was just like an ordinary van and had no medical fixtures and facilities or even a bed for putting the stretcher. The stretcher was as described and the cloth/durri was sagging in the centre.” Mr. Ravinder Kumar stated before the LSCI that it took ten minutes to reach to the DDU Hospital. According to Respondent No. 7, who deposed before the LSCI, on reaching the DDU Hospital, Rajan Pillai was transferred to the casualty ward and treatment was started. Respondent No. 7 admitted before the LSCI that he did not mention the fact that Rajan Pillai had complained on 4th July 1995 of having haematemesis and liver cirrhosis in the referral slip nor did he tell the doctors at DDU Hospital about this. He claimed that he was busy trying to revive the patient and forgot to inform the doctors of the above medical history of the patient. He, however, told the DDU Hospital doctors that bleeding from the mouth along with froth had started in the van and that is why suction treatment was started immediately. Dr. Sanjay Saxena, who was working as Assistant Medical Officer in DDU Hospital on 7th July 1995, deposed before the LSCI that around 6.20 p.m. Rajan Pillai was brought into the casualty ward accompanied by a few policemen and the Jail Doctor who gave him a referral slip and told him that the patient had high fever and was unconscious.

30. The LSCI has recorded in detail the events that took place at the DDU Hospital. Rajan Pillai was then examined by Dr. Mullik, a Medical Officer of the DDU Hospital who found Rajan Pillai to be deeply unconscious. He could not be aroused by means of painful stimuli which showed that his brain activity was severely impaired. His pupils were reacting sluggishly to light. Rajan Pillai was then examined by Dr. Bhatnagar, Senior Medical Officer at the DDU Hospital. He prepared a prescription which mentioned heat hyperpyrexia, cerebral malaria and septic shock. He advised an injection of Rantidive which was given to prevent the acute gastric erosions. On his advice, E.C.G. was also

done. Dr. Bhatnagar stated that he was not aware that Rajan Pillai was suffering from cirrhosis. Dr. P. K. Pathak, Senior Physician received the call from Dr. Bhatnagar at about 6.50 p.m. He reached the casualty ward at around 8.15 p.m. He found that by then Rajan Pillai had had a cardio respiratory arrest; his blood pressure and pulse were not recordable and there was no spontaneous respiratory effort. Despite all measures being undertaken Rajan Pillai could not be revived and was declared dead at about 8.30 p.m. According to Dr. Pathak, though the doctors were unaware that Rajan Pillai was a patient of cirrhosis, even if they had known about it, the treatment would have been the same. The postmortem conducted by a team of three doctors showed that Rajan Pillai died of aspiration of blood in the respiratory airway consequent to bleeding from ruptured esophageal varices – a complication of advanced stage of cirrhosis of the liver.

LSCI's findings on role of the doctors at Tihar Jail and DDU Hospital

31. The report of the LSCI then dealt with two other terms of reference as under:

“b) To ascertain the adequacy of the treatment given to him (Rajan Pillai) by Jail Medical Officer and Doctors in the Deen Dayal Upadhyay Hospital, New Delhi in the context of the history of his part illness;

c) To ascertain the adequacy and promptness of response of the doctor(s) and other authorities both of the jail and the Deen Dayal Upadhyay Hospital when the health of Shri Rajan Pillai deteriorated.”

32. The observations and conclusions of the LSCI relevant to the above terms of reference are as under:

“18. Mr. Pillai then returned to Jail No. 4 at 8.13 p.m. and was lodged in the *mulahiza* ward with three others in a cell meant for one. There was an open toilet in the cell itself. The cell is small and has a raised cement platform to be used as a bed for one person. The others sleep on the floor and because of the overcrowding one of the inmates has to sleep bang next to the toilet. Further these inmates have to use the toilet facilities while others are present and

watching. All this is certainly not in keeping with human dignity and is deplorable.

...

31. It is difficult to believe that Mr. Rajan Pillai did not mention cirrhosis of the liver of haemetemesis as he was aware of its seriousness having had two earlier life threatening episodes in 1992 and had undergone sclerotherapy a number of times thereafter. Further he had been repeatedly telling the court about it and had also mentioned it to Dr. Sudhanshu and Dr. Venkatsubbaiah on 4/7/95. It is also difficult to believe that if Dr. Hira Lal had written the *mulahiza* register (exhibit EW-28/6), the O.P.D. ticket (exhibit EW-16/1) and a part of the admission and summary record (exhibit EW-16/2) at about the same time as he claims to have done that there would be so many differences in recording.

32. Also the evidence indicates that even though the *mulahiza* was normally being done cursorily, due to pressure of too many persons, the weight and the question of drug/alcohol addiction was normally noted. In this connection, it is surprising that neither Mr. Pillai's weight has been noted nor is there any mention as to whether he is addicted to drugs or alcohol in the *mulahiza* register. Dr. Hira Lal is not able to explain why he did not record the weight or ask the usual question of addition to smack or alcohol, especially as he says he took 10 to 15 minutes to examine Mr. Rajan Pillai. Certainly if the question of alcohol had come up – the question of Mr. Pillai being a patient of alcoholic liver cirrhosis would have been apparent.

33. Dr. Hira Lal further says that he did not try to find out the cause of the fever but just treated it symptomatically. This is hardly how a competent doctor would behave. He would try to find out the past history of the patient in order to ascertain the reason for the high grade fever and treat him accordingly. A doctor looking after a person in the jail/custody has to be more particular as the patient's liberty is curtailed and he has no choice of going to another doctor or access to his own relatives. In fact if Dr. Hira Lal had examined Mr. Pillai properly he surely would have noticed the swelling/odema which has been referred to in the evidence. It was even noticed by Ms. Vishwanathan, the nurse doing voluntary work and she says that she brought it to the attention of the doctor.

...

38. It is really surprising that Dr. Hira Lal, a doctor about six years standing did not try to find out the reason for the high fever of the patient especially when he admittedly examined him for 10 to 15

minutes. He did not probe to ask Mr. Rajan Pillai, if there was any history of giddiness. Despite seeing that he had psoriasis, a skin disease, all over the body and being informed by the nurse about odema, he did not react. He did not even record the *mulahiza* as normally done – taking the weight and finding out about drug or alcohol addiction. His whole approach appears to be casual and incompetent and not that of a professional. He left for the day at 1 p.m. without even taking due care to record the temperature, pulse etc. of the patient. He did not try to find out the cause of the sickness. This can certainly not be called adequate treatment.”

33. As regards the role of Respondent No. 7, the LSCI observed as under:

“42. Dr. Venkatsubbaiah EW-29 has admitted that when Mr. Rajan Pillai was examined by him on the evening of 4/7/95 on the very first day of his entry to the jail, he had told him that he was an old patient of haematemesis since 1992 and was treated for cirrhosis of liver by the Escorts Hospital, New Delhi by way of non invasive surgery and had been continuously under treatment. Further on the previous night i.e. on the night of 3/7/95 he had an attack of haematemesis and vomited blood at about 9.30 p.m. Despite the fact that Dr. Venkatsubbaiah had been informed about the symptoms of the disease and that the internal symptoms had started appearing, Dr. Venkatsubbaiah took a very casual view and only prescribed symptomatic treatment without taking any steps of keeping such a patient under constant observation which was necessary or referring him to a gastroenterologist or sending him to a super speciality hospital.

43. There is no doubt that in jail some of the inmates feign illness in order to get some special treatment or be sent to an outside hospital but a competent doctor should be able to find out the actual ailment especially when he is being informed. Dr. Venkatsubbaiah was a medical officer posted in the Central Jail. He got his M.B.B.S. degree from Andhra Pradesh in the year 1982 and had an experience of about 12/13 years in the medical field. As such he is expected to know the seriousness of the problem with which Mr. Rajan Pillai was suffering.

44. His carelessness is further apparent from the fact that on 4/7/95 he did not record the history of liver cirrhosis while preparing the prescription exhibit EW-29/9 and only mentioned haematemesis. He did not behave in a professionally competent manner, nor did he record the pulse rate, temperature and blood pressure of the patient, which he alleges to have taken. He was stated from memory that his blood pressure was 140/100 and admits that this is not normal

but raised – yet he did not record it as he should have done. He does not appear to have examined Mr. Rajan Pillai properly or else he would have noted that he had psoriasis all over his body. He says that he saw Mr. Pillai's stomach by asking him to adjust his T shirt but he did not ask him to take off his clothes. He noticed that there was no injury.

...

47. Surprisingly, the only treatment given by Dr. Venkatsubbaiah was symptomatic especially when he was aware of the critical symptoms of cirrhosis of the liver due to the blood in the sputum; consequently in the context of the past history of the patient this does not appear to be adequate treatment. Dr. Venkatsubbaiah should have realised the seriousness of the matter as Mr. Pillai had vomited blood and kept him under observation or referred him to a gastroenterologist or recommended he be sent to a specialized hospital such as G. B. Pant Hospital, as he was aware that he could not be treated in the jail for bleeding due to cirrhosis of liver as there were no facilities for non invasive surgery.

48. Dr. Venkatsubbaiah's conduct later in not informing the DDU Hospital doctors in the Casualty about the history of cirrhosis of liver of which he was aware when he accompanied Mr. Rajan Pillai to the said hospital on the evening of 7/7/95 when he was in a critical condition is deplorable. He did not even mention it in the referral slip. A doctor cannot be permitted to forget the patient's illness just because there is an emergency and tension. In fact this was a matter of crucial importance as Mr. Rajan Pillai was a high grade patient of cirrhosis of the liver and the warning symptoms had started appearing on 3/4 - 7/95. Dr. Venkatsubbaiah has admitted that when he accompanied Mr. Rajan Pillai to the DDU Hospital on the evening of 7/7/95 he did not tell the doctors on duty at the DDU Hospital that Mr. Pillai was suffering from cirrhosis of liver and had already undergone non invasive surgery in the year 1992. Nor did he stay there for long, just a few minutes and then rushed back but appears to have mentioned to Dr. Saxena EW-39 that Rajan Pillai was an alcoholic."

34. The general conclusion as regards the second term of reference was as under:

"66. Looking at the manner in which the various doctors at DDU Hospital, as outlined earlier, treated Mr. Pillai with the available infrastructure, it cannot be said that the response was not prompt and adequate, when Mr. Pillai's health deteriorated.

67. Apart from the medical personnel in the jail the other authorities who had to deal with Mr. Rajan Pillai when his health deteriorated were the Superintendent, Deputy Superintendent and Assistant Superintendent, the driver and the D.A.P. personnel. There is nothing to indicate that the Superintendent (did not make) (*sic.*) made sincere efforts to get the doctor. It is also apparent from the record, as outlined earlier, that the ambulance was sent to get the doctor from Jail No. 3 and cold sponging was started even before he came. After Dr. Venkatsubbaiah decided to refer Mr. Rajan Pillai as an emergency case to the DDU Hospital, the D.A.P. guards were sent for and brought in the ambulance. Though it is true that the whole process took about an hour before Mr. Pillai was moved to hospital and precious moments were ticking away, this was not because there was no promptness of response. It was because of the difficulties of communication and the fact that Jail No. 4 was not connected with Jail No. 3 and there was an acute shortage of doctors; there being only one doctor on emergency duty available for all the four Jails in the evening. Apart from this certain procedure had to be followed. Consequently, the tragic death of Mr. Rajan Pillai was despite the efforts made by the authorities to help him when his condition deteriorated.”

Findings of the LSCI on negligence of Tihar Jail officials

35. The third term of reference was to ascertain whether there was any negligence on the part of any authority and to fix responsibility for the same. On this, the LSCI’s findings are as under:

“14. The Commission has carefully perused the evidence on record and has not been able to find any evidence on record to substantiate the vague unconnected allegations of conspiracy alleged by Ms. Pillai.

...

16. The evidence of Mr. Rajinder Kumar EW-3a convict under Section 302 Indian Penal Code (to be referred to in brief as I.P.C.), Mr. Pradeep EW-6, a convict under Section 397 I.P.C. and Mr. Rama Koti EW-10 an undertrial under Section 467, 468 IPC is relevant. These three inmates have alleged that they were present in Jail No. 4 and had gone to the Deodi at about 5.30 p.m. on 4/7/95 when they heard a person weeping inside the office of the Superintendent Mr. A.K. Singla. According to Mr. Rajinder on opening the door he saw that Mr. Singla was giving fist blows on the stomach of Mr. Rajan Pillai, who was bleeding from the mouth. He says that Mr. Mahavir Singh, Deputy Superintendent and

Mr. Bacha Majhi, Assistant Superintendent were both holding both the shoulders and arms of Mr. Rajan Pillai.

...

18. All three inmates were cross examined and it appears that their presence in the Deodi at that time is doubtful and what they have stated is far from the truth as no inmate is allowed to enter the Deodi and the Superintendent's room without permission. This is also corroborated by Mr. Shamin Akhtar EW-32.

...

22. In these circumstances, the Commission has no hesitation in coming to the conclusion that the story regarding beaten by the three jail officials mentioned above on the evening of 4/7/95 is concocted and far from the truth.

...

27. In these circumstances, it is clear that the lack of medical personnel and the faulty system were responsible for the *mulahiza* not being done as soon as possible; and negligence cannot be attributed to any particular individual.

28. Further the pressure of numbers resulted in the *mulahiza* of prisoners being done in a casual manner as already noticed. Dr. Hira Lal carried out the *mulahiza* of Mr. Rajan Pillai and even though he spent 10 to 15 minutes on the examination, he appears to have conducted it in a very half hearted manner as observed earlier.

29. Dr. Hira Lal EW-28 examined Mr. Rajan Pillai on the morning of 7/7/95 when admittedly he was not well and having high grade fever. Despite this he simply kept him under observation and did not make any entry regarding the past history and provided only symptomatic treatment. Though he has tried to safeguard his position by saying that the temperature of Mr. Rajan Pillai came down in the afternoon, there is no such entry in the medical record of Mr. Rajan Pillai. So it is very difficult to believe that the temperature really came down. In fact, Dr. Hira Lal has made a statement that he examined Mr. Pillai only at the time of *mulahiza* and not later on. It is certainly a case of negligence on the part of Dr. Hira Lal that he did not examine Mr. Pillai again despite his having high grade fever of 103° F and complaining of giddiness. This is specially so, as Dr. Hira Lal was leaving for the day and he knew that no medical personnel would be available till the next morning. He was failing in his duty as a doctor in not sending Mr.

Pillai to the Central Jail Hospital in Jail No. 3 where some medical personnel would be available, however inadequate. Though it would have been better if he had sent him to a more equipped hospital like Deen Dayal Upadhyay Hospital or super specialized hospital like G. B. Pant.

30. Moreover, in addition to Dr. Hira Lal the system is also to blame that the observation ward hospital used to be kept locked between 12.30 p.m. to 3 p.m. when there was neither a doctor nor a ward sister available and there was no medical officer to look after the patients admitted in the ward. The condition of any person deteriorates in the ward then the only remedy is for the other inmates to shout to the warder who comes if he hears (there has also been the case of a deaf warder) and if he is satisfied that the condition of an inmate is serious, he brings the key from the Deodi which is about 400 yards away from the observation ward. Moreover, if the condition of any patient deteriorates and he is unable to react or shout for help, the other inmates may not realise the seriousness of his condition and consequently he may not be attended to.”

36. The LSCI also noted that it was on account of the failure of the system that Rajan Pillai had to walk about 400 yards at about 4.30 p.m. to go for his legal interview. Given that the maximum temperature on that day was 40.9° C walking with the temperature of 104° F must have been a herculean effort for a sick man like Mr. Rajan Pillai. As for Respondent No. 7, the LSCI found that he was “casual in his approach and can be said to be negligent while performing his duty as a doctor”. The LSCI further observed that despite knowing that there was no facility in the jail hospital to treat Rajan Pillai with non-invasive surgery as was required, and despite knowing that he needed constant monitoring for his chronic condition of alcoholic cirrhosis of the liver, Respondent No. 7 did not take the precaution of keeping Rajan Pillai under observation nor did he refer him to a gastroenterologist or a better equipped hospital like DDU or G. B. Pant Hospital. He did not even record the history of the illness except mentioning haematemesis. The LSCI concluded that Respondent No. 7 “was certainly failing in his duty as a doctor and was negligent. He was further negligent in not recording the history of cirrhosis of the liver in the referral slip to the DDU Hospital on 7/7/95; nor informing the

DDU Hospital doctors, even though he accompanied Mr. Rajan Pillai.”

37. As regards the conduct of Dr. Sanjay Gupta, Assistant Superintendent in not ensuring that the letter received from Mr. Mehta was sent to the RMO, the LSCI observed as under:

“36. According to him, he sent the letter to the RMO through the escorts without taking a receipt due to the pressure of work of releases and does not remember the name of the escort. He has certainly acted without taking due care whether the letter had been delivered to the RMO or his office, especially when it was such an important urgent letter. He did not even check up from the escorts when they returned whether it had been delivered.

37. This conduct of Mr. Sanjay Gupta may not be described as negligent but he was certainly careless in not making sure that such an important confidential letter reached the right quarters. He needs to be reprimanded for not keeping a proper record of the urgent/confidential letter which was received from the court and was required to be replied to by the RMO by 2 p.m. on 5/7/95.”

38. The LSCI was also critical of Mr. A. K. Dutt, the Deputy Legal Advisor to the CBI, for not informing the Court of the legal advice received from the Medical Superintendent of Safdarjung Hospital as well as the RMO of the Tihar Jail. The LSCI observed:

“39. Though Mr. A. K. Dutt might be well within his rights not to have shown the letter of the RMO to the court, a responsible officer is expected to act in a manner showing a level of high integrity considering the fact that his silence might result in depriving a person of proper medical treatment.”

39. As regards the ambulance, the LSCI found as under:

“40. The condition of the jail ambulance and that of the stretcher in which Mr. Rajan Pillai was carried to DDU Hospital on 7/7/95 also needs to be highlighted. On inspection of the ambulance by the Commission it is apparent that it is not really fit to be called an ambulance but is more like a pick up van. It has no medical facilities or fixtures or equipment or even fan or oxygen cylinder. It does not even have proper seats to sit on. There is no bed or

bench/seat for placing the stretcher. It has a bare wooden bench about one foot wide running along all the three sides of the van area which is sealed off from the driver's cabin. The condition of the ambulance was such that the Commission has no hesitation in holding that it was an ambulance only in name and the upkeep of the vehicle was not proper.”

40. The LSCI concluded:

“42. Though no particular person can be held responsible for the upkeep of the vehicle and the stretcher a proper arrangement should be made for the management and upkeep of these items. The state should also have ensured that there are proper vehicles with medical fixtures and equipment provided at the jail. The RMO should be overall incharge and take care that all proper medical facilities are in order.

43. There is no doubt that Mr. Rajan Pillai was a sick man, having a chronic disease like alcoholic cirrhosis of the liver. He had two life threatening episodes in 1992 and ten sclerotherapies till March, 1995. As to how many years he would have survived is a moot point especially as he continued to drink. But he certainly was entitled to proper medical treatment and it was the duty of the State to have ensured that it was made available since he was in custody. Unfortunately both Dr. Venkatsubbaiah and Dr. Hira Lal, the two doctors in Central Jail, Tihar, New Delhi who examined him were casual and careless in the performance of their professional duty, as outlined earlier. Their negligence eventually resulted in giving him hardly any chance of survival.”

Summary of the suggestions of the LSCI

41. A summary of the suggestions of the LSCI for improving medical care facilities for prisoners in the Tihar Jail is as under:

1) There was overcrowding of the jails and there are no specialist doctors available in the jail for treatment of prisoners in need of such treatment. Although the number of sanctioned medical doctors was 17 including the RMO in July 1995, the number of doctors in position from 4th to 7th July 1995 was six including the RMO. In Jail No. 5, although the sanctioned capacity was 750 which had

more than 1400 prisoners. Therefore, it was important to ensure that the prison population and the resultant congestion was reduced.

2) The prisoners should have access to fresh air and should be allowed to spend a large period of their time in purposeful activity and remain unlocked for the maximum period possible.

3) Primary health care must be provided on a 24 hour basis and should be supplemented by visiting specialists. Specialist doctors must be available for all emergency consultation outside normal attendance. The speed of making such arrangements must be dictated by the prisoner's medical condition.

4) The format of the case sheets, medical cards, registers etc. need updating so that these can be produced in Court if necessary or be available to the hospital where the patient is taken in case of an emergency. It is necessary to computerize the medical records for efficient management and easy retrieval especially since the turnover of the prisoners is rather high.

5) The book in which the medical record is kept should be different from the book of entry and release of the prisoners. The initial medical examination of the prisoner is a serious business and must be done thoroughly. There should be adequate facilities for segregation and treatment of patients with infectious diseases. There should be proper disposal of waste, sewage, and for this purpose an incinerator for burning toxic waste is installed; bio degradable mass is to be converted into manure and there should be a regular checking of the water supply and installation of the chlorination plant for safe drinking water. The other suggestions are for providing ventilation and providing of exhaust fans and ceiling fans and coolers in the rooms of the critically sick patients.

6) For proper diagnosis of the disease, a sound laboratory back up is necessary in the jail itself. The bed strength of the Jail Hospital should be increased from 30 to 150 and specialists should also be recruited as part of the Jail Hospital staff. The LSCI also noted that a Committee headed by Dr. KK Jain that is constituted to raise the existing medical facilities at the Tihar Jail, had made certain recommendations. The LSCI recommended that the Committee's recommendations be implemented on an urgent basis "and not meet the fate of most committees".

42. The other recommendations of the LSCI were:

i) The circulation of the judgment of the Delhi High Court in Criminal Main (M) No. 1621 of 1995 in Nauroz Ali Gharie dated 12th July 1995 which states that in a case of emergency case, a prison inmate can be referred to any hospital which in the opinion of the jail doctor is suitably equipped to treat such ailments and that the jail authorities can take the inmate to the hospitals without any special permission from the Court.

ii) The doctor should have the discretion to rush the patient to the hospital in the ambulance allowing the escort to follow. A well equipped ambulance and proper stretcher etc. should be immediately available. The names of the persons responsible for looking after the equipment, the ambulance and the stretcher, should be put on the notice board.

Submissions of counsel

43. Mr. CA Sundaram, learned Senior counsel appearing for the Petitioners submitted that with the Respondents having accepted the findings of the LSCI,

the negligence on the part of the Respondent Nos. 6 and 7 in failing to give proper care and treatment to Rajan Pillai in judicial custody stands proved. Invoking the principle of strict liability Mr. Sundaram submitted that in the present case it is the GNCTD which is liable to compensate the Petitioner for the unnatural death of Rajan Pillai which could have easily been avoided if the minimum standard of care and treatment was provided to him while in judicial custody. It was submitted that at the time of his death Rajan Pillai was earning a million dollars a year and that irrespective of the income of the person who suffers an unnatural death while in judicial custody, the principle of strict liability should apply. Mr. Sundaram submitted that there was a difference between a person who volunteered for medical treatment and a person who on account of his compulsory detention was unable to seek treatment of his choice. He cited a number of judgments which will be discussed hereafter.

44. The Petitioners had earlier stated before this Court that the compensation awarded would be utilised for constructive purposes like a trust for charitable purposes. Mr. Sundaram later submitted a separate note on this aspect in which it is stated that Petitioner No. 1 proposes to set up a polytechnic in the name of Rajan Pillai exclusively for girls. The institution would focus on vocational training skills that would enable girls to seek gainful employment. The polytechnic aims to steadily increase the number of students from 200 to about 800 in the span of ten years. The compensation awarded would offset the infrastructure and administrative costs.

45. Mr. KTS Tulsi, learned Senior counsel appearing for Respondents 2 to 7, submitted that having accepted the findings of the LSCI, the Respondents had taken several steps to improve the facilities for prisoners in the Tihar Jail complex. The number of doctors had increased from 16 in 1995 to 75, and paramedical staff from 9 to 125. As regards the recommendation of the LSCI to have specialists undertake visits to the jail periodically, the frequency of such visits had also been increased. As far as the indoor facilities for medical treatment were concerned, the number of beds had been increased and a

pathology lab had been established. Specialists from both AIIMS and GB Pant Hospital were regularly visiting Tihar Jail to attend to serious cases.

46. Mr. Tulsi referred to an affidavit dated Nil November 2010 filed by the Respondents in which the various measures taken to decongest Tihar Jail have been set out. Since the time of Rajan Pillai's death, Central Jail No. 5 was commissioned with a sanctioned capacity of 750 prisoners for keeping adolescents, i.e., between the age group of 18 and 21 years. Central Jail No. 6 was commissioned in 2000 for lodging 400 female prisoners. In 2003 Central Jail No. 7 was commissioned for lodging 350 prisoners. A separate district jail in Rohini was commissioned in 2004 for lodging 1050 prisoners. In 2005 Central Jail Nos. 8 and 9 were commissioned for lodging 600 prisoners each. In 2008, the construction of Mandoli Jail Complex in East Delhi was commenced which was designed to lodge 3500 prisoners and was expected to be completed in July 2011.

47. There has been a diversification of vocational training programmes offered to the inmates of the Tihar Jail and Rohini Jail Complexes. Mr. Tulsi explained the steps taken for conservation of energy in the Tihar Jail. The complex also has Model Visitation Chambers and the facility of legal aid through video conferencing. Mr. Tulsi explained that the mortality rate of prisoners in the Tihar Jail Complex was presently lower than at the time of Rajan Pillai's death and as compared to other jails in the country. As regards the hospitals and medical facilities, there is a 150 bedded hospital in Central Jail No. 3 and dispensaries in each jail for round the clock health care. Since June 2008, there is an integrated Counseling and Testing Center for HIV in the Central Jail Hospital. A Link Anti Retroviral Treatment center was started in the Central Jail Hospital from 23rd September 2008. There are 79 doctors and 135 paramedical staff deputed for patient health care. It is stated that regular health checkups of the inmates are undertaken and cases of seriously sick under trial prisoners are taken up with the concerned Courts either for early disposal of the cases or for release on bail. There is a 120 bedded drug de-addiction centre

commissioned in the Central Jail Hospital. It is stated that *mulahiza* is carried out compulsorily for all prisoners entering any of the jail complexes as inmates. Each jail has an ambulance for shifting patients to various outside hospitals for OPD as well as for any medical emergency. There are 19 ambulances in the Delhi Prisons department, out of which two ambulances are stationed round the clock at Central Jail No. 3 for emergency. Although it is stated that the ambulances are well equipped with basic emergency facilities, it was pointed out by Mr. Tulsi that at least one fully equipped ambulance is required to be provided.

48. In a further note submitted by the Respondents the position regarding the number of inmates that have died in Tihar Jail since 2006. It was 13, 14 and 15 for the years 2008, 2009 and 2010 respectively. The reason for the custodial deaths is invariably attributed by the Respondents to natural causes. A small percentage is attributed to unnatural cases, i.e., on account of suicides. Only one case of death of an inmate in 2010 is stated to be on account of assault by other inmates.

49. The vacancy position of the medical staff indicates that out of total sanctioned strength of 110, there are 32 vacancies. There were 14 vacancies in the post of GDMO; 06 vacancies in the post of Junior Residents and 02 vacancies in the post of Medical Specialists. The post of RMO, Psychiatrist, Dentist, Cas Dental, Junior Specialist (Radiologist), Junior Specialist (Pathologist), Clinical Psychologist Suicide Counseling and Child Psychologist are all vacant. As regards paramedical staff, there are 27 vacancies and as regards Class 4, there are 27 vacancies with 15 vacancies in the post of Nursing Orderly. It is admitted that a majority of the prison population comes from the economically weaker section of society and suffers from many diseases even at the time of their admission. Mr. Tulsi emphasized that directions are required from the Court for provision of 24 hour investigation facilities and for filling up of the posts that have remained vacant for number of years.

Scope of the present proceedings

50. The order dated 5th December 2005 of this Court recorded the statements of counsel on both sides that they do not question the findings on facts of the LSCI which they agreed “may be treated as conclusive decision on facts so far as the purposes of the Writ Petition is concerned.” Consequently, the Court noted that “the objection as to disputed questions of facts, therefore, would no longer deter this Court from exercising its extraordinary powers under Article 226 of the Constitution.” The task before the Court is only to determine whether on the basis of the findings of the LSCI, the Respondent GNCTD can be held liable to compensate for the death of Rajan Pillai and what should be the quantum of compensation that should be awarded to the Petitioners.

51. To recapitulate the findings of the LSCI, in a cascading sequence of events, there was to begin with a failure to subject Rajan Pillai to a routine medical examination for over two days after he was admitted to the Tihar Jail. He was kept in deplorable conditions in Tihar Jail without access to proper medical treatment leading to a rapid deterioration of his health. An incorrect diagnosis by the medical staff at the Jail led to administration of drugs which were not appropriate to his medical condition. There was a failure by the jail staff to comply with the order of the learned Magistrate to submit a medical report. Had such medical report been made available to the learned Magistrate, it is possible that an order may have been passed for his immediate treatment in a specialty hospital. Then there was a problem with the ambulance; a delay in reaching Rajan Pillai to the DDU Hospital; a failure on the part of Respondent No. 7 to inform the doctors at DDU Hospital of the fact that Rajan Pillai was suffering from chronic liver cirrhosis and the consequent failure by the DDU Hospital to provide Rajan Pillai with timely and appropriate medical treatment.

52. The LSCI’s findings that have been extracted hereinabove also point out to a systemic failure that aggravated the causes leading to the death of Rajan Pillai. This is a case where it is possible to fix both joint and several liability of Tihar Jail administration as a whole, and individual doctors, i.e., Respondent

Nos. 6 and 7 in particular. The LSCI has already determined liability of Respondent Nos. 6 and 7 for their respective roles which demonstrated medical negligence which led ultimately to the death of Rajan Pillai in unfortunate circumstances. Given that the report of the LSCI has been accepted by the Respondents, it is not necessary to discuss any further the evidence that has come on record. The scope of the present petition is to determine the liability of the Respondents and the compensation payable.

Liability of the State

53. Rajan Pillai's death occurred while he was in judicial custody. There is both a constitutional and a legal obligation of the State, in terms of Article 21 of the Constitution, to protect the life and liberty of every inmate of a prison. The liability of the State to compensate the victim and/or the family of the victim for its failure to ensure such protection has been explained in several decisions of the Supreme Court and the High Courts.

54. There has been a series of decisions both by this Court as well as the Supreme Court on general conditions of the Tihar Jail as well as individual instances of custodial violence. Particular to the Tihar Jail Complex the liability of the Respondent State to compensate for the deaths and injuries suffered by inmates has been the subject matter of several decisions of this Court as well as the Supreme Court.

55. A discussion of the law relating to fundamental rights of inmates of prisons must begin with the decision in *State of Maharashtra v. Prabhakar Pandurang Sanzgiri AIR 1966 SC 424* where the Supreme Court held that conditions regulating the restrictions on the liberty of a detenu laid down in the Bombay Conditions of Detention Order, 1951 must be strictly construed and all basic necessities of life made available to inmates, including sending out manuscripts for publication from the prison. The State of Maharashtra had argued that the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges and writing or publishing a book was not one

such privilege. Both the Bombay High Court and a Constitution Bench of the Supreme Court rejected this contention. The Supreme Court held as under: (AIR @ 427-428)

“(W)e are only concerned with the question whether the restriction imposed on the personal liberty of the first respondent is in terms of the relevant provisions of the Defence of India Rules. Here, the first respondent's liberty is restricted under the Defence of India Rules subject to conditions determined in the manner prescribed in Sub-r. (4) of r. 30 thereof. We find it difficult to accept the argument that the Bombay Conditions of Detention Order, 1951, which lays down the conditions regulating the restrictions on the liberty of a detenu, conferred only certain privileges on the detenu. If this argument were to be accepted, it would mean that the detenu could be starved to death, if there was no condition providing for giving food to the detenu. In the matter of liberty of a subject such a construction shall not be given to the said rules and regulations, unless for compelling reasons. **We, therefore, hold that the said conditions regulating the restrictions on the personal liberty of a detenu are not privileges conferred on him, but are the conditions subject to which his liberty can be restricted.** As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the first respondent in derogation of the law whereunder he is detained.” (emphasis supplied)

56. In one of the earliest cases dealing with the living conditions of undertrial prisoners, *D Bhuvan Mohan Patnaik v. State of Andhra Pradesh (1975) 3 SCC 185*, Chandrachud, J. (as he then was) held as under (SCC @ 188):

“The security of one's person against an arbitrary encroachment by the police is basic to a free society and prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crimes. Such intrusions are against the very essence of a scheme of ordered liberty. ... **No person, not even a prisoner, can be deprived of his 'life' or 'personal liberty' except according to procedure established by law.** The American Constitution by the 5th and 14th Amendments provides, inter alia, that no person shall be deprived of "life, liberty, or property, without the due process of law". Explaining the scope of this provision, Field J. observed in *Munn v. Illinois (1877) 94 US 113* that the term "life" means something more than mere animal existence and the inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. This statement of the law was approved by a

Constitution Bench of this Court in *Kharak Singh v. The State of UP AIR 1963 SC 1295.*” (emphasis supplied)

57. Justice Krishna Iyer reiterated the essentiality of fundamental rights for jail inmates in *Charles Sobraj v. Superintendent, Central Jail, Tihar, New Delhi (1978) 4 SCC 104* in the following passage (SCC @ 109-110):

“If a whole atmosphere of constant fear of violence frequent torture and denial of opportunity to improve oneself is created or if **medical facilities and basic elements of care and comfort necessary to sustain life are refused then also the humane jurisdiction of the court will become operational based on Article 19. ... prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise.**” (emphasis supplied)

58. A Constitution Bench of the Supreme Court took serious note of the treatment meted out to undertrials, convicts and those awaiting death penalty in the case of *Sunil Batra (I) v. Delhi Administration (1978) 4 SCC 494*. The majority held as under (SCC @ 568):

“It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed [see *Procunier v. Martinex 40 L Ed 2d 224 at 248 (1974)*]. However, a prisoner’s liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial.”

59. Krishna Iyer J., in his concurring opinion in *Sunil Batra (I)* (supra), further elaborated upon the need for “going education for prison staff, humanisation of the profession and recognition of the human rights of the human beings in their keep.” (SCC @ 536) He reminded that: (SCC @ 550)

“The humane thread of jail jurisprudence that runs right through is that no prison authority enjoys amnesty for unconstitutionality, and forced farewell to fundamental rights is an institutional outrage in our system where stone walls and iron bars shall bow before the rule of law.”

60. In *Sunil Batra (II) v. Delhi Administration (1980) 3 SCC 488* Krishna Iyer, J. reiterated the need for prison reforms when a particularly gruesome instance was complained against. Soon thereafter, in *Rakesh Kaushik v. BL Vig, Superintendent, Central Jail, New Delhi 1980 (Supp) SCC 183* Krishna Iyer, J. had another occasion to deal with the conditions of inmates at the Tihar Jail and one to evaluate whether the directions issued in *Sunil Batra (I)* (supra) and *Sunil Batra (II)* (supra) were being followed. Observing the unhappy state of affairs, the Court noted: (SCC @ 194)

“Not until a transformation in the awareness of the top-brass, not until new techniques of instilling dignity and mutual respect among the prisoners, not until a hospital setting and curative techniques pervade the staff and the inmates, can there be any human right conscious reformation in the Tihar prison.”

61. Bhagwati, J. (as he then was) also condemned the approach of the Tihar Jail administration and emphasized the rights of detainees in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608*. The specific right to be interviewed by the lawyer and family members was in issue. Clauses 3 (b) (i) and (ii) of the Conditions of Detention Order laid down by the Delhi Administration under an Order dated 23rd August 1975 issued in exercise of the powers conferred under Section 5 of the COFEPOSA Act were struck down as being violative of Articles 14 and 21 of the Constitution. After discussing the aforementioned decisions, the Court held that it is no longer *res integra* that “the prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarceration.”

62. In *Sanjay Suri v. Delhi Administration 1988 AIR SC 414*, the Supreme Court entertained writ petitions pointing out maladministration at the Central Jail at Tihar relating to juvenile undertrial prisoners. The Court took judicial

notice of the prevailing conditions in jails, and emphasized the need to press upon the shift in prison jurisprudence to a focus on 'reformation' and introducing 'good living' in jail life. The Court focused on Tihar Jail considering it the best suited to start bringing about this change, given its location in the Capital and the immense publicity it receives.

63.1 The Supreme Court, taking note of a letter petition by a prisoner in Central Jail, Bangalore, issued several directions in *Rama Murthy v. State of Karnataka (1997) 2 SCC 642* to improve the living conditions of inmates. The Court delineated nine major problems "which afflict the system and which need immediate attention. These were : (1) overcrowding; (2) delay in trial; (3) torture and ill-treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing; (6) prison vices; (7) deficiency in communication; (8) streamlining of jail visits; and (9) management of open air prisons." (SCC @ 653) On neglect of health care facilities, the Court observed as under: (SCC @ 657)

"(S)ociety has an obligation towards prisoners' health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions on their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap."

63.2 Further, regarding medical facilities the Court directed as under: (SCC @ 650-652)

"3. The staff in the jail hospital has to be increased by providing at least 2 more Doctors preferably who have specialised in the particular field where the prisoners may require their services in special cases. Once Lady Medical Officer, a Lady Nurse and two lady attendants for the purpose of attending the women prisoners. The location of their office may be provided in the separate block meant for women prisoners. If regular posting of Doctors cannot be made for the purposes stated above, the services of the Doctors from other Government Hospitals in Bangalore may be secured as a

routine periodically or in case of emergencies by providing them some conveyance. It is suggested that Doctors incharge of the Hospital may visit each barrack at least once in a week and meet the inmates to know their health problems and to treat the, in jail Hospital. In case of emergency as agreed by them, they may visit the prisoners whenever their services are required.

...

6. The Superintendent of the jail should take all the steps to produce the prisoners to the Hospitals outside the jail for the purpose of examination and treatment whenever necessary as per the opinion of the Jail Doctors and for this purpose also, the same procedure may be followed regarding police escort as stated above.

7. All the hospitals under the control of the Government who are expected to treat the prisoners either in the normal cases or in special cases may be strictly instructed to treat the prisoners either as in-patients or otherwise as per the recommendation of the jail Doctors and the Superintendent of the Jail without referring them back to the jail for treatment, particularly in case of mental patients, the NIMHANS authorities may be requested to treat them as in-patients till they become normal without referring them back to the jail.”

63.3 *Inter alia*, the Supreme Court in ***Rama Murthy v. State of Karnataka*** directed that recommendations of the Seventy-Eighth Report of the Law Commission of India, 1980 on 'Congestion of Undertrial Prisoners in Jails' and the Report of the All India Committee on Jail Reforms (1980-83) chaired by Justice A N Mulla be acted upon within six months.

64. In ***Murti Devi v. State of Delhi (1998) 9 SCC 604*** the Supreme Court again found the Tihar Jail authorities negligent and awarded compensation to the Petitioner for the death of her husband, an undertrial prisoner, Raj Kumar. The jail authorities made an unsuccessful attempt at convincing the Court that the deceased “was a drug addict and presumably as a consequence of withdrawal symptoms had suffered some injuries and also on account of an old injury in kidney, he had died.” The Supreme Court held that, “prompt and appropriate action in rendering medical aid in a hospital was also not given to the said deceased. ... There is no manner of doubt that because of the gross negligence on the part of the jail authorities, the said Raj Kumar, an undertrial prisoner in

Tihar Jail, was subjected to serious injuries inside the jail which ultimately caused his death.”

64.1 In *Ajab Singh v. State of Uttar Pradesh (2000) 3 SCC 521* the Supreme Court once again commented on the negligent attitude of jail authorities resulting in death of an undertrial. The deceased was lodged in the District Jail, Meerut. The Respondent stated that “Rishipal had gone to the jail hospital on 31st May, 1996 and complained of "jaundice" and weakness, yellow urine and lack of appetite. He was admitted to the jail hospital and treated for jaundice. On the evening of 31st May, 1996, Rishipal started vomiting and was given treatment. The jail doctor referred him to the Medical College, Meerut where he was admitted at about 8.40 p.m. on 1st June, 1996. His condition did not improve "and he died as result of the jaundice and liver failure".... The post mortem report is rather misleading which narrated the cause of death as 'shock and haemorrhage due to ante mortem injuries'.”

64.2 Taking a strong view on the affidavit, the Supreme Court held as under: (SCC @ 524)

“(W)hat appears to us to be a concocted story is that set out in the respondent's affidavits. They are, to our mind, desperate attempts to avoid responsibility for acts committed while Rishipal was in judicial custody. There can be no doubt that the respondents have not investigated the cause of death of Rishipal as they ought to have done or that, at any rate, they have not placed all relevant material before this Court. They have attempted to pull the wool over the eyes of this Court. We do not appreciate the death of persons in judicial custody. When such deaths occur, it is not only to the public at large that those holding custody are responsible; they are responsible also to the courts under whose orders they hold such custody.”

64.3 The Supreme Court directed the CBI to investigate into the circumstances of Rishipal's death and the State of UP to pay compensation in the sum of Rs. five lakhs.

65. The liability of the state to compensate for the death of a prison inmate in unnatural circumstances was reiterated in *State of Andhra Pradesh v. Challa Ramkrishna Reddy (2000) 5 SCC 712*. The Supreme Court dismissed the appeal of the State of Andhra Pradesh against the decision of the High Court of Andhra Pradesh granting compensation to the family members of an undertrial who got killed in an attack targeting him in the jail due to the negligence of jail authorities at sub-jail Koilkuntla. “On being lodged in jail, the deceased Challa Chinnappa Reddy and Challa Ramkrishna Reddy (P.W.1) both informed the Inspector of Police that there was a conspiracy to kill them and their lives were in danger. ... In spite of the representation made by the deceased and Challa Ramkrishna Reddy, adequate protection was not provided to them...” There were two guards on duty instead of the stipulated nine. The Court held the incident to be a result of “failure to take reasonable care.”

66. The various High Courts in the country have also dealt with cases of negligence of prison authorities and reiterated the need to safeguard the rights of jail inmates. The decisions include *Lawyer's Forum for Human Rights v. State of West Bengal 1997 CriLJ 1762*, *Rasikbhai Ramsing Rana v. State of Gujarat 1998 CriLJ 1347*, *Akshay Pratap Singh alias Gopal Ji v. State of Uttar Pradesh (2003) 3 ACR 2925* and *P Bharathi v. Union Territory of Pondicherry 2007 CriLJ 1413*. This High Court in *Court on its own motion v. State* [Crl. Ref. No. 1/2007 and Crl. M.A. No. 7030/2007, order dated 22nd August 2007] took note of the problem of overcrowding and the resultant violation of rights of the inmates, including the inadequacy of medical care available, and passed detailed directions to address the problem. In *Court on its own motion v. State of NCT of Delhi* [W.P. (Crl) 201 of 2009, order dated 27th October 2010] a Division Bench of this Court took up the case of 16 terminally ill patients lodged in the Tihar Jail. The Court directed that terminally ill patients may be exempted from personal appearance under Section 317(1) Code of Criminal Procedure, 1973 (CrPC), a separate trial may be held for them in terms of Section 317(2) CrPC or prosecution may be withdrawn all together for a terminally ill undertrial in terms of Section 321 CrPC. In *W.P. (C) No. 1894 of 1998*

Charanjit Singh and National Human Rights Commission v. State [decision dated 4th March 2005 in CrI/W Nos. 729/2002 and 1278/2004], this Court emphasised the need to sensitively deal with mentally ill prisoners and address their need for special psychiatric care.

Issues needing to be addressed in Tihar Jail

67. Having surveyed some of the decisions of the Courts, this Court proceeds to determine the extent to which liability can be fastened on the Tihar Jail administration for the death of Rajan Pillai. Incidentally, the Jail administration has viewed this case as a non-adversarial litigation and made constructive suggestions for improving the facilities for prisoners and sought specific directions in that regard.

68. It is apparent from the report of the LSCI and the affidavits filed by the Respondents that certain further corrective and preventive measures need to be deployed in the Tihar Jail complex to ensure that incidents such as the death of Rajan Pillai on account of the negligence of the medical and administrative staff do not recur.

69. Over the years, the jail population has been increasing and so have the issues concerning the health and general conditions of hygiene as well as safety. The incident which led to the filing of this petition occurred nearly 16 years ago. The report of the LSCI shows that there were several factors that led to the avoidable death of Rajan Pillai. First, is the system of medical screening (*mulahiza*) of prisoners soon upon their admission to the jail. In the present case, the mandatory medical screening of Rajan Pillai did not take place for three days. It is not clear whether the system that is now in place adequately addresses this problem. In other words, since the medical screening is scheduled to take place only in the morning hours, it is possible that a prisoner who is brought into the jail in the evening and has to be produced in the Court the very next morning might end up not being screened medically for two days.

70. The second problem is the feedback given to the criminal Court about the medical condition of the prisoner. The absence of such feedback to the Magistrate in the present case led to an order being passed which effectively denied Rajan Pillai specialist medical treatment. There ought to be an effective system of communication between the Court and the medical staff in the jail. Medical reports called for by the Court ought to be provided promptly. The life and liberty of the prisoner depends to a great extent on the sense of responsibility displayed the medical staff.

71. The third aspect is the availability of emergency medical treatment within the jail complex. Since Tihar Jail is one of the biggest in the country and has several individual units within the complex, there has to be a proper system of coordination which will ensure timely medical assistance to every inmate at any time of the day. In the instant case, there was no medical assistance available to Rajan Pillai after he was locked away in Prison No. 4 in the Tihar Jail. This aggravated his medical condition to a point where he could not thereafter be rescued. The non-availability of specialist doctors on call coupled with the inability to promptly refer Rajan Pillai for treatment to a hospital nearby, the failure to have a properly equipped ambulance, the failure of the doctors to correctly diagnose the problem and treat it, were the factors that cumulatively caused the death of Rajan Pillai.

72. With Tihar Jail itself being the focus of cases in the Supreme Court and this Court, some of which have been discussed earlier, there can be no excuse for not having the best possible medical treatment available in the jail complex. Every decision of the Court concerning the conditions of the jail should have been seen as an opportunity to improve the conditions. However, the LSCI found that there was much to be desired as regards the availability of minimum standard of care and treatment in Tihar Jail. The LSCI also highlighted the serious problem of under-staffing of medical personnel and orderlies. This problem persists even today. “The Annual Review of Delhi Prisons” of the

W.P. (C) No. 1894 of 1998 *Page 40 of 48*

Tihar Jail ('AR') 2011 published by the GNCTD claims a low mortality rate with only 15 (out of a total prison population of 10,856) deaths recorded in 2010. In 2009, 15 (out of 11,246) deaths have been recorded. While the figure is 13 (out of 11,553) for 2008. The AR 2011 claims that "(l)ow mortality rate is achieved by special health care shown to the sick and old prisoners and better medical attention to the inmates." The need for better medical facilities also comes from the fact that, as the AR 2011 itself notes, "(m)ost of the prisoners come from the low economic strata of society and are already suffering from various kinds of diseases." The AR notes that the problem of overcrowding persists. Even the last year (2010) in the nine central jails at Tihar and the District Jail, Rohini, the occupancy was 174%. Approximately 77% of the prison population on 31st December 2010 comprised of undertrial inmates.

73. The AR 2010 states that the following health facilities exist in the Delhi prisons:

Hospital and Medical Facilities

There is one 150 bedded hospital in Central Jail No. 3 and dispensaries in each jail for round the clock health care of prisoners. There is separate dispensary with MI Room for the female prisoners. During this year Ayurvedic and Unani Dispensary has been started in Central Jail No.8/9. A new MI Room has also been added in Central Jail No.1. The main feature of health services in Delhi Prisons are as under:

- One integrated Counseling and testing Centre for HIV, started functioning in Central Jail Hospital from June 10, 2008.
- Link Anti Retroviral Treatment (ART) centre started in Central Jail Hospital from 23.9.2008.
- Oral Substitution Therapy for drug abuser inmates, inaugurated by Hon'ble L.G. of Delhi on 07.11.2008.
- Special diet for HIV/AIDS, Tubercular and HCV patients.
- Cases of seriously sick under trial prisoners are taken up with the concerned court for their bailing out/early disposal of case.
- DOTS Centre for T. B.
- Complete Dental Unit in Central Jail Hospital, Central Jail-4, Central Jail-6 and District Jail, Rohini.
- Pulse Polio immunization programme carried out regularly as per Pulse Polio schedule of Delhi Government, in Central Jail-6 (female jail).

- The prisoners suffering from various contagious diseases are kept separately.
- Prisoners are referred to various specialty and super specialty hospital for providing medical care.
- Various NGO's also working with Tihar Prisons and contributing toward medical services.
- 110 Doctors and 190 paramedical staff sanctioned for prison health care.
- 150 bedded Hospital with Medical, Surgical, Tuberculosis and Psychiatric Wards.
- Round the clock casualty services in Central Jail Hospital.
- A minor O.T. in Central Jail Hospital.
- Investigation facility for Biochemistry, Pathology, X-Ray, ECG available in all Jails.
- A 120 bedded Drug De-Addiction Centre functioning in Central Jail Hospital.
- Physiotherapy Unit has been commissioned at Central Jail No.2, Tihar.
- ANC screening facility in Central Jail No.6.
- Geriatrics OPD services in Central Jail No.6.
- Various specialists – Medicine, Ophthalmology, Orthopedics, Chest & TB, Skin, Psychiatry and Pathology are available.
- Drug De-Addiction Center (Central Jail Hospital) is ISO 9001 – 2000 certified institution.
- Delhi Administration Dispensary is functioning for providing Medical facilities to the staff and families.
- Regular Health Check up of inmates.

74. The AR 2010 also notes that a majority of the prison population comes from the lower strata of the society; they suffer from serious diseases. It is claimed that they are given medical attention from day one of their admission in prison. Prisoners requiring specialist treatment are referred to outside hospitals. In the year 2009, 23315 prisoners were referred to DDU Hospital, AIIMS, RBTB Hospital for OPD and other specialized health care. It is further claimed that “(f)or continuing Medical education, experts from different super specialties institutions were invited for lectures and interactive sessions with the medical/para medical staff. To supplement as well as to provide comprehensive and integrated health services, regular Medical Camps of eye check-ups, anemia testing, dental check-up were organized in Central Jails with the help of NGOs.”

75. As regards issues concerning the health of prisoners, the law discussed hereinbefore points to the applicability of the principle of strict liability. *Sunil Batra (I)* (supra) holds that the State cannot subject a prisoner to any greater loss of liberty than that which is provided by law. The detention in prison is brought about by procedure established by law but that by no means permits the jail authorities to subject prisoners to any greater risk to their life other than the actual loss of physical liberty. In other words, the state has to ensure that no prisoner is deprived of the minimum standard of health and safety while in jail. As regards availing of medical facilities, the prisoner has no choice regarding the quality or type of treatment. The liability of the State, therefore, is even greater.

76. The reports of the National Human Rights Commission ('NHRC') bear testimony to the instances of deaths in judicial custody which have not shown a declining trend over the years. These include the deaths in judicial custody in Tihar Jail as well.

Deaths in Judicial Custody (Natural and Unnatural)

Years	Delhi	India
2000-2001	28	910
2001-2002	27	1140
2002-2003	30	1157
2003-2004	22	1300
2004-2005	27	1357
2005-2006	29	1591
2006-2007	25	1477
2007-2008	33	1789
TOTAL	221	10,721

Source: NHRC Annual Reports 2000-01 to 2007-08.

77. Although the Respondents would themselves characterize these as deaths due to natural causes, the instances of compensation awarded for such deaths after a determination that they were due to unnatural causes tells a different story. For instance, even in the present case, while it is the Respondents who

want to characterize the death of Rajan Pillai as being due to ‘natural causes’, it is clear that it was the failure or omission of the jail authorities on several counts that were found to have resulted in such deaths. Even if the LSCI has disbelieved the allegation that Rajan Pillai was subjected to violence while in custody, the fact remains that with timely medical assistance his life may have been saved. There are no mitigating factors which can explain the omission of the jail authorities in providing such timely medical assistance. Learned Senior counsel appearing for the Petitioners is right in his submission that the social background of the prisoner, the nature of the charges which such prisoner is facing or has faced trial and other circumstances concerning the conduct of the prisoner for which he may be detained in the jail are not factors that should permit the jail authorities to apply a different yardstick in the treatment of the prisoners. The basic minimum right to life and dignity should be available to every prisoner. When that non-derogable minimum standard is breached, the principle of strict liability should be invoked against the jail authorities making them answerable in law for the consequences of such breach.

Need to strengthen the system of Board of Visitors

77.1 Section 71 (23) of the Delhi Prisons Act, 2000, the current law for management of prisons in Delhi, provides the Government with the power to frame rules for “the appointment and guidance of visitors of prisons”. The Delhi Prisons (Visitors of Prisons) Rules, 1988, specifically provides for the constitution of Board of Visitors, an institutional arrangement by which civil society can keep a watch on the jail administration and jail conditions. Rule 12 states that:

“Once in every three months, not less than two, ex officio and one non-official visitor, of which one, unless prevented by unavoidable cause, shall be District Magistrate, shall constitute a Board and visit the jail of which they are visitors. The District Magistrate shall be the ex officio Chairman of the Board, the Board should meet at the jail on such days as the District Magistrate may

determine, and **will inspect all the buildings and prisoners, hear any complaints and petitions that may be preferred, inspect the prisoners' food and see that it is of good quality and properly cooked, inspect the punishment book** and satisfy themselves that it is kept up-to-date.” (emphasis supplied)

77.2 Rule 13 lays down certain general duties of visitors as under:

- “1. Inspect the barrack, cells, wards, work shed, and other buildings of the jail generally and the cooked food.
2. Ascertain **whether consideration of health, cleanliness and security are attended to**, whether proper management and discipline are maintained in every respect and whether any prisoner is illegally detained or is detained for an undue length of time while awaiting trial.
3. Examine jail registers and records.
4. Hear, attend to all representations and petitions made, by or on behalf of prisoners.
5. Direct, if advisable, that any such representations or petitions be forwarded to the Government.
6. Ordinarily not visit the high security area ignoring the instructions given by the Inspector-General on this behalf.” (emphasis supplied)

77.3 Despite the stipulation of frequency of once in three months in Rule 12, the NHRC Annual Report of 2000-2001 revealed complete inaction in reality:

“No official visitor has been appointed after 30th September 1996, nor has the Board of visitors visited the jail.”

77.4 In *Sunil Batra (II)* (supra), the Supreme Court emphasized the importance of such an arrangement: (SCC @ 514)

“The institution and composition of the Board of Visitors comes in handy and has statutory sanction. The visitatorial power is wide, the panel of visitors includes judicial officers and such situation can be pressed into service legally to fulfil constitutional needs”

77.5 Clearly there is a need to strengthen the system of the Board of Visitors. This could be an effective mechanism to ensure the observance by the jail administration of the minimum standards of treatment and care of the jail

inmates consistent with the constitutional obligations of the state. Rajan Pillai's death may not have occurred if the oversight by the Board of Visitors was as frequent as it ought to be. The system requires to be revamped and made effective.

Quantum of compensation

78. The question that next requires to be addressed is the quantum of compensation that must be awarded in the instant case. In similar cases that have come before the Courts the claimants have generally been persons belonging to economically weaker sections of the society. The victim of custodial violence has invariably been the primary earner of his family and one parameter in determining compensation has been that of income replacement. In the instant case, admittedly, Rajan Pillai's earnings were substantial. Given the economic status of the Petitioners, income replacement as a factor for computing compensation may not be apposite. Nevertheless, the compensation to be awarded must serve the purpose of impelling the State machinery to prevent such instances in the future. The Petitioners have stated that the compensation amount would be used by them for charitable purposes. Initially, a submission was made to this Court that the Petitioners would set up a charitable trust with the compensation money forming the corpus. At the last hearing of the case, the suggestion was that the Petitioners would establish a polytechnic for women. The Court appreciates this gesture of the Petitioners and their persistence with the cause that has evidently helped improving the penitentiary system at Tihar. The non-adversarial stand Respondents and their suggestions for improvement of the system have also been helpful in issuing the consequential directions which are aimed at getting the Respondent authorities to take a series of steps that would constitute a 'guarantee of non-repetition'.

Directions

79. The LSCI has in its report made several useful suggestions a summary of which has been extracted in paras 41 and 42 of this judgment. Those

suggestions require to be implemented, if not already done, in right earnest by the GNCTD. The following directions by the Court supplement those suggestions.

80. In the circumstances, this Court disposes of the writ petition with the following directions:

- (i) The Respondent GNCTD will, within a period of four weeks from today, pay a token compensation of Rs.10 lakhs to the Petitioners together with costs of this litigation quantified at Rs. 20,000;
- (ii) The Petitioners will deploy the compensation amount in any charitable cause of their choice in keeping with the statement made by them before this Court;
- (iii) The GNCTD will, within a period of three months from today, ensure that the suggestions made by the LSCI in its report for improvement of the system at Tihar are fully implemented;
- (iv) The GNCTD will, within a period of three months from today purchase for exclusive use by the Tihar Jail an ambulance comparable with the best available in the country with a team of dedicated medical personnel and trained staff. This should be available on call at any hour of the day.
- (v) The GNCTD will ensure that the process for recruitment of persons to fill up the vacancies in the posts of medical personnel will be initiated within two months from today and completed within a further period of four months thereafter. This will be done on a priority basis.
- (vi) The GNCTD will, within a period of four months, undertake a review of the system of Board of Visitors and lay down a fresh set of guidelines, in consultation with the NHRC, for the Board of Visitors to follow. These guidelines will be consistent with the state's constitutional obligations as explained in the

numerous judgments of the Supreme Court and the High Courts. The reports of the periodic visits of the Board of Visitors (which should be not less than four in a year) will be placed on the website of the Tihar Jail.

S. MURALIDHAR, J

MAY 13, 2011
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