

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.1689/2012**

Case of **ANIL KUMAR**

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Applicant Anil Kumar – resident of village Kothia P.S. Deedarganj, District Patna – has approached this Commission for compensation and other reliefs for being kept in illegal detention as a convict for a period of five years and eight months.

It is his case that he was 'juvenile' on the date of occurrence and therefore in view of the provisions of the Juvenile Justice Act 1986 and Juvenile Justice (Care and Protection of Children) Act 2000 he could not be dealt with like an ordinary accused as per the provision of Criminal Procedure Code.

Brief facts of this case are that the applicant was put on trial after the usual investigation and commitment under the provisions of Criminal Procedure Code with respect to an incident of 19.9.1990 for which Deedarganj P.S. Case No.78/90 (GR. No.1557/90) was registered giving rise to Sessions Trial No.192/211 of 1993/2001 under section 302, 302/34 IPC and section 27 of the Arms Act. It is the case of the applicant that after four months of judicial custody, during investigation, he was released on bail by the Sessions Judge on the ground of being juvenile. However, by judgment and order dated 1.11.2006, Addl. Sessions Judge (Fast Track Court No.2) Patna, Sri Ram Pravesh Chaubey, convicted and sentenced him to imprisonment for life under section 302 IPC and three years RI under section 27 of the Arms Act. Being a juvenile within the meaning of Juvenile Justice Act 1986 and the Juvenile Justice (Care and Protection of Children) Act 2000, he could not have been tried, much less, along with other accused, and awarded conviction and sentence as aforesaid. It is his case that he was born on 2.1.1977 and was 13 years in age on the date of incident and therefore a juvenile within the meaning of the said Acts.

The plea of the applicant found favour with the High Court at the appellate stage in Criminal Appeal (DB) No.1171 of 2006. A Division Bench of the Patna High Court on consideration of the reports vide judgment dated 5.3.2012, accepting the applicant's case, held that he was a juvenile in conflict with law both under the Juvenile Justice Act 1986 and the Juvenile Justice (Care & Protection of Children) Act 2000. The High Court found, "in view of section 24 of the Juvenile Justice Act 1986 and also in view of section 18 of the Juvenile Justice (Care and Protection of Children) Act 2000, no juvenile would be charged or tried for any offence together with a person who is not a juvenile nor can he be sentenced. In the present case, the appellant has been charged and tried

together with other accused persons who were not juvenile". Holding thus the High Court further held that the conviction and sentence of the applicant was vitiated, and accordingly while setting aside the same, directed that the appellant be released forthwith from custody, if not required in any case, observing that "keeping his age in view as also the fact that the appellant has already remained in judicial custody for about five years, no useful purpose will be served by remanding the matter back to Juvenile Justice Board for any enquiry or order".

After thus being acquitted and released from custody the applicant moved this Commission for Rs.12 lakh compensation and other reliefs.

By its preliminary order dated 11.5.2012, the Commission briefly referred to the complaint of the applicant; his claim for compensation and sought report from the Secretary, Home (Special) Department and later - when the Department did not file any report despite reminders - fixed the case for oral hearing, and issued notice to the Secretary, Home (Special) Department and the applicant to cause appearance on the date of hearing. The Home (Special) Department vide memo no.7903 dated 4.9.2012 authorized DIG (Human Rights) to represent the Department at the time of hearing, and accordingly Sri Ravindran Shankaran, DIG (Human Rights) appeared on behalf of the State Government while applicant Anil Kumar appeared in person for hearing on 24.9.2012 and the matter was heard in their presence.

In view of the categorical finding of the Hon'ble High Court there is no room for any doubt or discussions on the point of age of the applicant and it is established that he was a juvenile on the date of the incident - which is the material date. The High Court indeed found him to be aged 13½ years. The trial of the applicant having been held to be illegal by the High Court in view of the provisions of the two Acts there is hardly any necessity to go into that issue. The Commission would nevertheless refer to the provisions of section 16 of the Juvenile Justice (Care and Protection of Children) Act 2000 which lays down.

"(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security." (emphasis added)

On a plain reading it is manifest that the sentence of imprisonment awarded to the applicant was void and illegal. As a matter of fact, in terms of the provisions of the Act, a juvenile in conflict with law is required to be tried by Juvenile Justice Board and not by the ordinary criminal court under the provisions of the Cr.P.C. and therefore the applicant's trial and conviction/sentence were in clear and gross violation of the provisions of the Act.

Article 21 of the Constitution of India which protects 'life and personal liberty' lays down that no person shall be deprived of his life or personal liberty "except according to procedure established by law". In the present case, it is clear that the applicant was deprived of his personal liberty in violation of law rather than 'according to procedure established by law'. The Commission has therefore no difficulty in concluding that the applicant is entitled to compensation. As a matter of fact, monetary compensation can hardly give back the years of life which the applicant spent in defending himself as an under trial, finally landing up in jail as convict and remaining in incarceration for over five-and-a-half years. It took 22 years to finally earn reprieve from the High Court. At the time of incident he was a school student. The ordeal deprived the applicant of education, sound livelihood and a decent life. Monetary compensation therefore can only be a token one but nonetheless would give some solace to him.

In the facts and circumstances and having regard to the total period involved and the period of actual incarceration, the Commission is of the view that the applicant should be paid compensation of rupees four lakh.

Before closing the discussions the Commission would express anguish especially over the manner in which the applicant was dealt with especially by the magistrate who committed the case for trial by sessions court and the trial judge who eventually convicted him and awarded sentence of imprisonment for life. He could not have been put on trial much less convicted and sentenced for "any term of imprisonment" in view of the provisions of section 16(1) of the Juvenile Justice (Care and Protection of Children) Act 2000, quoted above. It may be recalled that the applicant had taken the plea of being juvenile at the earliest opportunity and it was on that ground that he was released on bail after four months' of custody by the Sessions Judge. The courts apparently overlooked the record and the relevant orders. They proceeded as if it was a routine case. For the plight that applicant landed in by reason of commitment, trial and conviction, the courts concerned are prima facie to blame.

Having observed thus the Commission would conclude the matter by directing Principal Secretary, Department of Home (Special) to pay compensation of rupees four lakh to the applicant within a period of six weeks and submit compliance report.

Put up in the third week of November 2012 awaiting compliance report.

Copy of this order may be sent to the Principal Secretary, Home (Special) Department, Government of Bihar and the applicant.

Copy may also be sent to Registrar General, Patna High Court for information and such inquiry as may be considered appropriate.

Date: 26.09.2012

Justice S.N. Jha  
Chairperson