

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

File No **BHRC/COMP. 1524/11**

**Case of Guddu Ansari @ Azad Ansari**

---

The complaint in this matter is about invalidity of prosecution and trial of one Md. Guddu Ansari @ Azad Ansari son of Yousuf Ansari, resident of village Daulatpur P.S. Barhara district Bhojpur in view of the provisions of the Juvenile Justice (Care & Protection of Children) Act 2000 (hereinafter referred to as the 'Juvenile Justice Act'). Applicant Birendra Kumar Singh, Secretary of 'Antar-rashtriya Sansadiya Sansthan' has approached this Commission for enquiry on the point of age/juvenile status of said Guddu Ansari @ Azad Ansari and compensation.

From the report of S.P. Bhojpur dated 26.8.2011 it appears that Guddu Ansari @ Azad Ansari was apprehended in connection with Barhara P.S. Case no.27/05 dated 18.2.2005 under sections 364, 302, 200B, 379, 411/120B/34 IPC on 13.3.2005. He was put on trial along with other accused and sentenced to undergo rigorous imprisonment for life by the Addl. Sessions Judge (Fast Track Court). He was lodged in Central Jail Buxar when the complaint was filed. He was acquitted by the High Court and released after seven years of incarceration during pendency of the present proceeding.

In the aforesaid report dated 26.8.2011 S.P. Bhojpur took a stand that at no state of investigation or trial any objection was taken about Guddu Ansari being a juvenile. In any view, determination of age of the convict is to be made by the court. Having taken this stand, S.P. Bhojpur went on to say that Guddu Ansari was reported to be 24 years old

from which it appeared that he was about 18 years old at the time of incident.

In its order dated 21.1.2013, the Commission noted that the plea about one's juvenile status in the normal course should be taken in the magistrate's court. In the instant case, unfortunately, no such plea was taken either in the magistrate's court or the trial court. The High Court in fact acquitted Guddu Ansari (and others) on merit. However, being of the view that in matters involving human rights violations, it is not proper to take a technical view, the Commission entertained the plea. The Commission observed that there is sometimes lack of awareness and ignorance amongst the people at large including the legal fraternity and the possibility of a person not getting proper legal assistance cannot be ruled out. Observing further that trial of a juvenile is not only violative of the Juvenile Justice Act; it is in fact void ab initio and if it is established that Guddu Ansari was really a juvenile at the relevant time, not only he may be entitled to compensation but the officials concerned may also be liable to disciplinary action – ushering in a chain of consequences, the Commission directed the Principal Secretary, Health Department/Director-in-Chief, Health Services to constitute a committee/Board to determine the age of Guddu Ansari within four weeks.

After a few adjournments, the Director-in-Chief brought on record the opinion of the Medical Board – headed by himself – to the effect that the “age of the above mentioned person Md. Guddu Ansari @ Azad Ansari, son of Yousuf Ansari of village Daulatepur P.S.Bardhara district Bhojpur (Case no.27/2005 dated 12.8.2005) is in between 22 to 25 years”. As per the findings of the Medical Board, thus,

Guddu Ansari was 14-17 years old at the time of the incident – which is the material date – and therefore a juvenile within a meaning of Juvenile Justice Act – Section 2(k) of which defines juvenile to mean “a person who has not completed eighteenth year of age”.

Sub-section (1) of section 18 of the Juvenile Justice Act provides:-

“Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile”

Sub-section (1) of Section 16 of the Juvenile Justice Act 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)

It is thus established that the trial of Guddu Ansari was in violation of the provisions of Juvenile Justice Act, and the sentence of imprisonment (for life) awarded to the applicant was also void and illegal. As per the provisions of the Act, a juvenile in conflict with law is required to be tried by Juvenile Justice Board and not by ordinary criminal courts under the Cr.P.C, and therefore the applicant’s trial and conviction/sentence was clear and gross violation of the Act. In terms of the provisions of section 15(1)(g) of the Act, the maximum period for which a juvenile can be kept in custody – in a Special Home, is three years whereas Guddu

Ansari remained in incarceration in an ordinary jail along with ordinary convicts for a period of seven years.

Article 21 of the Constitution of India which protects 'life and personal liberty' of a citizen 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 Guddu Ansari spent in jail – defending himself as an under-trial – finally landing in jail as convict, and remaining in incarceration; monetary compensation can only be a token gesture but nonetheless would give some solace to him.

In the facts and circumstances, and having regard to the period of incarceration the Commission is of the view that it would be just and proper to award compensation of Rs. two lakh to him.

The Commission thus directs Principal Secretary, Department of Home (Special) to pay compensation of Rs. two lakh to Guddu Ansari @ Azad Ansari son of Yousuf Ansari, resident of village Daulatpur P.S. Barhara district Bhojpur.

Compliance report should be submitted within six weeks.

Copy of this order may be sent to Principal Secretary, Home (Special) Department as well as to the applicant.

Date: 25.10.2013

Justice S.N. Jha  
Chairperson