

**Odisha Human Rights Commission**  
**2<sup>nd</sup> Floor, Toshali Bhavan,**  
**Satyanagar, Bhubaneswar – 751007.**

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**OHRC Case No.1018 of 2015**

**Sri Biswapriya Kanungo**

**..... Petitioner**

**ORDER**

**Dated: 21<sup>st</sup> December, 2015**

Article 21 of the Constitution of India occupies a place of pride in our Constitution. This Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Custodial violence/torture and abuse of Police power are not peculiar to our country, but it is widespread. The Universal Declaration of human rights 1948, marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights as stipulated in Article 5 which says that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, instances have come to the notice that crime continues though every civilized nation shows its concern and makes effort for its eradication.

In the instant case, Sri Biswapriya Kanungo, an Advocate by profession and Human Rights Activist, by drawing the attention of this Commission to two news clippings published in the Jeypore edition of 'SAMBAD' dated 19-3-2015 and daily edition of 'DHARITRI' dated 18-3-2015 alleges that a boy aged about 13 years old to have been illegally detained in Laxmipur Police Station of Koraput district for about 7 days and was brutally tortured while he was in custody. The newspaper

clippings also revealed that the said minor boy sustained injuries because of Police torture while being interrogated by Laxmipur Police and received medical treatment. Accordingly, the petitioner Mr. Kanungo prayed to the Commission for enquiring into the matter and to award compensation to the victim as he was subjected to inhuman torture while in custody of Laxmipur Police.

The Commission took cognizance of the alleged serious violation of human rights of a minor boy aged about 13 years by Laxmipur Police and called for a report from the Superintendent of Police, Koraput. The Superintendent of Police, Koraput in his letter No.811/HRPC dated 2-5-2015 reported that the matter was entrusted to the SDPO, Laxmipur for enquiry. The report of the SDPO, Laxmipur reveals that the victim minor boy was studying in Odiyapentha School, Laxmipur in class-VI and was staying in the school hostel, but he left the school hostel and was staying at HarijanSahi of Laxmipur. The said minor boy, namely Rahul @ SankarGarada aged about 13 years was strongly suspected to have been involved in Laxmipur PS case No.25 dated 22-5-2014 registered under Sections 457 and 380 of the IPC, Laxmipur PS case No.35 dated 3-7-2014 registered under Sections 457 and 380 of the IPC and Laxmipur PS case No.54 dated 15-11-2014 which was also registered under Section 457 and 380 of the IPC. The report of the SP, Koraput further reveals that the SDPO, Laxmipur on enquiry found that the aforementioned minor boy was brought to Laxmipur Police Station on 11-3-2015 by the staff of Laxmipur PS and he was detained for interrogation. During interrogation, he was assaulted on his both feet in the Police Station by Sri Kailash Chandra Sethi, IIC, Laxmipur Police Station, as a result of which he sustained swelling injuries on his both feet, for which he was sent to CHC, Laxmipur for treatment on 16-3-2015 and 17-3-2015. On 16-3-2015 around 9:45 pm the mother of the minor victim boy, namely Smt. Laxmi Garada when came to Laxmipur

Police Station she was told by the IIC to take back her son, but she refused to take her son as there was swelling on his both feet and she told that she would be taking the injured on 17-3-2015 after due treatment. According to the report of the SP, Koraput, on 17-3-2015 at 11 am the mother of the victim boy was handed over custody of her son after due treatment, but on 19-3-2015 again the injured was admitted at CHC, Laxmipur for treatment, wherefrom he was referred to District Headquarters Hospital, Koraput. According to the SP, Koraput, the CDMO, Koraput was requested to provide proper treatment to the victim boy and the SDPO, Laxmipur was directed to liaise with the Medical Officer and to monitor the treatment of the minor victim boy. On 21-3-2015 the minor victim boy was taken to District Headquarters Hospital, Koraput, where Dr. K.R. Mohapatra plastered his both the feet. On 14-4-2015 the plasters were removed and after medical examination, he was found fit as the injured was walking freely. It is also reported by the SP, Koraput that draft charge and memo of evidence against the Inspector of Police, Sri Kailash Chandra Sethi, IIC, Laxmipur PS have been submitted to the competent authority for initiation of departmental enquiry and to take necessary disciplinary action for his gross misconduct and dereliction in duty.

Regarding the injuries which were detected on the person of the minor victim boy, there are overwhelming materials to corroborate that. The photocopy of the injury report of the minor victim boy dated 16-4-2015 issued by the Medical Officer in-Charge, CHC, Laxmipur reveals that there was swelling on the total anterior aspect of both the feet. Again on 17-3-2015 examination by the Medical Officer, CHC, Laxmipur was done in respect of the victim boy and swelling was found on both the feet and the doctor suspected fracture of small bones, for which he advised X-ray examination of the injured feet. On 19-3-2015 the said doctor, on viewing the X-ray films, found fracture of 4<sup>th</sup> and

5<sup>th</sup>metacarpals on both side of foot and referred to District Headquarters Hospital, Koraput, i.e. to the Orthopaedic Department for re-plaster and further treatment.

The Commission had summoned the doctor of CHC, Laxmipur to appear before it during enquiry with regard to the injury report which he furnished in respect of the injured minor boy. Dr. Naba Kishore Kundu, who was Medical Officer in-Charge, CHC, Laxmipur, has furnished a report to the Commission on 6-7-2015 stating that the injuries which he found on the person of the injured, i.e. fracture of 4<sup>th</sup> and 5<sup>th</sup> metacarpal of both the feet were grievous in nature, but he inadvertently forgot to mention that fact in the injury report. He further opined that the possibility of existence of such injury for some other reasons, besides accidental fall cannot be ruled out. The photocopy of the bed-head ticket of District Headquarters Hospital, Koraput which has been forwarded to this Commission by the CDMO, Koraput reveals that the injured Rahul @ SankarGarada was admitted into District Headquarters Hospital, Koraput on 21-3-2015 at 3 pm and the X-ray films revealed fracture of head of 4<sup>th</sup> metacarpal of right foot and fracture of shaft of 5<sup>th</sup> metacarpal of the left foot and accordingly both the feet were bandaged and the injured was discharged on 22-3-2015. Such fracture which existed on both the feet were detected also on 17-3-2015 by Dr. G. Krishna Prasad, Orthopaedic Specialist as is envisaged from the photocopy of the prescription, i.e. also evident from the medical prescription dated 19-3-2015 of the DHH, Koraput.

Sri Kailash Chandra Sethi, who was the Inspector-in-Charge, Laxmipur Police Station in his written response to the report of the SP, Koraput though admits of the injuries on both the feet of the minor, has resorted to the plea that the victim, on seeing the Police personnel on 16-3-2015 morning, tried to escape by jumping from a mango tree, but could not do so because of the injuries which he sustained on his legs

by dashing against the hard stony surface and the victim was immediately sent to CHC, Laxmipur for treatment through Constable No.335 and subsequent treatment on 17-3-2015 and also the treatment received by the boy in the District Headquarters Hospital, Koraput. The said Inspector of Police denies the allegation to have brought the victim boy for seven days and was subjected to assault.

Thus, the fact remains that the victim boy had sustained fracture injuries on his both the feet. The IIC, Laximpur PS denies the allegation to have detained the boy in Laxmipur PS for seven days and also denies to have assaulted the victim boy, for which he sustained fracture injuries on his both the feet.

Mr. Kanungo very strenuously urged before the Commission that when admittedly the suspect was 13 years old, he should have been dealt with as per the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended up-to-date along with the Juvenile Justice (Care and Protection of Children) Rules, 2007. Ample materials are there on record including the report of the SP, Koraput that the injured boy was suspected to have been involved in three cases of house breaking by night and property theft cases registered under Laxmipur Police Station and the report of the SP, Koraput also candidly reveals that during enquiry it was ascertained that Rahul @ SankarGarada was brought to Laxmipur PS on 11-3-2015 by the staff of Laxmipur PS, where he was detained for interrogation. During interrogation, he was assaulted on his both the feet in the Police Station by Sri Kailash Chandra Sethi, IIC, Laxmipur PS, as a result of which the boy sustained swelling injuries on his both feet. This report of the SP, Koraput has been disputed by Sri Kailash Chandra Sethi, IIC, Laxmipur PS in his response dated 25-8-2015.

Now let us come to the contention of Sri Kanungo with regard to flagrant violation of the mandatory provisions of Juvenile Justice (Care

and Protection of Children) Act, 2000 ( in short the JJ Act). Rule 3 of JJ Rules, 2007, i.e. "juvenile or child or juvenile in conflict with law is presumed to be innocent of any mala fide or criminal intent up to the age of 18 years and such child's right to presumption of innocence shall be respected throughout the process of justice and protection, from the initial contact to alternative care including after care". Sub-Rule VI of Rule 3(6a) speaks that "at all stage, from the initial contact till such time he remains in contact with the care and protection system and thereafter, the juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, mal-treatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child. The state has a great responsibility for ensuring safety of every child in its care and protection, without restoring to restrictive measures and processes in the name of care and protection". Rule 11 of the JJ Rules, 2007 prescribes that since a juvenile alleged to be apprehended by a Police, the concerned Police Officer shall inform:

- a) The designated Juvenile or the Child Welfare Officer in the nearest Police Station to take charge of the matter;
- b) The parents or guardian of the juvenile alleged to be in conflict with law about the apprehension of the juvenile, about the address of the Board where the juvenile will be produced and the date and time when the parents or guardian need to be present before the Board.

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Rule 11(11) of the JJ Rules, 2007 further speaks that "in dealing with cases of juveniles in conflict with law the Police or the Juvenile or the Child Welfare Officer from the nearest Police Station shall not be required to register an FIR or file a charge-sheet, except where the offence alleged to have been committed by the juvenile is of a serious

nature such as rape, murder or when such offence is alleged to have been committed jointly with adults; instead, in matters involving simple offences, the Police or the Juvenile or the Child Welfare Officer from the nearest Police Station shall record information regarding the offence alleged to have committed by the juvenile in the general daily diary followed by a report containing social background of the juvenile and circumstances of apprehension and the alleged offence and forward it to the Board before the first hearing.”

The above is the salutary provisions of law. But in the instant case, the Commission has no hesitation to observe that the IIC, Laxmipur Police Station has closed his eyes to the aforesaid provisions of law and probably he was oblivious of such existence of the Rules and procedures as to how to handle a child in conflict with law, especially when he is of very tender age of 13 years.

To get an idea as to what happened in Laxmipur Police Station and as to when exactly the boy was brought to the Police Station and how long he was detained, the Station Diary Book of Laxmipur PS was called for containing entries from 10-3-2015. It is the case of the Inspector of Police then attached to Laxmipur PS, namely Sri Kailash Chandra Sethi that he on receipt of information on the morning of 16-3-2015 that suspect Rahul @ SankarGarada was present in LaxmipurHatapada area, instructed SI of Police, Sri M.K. Pradhan, ASI of Police, Sri C.K. Nayak and C/335 Sri S.K. Bagh to proceed to Hatapada, where they found the suspect to have climbed a mango tree and on seeing them suddenly jumped from the mango tree, but could not flee because of the injury sustained by him by falling on the hard stony surface. He further takes the plea that SI of Police and ASI of Police brought the suspect to Police Station at 9 am on 16-3-2015. Perusal of the entries made in the Station Diary Book of Laxmipur Police Station dated 16-3-2015 vide Station Diary Entry No.328 recorded at

8:10 am shows about receipt of reliable information about the moving of suspect Rahul @ SankarGarada of HarijanSahi in Hatapada, Laxmipur. Station Diary Entry No.329 recorded at 8:20 am reveals that as per the order of IIC, SI of Police, Sri M.K.Pradhan and ASI of Police, Sri C.K. Bagh and C/335 Santosh Kumar Bagh left for Hatapada to apprehend the suspect Rahul in Laxmipur PS case Nos.25, 35 & 54 of 2014. Entry No.331 recorded at 9 am reveals that the injured was brought to Police Station and at 9:10 am he was sent to CHC, Laxmipur for his treatment. Very interestingly Station Diary Entry made on 17-3-2015 vide Entry No.361 recorded at 11:15 am shows that the suspect Rahul @ SankarGarada was handed over to his mother LaxmiGarada, who took her son to her house and she was instructed to produce Rahul @ SankarGarada for the purpose of investigation after recovery from the injury. Station Diary Entry No.362 made at 11:30 am on 17-3-2015 reveals that the suspect Rahul @ SankarGarada while in Police Station confessed that he along with others committed burglary in the house of one DaitariBisoi of village Kanimusa and committed theft of one camera and other articles. Accused SankarGarada also confessed to have committed burglary in the jewellery shop of S. TrinathAchary of Main Road, Laxmipur and also admitted to have committed burglary in the house of Prasanta Kumar Choudhury of Tarifsing Colony, Laxmipur. The Station Diary Entries made on 16-3-2015 vide Entry No.331 recorded at 9 am till Entry No.362 dated 17-3-2015 recorded at 11:30 am clearly establishes that the victim injured boy had been detained in Laxmipur Police Station for interrogation and probably to extract confessions.

It is a well established fact that the Police Officers posted in a Police Station are the custodians of the Station Diary Book, the FIR book and it would be difficult to secure evidence against policemen responsible for resorting to third degree methods as the Police Officers in-charge of the Police Station records do not find it difficult to

manipulate the Police Station records. The Superintendent of Police of the district has specifically reported to this Commission that the victim boy was brought to Laxmipur Police Station on 11-3-2015 and was detained for interrogation. The SP, Koraput also categorically reported that during interrogation the boy was subjected to assault on his both feet in the Police Station by Sri Kailash Chandra Sethi, IIC, Laxmipur PS, for which he sustained swelling injuries on both of his feet. If we look for any evidence or corroborative facts to establish custodial torture that would be a futile attempt as no direct evidence can be made available to substantiate the charge of torture or causing hurt merely because of the fact that the general public do not have any access to a Police Station and such torture invariably takes place away from public gaze and the only witnesses are either policemen or prisoners, who are highly reluctant to speak because of ties of brotherhood or fear of retaliation by superior officers of the Police. (D.K. Basu v. State of West Bengal, AIR 1997 SC, 610, State of Madhya Pradesh v. Shyamsunder Trivedi, 1995 AIR SCW 2793).

Despite several judgments of the Apex Court of the country, there has been no noticeable change in the functioning of the Police system in our country. The law enforcers cannot take law into their hands to collect evidence or to unearth the mystery over the crime. There is a great responsibility on the Police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. Duty of care on the part of the State is strict and admits of no exceptions.

In the instant case, at the cost of repetition, the Commission may observe that instead of handing over the child in conflict with law to the designated Juvenile or Child Welfare Officer in the nearest Police Station to take charge of the matter as envisaged under Rule 11(a) of the JJ Rules, 2007 and provisions of Rule 3 of the said Rules, 2007, Laxmipur Police kept the juvenile in the Police Station as per the admitted facts

mentioned in the Station Diary Book entry No.331 recorded at 9 am on 16-3-2015 and entry no.362 recorded at 11:30 am on 17-3-2015. The report of the SP, Koraput shows that already he has moved the competent authorities for initiation of a disciplinary proceeding against Sri Kailash Chandra Sethi, IIC, Laxmipur PS for gross misconduct and dereliction in duty for assaulting a minor boy while he was in Police custody. The plea which Sri Kailash Chandra Sethi, the then IIC, Laxmipur Police Station has taken while filing his response to the report of the SP, Koraput that he was not given adequate opportunity of defending his case and the disciplinary proceeding has been wrongly initiated are matters to be considered by disciplinary authority and the Commission is no way concerned with such move of the SP, Koraput for initiation of the departmental proceeding against Sri Kailash Chandra Sethi.

It is now a well accepted proposition that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender as awarding appropriate punishment for the offence is left to the competent forum. The relief to address the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.

Thus, taking into consideration the entire gamut fact situation of the case, the Commission feels it proper to recommend for providing some financial assistance to the victim for the trauma he had undergone in the hands of Police. Accordingly, the Commission recommends payment of financial assistance of Rs.25,000/- (rupees twenty-five thousands) to Smt. LaxmiGarada, the mother of the injured boy Rahul @ SankarGarada since the victim is reportedly a minor.

The Commission also, before parting with the record, would like to observe that the Police Officers of the State needs to be sensitized with regard to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended up-to-date and the Rules framed thereunder, especially the Rule 3, 11 & 12 of the JJ Rules, 2007.

Let copy of this order be communicated to the Principal Secretary to Government, Home Department, Government of Odisha for furnishing a compliance report with regard to the recommendations made by this Commission including the financial assistance to be provided to the mother of the victim minor boy.

**JUSTICE B.K. MISRA  
ACTING CHAIRPERSON**

**Dated: 21<sup>st</sup>December, 2015.**