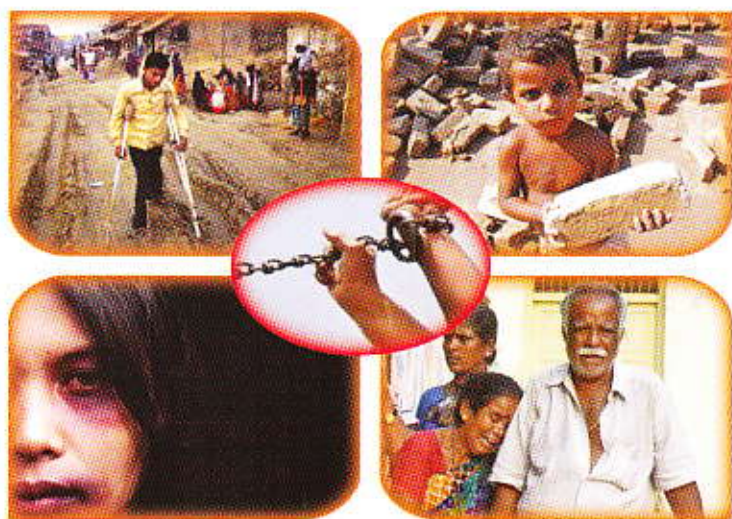


ବାର୍ଷିକ ବିବରଣୀ
Annual Report

2014 ♦ 15



ଓଡ଼ିଶା ମାନବ ଅଧିକାର ଆୟୋଗ
ODISHA HUMAN RIGHTS COMMISSION
BHUBANESWAR, ODISHA



ବାର୍ଷିକ ବିବରଣୀ

ANNUAL REPORT

2014-15



ଓଡ଼ିଶା ମାନବ ଅଧିକାର ଆୟୋଗ

ODISHA HUMAN RIGHTS COMMISSION

BHUBANESWAR, ODISHA



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CHAPTER - 1

INTRODUCTION

1. The Odisha Human Rights Commission was constituted in 2003 under Sub-Section (1) (2) & (4) of Section 21 of the Protection of Human Rights Act, 1993. During twelve years of existence, the Commission has been making concerted efforts for effective implementation and enforcement of the Protection of Human Rights Act, 1993 in the State. The Commission has also been making sincere efforts for creating awareness amongst people in understanding the broader meaning of Human Rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution and embodied in the International Covenants. Human Rights deals with subjects coming under Children, Health, Jail, Criminal Gangs, Labour, Minorities /SC/ST, Physically Handicapped, Police/Paramilitary forces, Pollution, Religion community, Service matter, Women and other miscellaneous matters. During the course of action, the Commission have emphasized on protection of more vulnerable and weaker section of our Society which includes children, distress women, people in custody, patients under medical treatment, physically, mentally and socially disadvantaged persons.

The Commission's intervention has resulted in tangible improvement in many illustrative areas where human rights and fundamental freedoms of individuals or group are to be safeguarded. It is there for the help of the administration and the people to achieve the social, economic and cultural rights adopted by the General Assembly of the United Nations on 16th December, 1996. People are gradually coming to realize that violation of human rights is a matter which can be effectively taken care of by the Human Rights Commission.

In OHRC Case No-2025/2014, the Hon'ble Commission under Section 18 (a)(i) of the

Protection of Human Rights Act, 1993 had recommended compensation to the tune of Rs. 3,00,000/- (Rupees three lakhs) to the widow of Late Basant Pradhan, an amount of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) to injured Md. Bilal Ansari and an amount of Rs.25,000/- (Rupees twenty five thousand) to injured Md. Fazal who underwent custodial torture and illegal confinement in Bolangir Town Police Station from 10-06-2014 to 13-06-2014 in an alleged incident of theft of Mobile Phone. The above recommendation was communicated to the Chief Secretary, Odisha and Principal Secretary, Home department, Government of Odisha for payment of the compensation awarded to the widow of late Basant Pradhan, injured Md. Bilal Ansari and Md. Fazal. The Commission also directed the D.G and IG of police, Odisha to expedite disciplinary action against Tarique Ahammed, Ex- IIC of Bolangir Town PS, (now under suspension) and to take the matter to its logical conclusion. The details of the illustrative order passed by the Commission is given in Chapter-4.

2. Hon'ble Shri Justice B.K Misra assumed the charge of the Acting Chairperson from 18-11-2013 and is continuing as such. Sri B.K Pattnaik, IAS (Retd.), Former Chief Secretary, Odisha, assumed the office of the Member (Administrative) on 04-07-2014 and continued up to 24-07-2015. Shri Santosh Kumar Upadhyaya, IPS continued as Addl. D.G of Police-cum- Director Investigation during the period of report. Sri Benudhar Behera, OAS (SAG), who assumed office of the Secretary of the Commission on 29-10-2014 after retirement of Sri R.K Choudhury, IAS on 31-05-2014 also continued as such during the period under report

3. During the year 2014-15, the Commission continued its efforts to sensitize



people about provisions of the Protection of Human Rights Act, 1993 and relevant regulations by conducting awareness camps through NGOs and Collectors of different districts. Camp Courts were also held by the Commission for prompt redressal of the grievances of the petitioner.

4. The World Human Rights Day was observed by the Commission on 10th of December, 2014. His Excellency, the Governor of Odisha Dr. S.C Jamir was the Chief Guest of the occasion and Shri Justice A.K Patnaik,

Former Judge of Hon'ble Supreme Court of India was the Chief Speaker. A debate competition among law students of different colleges and Universities on the topic "Do Human Rights trigger Social Justice" was conducted on the eve of the occasion and best performers in the said competition were awarded prizes on the day. The "Peoples Beacon", the Annual Magazine of the Commission was also released on the occasion by the Chief Guest, His Excellency the Governor of Odisha.





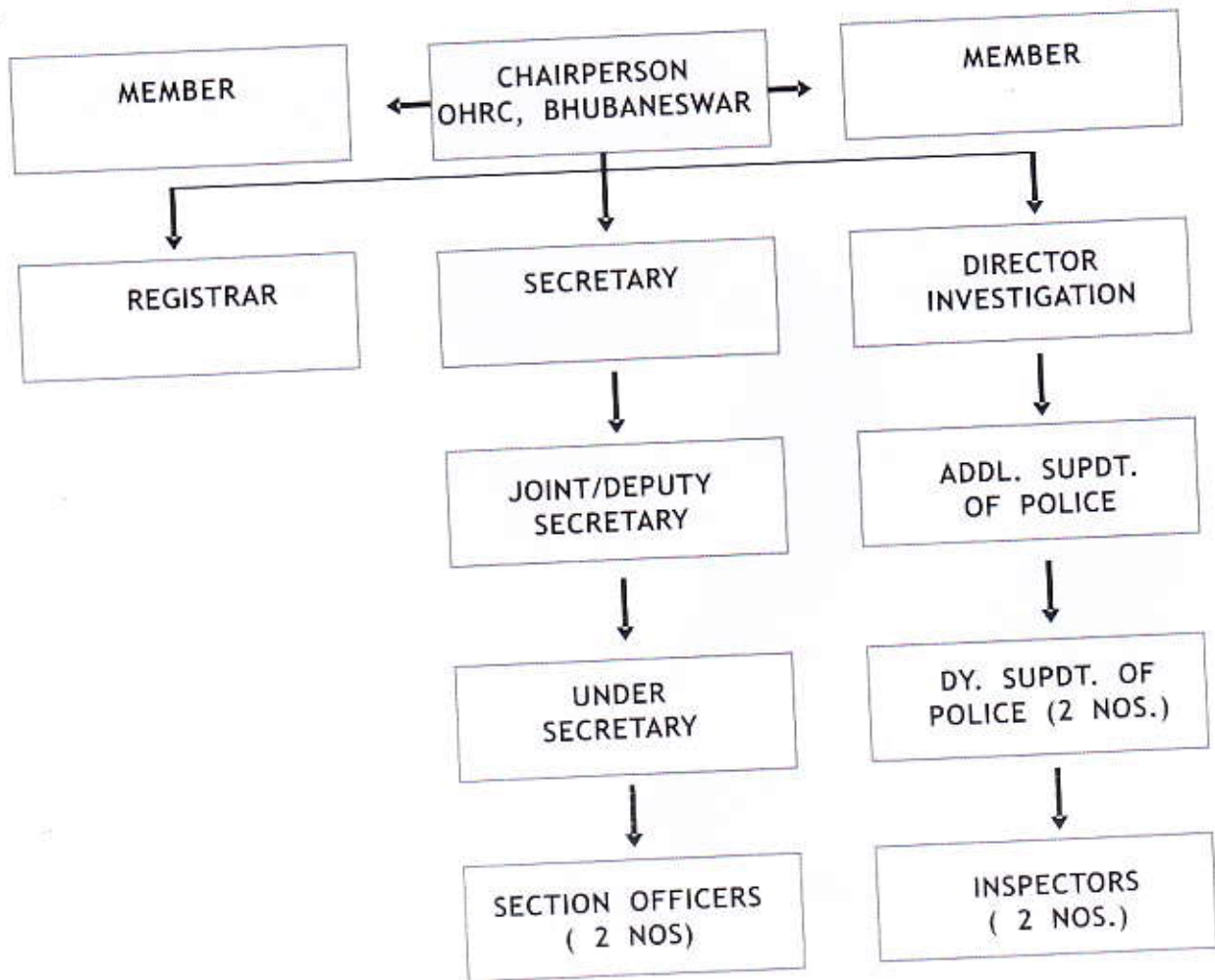
CHAPTER - 2

COMPOSITION OF THE COMMISSION 2014-15

		Date of joining	Date of retirement
Justice B.K Misra	Acting Chairperson	18-11-2013	Continuing
B.K Patnaik	Member	04-07-2014	27-04-2015

The Staffing pattern of the State Human Rights Commission during the Period under Report is furnished in the Annexure-I.

ORGANOGRAM



**CHAPTER - 3****REGISTRATION AND DISPOSAL OF CASES**

Since its inception, the Commission has been receiving complaints alleging violation of human rights from all districts on a variety of subjects. Besides, Newspaper Reports published in leading Newspapers are being scrutinized on regular basis and the Commission suo motu has been taking cognizance of Reports which prima facie disclose violation of human rights or negligence in the prevention of such violation by the Public Servant.

During the period from 1st April 2014 till 31st March 2015, the Commission received 4634 number of Complaint Petitions out of which 1840 complaints were dismissed in limine and the balance 2794 cases were entertained for enquiry by the Commission, which included 85 numbers of cases entertained Suo Motu for enquiry. During the period under report, 1041 number of Cases were disposed of after enquiry besides 1840 Cases having been dismissed in limine.

The Statement indicating subject-wise classification of Cases filed during 2014-15 is furnished in Annexure II. Suo Motu Cases filed during the period under Report is furnished vide Annexure III. Classification of Cases entertained during 2014-15 is furnished in Annexure-IV.

Complaint in which Commission has taken cognizance related to variety of grievances including allegations of custodial death both in police stations and in jails, custodial torture, starvation death, arbitrary use of power and failure in taking lawful action by police, child labour, cruelty to children, trafficking in human beings, environmental pollution, indignity to women, discrimination against physically handicapped, discrimination against Scheduled Caste and Scheduled Tribe persons and denial/delay in grant of livelihood support to deserving persons/ delay in sanction of pensionary and other benefits to retired persons, negligence of Doctors in the treatment of Patients etc.





CHAPTER - 4

ORDERS PASSED BY THE COMMISSION IN ILLUSTRATIVE CASES

Case No-983/2014

Sri Sudhanshu Kumar Nanda, Advocate
..... Petitioner

Order Date : - 10-11-2014

The case is based on the petition of Sri Sudhanshu Kumar Nanda, Advocate and Human Rights Activist addressed to the NHRC, which has been transferred to this Commission by the latter for necessary redressal. It is alleged that in Duajhar area of Nuapada District, Odisha for orphan children namely, Sabitri (11 years), Jagyaseni (8 years) Madhusmita (4 years) and Madhumati (2 years), all daughters of late Baikuntha Sabar and late Sugani Sabar, live in distress with their old grandparents, Dharmu Sabar and Munga Sabar, who are themselves too old to earn their livelihood. The matter was referred to the Collector, Nuapada, the Collector and D.M Nuapada got the matter enquired into by the BDO, Khariar and CDPO, Nuapada. The report reveals that Dharamu Sabar has been covered under MBPY and his wife Munga Sabar under the Emergency Feeding Programme. An application has been collected from Smt. Munga Sabar for coverage under MBPY. The family has been covered under PDS and is getting essential commodities regularly. An amount of Rs. 20,000/- will be sanctioned in favour of the children under NFBS after receipt of the death certificate in favour of the deceased persons. Two of the daughters namely, Jagyaseni Sabar (9 years) and Madhumita Sabar (8 years) have been admitted to Sevashram, Birighat and they will reside in the girl's Hostel. An amount of Rs. 6,000/- has been released in favor of Rinki Sabar @ Sabitri Sabar and she has also been allowed to get sponsorship at the rate of Rs.1000/- Per Month as per the order of CWC, Nuapada. The allegation of starvation has been denied by all the authorities.

While we appreciate the action of the District Administration for assisting the family, we cannot help observing that some of the actions have been initiated only after receipt of this petition. There have been many allegations of starvation death and abject poverty in the districts of KBK of which Nuapada is one. The Administration should be extremely alert when it is faced with such allegation which warrants pro-active rather than re-active steps. The Collector, Nuapada is directed to designate one Extension Officer/ VLW for every Gram Panchayat who should conduct a survey in every village within his jurisdiction in order to diagnose incipient indigence in any of them. The Collector should himself monitor reports from such Extension Officers every month in order to ensure right to life of every citizen who is in need of help of administration. With the above direction, the case is closed.

O.H.R.C. CASE NO.1579 of 2013

Sri Madan Mohan Bindhani
.... Petitioner

Order Dated:- 28th January, 2015

The petitioner's case is that he had acquired a piece of land on the strength of a registered deed under the Transfer of Property Act for starting a Yoga Vidyapitha. The record of right in respect of that piece of land stands in the name of the deity and he was the caretaker of the said Yoga Vidyapitha. He alleges that a group of people under the leadership of one Hrusikesh Mohapatra and others, who exerts political clouts started creating obstacles and disturbances preventing the petitioner from entering into the Yoga Vidyapitha. It is further alleged that Hrusikesh Mohapatra and his supporters by hatching a conspiracy fraudulently obtained a trust deed, depriving



the petitioner of his legitimate right over the land in question and that of Yoga Vidyapitha of village Badapatuli under Korei Police Station limits. The petitioner challenges the genuineness of such a trust deed and according to him the said trust deed is a void document and has been manufactured to defeat the provisions of law and to deprive of the legal rights of the marginalized sections of the society. It is alleged that the main motive of Hrusikesh Mohapatra and his supporters is only to exploit and disturb the social harmony and the rights of others. The petitioner also alleges that because of the political influence of Hrusikesh Mohapatra and others, he is not getting justice and accordingly has approached this Commission for appropriate action in the best interest of the nation and social justice.

On receipt of the complaint of the petitioner, this Commission called for a report from the Collector and the SP, Jajpur and such reports so furnished are on hand.

The Collector, Jajpur in his report dated 06.01.2014 admitted the existence of the Yoga Vidyapitha in village Badapatuli, which was conceptualized originally by the petitioner. In such noble act, the petitioner got active support from an eminent and admired person of village Badapatuli namely Sri Hrusikesh Mohapatra. Subsequently, a Trust Board was created in the year 2010 of which Sri Gouranga Charan Majhi was the President and Amulya Kumar Das was Secretary. There are other members also in that Trust Board. According to the report of the Collector, Jajpur, the petitioner along with Sri Hrusikesh Mohapatra were imparting training on Yoga to 15 trainees of whom six belong to Scheduled Caste community including some trust members. It was ascertained from the villagers by the Collector that regarding collection of donations for the Yoga Vidyapitha and its expenses, dissension arose between the petitioner and Sri Mohapatra for which relationship between the two got severely affected and allegations have been made by the petitioner against Sri Mohapatra and others which has no basis. The Collector has specifically reported that at

present, though there is a building standing over Gayatri Yogapitha but no Yoga class is being held. The IIC, Korei Police Station also in his report to SP, Jajpur dated 03.01.2014 has reiterated the facts as has been mentioned by the Collector & District Magistrate, Jajpur in his report dated 06.01.2014. Besides that the report of the IIC, Korei Police Station further shows that one of the Trust members namely Sri Siba Charan Majhi is a Scheduled Caste and the villagers express that no discriminatory attitude was being shown to the trainees on the basis of their caste or creed. The SP, Jajpur in a very detailed report dated 03.06.2014 highlighted the fact that the petitioner, who is a resident of village Barei under Panikoili Police Station limits was an active member of Gayatri Parivar. In the year 2007, one Gayatri Yogapitha, a religious unit was formed in village Badapatuli under the leadership of the petitioner. One Gouranga Raj of village Badapatuli along with some senior citizens and few religious minded people of the locality joined the Gayatri Pitha formed by the petitioner and Gouranga Raj was pleased to donate 08 decimals of land out of 53 decimals of his cultivable land pertaining to khata no.249 and plot no.951 to Gayatri family and a gift deed was executed on 24.01.2007 in the office of Registration Officer, Dolipur. In that deed, Gouranga Charan Raj was shown as donor, where Gayatri Parivar Yogo Nirman Yojana Marphat Madan Mohan Bindhani was shown as the receiver of the land. After taking possession of the land, the Committee under the leadership of Sri Bindhani, developed the said land and planted flower and fruit bearing trees. Besides that, a temporary shed was constructed with a prayer hall but the construction was stopped midway because of shortage of funds but, however, other religious activities like Yajna, religious workshops were going on. Some villagers wanted to extend their cooperation and financial assistance to dig a tube-well and construction of a prayer house and for undertaking other developmental works, but the petitioner refused to accept



the donation of the local people, instead he tried to arrange money from his own source but he could not be successful in his attempt. When construction of the prayer hall was delayed, difference arose among the core members of the organization. Since Mr. Bindhani, the petitioner was an outsider, local people of the Committee tried their best to collect donations from the local donors inspite of opposition of the petitioner and accordingly one Siba Charan Majhi, a lecturer in Odia of V.N.College, Jajpur Road donated 4 decimals of land which was adjacent to the land which was acquired earlier for Yogapitha. The said land was acquired by the Committee without the consent of the petitioner. According to the SP, Jajpur since Sri Bindhani lost his importance and role in the Committee, he did not show any interest in the developmental work of the organization and did not take any interest in any of the activities of the Board or to form any Trust Board for the management or managing committee to run the organization. It is also reported that in the year 2010, a Trust Board was formed and a Trust Deed was executed in the Office of the Registration Officer, Dolipur on 29.05.2010 and Gouranga Charan Raj was nominated as President and deity Sri Sri Maa Bedamata Gayatree Bijee at village Patuli, Police Station Korei represented through the Managing Committee of the Trust Board by Sri Siba Kumar Majhi as Official President, Amulya Kumar Das as the Secretary, Jitendra Kumar Bal as Asst. Secretary and Muralidhar Pallar as the Treasurer. Bye-laws was also prepared which was a part of the Trust Deed.

Thus, when the new Trust Board started functioning, a new prayer house was constructed over the acquired land by the Odia lecturer Sri Siba Charan Majhi. During all those activities, the petitioner Madan Mohan Bindhani was sidelined and he was also not included in the new Trust Board, which irked Mr. Bindhani and resultantly the petitioner Mr. Bindhani started filing complaints against new Committee in different forums to declare the Trust as null and void. It is specifically reported

by the SP, Jajpur that the allegations made by Sri Bindhani in his petition are totally baseless.

Copies of those reports of the Collector and SP, Jajpur and IIC, Korei Police Station were supplied to the petitioner for his response and in all such responses, the petitioner only took the stand that there was no inquiry conducted by the aforesaid authorities and they are under pressure from the political parties. They have submitted the report against the petitioner.

After going through the materials on record, the Commission is of the view that the questions which the petitioner has raised in his petition dated 17.05.2013 i.e. to declare the Trust Deed executed subsequent to the earlier deed is a void document and is against the provisions of Transfer of Properties Act and Contract Act and such a document is a nullity having no legal sanction, are matters which can be best adjudicated in a competent court of law. This Commission cannot decide the question of fraud or genuineness of a document as it is not a regular Civil Court. The dispute is primarily a civil dispute. The petitioner instead of approaching this forum, should have gone to the Civil Court questioning the validity of the registered document. So with regard to those prayers, the Commission cannot come to the rescue of the petitioner.

Now regarding the other allegation that Mr. Hrusikesh Mohapatra and his group of people are prohibiting the petitioner or creating hurdles in his way to come to Yogapitha are totally denied by the Collector and SP, Jajpur. On the other hand, their reports show that the Yogapitha is not at all functioning and the 15 trainees, who are attending the Yogapitha included six persons belonging to the Scheduled Caste community. The reports of the district authorities definitely shows that with a noble purpose, the petitioner took the initiative in establishing a Yoga Vidyapitha in village Badapatuli but later on it ran into controversies with regard to the constitution of the new Trust Board.

Religion is that which binds a man with his Cosmos, his creator or super-force.



"Dharma" embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enables building a healthy society and healthy mind. "Dharma" regulates the mutual obligations of the individual and the society. "Dharma" is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of our mother land "India".

With the aforesaid observations, the petition stands disposed of.

OHRC Case No.1658 of 2013

Sri Rebati Mohan Patel

..... Petitioner

Order Dated:- 1st November, 2014

The petitioner Sri Rebati Mohan Patel, aged 81 years and resident of Kudapada in Kuchinda Sub-Division in Sambalpur district who happens to be a reputed person of his village and a social activist complains about the harassment meted out to him by the Arresting Officer and IIC, Kuchinda PS by bringing him from the bathing pond in the early morning, i.e. at 6:30 am on 9-5-2013 to Kuchinda PS despite his informing the said Police officers that he has been granted bail by the Hon'ble High Court of Orissa in BLAPL No.11396/2013 on 7-5-2013. He alleges that he was not even allowed to obtain the copy of the bail order, which was received by FAX and lying in a telephone booth. But ultimately he was allowed to leave the Police Station on 9-5-2013 by the IIC, Kuchinda PS, Sri Saroj Kanta Mahapatra at 1:00 pm. Sri Patel in his petition has further alleged that he has been implicated in a false case and deliberately the penal Section 506 of the IPC was inserted while registering the case with a view to put him behind the bar as Section 506 of the IPC is non-bailable in nature. Sri Patel states that he was not a rapist; nor a murderer; nor a dacoit; nor involved in any heinous offence which had

necessitated Kuchinda Police to bring him to the Police Station and that too in utter disregard to the provisions of law and he was to remain in the Police Station without any food. He was not even allowed to change his wet clothings. Accordingly, the petitioner approached this Commission for causing an enquiry into his allegations and to take appropriate action against the IIC, Kuchinda PS.

The Commission on receipt of the complaint asked the SP, Sambalpur to furnish a report about the allegations of the complainant. The SP, Sambalpur in his letter dated 8-8-2013 informed this Commission that on the report of one Nrupalal Patel, son of late Rajendra Patel of village Kudapada under Kuchinda PS limits in the district of Sambalpur, a case was registered against the present petitioner Rebati Mohan Patel and his son Rajkishore Patel vide Kuchinda PS case No.68 dated 8-4-2013 under Sections 341, 294, 506 read with Section 34 of the IPC. The said case was entrusted to ASI of Police, Tapan Kumar Pradhan for investigation and IIC, Saroj Kanta Mahapatra had supervised the case. The SP, Sambalpur reports that after due investigation charge-sheet has been submitted against the petitioner and his son Rajkishore Patel vide Charge-Sheet No.83 dated 15-5-2013. It is also stated by the SP, Sambalpur that the petitioner was not arrested immediately considering his age and health condition and was asked to surrender in the Court, which the petitioner did not do nor he produced his bail order granted by the Hon'ble High Court of Orissa. Since the case was of petty nature in order to close the investigation, the IO had sent information to the petitioner time and again and also while visiting Kudapada tried to contact the petitioner, but the petitioner intentionally avoided Police. The report further discloses that on 9-5-2013 when the IO ASI of Police T.K. Pradhan had been to the village of the petitioner, called him to the Police Station and the petitioner voluntarily came to the Police Station stating that he has obtained the bail order from the Hon'ble High Court and will show the same at Kuchinda. The petitioner



contacted his relative Sunil Kumar Patel, who is working as a Bench Clerk in the Hon'ble High Court of Orissa on 7-5-2013 and thereafter he was allowed to go from the Police Station immediately. The report of the SP, Sambalpur also discloses that on 10-5-2013 the petitioner and his son voluntarily appeared before the IO with the order of the Hon'ble High Court of Orissa and immediately they were released on bail. The SP, Sambalpur reports that the allegation made against the IIC, Sri Saroj Kanta Mahapatra of Kuchinda PS that he had gone to village Kudapada and dragged the petitioner to the Police Station are all false.

A copy of the report of the S.P., Sambalpur dated 08.08.2013 was supplied to the petitioner for furnishing his response and the petitioner furnished his comments stating that the IIC, Kuchinda PS without any proper enquiry registered the case and the case was sent to the Court of SDJM, Kuchinda on 10-4-2013. It is his further contention that the allegations should have been examined as a false case has been initiated. It is his case that Police instead of devoting their time to such type of false and frivolous allegations should devote time to more serious law and order problems. The petitioner had also referred to the provisions of Sections 111 and 160 of the IPC and Section 110 of the CrPC about the enquiry and notice which should have been served on him. He also states that, when the offences are petty in nature, what was the necessity of registering the FIR and registering a case under Section 506 of the IPC.

After perusing the materials on record, it is seen that before submission of the petition to this Commission by the petitioner, the case which was registered by Kuchinda Police on the written report of Nrupalal Patel, i.e. Kuchinda PS case No.68/2013 had ended in submission of charge-sheet, which the SP, Sambalpur has specifically mentioned in his report dated 8-8-2013 stating that charge-sheet was submitted in that case on 15-5-2013. The petitioner never disputes this fact.

Therefore, when the matter is before a competent Court of law and is subjudice, the Commission cannot decide nor has the jurisdiction to say that the petitioner has been involved in a false case and the action taken during investigation are not sustainable in the eye of law as they are perfunctory in nature. The petitioner if so desired, he could have challenged such submission of charge-sheet by approaching the appropriate forums available under law.

Now coming to the allegation of the petitioner about the atrocities committed on him by Kuchinda Police and bringing him to the Police Station in utter disregard to the mandate of law and his age, the Commission feels prudent to refer to the provisions of Section 41(1)(b) of the CrPC. Section 41 reads as follows:

“When Police may arrest without warrant - (1) Any Police officer may without an order from a Magistrate and without a warrant, arrest any person -

- (a) xx x x x
- (b) Against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-
- (i) x x x x x
- (ii) The Police officer is satisfied that such arrest is necessary:-
- (a) to prevent such person from committing any further offence; or
- (b) for proper investigation of the offence; or
- (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- (d) to prevent such person from making any inducement, threat or promise to



any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer; or

- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the Police officer shall record while making such arrest, his reasons in writing:

Provided that a Police officer shall, in all cases whether the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

A plain reading of the aforesaid provision makes it crystal clear that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine cannot be arrested by the Police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Law mandates that a Police officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the Police officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. Law further mandates the Police officer to state the facts and record the reasons in writing which led him to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the Police officers to record the reasons in writing for not making the arrest. In other words, the Police officer before arrest must bear in mind whether such arrest is legally required? What purpose it will serve and what object it will achieve? It is only after the questions are addressed and one or

the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In nut shell, before arrest the Police officers should have reason to believe on the basis of information and material that the accused has committed the offence and he has to be satisfied further that the arrest is necessary for one or the more purposes as enshrined in sub-clauses (a) to (e) of clause (1) of Section 41 of the CrPC.

Arrest during investigation of a cognizable case may be considered justified in one or other following circumstances, namely:

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.
- (ii) The accused is likely to abscond to evade the processes of law.
- (iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

(AIR 1994 Supreme Court 1349, Joginder Kumar Vrs. State of UP and Arnesh Kumar Vrs. State of Bihar and another (2014)58 OCR (SC) 999).

In the instant case, perusal of the photocopy of the Station Diary Entry dated 10-5-2013 and to be more specific entry No.249 made at 1:00 pm appears to have been tampered with as clearly to the naked eye, it is seen that 12 has been interpolated to show that it was made at 1:00 pm. Further, the entry made vide Station Diary Entry No.249 dated 10-5-2013 of Kuchinda PS that "By this time ASI of Police T.K. Pradhan arrested the accused Rebati Mohan Patel and Rajkishore Patel of Kudapada in PS case No.68/2013" was in the hand of a different person, but not in the hand of Diary Charge Officer. The interpolation which has been made about the



time of arrest has not been authenticated. The handwritings and the ink used in inserting the fact about the arrest of accused Rebati Mohan Patel and Rajkishore Patel can tantamount to entries made at a later stage only to save the Police officers. The Station Diary Entry and the Case Diary is silent on the point as to why the two accused persons were arrested and that such arrest was necessary. The report of the SP, Sambalpur reveals that the case was of petty in nature and the IO sent information to the petitioner time and again, but he intentionally avoided Police. The report of the SP, Sambalpur further discloses that on 9-5-2013 the investigating Police officer, namely ASI of Police T.K. Pradhan had gone to the village of the petitioner and called the petitioner to come to the Police Station and the petitioner voluntarily came stating that he has obtained bail order from the Hon'ble High Court and will show the same at Kuchinda and, accordingly, he was allowed to go from the Police Station immediately. The report also discloses that on 10-5-2013 the petitioner and his son voluntarily appeared before the IO with the order of the Hon'ble High Court of Orissa and immediately they were released on bail. Not a single scrap of paper is there except the arrest memos and the bail bonds that the petitioner, who was taken to the Police Station on 9-5-2013, was allowed to go from the Police Station immediately. Sri P.K. Tripathy, DSP, Investigation Wing of this Commission, who was deputed to hold an independent enquiry, reports specifically that there was no entry in the Case Diary or in the Station Diary Book of Kuchinda PS that the petitioner was brought to Kuchinda PS on 9-5-2013 at 9 am and was asked to go away at 1 pm with a direction to produce the bail order of the Hon'ble High Court. If we believe the report of the SP, Sambalpur who is a senior IPS Officer, his report lends all credence to the complaint of the petitioner that he was taken to Kuchinda PS on 9-5-2013 morning and was released at 1 pm. The Commission is fortified with such conclusion while considering Station Diary Entry No.206 dated 09.05.2013 made at 8:15 A.M.

and Station Diary Entry No.249 dated 10.05.2013 made at 1 P.M. The Station Diary entries referred to above are silent as to when ASI of Police, T.K. Pradhan returned to Kuchinda P.S. on 09.05.2013 and if he arrived at Kuchinda Police Station on 10.05.2013 at 1 P.M. after investigating into Kuchinda P.S. Case No.68 of 2013 along with the petitioner and his son. Station Diary Entry No.249 dated 10.05.2013 does not show as to what happened to Rebati Mohan Patel and his son Rajkishore Patel after they were arrested and whether the eleven guidelines issued in connection with the arrest of a person as spelt out by the Apex Court in the case of D.K. Basu Vrs. State of West Bengal were observed.

The million dollar question as to why a subsequent entry has been inserted into Station Diary Entry No.249 dated 10-5-2013 regarding the arrest of the petitioner and his son on the alleged date 10.05.2013 at 1 P.M. or 12 noon casts a serious cloud on the functioning of Kuchinda Police Station which brings the entire Police system to unnecessary criticism.

That apart Section 41(A) of the CrPC, which was inserted by Section 6 of the CrPC (Amendment) Act, 2008 (Act 5 of 2009) reads as follows:

“Notice of appearance before Police officer - (1) The Police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless,



for reasons to be recorded, the Police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

In the instant case, on the basis of the FIR lodged by Nrupalal Patel before the IIC, Kuchinda PS on 8-4-2013, Kuchinda PS case No.68/2013 was registered under Sections 341, 294, 506 read with Section 34 of the IPC against the present petitioner Rebati Mohan Patel and his son Rajkishore Patel. I have perused the photocopy of the said FIR alleged to have been lodged by Nrupalal Patel. Without delving into the question about the allegation of the petitioner, when the matter is subjudice in a Court of law suffice to say that Sections 241 and 394 of the IPC are bailable in nature. Similarly, the first part of the Section 506 of the IPC is also bailable in nature. Perusal of the FIR as well as the statements of the witnesses, which have been recorded by the IO during investigation under Section 161 of Cr.P.C. simply reveals that both the accused persons Rebati Mohan Patel and Rajkishore Patel had threatened to do away with the life of the informant Nrupalal Patel. The Commission is very much well aware of its limitations and is not a judicial forum to decide whether the offence falls under Section 506 of the IPC part one or part two. But the bare perusal of the photocopy of the FIR and photocopy of the under Section 161 Cr.P.C. statements of the witnesses gives a feeling that the accused persons were never involved in commission of any grave offence like murder, dacoity, robbery and rape, which necessitated the officers of Kuchinda Police Station, namely the IO to arrest the petitioner and his son. There was also no reasonable apprehension of their absconding to evade the process of law and they were not habitual offenders; nor there was any likelihood that they would

commit further offences unless their movements brought under restraint. Admittedly, in this case when the investigating Police officer thought it fit to arrest the petitioner and his son, no notice was issued to them directing to appear before the IO at a specified place and time. The Hon'ble Apex Court in the case of Arnesh Kumar (supra) have categorically observed to quote "we are of the opinion that the provisions of Section 41 of the CrPC which authorises the Police officer to arrest an accused without an order from a Magistrate or without a warrant are scrupulously enforced, the wrong committed by the Police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. x x x". The then IIC, Kuchinda PS, who was the supervising officer, in his supervision note has not at all dealt with the aforesaid provisions of law and it is completely silent as to what necessitated the arrest of the two petitioners when the offences alleged to have been committed were simple in nature. It is also the settled position of law that arrest is not necessary for submission of charge-sheet in Court. (*Dinesh Dalmia Vrs. CBI, AIR 2008 Supreme Court, P-78*). When the report of the SP, Sambalpur shows that the case is petty in nature and investigation was complete, charge-sheet could have been placed against the accused persons showing them as absconders. The report of the SP, Sambalpur reveals that the investigating Police officer had gone to the village of the petitioner on 9-5-2013 and called him to the PS lends much credence to the allegation of the petitioner that he was taken to PS even though he had informed that he has been granted bail by the Hon'ble High Court of Orissa. But the report shows that the petitioner voluntarily appeared at Kuchinda PS on 10-5-2013 along with his son and they were released on bail by the IO when they produced the order of the Hon'ble High Court.

Sri P.K. Tripathy, DSP attached to the Investigation Wing of the Commission in his



report states that the petitioner was taken to Kuchinda PS on 9-5-2013 morning at about 9 am and was released on the same day at about 1 pm and during his visit to the spot the neighbours of the petitioner, namely Ajit Patel, son of late Sashi Bhusan Patel; Sushil Kumar Patel, son of Nandalal Patel and other villagers, who were the eye-witnesses to the occurrence, clearly disclosed before him that Police brought the petitioner from the pond to his house, where the petitioner changed his clothings and then he was taken to the Police Station. The report also shows that the petitioner came back to his village in the afternoon. The petitioner also in his petition alleges that while he was taking bath in village pond around 6:30 am on 9-5-2013 including the IIC, Kuchinda PS forced him into a van and he was brought to his house. He also alleges that he was not allowed to change his wet cloths and then taken to Kuchinda PS, where he was made to wait till 1 pm without food. Thus, this allegation of the petitioner gets support from the report of Sri Tripathy, DSP attached to the Investigation Wing of this Commission, who is a highly disinterested person not connected with the case; nor being a Police officer he tried to suppress the real facts before the Commission.

In a number of cases, the Hon'ble Apex Court have held that arrest brings humiliation, curtails freedom and creates a scar. Thus, despite enactment of progressive legislations and instructions issued from time to time by the Government and the Police Headquarters, the Commission has a feeling that the image of Police has not yet changed and improved and has not come out of its colonial image that too even after 67 years of independence. The perception of the common man is that the power to arrest is considered as a tool of harassment, oppression and Police is not considered as a friend. So time has come to lay much emphasis and introspection is needed as to how best our Police officers can be sensitised to this human issue. The common attitude is to arrest first and then to proceed with the rest of the investigation. The

existence of the power of arrest is one thing, but justification for its exercise is quite another. Apart from the power of arrest, the Police officers must be able to justify the reason. Therefore, no arrest can be made in a routine manner on a mere allegation of commission of an offence against a person. Even after the amendment of the CrPC, which has been brought into Section 41 of the CrPC in the year 2010 (CrPC Amendment Act, 2008) (5 of 2009) when the situation did not change, the Apex Court, while hearing the case of Arnesh Kumar Vrs. State of Bihar and another, expressed anguish on the functioning of the Police system in our country and came down heavily in issuing different guidelines.

It is desirable for the Police Officers of the State to go through the different guidelines of the Apex Court and of the Union and State Governments that a Police officer before making an arrest should record in the Case Diary the reasons for making the arrest thereby clarifying his conformity to the mandate of law. The petitioner in this case, who is an educated man and bent with age, should have been treated with compassion and the Police officers could have handled the case without causing any mental tension and harassment to an old aged and sick person. The case in hand speaks volumes of the functioning of a Mufsil Police Station like Kuchinda in the district of Sambalpur. The Police officers, who were there in the year 2013 including the IIC, Kuchinda PS, Sri Saroj Kanta Mahapatra had scant regard for an elderly person and had acted in utter disrespect to the laws of the land. The Police Station records have been manipulated to give cover to their misdeeds in this case. The less said is the better about the memo of arrest. Photocopies of which are available on record as collected by the DSP, attached to the Investigation Wing of the Commission during his enquiry.

No doubt that the A.S.I. of a Police Station is a petty junior Officer. His work should have been supervised by higher authorities like the S.D.P.O., Kuchinda. The



senior Officers also failed to discharge their responsibilities in guiding the junior Officers of a Police Station.

Thus, considering the entire gamut situation of this case and the nature of violation of the human rights of an old aged person, namely the petitioner and his son, the Commission recommends the Government to initiate departmental proceedings immediately against Sri Saroj Kanta Mahapatra, who was IIC, Kuchinda PS during the relevant period and had supervised the Kuchinda PS case No.68/2013 registered under Sections 341, 294, 506 read with Section 34 of the IPC as well as against the Arresting Officer, namely ASI of Police, Sri Tapan Kumar Pradhan. Deterrent punishment may be awarded to the violators of the law so that it will be an eye opener for rest in the Department. The Commission expects that such departmental proceedings be brought to its logical conclusion within 2 months and action taken report be submitted to the Commission on or before 02.02.2015 positively.

Taking into consideration the trauma undergone by the petitioner in being taken to the Police Station early in the morning and detaining him there for about 4 hours without food and caring for his age and sickness and also the nature and extent of violation of his human rights, the Commission further recommends the State Government to give monetary compensation of Rs.20,000/- (Rupees-twenty-thousand) to the petitioner Rebat Mohan Patel as Kuchinda Police acted in utter disregard and disrespect to the provisions of Section 41(1)(b) and Section 41(A) of the Code of Criminal Procedure, under Section 18(a) of the Protection of Human Rights Act, 1993 and a compliance report be submitted on or before 02.02.2015.

Let copies of the order be sent to the Chief Secretary of the State and Director General of Police, Odisha for appropriate action in the matter.

A copy of this order be sent to the Principal Secretary to Government, Home Department with a request to arrange payment

of the above compensation amount to the petitioner Sri Rebat Mohan Patel. He is also requested to submit compliance report within two months hence.

O.H.R.C. CASE NO.1916 OF 2013

Sri Jatish Chandra Mahanta & others
... Petitioners

Order Dated:-25th April, 2014

The petitioners, who are office bearers of Samrudha Odisha, a political outfit of Odisha presented a petition before this Commission that one Mahanadi Aban Power Company entered into one MOU with the Government of Odisha for establishment of a Thermal Power Project in village Tentulei under Talcher Block in the district of Angul. They allege that the said company without informing the general public of the area, handed over their valuable fertile lands to NSL Company. It is further alleged that despite the protest of the villagers, the Company with the active support of the administrative machinery and goons when forcibly erected compound wall around the acquired land on 18th March, 2013 Miss Ritarani Das, Secretary of Samrudha Odisha presented a memorandum addressed to the Chief Minister of Odisha through the Sub-Collector, Talcher on the same day requesting therein that the Company should be stopped within 24 hours in taking up the construction of the compound wall and to stop terrorizing the people of the locality, failing which they would be resorting to hunger strike in front of the residence of the Chief Minister, Odisha. The petitioners further state that the members of Samrudha Odisha accompanied by Ritarani Das marched towards the residence of the Chief Minister around 4 PM of 19th March, 2013 but they were accosted on their way near Sishu Bhawan Chhak by Police and were left at PMG Square with an advice that they should stage 'Dharana' there. Accordingly, under the leadership of Miss Das, the members of Samrudha Odisha resorted to hunger strike at Lower PMG Square. It is alleged that on the same day night, around 2.30 AM, Police with the help of goons of the Company,



in utter violation of the basic human rights kidnapped Ritarani Das. Accordingly, the petitioners sought the intervention of this commission as to how around 2.30 in the night Ritarani Das was picked up by Police and with a further prayer not to implicate Miss Das in any false accusation and to take stringent action against Company having violated the rules and procedures in respect of acquisition of lands.

The Commission on receipt of the complaint from the petitioners asked the Collector, Angul and DCP, Bhubaneswar to send their reports in the matter. Pursuant to the direction of this Commission, the DCP, Bhubaneswar got the matter enquired into by Sri P.K. Patnaik, OPS, Asst. Commissioner of Police, Zone-I, Bhubaneswar Urban Police District. Sri Patnaik, ACP Zone-I, Bhubaneswar in his letter dated 21.08.2013 reported to the DCP, Bhubaneswar that his inquiry reveals that on 20.03.2013 at 2 AM one Ritarani Das, Zilla Parishad Member, Angul was apprehended by Smt. Mamata Nayak, IIC, Vikrampur Police Station and staff at Lower PMG Square, Bhubaneswar in connection with Vikrampur PS Case No.27 dated 18.03.2013 which was registered under Sections 143/341/186/294/506 of the IPC read with Section 149 of the IPC and under Section 7 of the Criminal Law Amendment Act. The said fact has also been reflected in Capital PS Station Diary Entry No.689 dated 20.03.2013. The ADM, Angul in his letter No.1757 dated 03.10.2013 has submitted the report of the Tahasildar, Talcher. The Tahasildar-cum-Land Acquisition Officer (MAPCL), Talcher reports to the ADM, Angul that possession in respect of 455.30 acres of private land in village Tentulei was handed over to IDCO, Bhubaneswar for establishment of industries, which was eventually to be transferred to M/S. Mahanadi Aban Power Corporation Ltd. The said lands were accordingly handed over to M/S. Mahanadi Aban Power Corporation Ltd. and after amalgamation of NSL Power & Infratech Pvt. Ltd. And M/S. Mahanadi Aban Power Corporation Ltd., construction of the boundary

wall was undertaken by M/S. NSL Power Limited. As reported by the NSL Power Limited, there was no violation of the provisions of the Land Acquisition Act in respect of the aforesaid Project. The report of the Tahasildar, Talcher further discloses that while construction of the boundary wall of NSL Power Limited was in progress in village Tentulei, on 18.03.2013, some local residents created disturbance at the site and threatened to kill the employees of NSL Power Limited and abused them including the Police personnel, who were deployed on duty. Accordingly, Vikrampur PS Case No.27 dated 18.03.2013 was registered and during investigation, the involvement of Ritarani Das, daughter of Gokula Das of village Tentulei was prima-facie established and she was arrested on 20.03.2013 at 8 AM along with four others after observing all the formalities of arrest and were forwarded to the Court of SDJM, Talcher. It is further reported that the said Vikrampur PS Case No.27 of 2013 has ended in submission of charge sheet on 31.05.2013 and the matter is subjudice. The IIC, Vikrampur Police Station in her letter to Tahasildar, Talcher dated 21.09.2013 reports that Ritarani Das along with Srikant Naik, Dhiren Naik, Mulia Naik and Baidhar Naik were arrested on 20.03.2013 at 8 AM in connection with Vikrampur PS Case No.27 dated 18.03.2013 and were forwarded to the Court of SDJM, Talcher as prima-facie materials were available against them under Sections 143/341/294/186/506 of the IPC read with Section 149 of the IPC as well as under Section 7 of Criminal Amendment Act. The IIC, Vikrampur Police Station has also reported that the case has ended in submission of charge sheet on 31.05.2013 against the accused persons.

I have heard Sri P.K.Patnaik, ACP Zone-I, Bhubaneswar Urban Police District and Smt. Mamata Naik, IIC, Vikrampur Police Station, who were present in this commission being noticed by this Commission and Smt. Naik produced the original Station Diary Book of Vikrampur Police Station. Sri P.K. Patnaik, ACP Zone-I, Bhubaneswar in his letter to the



DCP, Bhubaneswar specifically states that the victim Ritarani Das was apprehended by Smt. Mamata Nayak, IIC, Vikrampur PS and her staff at Lower PMG Square, Bhubaneswar at 2 AM on 20.03.2013 in connection with Vikrampur PS Case No.27 dated 18.03.2013 and he has also specifically stated that the same has been reflected in the Capital PS Station Diary Book vide Entry No.689 dated 19.03.2013. As per the direction of this Commission, the original Station Diary Book of Capital Police Station w.e.f. 07.03.2013 to 11.04.2013 was produced and entry No.689 dated 19.03.2013 made at 3 AM reveals that the Diary Charge Officer noted in the Station Diary Book that "Mamata Nayak, IIC Vikrampur Police Station apprehended Ritarani Das, President of Samrudha Odisha in connection with her PS Case No.27 of 2013. The said fact was entered in the Station Diary Book of Capital Police Station for future reference". So this entry made in the Station Diary Book of Capital Police Station and the report of a Senior Police Officer namely the ACP, Zone-I, Bhubaneswar establishes the fact that Ritarani Das was taken into custody by Smt. Mamata Nayak, IIC Vikrampur Police Station from Lower PMG Square in connection with Vikrampur PS Case No.27 of 2013 at the dead of the night i.e. at 2 'O' clock and the same belies the report of the Tahasildar, Talcher and the letter of the IIC, Vikrampur Police Station that Ritarani Das was arrested on 20.03.2013 at 8 AM in connection with Vikrampur PS Case No.27 of 2013. Station Diary Entry No.392 alleged to have been made at 8 AM in the Station Diary Book of Vikrampur Police Station dated 20.03.2013 reveals that the IIC along with SI Sri P.K.Panda, Havildar, M.B.Pradhan, Constable, Y.Gagarai and Home Guard, Khirod Behera returned to Police Station from Bhubaneswar along with arrested accused persons in PS Case No.27 of 2013 namely Sushree Ritarani Das, Dhiren Naik, Baidhar Naik, Mulia Naik and Srikanta Naik and SI of Police Sri P.K. Panda arrested them in the said case after observing all formalities and rules as per the Apex court direction and

Constable Y. Gagarai was directed to guard the accused persons.

So this very entry in the Station Diary Book of Vikrampur Police Station vide Entry No.392 dated 20.03.2013 at 8 AM bolsters the case of the petitioners that Ritarani Das, a woman was arrested by Vikrampur Police on the night of 19.03.2013 by violating all the established norms and procedures and in utter disregard of the law of the land. No amount of excuses and apologies can undo the wrongs which have been perpetrated on the victim a lady by the illegal acts of Vikrampur Police. It is very unfortunate that the ADM, Angul and the Tahasildar, Talcher without unfolding the truth, tried to shield the perpetrators of violation of human rights and, therefore, the Commission is constrained to observe that the aforesaid two functionaries of the State failed to discharge their duties as responsible public officers and, accordingly, their conduct is reprehensible.

The position of law is very clear on the point.

Sub-Section 4 of Section 46 of the Code of Criminal Procedure, 1973 specifically states that :

"Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

In the instant case, the IIC, Vikrampur Police Station has not produced a single scrap of paper to show that before arresting Ritarani Das on the night of 19.02.2013/20.03.2013 at Lower PMG Square, Bhubaneswar, she had obtained the permission from the SDJM, Talcher or SDJM, Bhubaneswar in that regard.

Thus, the materials on record and to be specific, the entry made in the Capital Police Station Diary Book at 3 AM vide Entry No.689 dated 19.03.2013 and Vikrampur Police Station



Diary Book Entry No.392 dated 20.03.2013 clearly establishes the case of the petitioners Sushree Ritarani Das that she was arrested in the dead of the night of 19.03.2013 in utter violation of the mandate of law i.e. Section 46(4) of the Cr.P.C. and the Commission has no hesitation in mind to observe that the basic human rights of a woman were infringed by the IIC, Vikrampur Police Station Smt. Mamata Nayak and the arresting officer, SI of Police Sri P.K.Panda of the said Vikrampur Police Station.

The horizon of human rights is expanding. Very often, this Commission is receiving complaints about violation of human rights because of indiscriminate arrest. How are we to strike a balance between the two? Therefore, a realistic approach should be made in this direction. The law of arrest is one of balancing individual rights/liberties and privileges on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively. Protection of the individuals from oppression and abuse by Police and other enforcing officers is indeed a major interest in a free society. To strike the balance between the needs of law enforcement on the one hand, and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other is a perennial problem of statecraft.

The arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances, namely;

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.
- (ii) The accused is likely to abscond to evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a Police Officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.

The settled position of law is, no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The arrest and detention in a police lock up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest, therefore, can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. (AIR 1994 SC 1349, Joginder Kumar Vrs. State of UP)

Now reverting back to the case in hand, the records reveal that Vikrampur PS Case No.27, dated 18.03.2013 was registered under Sections 143/341/186/294/506 of the IPC read with Section 149 of the IPC and under Section 7 of the Criminal Law Amendment Act.

Thus, the case is not a case which involves grave offences like murder, dacoity, robbery, rape etc. necessitating arrest of the accused persons and bring their movement



under restraint to infuse confidence among the terror-stricken victims.

Accordingly, taking into consideration, the nature of violation of such human rights of Sushree Ritarani Das, the Commission recommends payment of compensation of Rs.50,000/- (Rupees fifty thousand) under Section 18(a) of the Protection of Human Rights Act, 1993 to the victim Sushree Ritarani Das.

A copy of this order be sent to the Principal Secretary to Government, Home Department with a request to arrange payment of the above compensation amount in favour of Sushree Ritarani Das and compliance report be submitted to this Commission within four weeks time.

Put up this matter on 20.06.2014.

Let copies of this order be sent to the Chief Secretary of the State and Director General of Police, Odisha, Cuttack for information and guidance of all Police Officers of the State.

The original Station Diary Book of Capital PS w.e.f. 07.03.2013 to 11.04.2013 and the Station diary Book of Vikrampur PS w.e.f. 08.03.2013 to 17.04.2013 and the Command Certificate Book of the Vikrampur PS w.e.f. 08.02.2013 to 27.03.2013 and copies of the papers in Vikrampur PS Case No.27 of 2013 be returned back to the concerned IICs of the Police Stations forthwith.

Compliance by Public Authorities:

Date:- 25-09-2014

The AFA-cum- Under Secretary to Government, Home Department in his letter dated 22-08-2014 has conveyed sanction of Rs.50, 000/- towards payment of compensation to the victim of Sushree Ritarani Das. It is reported that the DG & IG of Police, Odisha has been requested to draw the above amount and disburse the same to the victim and submit a copy of the stamped money receipt as proof thereof.

In views of the above, the DG and IG of Police, Odisha be requested to draw the above compensation amount and disburse the same

to the victim Sushree Ritarani Das and report compliance to the Commission within four weeks time.

Date:- 30-01-2015

The Addl. D.G of Police (L & O), Odisha in his letter dated 14-01-2015 has reported that the compensation amount of Rs. 50,000/- has been paid to the victim Sushree Ritarani Das on 03-1-2015 and has submitted a copy of the stamped money receipt as proof thereof.

Since the compensation amount has already been disbursed to the victim, the Commission feels that there is no necessary in continuing further with this case. Accordingly, the case stands closed.

Case No. 2025 of 2014

Sri Biswapriya Kaungo, Advocate
.....Petitioner

Order Date:- 20-03-2015

The case is based on the complaint filed by Sri Biswapriya Kanungo and Sri Bijaya Kumar Panda, Advocates, Bhubaneswar alleging death of one Basanta Pradhan aged about 32 years due to custodial torture. They have mentioned that late Basanta Pradhan and two others of Hatapada, Titilagarh in the district of Bolangir were taken to custody by the Bolangir police on 10.06.2014 in a case of theft of Mobile phone. They were not produced before any Court and were subjected to physical torture. They have alleged that the case of death of late Basanta Pradhan was directly attributable to such custodial torture and they have demanded compensation of Rs. 10, 00,000/- to the family of deceased apart from other criminal action against the erring police officer. One Sri Sandeep Mohanty, Member of HRF, Bhubaneswar also submitted a separate petition (OHRC Case No. 2024/2014) to the Commission on the self same allegation. Both the petitions were taken up together for consideration. The copy of the petition was sent to the DIG of Police (NR), Sambalpur as well as to the ADG, CID,CB, Cuttack, the District Magistrate & Collector, Bolangir and S.P., Bolangir for their reports. Their reports were received in



the Commission and we felt that it is fit case where the Investigation Wing of the Commission should conduct its own investigation and apprise the Commission about the facts. The ADG-cum-Director of Investigation of the Commission along with the DSP of Police, Sri P.K. Tripathy and other supporting staffs proceeded to Bolangir and Titilagarh and submitted their report on 31.10.2014. The copy of the enquiry report of the ADG-cum-Director of Investigation of the Commission was given to the petitioners for comments which have since been received. We have also heard Mr Kanungo at length as well as the Director of Investigation, OHRC on 06.01.2015.

The facts of the case as revealed from the various reports referred to above are as follows:-

A Samsung Mobile Phone belonging to the wife of Ex- IIC, Town P.S., Bolangir, Sri Tarique Ahammad was stolen in the night of 31.05.2014, although there was no official record in this regard in Bolangir Town P.S. On 10.06.2014, the IIC of the P.S. Sri Tarique Ahammad, along with S.I. A.K. Pradhan, ASI. D.K. Dang, WSI, Lipika Naik and some Home Guards and Constables proceeded to Titilagarh P.S. on the information that the said Mobile Phone has been recovered. The team returned to the P.S. along with three persons namely, Md. Bilal Ansari, Md. Fazal and Sri Basanta Kumar Pradhan on the same night. A station Diary Entry has been made to this effect on 12.06.2014. As per the available police record of Bolangir Town P.S. it is an admitted fact that late Basanta Pradhan, Md. Fazal and Md. Bilal Ansari were detained in P.S. from the early hours of 12.06.2014 till the evening of 13.06.2014. Md. Bilal Ansari and Md. Fazal were released on 13.06.2014 evening. Detainee Basanta Kumar Pradhan was released from Bolangir Town P.S. on 14.06.2014 around 10.30 P.M. in a state of acute sickness.

Prior to his release, he had been taken to DHH, Bolangir on 12.06.2014 with injuries on left side of his thigh, where he was treated by Dr. Girija Sankar Udgata. The said detainee

was again sent for medical treatment on 14.06.2014 by policemen in civvies and Dr. T.K. Palit of Police Hospital, Bolangir treated him. Both the doctors have stated before the investigation team that the injuries on left thigh of Basanta Kumar Pradhan could have been caused by blunt force.

The investigation team of OHRC have come to the conclusion after going through the CDRs and collecting further evidence that late Basanta Kumar Pradhan was detained in Bolangir P.S. from the evening of 10.06.2014 till the evening of 14.06.2014. He was released on 14.06.2014 only after and undertaking was obtained by the police that the victim had not been subjected to any custodial torture.

The investigation team has further found during the enquiry that the Bolangir Town P.S. staff coerced and intimidated the brother of victim not to take him to any Govt. Hospital for treatment even after his release on 14.06.2014. The victim returned to Titilagarh on the next day and consulted Dr. Ram Prasad Sahu on 18.06.2014 and later consulted Dr. Bikram Sharma of Titilagarh on 21.06.2014, who stated before the Investigation team that he had observed gluteal abscess with pus discharge. He gave the opinion that "such type of complication followed by injuries could be possible by assault with hard and blunt object.". On 28.06.2014 the condition of late Pradhan became serious and he was finally taken to the Sub-Divisional Hospital, Titilagarh, where he was declared dead. After the news of Basanta Pradhan's death spread in Titilagrah a huge mob became violent and ransacked Local P.S., Titilagarh SDPO's office, Police Barracks and burnt Government properties. On the report of Satyanarayan Pradhan, the brother of the deceased, the police registered a case bearing Titilagarh P.S. Case No. 144 dt. 28.06.2014 under section 341,342,506,302/14 I.P.C. It is reported that the investigation of Titilagarh PS case no- 144 dt-28-06-2014 relating to this case has been handed over to the HRPC and the matter is under investigation.

Md. Bilal Ansari another detainee has also stated that he was assaulted by the



policemen during his detention at Bolangir Town P.S. during the above period and he was treated by Dr. L.D. Sharma on 14.10.2014 and subsequently by Dr. Debasis Panik on 29.10.2014. He further had to take treatment in Seven Hills Hospital, Vizag as an OPD patient on 02.07.2014.

An opportunity was given by the Commission to Tarique Ahammad, IIC, Bolangir Town P.S. to appear before the Commission on 23.12.2014 at 11.30 A.M. and to explain his conduct. In response to the above direction, the S.P., Bolangir in his letter dt 12.12.2014 reported that the whereabouts of Sri Ahammad, who had been placed under suspension were not known. The investigation team of the Commission found during their enquiry that the P.S. has CCTV Cameras one Camera was fitted in the Hazat room, two Cameras in Central Hall and another in front of the Town P.S. and all of them are connected to the monitor of the CCTV in chamber of the IIC. The team however, found that the hard disk of the monitor was missing. Since the IIC, Tarique Ahammad chose not to appear before the Commission and since no independent source of evidence such as recording of the CCTV was available to us, we are constrained to rely on the available reports of the police as well as the investigation wing of the Commission.

We would not like to influence the course of investigation being conducted by the HRPC in P.S. Case No. 144 of Titilagarh P.S. Our concern at this point of the time is only to access whether there was any human rights violation in the entire episode from 10.06.2014 to 28.06.2014.

The investigation team of OHRC has conclusively established before us after making a thorough analysis of the evidence collected during their field visit that late Basanta Pradhan was detained in Bolangir Town P.S. from the night of 10.06.2014 till night of 14.06.2014 and that Md. Bilal Ansari and Md. Fazal were detained in the same P.S. from the night of 10.06.2014 till the evening of 13.06.2014. There was no F.I.R. in the P.S. on the basis

of which these three persons were detained. No arrest was shown anywhere in the police records. Late Basanta Pradhan was taken to the DHH, Bolangir on 12.06.2014 and to Police Hospital on 14.06.2014. The police records do not explain why it was necessary to do so. There is clear cut evidence that late Basanta Pradhan and Md. Bilal Ansari had been subjected to police torture during their detention. This has been corroborated by none other than police personnel of Bolangir Town P.S. itself. Bolangir police had obtained an undertaking from the victim late Basanta Pradhan on 14.06.2014 that he had not been subjected to any torture. Designed that it had to cover the tracks of the police concerning custodial torture, such an undertaking has only acted as a smoking gun and brought out in sharp relief the criminal intention of Bolangir police in trying to cover up the blatant acts of such torture.

Our conclusion about custodial torture is not based on only such inferences. There is evidence collected from doctors, who treated late Basanta Pradhan and Md. Bilal Ansari that they had been beaten by blunt weapon while they were in Police Station. The two acts namely, the illegal detention of the three persons and the custodial torture inflicted on late Basanta Pradhan and Md. Bilal Ansari are enough to establish the fact beyond any pale of doubt that the Bolangir police did commit human rights violation in this case.

But the story does not end here. When late Basanta Pradhan was finally released in the evening of 14.06.2014 in the custody of his nephew and brother allegedly in abnormal state, he was "coerced and intimidated" by the Bolangir P.S. not to take any medical attention from a Government hospital. He was therefore, treated by two private doctors, Dr. Ram Prasad Sahu on 18.06.2014 & Dr. Bikram Sharma on 21-06-2014.

Post-mortem report of the dead body of deceased Basanta Pradhan was conducted by four doctors namely, Dr. Debasis Pattnaik, Dr. P. K. Naik, Dr. G.B. Sahu and Dr. S.S. Jena attached to Sub-Divisional Hospital, Titilagarh



and they opined that the cause of death was due to Septicemia shock and resultant Cardio Circulatory failure. They further noticed various injuries of ante-mortem in nature, caused by hard and blunt objects on the person of the deceased. The age of the injuries was opined by the doctors as about 10 days prior to the date of postmortem i.e. 28.06.2014. The S.P. Bolangir in his report dt. 01.07.2014 addressed to the D.G. and I.G. of Police Odisha has opined that "it is not a case of death in custody, but torture in police custody cannot be ruled out". The Bolangir Police has been trying to take shelter behind the fig leaf that death of late Basanta Pradhan took place 14 days after he was released from Bolangir Town P.S. and hence it was not a case of "custodial death". But the finding of the investigation team of OHRC that he was coerced into to take any assistance from Government Hospital and the Post Mortem Report stating that death of late Pradhan took place due to septicemia shock relatable to injuries inflicted about 10 days prior to the death of the victim have unmistakably established the fact that the death was directly relatable to custodial torture.

Custodial violence /torture and abuse of police power are not peculiar to our country, but it is widespread. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

Article 21 of the Constitution of India is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. This Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Life or personal liberty include right to live with human dignity. It is, therefore, difficult

to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures.

Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone can who only explain the circumstances in which a person in their custody had died are available. It is not unknown that because of the ties of brotherhood at times, the police personnel prefer to remain silent to save their colleagues and the present case is an apt illustration as to how one after the other police witnesses feigned ignorance about the whole matter and also had gone to the extent of removing the hard disc of the CCTV Cameras installed in the Hazat and other places of Bolangir Town Police Station. Despite several judgments of the Apex Court of the country, there has been no noticeable change in functioning of the police system in our country and the dictum, of the Apex Court appears to have fallen to deaf ears. The vulnerability of human rights assumes a traumatic torture when functionaries of the State fail to protect the citizens. The law enforcers cannot take law into their hands to collect evidence or to unearth a 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 *Bhim Singh -V-State of J&K and others* (19985) 4SCC, 677 the Apex Court held that illegal detention in police custody amounts to violation of the fundamental rights under Article 21 and 22(2) of the Constitution of India and for such violation of the valuable constitutional rights, the State is to pay monetary compensation by



the way of exemplary costs or otherwise. Reliance can also be placed in judgement of the apex Court in Rudul Sah-V-State of Bihar and another (1983)3 SCR 508 and Sebastian M. Hongray-V-Union of India and others(1984) 1SCR, 904.

The macabre story of police torture in Bolangir Town P.S. narrated above is a slur on the police which has a fiduciary responsibility to use the authority of the State only for the protection of life and liberty of its people and not against them. What makes it particularly odious is the fact that the IIC, Bolangir Town P.S. used such authority of the State for retrieving a stolen mobile phone belonging to his wife. When the solemn authority of the State is abused for self-aggrandizement and vendetta with scant regard to the human rights of individuals, the resultant crime by the police assumes monstrous proportions which need to be visited with the severest deterrence.

The payment of compensation in cases of custodial torture/death is not to be understood as it is generally in civil action for damage under the private law but in the broader sense of providing relief by an order of making monetary amends under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights. The compensation is in the nature of the exemplary damages awarded against the wrong doer for breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort. The State of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceeding (AIR 1993 SC, 196, Smt. Nilabati Behera alias Lalita Behera -V- State of Orissa and others).

We have no doubt in our mind that is a fit case where compensation needs to be paid to the hapless widow of late Basanta Pradhan Under Section 18(a)(i) of the Protection of Human Rights Act, 1993 and we recommend that an amount of Rs. 3,00,000/

-(Rupees three lakhs) to be paid to her. We further recommend that an amount of Rs. 1, 50,000/- (Rupees one lakh fifty thousand) be paid to Md. Bilal Ansari, who underwent custodial torture and illegal confinement in Bolangir Town P.S. from 10.06.2014 to 13.06.2014. We further recommend a compensation of Rs. 25,000/- (Rupees twenty five thousand) to be paid to Md. Fazal for his illegal detention from 10.06.2014 to 13.06.2014. The above recommendations be communicated to the Chief Secretary, Odisha and Principal Secretary, Home Department, Government of Odisha to furnish a compliance report with regard to the payment of the compensation awarded to the widow of late Basanta Pradhan, Md. Bilal Ansari and Md. Fazal within eight weeks hence. We also direct the D.G. and I.G. of Police , Odisha to expedite the disciplinary action against Sri Tarique Ahammad, Ex IIC of Bolangir Town P.S. now under suspension and take the matter to its logical conclusion. We further direct the D.G. and I.G. of Police to send status report of investigation being conducted by the State HRPC eight weeks hence.

Case No-2027/2012

Sri Prabir Kumar Das, Advocate
.....Petitioner

Order Dated: - 02-07-2012

Advocate Prabir Kumar Das in his petition dated 06-06-2012 has prayed for compensation for death of a 10 year old child namely Rakesh Sethi due to collapse of a boundary wall of a school on 18-06-2011.

A petition to the Commission is to be submitted on behalf of the victim as per section 12 (a) of the Protection of Human Rights Act, 1993. Two weeks' time is hereby allowed to the petitioner to submit a petition on behalf of the victim.

Order Dated:- 04-09-2012

No document has been received from the petitioner despite adequate time having been allowed for the purpose. However, on perusal of the petition, it is seen that on 18-6-2011 at about 9 am while one Minati Sethi and her son Rakesh Sethi were taking water



from a tap located near the Siko Primary School under the Begunia Block of Khurda district, the boundary wall of the said school collapsed on them, as a result of which both Minati and her son were injured and her son Rakesh succumbed to the injury on the spot. It is also stated that the said boundary wall was constructed only a year before the incident.

In view of the above, a copy of the petition was sent to the Collector, Khurda with a request to get the matter enquired into and submit a detailed factual report to the Commission in four weeks' time.

Order Dated:-04-04-2013

In compliance to the order of the Commission dated 4-9-2012, report has been received from the Deputy Collector (Judicial), Collectorate, Khurda vide his letter No.253 dated 2-4-2013. The report is silent as to whether the school was a Government school and the reason as to why the wall collapsed leading to loss of a precious life.

The Collector, Khurda was requested to ensure proper enquiry into the matter and submit a further report addressing the above in three weeks' time.

Order Dated:-27-06-2014

Perused the report of the Collector & District Magistrate, Khurda dated 30-5-2014 and the enclosures thereto. It is reported by the Collector, Khurda that at the time of the incident an amount of Rs.10, 000/- was released to the bereaved family. The petitioner has claimed Rs.10 lakhs as compensation to the parents of the deceased.

Let notice go to the petitioner to remain present before this Commission on 28-7-2014 at 11:30 am to be heard in the matter of awarding enhanced compensation, if any, to the deceased 8 year old school boy.

Similarly, the Secretary to Government in General Administration Department as well as the Commissioner-cum-Secretary to Government in School & Mass Education Department was requested to send a copy of the resolution or order of the Government about payment of ex-gratia to a school student, who dies in an accident which takes

place in the school premises, within three weeks hence.

Order Date: - 28-07-2014

The advocate for the petitioner Sri Prabir Kumar Das is present and he has drawn the attention of the Commission to the judgment of the Hon'ble High Court reported in 2013 (1) OLR 154 (W.P (C) No. 12328 of 2012), Prabir Kumar Das- Vrs- State of Odisha and others.

The above judgment was delivered by the Hon'ble High Court in the matter of the unfortunate death of seven children who were below the age of 5 years at about 11 AM on 09-07-2012 when the wall of the Anganwadi Center operating at Nelia Upper Primary Center, Suansia under Ranpur Block in the district of Nayagarh Collapsed.

In the above matter the Hon'ble High Court after going through various judgments including that the Apex Court came to the conclusion that the State Government which was running the Anganwadi Center is liable to pay compensation for the death of the unfortunate children.

The petition of Sri Prabir Kumar Das dated 06-06-2012 has in the mean while been enquired into by the Collector, Khurda. Admittedly, the boundary wall of the School building collapsed on 18-06-2011 and caused the death of 8 years old boy named Rakesh Sethi who was reading in Class-IV in the said school. In her report No. 6106/Judl. dt. 30-05-2014, the Collector, Khurda has further reported that the Siko Primary School where the incident took place had been established around 1901 and was taken over by the Government in 1989. The Original wall of the school was constructed by the then Sarpanch and the then Headmaster. In 2009 the Headmaster repaired the wall and increased its height by adding two layers of laterite stone. The Collector has felt that continuous rain for 3 days prior to the incident and the old foundation of the boundary wall not being able to sustain the load due to increase in the height of the wall might have contributed to



the collapse of the wall on 16-06-2011. It is, therefore, beyond dispute that the poor student of the school while fetching water along with his mother sustained fatal injuries due to the collapse of the boundary wall.

In view of the judgment of the Hon'ble High Court referred to above, we feel that the Government should not shirk its responsibility to provide safety to its children in the school. Since it has failed to do so, the Commission feels that it would be just and proper for the Government to pay a compensation of Rs. 3,00,000/- (Three Lakhs) to the parents of the deceased child within three months.

Case No-2388/2014

Sri Prabir Kumar Das, Advocate
.....Petitioner

Order Date: - 22-01-2015

The case is based on the petition filed by Sri Prabir Kumar Das, Advocate-cum- Human Rights Activist vide his petition dt- 28-07-2014. He has stated that a four years old boy named Jitendra Kisan son of Kartik Kisan resident of Kusumi fell into an open septic tank under construction in the premises of Balaram High School at Kusumi under Mahulapali PS in Kuchinda Sub- Division, Sambalpur District on 26-07-2014. The boy was rushed to sub- Divisional Hospital at Kuchinda, where the doctors declared him brought dead. He has alleged that the septic tank, in question, has no barricade around it and that there was gross negligence of duty on the part of the School authority due to which the poor child lost his life. He has prayed for a compensation of Rs. 10 lakhs for the loss of life of the child. The petition was referred to the Collector, Sambalpur for report. The Collector, Sambalpur appeared in person before the Commission on 22-01-2015 and submitted his report vide letter no.107 dt. 19.01.2015. His report is based on the enquiry report of District Welfare Officer, Sambalpur dt. 17-01-2015. The enquiry of the DWO has confirmed the allegation that the victim fell into the half constructed septic tank meant

for the hostel attached to Balaram High School, Kusumi. Admittedly, the construction work took an inordinately long time and no safety and security measures were taken to protect the small children from falling into the pit. The Collector, Sambalpur has issued instructions to the ITDA, Kuchinda to ensure adequate safety and security measures at the time of construction and also to insist on timely completion of such work.

It is, therefore, clear that the death of the child took place due to sheer negligence on the part of the ITDA authority to put in place necessary barricade and other structure when a pit 11 ft deep was left in an incomplete stage for months together. This is particularly objectionable in view of the fact that the construction was taking place close to a school where many children frequenting the place. The poor child of a tribal lost his life due to such negligence and we feel that his parents need to be compensated by the Government.

We, therefore, recommended that an amount of Rs.3 lakhs be paid to the parents of the deceased child by the Government. The above recommendation was communicated to the Collector, Sambalpur as well as the Commissioner-cum-Secretary to Govt., SC & ST Development Department for necessary compliance within 60 days.

OHRC Case No.2592/2012

Bharati Baliarsingh
..... Petitioner

Order Dated: 29th August, 2013

In the petition received by the Commission from Manas Kumar Baliarsingh of Chandapada under Kanas PS limits of Puri district dated 16-8-2012, there was allegation of inaction of Police in investigating into Kanas PS case No.64 dated 7-8-2012 registered under Sections 147/148/341/294/448/323/506/149 of the IPC and the Superintendent of Police, Puri was asked by the Commission to get the matter enquired into and submit a factual report to the Commission.

Before receipt of the report called for, a submission dated 26-9-2012 was received



from Bharati Baliarsingh, wife of the petitioner, who along with her father-in-law Artatrana Baliarsingh appeared before the Commission on 6-12-2012 narrating another gruesome incident of assault on them leading to death of the petitioner, Manas Kumar Baliarsingh due to laxity on the part of the Police. It was also alleged that though Police registered a case in this regard vide Kanas PS case No.74 dated 13-9-2012 against 22 accused persons, they did not arrest a single one.

The Superintendent of Police, Puri was asked to get the matter enquired into by giving full opportunity to Bharati Baliarsingh and Artatrana Baliarsingh of being heard and submit a factual report to the Commission.

In compliance, report was received from the Superintendent of Police, Puri vide his letter No.366/DHRPC dated 2-2-2013 enclosing an enquiry report of SDPO, Pipili. From the report, it seemed that as the deceased Manas Kumar Baliarsingh was opposing cutting down of a big 'Chakunda' tree on a Government land by the wood mafia, he and his supporters were under attack by the opposite party. It was further noted from the report that none of the accused persons in Kanas PS case No.64 dated 7-8-2012 had been arrested until on 10-1-2013, i.e. nearly four months after the severe attack on Manas Kumar Baliarsingh on 12-9-2012 leading to his death. It was also noted that the OIC, Kanas PS had submitted counter PR u/s 107 CrPC against both the parties vide Kanas PS misc. Non-FIR No.37/2012 & 38/2012 to avoid further breach of peace, but the date as to when the PRs were filed was not indicated.

Since a life was lost in the process of protecting a public property and the report of the local Police did not satisfactorily establish that adequate action was taken in the matter, the Commission got the matter enquired into by its own Investigating Wing.

The Director, Investigation, OHRC vide his letter No.8107 dated 22-5-2013 submitted the enquiry report of DySP P.K. Tripathy. DySP Sri Tripathy, who appeared before the Commission, made a presentation of his report.

From the contents of the report and presentation of DySP Sri Tripathy, the Commission noted that the deceased Manas Ranjan Baliarsingh was opposing tooth and nail the villagers in their attempt to fell the tree standing over the Government land and paid the price of his life therefor.

As per the report of DySP Sri Tripathy, there had been prior assault and threatening and he had approached the Police and district administration. After the first incident of assault on the deceased Manas Ranjan Baliarsingh, though Kanas PS case No.64/2012 was registered against 12 accused persons, there was no arrest, though there was a case under Section 107 CrPC in which bonds were signed for keeping peace. Even two Home Guards were deployed in the village for day duty and four of them were deployed for night patrolling.

As per the report of DySP, OHRC, the villagers were trying to take the cut branches of the said tree at the upset price of Rs.22,472/- only and it was at the behest of the uncle of the deceased that the bid amount got raised to Rs.39,000/-. The accused persons started cutting some more branches along with the auctioned material, which was further objected to and reported by the deceased. Being enraged, the villagers assaulted brutally on 12-9-2012 the deceased, his wife, father, and the said uncle (who raised the bid price) to such an extent that the deceased succumbed to his injuries and both the legs of his uncle were broken. On the report of the father of the deceased, OIC, Kanas PS registered PS case No.74 dated 13-9-2012 under Sections 147/148/341/323/324/325/354/506/307/302/149 IPC/25 Arms Act and took up investigation of the same.

After the above incident, the OIC was transferred within a month. After joining of the new OIC, one accused in case No.74/2012 and two accused persons in case No.64/2012 were arrested and forwarded to Court. Almost all other accused persons in both the cases, excepting three absconding accused persons of case No.64/2012, have surrendered in the



Court and released on bail as per direction of the Hon'ble High Court.

While the deceased in his efforts to thwart the evil plans of the accused was incurring their wrath and kept approaching the Police and district administration for protection, the action taken in the matter by the Police was evidently lackadaisical and not effective. None of the two Home Guards for day duty were found present during the incident on 12-9-2012. Arrest in Kanas PS case No.64/2012 was made only after the second incident.

The Director, Investigation in his forwarding letter opines that it is difficult to say if arrest in Kanas PS case No.64/2012 would have prevented the mishap. In any case, it is also noted that, though preventive provision under CrPC was taken recourse to by the Police by initiating a proceeding under Section 107 after the mishap, there was apparently no report by the Police to the Executive Magistrate for appropriate action under Section 122(b) CrPC for breach of bonds.

This is a sad case, where a person in his effort to protect Government property and foiling the evil designs of the co-villagers, paid the price of his own life. Therefore, it is a fit case for grant of relief to be paid to his bereaved family, which includes his two young children, besides his wife and old father. Bharat Baliarsingh, uncle of the deceased, who helped in raising the bid price and became a victim of wrath of the villagers also deserves to be paid relief.

The Commission, accordingly, awards compensation of Rs.3,00,000/- (rupees three lakh) under Section 18 of the Protection of Human Rights Act, 1993 in favour of the widow, 2 children and old father of the deceased Manas Ranjan Baliarsingh, out of which Rs.2:00 lakh should be kept in a fixed deposit in the name of his children for a period of 10 years. The balance amount of One lakh to be paid to the wife of the deceased in shape of cash.

Further, relief of Rs.75,000/- (rupees seventy-five thousand) is hereby awarded in favour of Bharat Baliarsingh, uncle of the deceased, under Section 18 of the Protection of Human Rights Act, 1993.

A copy of this order be sent to the Principal Secretary to Government, Home Department with a request to arrange payment of the above relief amounts and report compliance to the Commission in four weeks' time.

Order Dated:-02-12-2013

Seen the letter of the Government in Home Department dated 17th October, 2013. The Government seeks clarification regarding the share of the father of the deceased and the amount recommended to be paid as compensation for the death of the deceased Manas Ranjan Baliarsingh. Sri Artatrana Baliarsingh, who is present before the Commission this day, submit that neither he nor his daughter-in-law are aggrieved by the order of this Commission dated 29th August, 2013 and they have never raised the issue of appointment of the compensation amount before any authority. Sri Artatrana Baliarsingh expresses that he is satisfied with the order to keep Rs. 2, 00,000/- in fixed deposit in the name of his minor grand-son and minor grand-daughter and also he is satisfied with the amount that has been directed to be paid to his daughter-in-law, namely Bharati Baliarsingh, who is the wife of the deceased Manan Ranjan Baliarsingh. In the circumstances, when the parties are not aggrieved with the order of this Commission dated 29th August, 2013 and when the order is very clear having no ambiguity at all, the recommendations made by this Commission are to be complied with by the Government without any further delay and that too within six weeks time.

Order Dated:-20-01-2014

Received the communication from the Hon'ble High Court of Orissa. Perused the order of the Hon'ble Court in WP (C) No.24372/2013 dated 28-11-2013, where



challenge was made regarding the grant of compensation by this Commission to the heirs of the deceased Manas Ranjam Baliarsingh, who was allegedly killed due to the negligence of the police. Their Lordship of the Hon'ble Court have dismissed the writ petition holding that there is no ground to interfere with the order passed by this Commission.

Let a copy of the order passed by the Commission with the copy of the order of the Hon'ble Court in WP (C) No.24372/2013 be furnished to the Principal Secretary to Government in Home Department for immediate compliance of the order of this Commission dated 29-08-2013. Such report be made available to this Commission within four weeks hence.

Compliance by Public Authorities:

Date: 04-03-2014

The Government in the Home Department through its AFA-cum- Under Secretary informs that the Government has already sanctioned Rs. 3, 75,000/- only towards payment of compensation i.e. 3 lakhs rupees to the wife and two children of the deceased Manas Ranjan Baliarsingh and 75,000/- rupees to Sri Bharat Baliarsingh, the uncle of the deceased of village Chandapada under Kanas Police Station limits and the DG and IG of Police, Odisha has been requested to draw the amount and disburse the same to the person entitled as has been ordered by this Commission and to furnish the stamped money receipt to the Government for untoward transmission of the same to the OHRC.

Date: 26-05-2014

The Spl. DG of Police (Hdqrs), Odisha in his letter dated 9-5-2014 has reported that the compensation amount of Rs.3,00,000/- has been paid to the wife and two children of the deceased Manas Ranjan Baliarsingh and Rs.75,000/- has been paid to Bharat Baliarsingh, the uncle of the deceased and has submitted stamped money receipt as proof thereof.

Thus, when the compensation amount has already been disbursed, the Commission feels that there is no necessity in keeping

this matter pending in the Commission. Accordingly, further proceedings in this case stands closed.

OHRC Case No. 2630/2724 of 2014

Sri Prabir Kumar Das, Advocate

..... Petitioner.

Order Date:-18-02-2015

The case is based on the complaint petition filed by Sri Prabir Kumar Das, Advocate, Orissa High Court, Cuttack, who brought to the notice of the Commission the incident of suicide committed by one Sunita Raita D/O Sudam Raita resident of Diptinagar, R.Udayagiri, Dist. Gajapati on 13.8.2014 due to the alleged negligence of the authorities to sanction/release stipend which she has been entitled to for a long period. A similar petition was also filed by Sri Nishikanta Mohapatra, State Convener, AAP, Odisha and few others on the self same matter. Both the complaints were, therefore, taken up together for examination. Since the allegation was that the hapless child was forced to take her own life due to utter callousness of Government officials including the Collector, Gajapati and the ITDA, Gajapati, the matter was entrusted to the RDC(Southern Division) for an enquiry. The R.D.C(S.D) submitted his report vide his letter No.495 dt.8.9.2014. A criminal case bearing PS case No.49/2014 in R.Udayagiri PS has also been instituted against Sri Basudev Bahinipati, the then Collector, Gajapati, Sri Kalyana Kumar Ratha, the then P.A, ITDA, and Sri Janardhan Rao, Accountant, ITDA U/s.306/34 I.P.C read with Section 3(1)(x)/3(2)(V) SC&ST(PA) Act on the basis of the report filed by Sri Sudama Raita, father of late Sunita Raita. S.P., Gajapati was directed to furnish a status report about the said P.S. Case No.49/14 which he furnished vide his letter No.1729 dt.24.12.14. In accordance with our direction dt.9.1.15, the IIC Sri Jayadev Biswajit of R.Udyagiri P.S. appeared before the Commission on 13.2.15 and submitted the C.D and other connected papers of P.S. Case No.49/14.

On perusal of the relevant records, we find that the police investigation into the P.S.



case No.49/14 is going on and one of the accused namely, Sri Kalyan Kumar Rath, the then P.A., ITDA, Gajapati has been arrested.

The petitioner Sri Prabir Kumar Das appeared before the Commission on 13.2.15 with a prayer that the parents of the victim being very poor tribal persons deserve compensation for the atrocity committed on their daughter.

While we would not like to interfere with the course of investigation being conducted by the police, we would like to deal with the issue of compensation to be paid to the parents of the victim as raised by the petitioner.

The facts of the case as revealed by the report of the R.D.C (S.D) are as follows:-

The victim girl Sunita Raita had passed + 2 in Science from "Seventh Day Adventist Higher Secondary School, Khurda" and she along with her friend Sajani Raita took admission in the Capital Academy of Nursing, Kharvela Nagar, Bhubaneswar on 14.8.2013, run by Sri Jagannath Education and Charitable Trust. After taking admission in the institution, Sunita Raita and Sajani Raita submitted application before the P.A, ITDA through the B.D.O., R.Udyagiri on 27.8.2013 requiring financial assistance for studying a course in B.Sc. Nursing covering four years with an approximate cost of Rs.3.5 lakhs. After nearly one month of the date of application, the BDO, R.Udayagiri Block recommended the application of both the girls to P.A, ITDA vide letter No.2413, dt.26.9.2013. On 20.11.2013 the Collector and Chairman, ITDA approved the proposal of PA, ITDA sponsoring the name of Sunita Raita to undergo a course of ANM (Health Worker Female) for the year 2013-14 in Mothers Nursing School, Kalinga Nagar, Bhubaneswar and that of Sajani Raita for pursuing a course of GNM in the School of Nursing and Health Science, Berhampur. Since the courses for which their names were sponsored were different from the course in which they had taken admission, the two girls filed a petition before the Collector, Gajapati in the Grievance

Cell held at R.Udayagiri Collectorate premises on 25.11.2013. Without going into the details of the prayer, the Special Officer, ITDA disposed of the grievance petitions with the observation that their grievance had already been redressed. The R.D.C(S.D), in his report has clearly mentioned the difference between the course being pursued by the two girls and the course for which their names have been sponsored by the ITDA as follows:-

"Whereas B.Sc. Nursing course is a four year course, ANM course is a one and half year course and is of lesser importance. GNM course is of three and half year duration." Thereafter, Sudam Raita, the father of the victim, and late Sunita Raita herself repeatedly approached the PA, ITDA, the accountant, Sri Janardan Rao, the Chairman of Panchayat Samittee, R.Udayagiri Sri Dasarathi Gamango, Zilla Parishad Member, R.Udayagiri, Sri Jagabandhu Das etc. in order to prevail upon the ITDA authorities to release the necessary assistance in favour of the Capital Academy of Nursing, Kharvel Nagar, Bhubaneswar. All the repeated requests fell on deaf ears. On 11.8.2014 late Sunita Raita with her father met the Collector, Gajapati in the Grievance Cell at R.Udayagiri Block Office, where the PA, ITDA and other Officers were present. The Chairman, Vice-Chairman and Zilla Parishad Members were also present in the Grievance Cell. The victim and her father brought to the notice of the Collector their long standing grievance, but the PA, ITDA Sri Kalyan Kumar Rath who was present in the Grievance Cell lost his temper and shouted at the victim and her father. He was, however, calmed down by the Collector, Gajapati. On the grievance petition of late Sunita Raita, the Collector directed the PA, ITDA to examine the matter. On 13.8.2014 the victim girl once again telephoned the PA, ITDA to know the fate of her petition. The PA, ITDA once again ill treated her over telephone and the girl was reportedly very upset. Within a few hours of the phone call she committed suicide in her own house by hanging herself with the help of a towel. In the course of



enquiry conducted by the RDC(S.D), Sri Kalyan Kumar Rath the then PA, ITDA stated that on 11.8.2014 the victim girl did meet him in the Grievance Cell of the Collector when the Collector assured the girl to release the funds. Accordingly, the file was approved on the very next day i.e on 12.8.2014, but the girl took her own life on 13.8.2014.

The above story is one of utter callousness of the district administration towards the genuine expectation of beneficiaries whom it is duty bound to serve. The manner in which the office of ITDA dealt with the applications for assistance from the two tribal girls betrays a feudal temperament which treats one's duty as if it were an act of charity. When the two applicants were pursuing a course in B.Sc. nursing, it is not understood under what consideration and logic the ITDA authorities recommended one for an ANM course and another for GNM course. When the mistake was pointed out by the victim girl and her father, it met with scornful rejection and violent behavior by the PA,ITDA. What adds to the poignancy of the tragedy is that assistance for the B.Sc. nursing course was sanctioned by the Collector on 12-8-2013, but was not revealed to the victim girl when she telephoned to the PA, ITDA on the morning of 13-8-2013. Had it been done, and probably the previous life of a poor tribal girl could have been saved.

During the enquiry conducted by the RDC, Southern Division, the PA, ITDA, Sri Kalyan Kumar Rath was given an opportunity to make a statement. His statement does not reveal any reason as to why the ITDA approved the course of ANM for the victim girl, whereas she had applied for and got admitted to a course in B.Sc. nursing. Nor did we find any trace of remorse on the part of Sri Rath for the tragic consequences of his behavior. The RDC, Southern Division has observed in his report that "the action of Sri K.K. Rath, PA, ITDA in handling the case of Sunita Raita does not speak good of his conduct. In the ultimate grievance cell on 11-8-2014, his behavior and disposition towards the girl and her father

was not proper and appropriate of a public functionary. Witnesses present in the grievance cell stated that he was irritated and Collector had to pacify him and also Collector directed the PA to put up the file immediately".

In view of the clear finding of the R.D.C.(S.D.) as revealed from his enquiry report and in view of the fact that an opportunity was given to Sri Ratha to explain his conduct and his statement has been recorded by the R.D.C.(S.D), we feel that adequate opportunity has been given to Sri Ratha, the then P.A.,ITDA, Gajapati in the matter. Hence, we do not find any further necessity to call Sri Ratha to this Commission again.

We are thus persuaded to believe that the imperious vanity of the PA, ITDA forced the victim girl into a state of morbid depression leading to her suicide. The manner in which the ITDA dealt with the case deserves to be condemned in the harshest of words. It is a fit case where compensation needs to be paid to the father of the deceased, who is a poor tribal belonging to the BPL category. We recommend that a sum of Rs.5,00,000/- (Rupees five lakhs only) be sanctioned in favour of Sri Sudam Raita, father of the victim girl, for gross violation of human rights by State functionaries. The disciplinary proceeding which has reportedly been initiated against the PA, ITDA be concluded at the earliest.

Send a copy of the order to the Chief Secretary of the State and to the Commissioner-cum-Secretary to Government, ST & SC Development Department with a direction to send a compliance report within six weeks.

Case No. 3127 of 2014

Sri Prabir Kumar Das, Advocate
.....Petitioner

Order Dated:-19-09-2014

Enclosing two newspaper clippings to his petition the petitioner Prabir Das states that a blind student of Class-IX of Utkal Balashram, Cuttack namely Bhagirathi Das died due to



drowning in a pond inside the premises of the School on 31.08.2014. The petition and the news paper items disclose that Bhagirathi was missing since the afternoon of 31.08.2014 and on thorough search, his dead body was found floating in the pond inside the school premises on 01.09.2014. It is alleged that there is no fencing around the pond and since the school is meant for blind students, adequate measure should be taken. The said school is run by the W & CD Department, Government of Odisha. Accordingly, alleging negligence on the part of the school authorities and seeking grant of compensation of ten lakhs of rupees, the petitioner has approached this Commission for its intervention.

Let a copy of the petition along with its enclosures be sent to the Secretary to Government, W & CD Department and Collector, Cuttack with a request to submit factual report in the matter within four weeks hence.

Order Date: - 19.01.2015

The petitioner has approached this Commission for payment of compensation to the tune of 10 lakhs of rupees to the next of kins of bereaved family of a blind boy namely Bhagirathi Das who has drowned in a pond of Utkal Balashram, Nuapada, Cuttack on 31.08.2014. The said blind boy was reading in Class-IX in Utkal Balashram, Cuttack and when he did not attend the class and did not turn up for his lunch, there was frantic search for him by his class mates and the school authorities were informed but none could trace him in the hostel but later on the body of the deceased Bhagirathi Das was floating in the pond around the premises of the school on 01.09.2014. According to the petitioner the School is run by the Women & Child Development Department of Government of Odisha which is meant for visually impaired (blind) students. There was no fencing around the School nor adequate measure were taken to ensure the safety of the blind children for which the unfortunate tragic death of a blind boy occurred only because of the negligence of the school authorities.

We have perused the photocopy of postmortem report of the deceased boy Bhagirathi Das whose age at the time of death was 15 years. The postmortem report shows that the death of the boy happened due to asphyxia as a result of drowning. The Collector, Cuttack in his report dated 24.12.2014 has admitted about the unfortunate death of visually impaired Class-IX student of the school for blind, Nuapada, Cuttack namely Bhagirathi Das on 01.09.2014 by drowning in the tank inside the premises of Utkal Balashram, Cuttack. The report of the Collector further reveals that the inmates and officials of the School for the blind, Nuapada, Cuttack participated in the immersion function of Lord Ganesh on 31.08.2014 and they had all gone to the tank. When the roll call was made around 11 a.m. i.e at the time of lunch, out of 21 students, 20 had reported to lunch and on verification the Warden found that the deceased Bhagirathi Das was absent but one of the hostel mates Bhanjuka Singh reported that the deceased has informed him that he will take lunch later and, therefore, he was in his room, Bhagirathi Das the deceased came out the room and sat on the veranda of the hostel and when Bhagirathi Das was found absent for lunch, the Warden and Cook proceeded to the hostel. So it was thought that the boy might have fled away from the institution as the deceased had requested the Warden to go to his home on the previous day. When the uncle of the deceased boy was contacted over phone by the Warden at 4.30. p.m. of 31.08.2014, he also could not tell about Bhagirathi Das. Accordingly local police and Child Line were informed. On 01.09.2014 about 8.30 a.m. some students of Utkal Balashram detected the dead body floating on the tank of the premises and reported the fact to the Superintendent of Utkal Balashram, Nuapada, Cuttack and later it was identified that the dead body was of the missing boy Bhagirathi Das. The Collector, Cuttack reports that financial assistance of Rs. 10,000/- was given to the father of the deceased on compassionate ground from the District Red



Cross Fund. Besides that Rs. 1.00 lakh has been sanctioned out of Chief Minister's Relief Fund in favour of the next kins of the deceased and also assistance has been provided under the Harishchandra Sahayak Jojana Scheme. In the mean while, basing on the report of the Additional District Magistrate, the Headmistress of the School Smt. Minati Routray, Warden Sri Pradeep Kumar Pal and Attendant Smt. Nalini Swain have been placed under suspension for negligence in discharging their duties and disciplinary proceedings have been initiated against the errant officials. Besides that, temporary fencing has been erected around the tank inside the premises of the Utkal Balashram where the Special School for the Blind is functioning and other infrastructural development of Utkal Balashram and Government has been requested for placement of funds for the purpose.

Mr. Das very vociferously urged that when the life of a blind student has been lost because of the carelessness of the teachers of the School and when the State has failed to protect the life and safety of its citizens, mere payment of Rs. 1.00 lakh out of Chief Ministers Relief Fund and providing Rs. 10,000/- from District Red Cross Fund are nothing but peanuts. Human Rights are basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. Constitution and legislations of civilized country recognize them since they are so quintessentially part of every human being. That is why every democratic country committed to rule of law has put in place mechanisms for their enforcement and protection. Human rights are universal in nature.

Thus, if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under law, and he is denied access to such a right, then it amounts to a clear violation of his human right. Deriving jurisdiction vested under Section 12(j) of the Protection of Human Rights Act,

1993, this Commission by operation of Section 29 of the Protection of Human Rights Act, 1993 enjoys the powers conferred on the National Human Rights Commission i.e. with regard to provisions of Sections 9,10,12,13,14 to 18 which are also applicable to the State Commission and the State Commission shall have the jurisdiction to enquire into any complaint relating to violation and protection of human rights. Such action would include inquiring into cases where a party has been denied protection of any law to which he is entitled, whether by private party, a public institution, the government or even the courts of law. (**Ramdeo Chauhan Vrs. Bani Kant Das, AIR 2011 SC 615**).

Thus, taking into consideration the fact that a helpless blind student died because of drowning in an unguarded and unprotected pond of the School meant for blind boys and when such a death occurred because of the negligence and carelessness of the School authorities and when the State has failed to discharge its duties in looking to the safety of the students, the Commission recommends the Government in Women and Child Development Department for payment of monetary compensation to the tune of Rs. 2.00 lakhs (rupees two lakhs) to the next kins of the deceased Bhagirathi Das over and above the amount which has already been paid out of the Chief Minister's Relief Fund and District Red Cross Fund within 3 months hence i.e. from the date of receipt of the copy of this order and compliance report be furnished to the Commission by 25.05.2015.

Case No-3129/2014

Sri Prabir Kumar Das, Advocate

.....Petitioner

Order Dated:- 19-09-2014

Enclosing four newspaper clippings to his petition, the petitioner Prabir Das alleges that Ritika Biswal, a student of Class-II of Patimunda Government UP School under Soro PS limits of Bahanaga Block under Balasore district died because of electrocution in the school premises during school hours. It is alleged that Ritika



came in contact with a live wire when she had gone to attend the call of nature around 11 AM. It is alleged that one Sikhya Sahayak namely Mamata Sahu, who was staying in a room of that school was drawing electric energy illegally and unauthorisedly using a heater. Accordingly, alleging gross negligence on the part of the school authorities and the petitioner prayed for payment of compensation to the tune of ten lakhs of rupees.

While taking cognizance of the complaint, we direct that a copy of the petition along with its enclosures be sent to the Collector, Balasore and Executive Engineer, Balasore Electrical Division and the District Education Officer, Balasore with a request to enquire into the matter and submit their factual report to the Commission within four weeks hence.

Order Date:- 22-12-2014

Petitioner Mr. Prabir Kumar Das, Advocate is present. District Education Officer, Balasore has furnished his report stating therein that Rs.1,00,000/- (Rupees one lakh) had already been paid as ex-gratia from the Chief Minister's Relief Fund in favour of Sri Nirmal Kumar Biswal, father of the deceased late Ritika Biswal. Mr. Das submits that the Ex-gratia amount which has been released in favour of the father of the deceased is too paltry a sum in comparison to the loss of life of a child because of the negligence of the State machinery. Therefore, he prays that compensation to the tune of ten lakhs be paid to the NOK of the deceased Ritika. After going through the report of the District Education Officer, Balasore as well as the enquiry report of the Enquiring Officer, we feel it proper to recommend to the Government, namely the Commissioner-cum-Secretary to Government, School & Mass Education Department, Odisha, Bhubaneswar to initiate departmental action against the erring headmistress, namely, Draupadi Lenka, for whose negligence and inaction the unfortunate death of a girl student occurred in School premises by electrocution. Action taken in the matter be intimated to us within 30 days.

Now coming to the submission of Mr Das that the ex-gratia money which has been sanctioned by the government is highly inadequate and inappropriate while considering the gravity of the incident we find that admittedly with the knowledge of everybody, even of the School Managing Committee and the Headmistress of the School, the Sikhya Sahayika, namely Smt. Mamata Rani Biswal was drawing power unauthorisedly from the electric pole by a live electric wire which was hanging low. The unfortunate poor girl while going to the bath room came in contact with the live electric wire and got electrocuted. The above findings are clearly mentioned in the report of the District Education Officer, Balasore. The conclusion is thus inescapable that a precious life of a girl child was lost due to gross negligence on the part of the Headmaster and the teacher (Sikhya Sahayika), who are all functionaries of the State. A compensation of Rs.1, 00,000/- (Rupees one lakh) is grossly inadequate to compensate the loss of a human life particularly in a welfare State, where it is the responsibility of the State Government to ensure the safety of its citizens and the children in its Schools. We feel it just and appropriate to direct the Commissioner-cum-Secretary to Government, School & Mass Education Department, Odisha, Bhubaneswar for payment of Rs.3, 00,000/- (Rupees three lakhs) as compensation to the next of the kin of the deceased girl student, namely Ritika Biswal over and above the ex-gratia of Rs.1, 00,000/- (Rupees one lakh), which has already been disbursed to her parents. This order of ours be complied with by the Commissioner-cum-Secretary to Government, School & Mass Education Department, Odisha, Bhubaneswar within 60 days and report of compliance be furnished to this Commission by 09.03.2015.

Compliance by Public Authorities:-

Date:-09-03-2015

The Joint Secretary to Government, Department of School & Mass Education in his letter dated 24-2-2015 reports that an amount of Rs.3 lakhs has been sanctioned towards



payment of compensation to the next of kin of the deceased girl student, namely Ritika Biswal of Patimunda Government UP School of Bahanaga Block in Balasore district. It is also reported that the Director, Elementary Education, Odisha will draw the amount and provide the same to Collector, Balasore in shape of Bank Draft/Cheque, who will disburse the amount to the NOK of the deceased.

Case No-3191/2013

Raghunath Mahanandia

.....Petitioner

Order Dated:- 22-10-2013

Raghunath Mohanandia of village Udibilika under the Baunsuni PS limits of Boudh district has prayed for a fair investigation into the case of death of his partially handicapped 9 years old son under suspicious circumstances on 17-09-2013.

A copy of the petition be sent to the Superintendent of Police, Boudh with a request to get the matter enquired into and submit a factual report to the Commission in the matter in four weeks' time.

Order Dated:-02-01-2014

Perused the report of the SP, Boudh as well as the petition sent by the petitioner Raghunath Mahanandia drawing the attention of this Commission over the unfortunate death of his minor disabled son Dukhu Mahanandia, who was residing in Seva Vihar, a charitable institution run by an NGO having been provided with financial assistance by both the State and Central Government, which situate in village Narayanpur in Sarasara GP of Boudh district. The petitioner blames the Institution, which did not take care of a visually impaired boy, who fell into a well and died because of drowning. Thus, he has prayed for punishing the culprits by launching criminal prosecution as well as payment of compensation for the death of his minor disabled son.

The report of SP, Boudh though speaks of launching of criminal prosecution against the accused persons namely Rasmirekha Pradhan, Janaka Malik and Puspanjali Bagh vide Boudh PS case No.215/2013, but the

report is silent about payment of any ex-gratia to the bereaved family by the State. In the premises, a copy of the petition was sent to the Commissioner-cum-Secretary to Govt., W & CD Department; Director, Social Welfare as well as to the Collector, Boudh as to what action has been initiated besides launching of criminal prosecution against the special school for blind and deaf, 'SEVA VIHAR', Narayanpur, Boudh over the unfortunate death of a minor blind boy and what financial assistance has been provided to the bereaved family, namely the petitioner. Such reports be made available to the Commission within six weeks.

Order Dated:-28-11-2014

Perused the report of the Addl. District Welfare Officer (A.D.W.O.) Boudh, which has been forwarded to the Commission by the under Secretary to Government of Odisha, Women and Child Development Department. I have also perused the report of the Superintendent of Police, Boudh. Both the report reveal that the deceased Dukha Mahanandia, son of Raghunath Mahanandia, a visual impaired 9 years old child had been kept by his parents in the special school for deaf and blind i.e. Seva Vihar, Butupalli, Boudh since 01-04-2009, which is run by one NGO, namely Association for Social Works and Social Research in Odisha (ASWSRO) funded by Government of India. The dead body of the deceased was recovered from a well near the School on 17-09-2013 and an U.D case was registered at Boudh case turned to a case under Section 304 (A) of the Indian Penal Code and the case was registered by Boudh Police vide Boudh PS Case No-2015 dated 06-11-2013 against Rashmi Rekha Pradhan, Janak Malick and Puspanjali Bagh, who are the care takers of the said Seva Vihar, Butupali, Boudh. All the aforesaid persons were arrested on 09-11-2013 and released on bail and Charge Sheet was going to be submitted against the said persons. The report of the Addl. District Social Welfare Officer, Boudh reveals that the deceased Dukha Mahanandia, the visual impaired child fell down accidentally in a garden



well of Radha Jirma of village. Naranpur, which is 200 Meters away from Seva Vihar due to the negligence of the care takers of the Special School. A sum of Rs. 10,000/- was paid to the petitioner out of the Chief Minister's Relief Fund and Rs. 2,000/- has been paid to them out of Harischandra Sahayata for cremating the dead body of Dukha Mahanandia. The petitioner suspected that his visually impaired son could not have gone alone to the nearby orchard in the night, where the alleged well situates and he suspects that he might have been murdered by rival group of the management to the institution or somebody else, but it was not a case of accident. Therefore, he had prayed for appropriate enquiry and for booking the culprits for the death of his minor child.

When admittedly, death of a 100 % visually impaired minor boy, aged 9 years had taken place by drowning in a well and when at the time of occurrence, he was under the care and custody of the care takers of the Seva Vihar, Butupalli, Boudh and when all accusing fingers have been pointed out the care takers of the Special School, the Commission fails to understand as to why a paltry sum of Rs. 10,000/- was paid to the NOKs of the deceased Dukha Mahanandia, when precious life of a visually impaired 9 years old boys has been lost while he was kept in the hostel of the School specially meant for deaf and blind being funded by the Government. When there are caretakers of the said School, the management of the School shall not shy away from their responsibility in protecting the inmates i.e. the visually impaired children, who have been kept in the Seva Vihar, especially a 100 % visually impaired minor boy.

Criminal prosecution against the caretakers is not adequate. The authorities cannot abdicate their moral responsibility especially in a welfare State like ours to see that no harm is caused to a visually impaired boy or any physically disabled person living in a Hostel.

From the report of the Collector & District Magistrate, Boudh, it appears that the Special School for Deaf and Blind, Narayanpur i.e. Seva Vihar, Butupali is a school run by an NGO namely Association for Social Works and Social Research in Odisha, which is funded by Government of India.

Human Rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. Constitution and legislations of civilized country recognize them since they are so quintessentially part of the every human being. That is why every democratic country committed to rule of law put into force mechanism for their enforcement and protection. Human rights are universal in nature.

Thus, if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under a law and he is denied access to such a right, then it amounts to a clear violation of his human right. Deriving jurisdiction vested under Section 12 (j) of the Protection of Human Rights Act, 1993, this Commission by operation of Section 29 of the Protection of Human Rights Act, 1993 enjoys the power conferred on the National Human Rights Commission i.e. with regard to provision of Section 9, 10,12,13,14 to 18 which are also applicable to the State Commission and the State Commission shall have the jurisdiction to enquire into any complaint relating to violation and protection of human rights. Such action would include inquiring into cases where a party has been denied of protection of any law to which he is entitled, whether by private party, a public institution, the government or even the courts of law. (**Ramdeo Chauhan Vrs. Bani Kant Das, AIR 2011 SC 615**).

Thus, taking into consideration the unfortunate death of a 100% visually impaired boy, who belongs to the marginalized sections of the society, especially belonging to tribal infested area, the Commission felt it proper



to compensate the parents of the deceased boy Dukha Mahanandia for the great loss caused to them. No amount of money can compensate the mental trauma and tragedy suffered by the family members of the deceased, but a helping hand would definitely act as a succour to assuage the feelings of the bereaved family. Accordingly, the Commission recommended the Government in W & CD Department for payment of monetary compensation to the tune of Rs.2 lakhs to the NOK of the deceased Dukha Mahanandia over and above the amount, which has already been paid out of the Chief Minister's Relief Fund within three months hence and a report of compliance be furnished to this Commission.

OHRC Case No.3219 of 2013

Sri Bhagaban Mishra

..... Petitioner

Order Dated:- 12th January, 2015

The petitioner, who is a Demonstrator in Chemistry, KBV Mahavidyalaya, Kabisuryanagar, Ganjam, had married Smt. Nirupama Mishra on 11-5-1995. The couple were blessed with a daughter and son. Since the marriage did not work and dispute arose, as alleged by the petitioner, his wife deserted him on 29-5-2011 and filed a maintenance proceeding which was registered as case No.474/2012 in the Court of SDJM, Bhadrak. Similarly, the present petitioner also filed Civil Proceeding No.165/2012 in the Court of Judge, Family Court, Berhampur praying therein for dissolution of his marriage with his wife, Smt. Nirupama Mishra. During the pendency of the aforesaid civil proceeding and maintenance case, it is alleged by the petitioner that the IIC, Kabisuryanagar PS, being influenced by Smt. Nirupama Mishra, called the petitioner to the Police Station at 3 O'clock in the night on 2-9-2013 and directed him also to remain present at the Police Station at 11 am again. It is further alleged that from 11 am of 2-9-2013 till 9 pm the petitioner was detained in the Police Station without any food and his signatures were obtained by the IIC, Kabisuryanagar PS on a non-judicial stamp

paper and he was also forced to write that he would give his house as well as household articles along with 50% of his salary to Smt. Nirupama Mishra and when he protested, he was kicked and assaulted by lathi, for which the petitioner out of fear signed on the written paper. It is also the case of the petitioner that he was abused in obscene words by IIC, Kabisuryanagar PS in presence of 15 or more persons. Accordingly, the petitioner approached this Commission to interfere in the matter and initiate appropriate action against the IIC, Kabisuryanagar PS for his illegal activities and direct payment of compensation of Rs.3 lakhs for the torture meted out to him.

The petitioner had also approached the Hon'ble High Court of Orissa by filing WP(Crl) No.1418/2013 for a direction to this Commission to enquire into his allegations about the alleged excesses committed by the IIC, Kabisuryanagar PS, who detained him and his father, Ramachandra Mishra, in the PS for no reason and physically torturing the petitioner and forcing him to execute an agreement for providing a house and 50% of his salary to his wife. The Hon'ble High Court of Orissa disposed of the said writ petition on 9-12-2013 directing the petitioner to file one petition before the Commission which the Commission shall consider and dispose of in accordance with law.

Pursuant to such direction of the Hon'ble Court, the petitioner filed a fresh petition stating therein some new facts that on 14-12-2013 he was arrested by the IIC, Kabisuryanagar PS and was forwarded to the Court on 15-12-2013 and he was bailed out by the Court on 27-12-2013. He further alleges that when the DIG of Police, Southern Range, Berhampur directed the IIC, Kabisuryanagar PS to appear before him for the enquiry, thereafter the said IIC, Kabisuryanagar PS arrested Nirupama Mishra, the wife of the petitioner and forwarded her to Court. On 8-1-2014 he along with Nirupama Mishra and IIC, Kabisuryanagar PS appeared before the DIG of Police, Southern Range, Berhampur, but that enquiry was not impartial and the



petitioner stated in his petition dated 9-1-2014 as to how Nirupama Mishra, having gained over by the IIC, Kabisuryanagar PS, subjected him and his parents to torture and how Nirupama Mishra managed to forcible possess his dwelling house and got it registered in her name through his mother. Accordingly, he had requested this Commission to give him justice and to return back his dwelling house and all other household articles.

The Commission on receipt of the said petitions directed the DIG of Police, Southern Range, Berhampur to enquire into the matter. Perused the report so furnished by the DIG of Police, Southern Range, Berhampur. It is intimated by the DIG of Police that he enquired into the matter in his office at Berhampur on 8-1-2014 which was attended by the petitioner, Bhagaban Mishra, his wife Nirupama Mishra, father of the petitioner Ramachandra Mishra, Narayan Prasad Mishra, Reporter of Odia daily newspaper 'Pragatibadi', Laxmi Narayan Sarangi, brother-in-law of the petitioner and Sri S.L.K. Prasad, IIC, Kabisuryanagar PS. It is reported that after examining all the witnesses and analysing the entire materials, it came to light that when the torture on Smt. Nirupama Mishra by her husband Bhagaban Mishra continued, on the report of Nirupama Mishra, Kabisuryanagar PS case No.216 dated 14-12-2013 was registered under Sections 498(A), 323, 506 of the IPC read with Section 34 of the IPC as well as under Section 4 of the Dowry Prohibition Act and during investigation since prima facie evidence was well established against the petitioner, he was arrested and forwarded to Court on 15-12-2013. Sri Bhagaban Mishra came out on bail on 28-12-2013. The said case is under investigation. It also transpires from the report of the DIG of Police that the petitioner had filed civil proceeding No.165/2012 seeking dissolution of his marriage in the Court of Judge, Family Court, Berhampur which is subjudice. Similarly, Nirupama Mishra, the estranged wife of the petitioner, also filed a case against her husband in the Court of SDJM, Bhadrak vide Misc. Case No.474/2012.

The aforementioned admitted facts clearly go to show that much prior to registration of Kabisuryanagar PS case No.216/2013 and Kabisuryanagar PS case No.217/2013, the petitioner as well as his wife were fighting out their matrimonial dispute in different Courts. The petitioner also filed a photocopy of the order of the Hon'ble High Court of Orissa in TRP (Criminal) No.60/2013 dated 25-11-2013, where the Hon'ble High Court of Orissa in Misc. Case No.67/2013 arising out of TRP (Criminal) No.60/2013 had stayed further proceedings in Misc. Case No.474/2012 pending in the Court of the learned SDJM, Bhadrak. Photocopy of the petition filed by Smt. Nirupama Mishra and her two minor children in Misc. Case No.474/2012 shows that the petitioners had filed the said case claiming maintenance from the opposite party, namely the present petitioner. The said criminal Misc. Case No.474/2012 was filed in the Court of SDJM, Bhadrak on 25-6-2012 in which notice was also issued on that day to the opposite party, namely the present petitioner. The CP No.165/2012 was filed under Section 13 of the Hindu Marriage Act by the petitioner in the Court of Judge, Family Court, Berhampur on 10-7-2012, which is evident from the photocopy of the said petition. It is also ascertained from the SP, Ganjam that Kabisuryanagar PS case No.216/2013 has ended in submission of charge-sheet on 28-2-2014 and Kabisuryanagar PS case No.217/2013 has also ended in submission of charge-sheet on completion of investigation on 30-1-2014. Thus, with the submission of charge-sheet both the cases are pending in the Court of JMFC, Kodala.

In view of these admitted facts, the only point which require consideration as to whether the IIC, Kabisuryanagar PS followed the procedure prescribed in law with regard to the arrest of the accused persons in Kabisuryanagar PS case No.216 and 217 of 2013. Admittedly, Kabisuryanagar PS case No.216/2013 was filed by Nirupama Mishra, the wife, against her husband alleging dowry torture. On the basis of the said FIR, according to the enquiry of the DIG of Police, the



petitioner was arrested and forwarded to Court on 15-12-2013. That case was registered under Sections 498(A), 323, 506 read with Section 34 of the IPC as well as under Section 4 of the Dowry Prohibition Act. Kabisuryanagar PS case No.217/2013 was registered under Sections 294, 506 and 342 of the IPC against Nirupama Mishra in which case she was arrested on 3-1-2013 and was forwarded to the Court on the same day.

Sections 294, 342 and 506(I) of the IPC are all bailable in nature. Section 294 of the IPC prescribes punishment for three months or fine or both. Section 342 of the IPC is punishable with imprisonment for one year or fine of Rs.1000/- or both. Section 506 of the IPC shows that if it is a case of simple criminal intimidation, imprisonment is for two years or fine or both and the same is bailable. Part-II of Section 506 of the IPC shows that if threat be to cause death or grievous assault etc., the same is punishable with imprisonment for seven years or fine or both. Section 498(A) of the IPC prescribes imprisonment for three years or fine. Section 323 of the IPC is punishable with imprisonment for one year or fine of Rs.1000/- or both. The said offence is bailable in nature and Section 4 of the Dowry Prohibition Act is bailable in nature.

Admittedly, both the Police cases were registered by Kabisuryanagar Police Station much after the civil proceeding was filed by the petitioner for dissolution of his marriage with his wife, namely Nirupama Mishra and similarly, Nirupama Mishra and her children filed a case in the Court of SDJM, Bhadrak claiming maintenance from Bhagaban Mishra, the present petitioner. The DIG of Police, Southern Range, Berhampur in his report admits that Bhagaban Mishra was summoned to Kabisuryanagar PS on the report of his wife Nirupama Mishra and when that related to a matrimonial discord for amicable settlement of the same by way of counselling. When the counselling failed and the torture on Nirupama Mishra by Bhagaban Mishra continued, Kabisuryanagar PS case No.216/2013 was registered against the present

petitioner under Sections 498(A), 323, 506 read with Section 34 of the IPC as well as under Section 4 of the Dowry Prohibition Act. The father of the petitioner, namely Ramachandra Mishra, stated before the DIG of Police during his enquiry that Bhagaban Mishra was never assaulted in the Police Station, but the IIC, Kabisuryanagar PS only shouted at him which the petitioner perceived as an assault and the allegations made against the IIC, Kabisuryanagar PS prima facie appeared to be a pressure tactics on Police to proceed against Nirupama Mishra.

With regard to arrest of a person where the maximum punishment of imprisonment which is seven years or upto seven years or fine, position of law is very clear. It seems that the legislators when confronted with the enormous problem of misuse of power of arrest by Police brought in amendment to the Code of Criminal Procedure, i.e. by amending Section 41 and introduced clause 'a' and 'b' to Section 41 of the CrPC by Amending Act of 5 of 2009 which came into force with effect from 1-11-2010. It is the general perception that arrest brings humiliation, curtails freedom and casts scars forever. The makers of law know it so also the Police. The need for caution in exercising the drastic power of arrest has been emphasised time and again by Courts, but did not yield the desired result. The attitude of the Police is to arrest first and then proceed with the rest of the investigation. In the strongest words, it has been described that power to arrest has become a handy tool to those officers, who lacks sensitivity or act with oblique motive. Therefore, it was decided to bring in amendment to the CrPC which prescribes that no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. Section 41(1)(b) of the CrPC, 1973 as amended reads as follows:

"41. When Police may arrest without warrant. - (1) Any Police officer may without an order from a Magistrate and without a warrant, arrest any person -



- (a) x x x x x
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-
- (i) x x x x x
- (ii) the Police officer is satisfied that such arrest is necessary:-
- (a) to prevent such person from committing any further offence; or
- (b) for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear; or
- (c) tampering with such evidence in any manner; or
- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police officer; or
- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the Police officer shall record while making such arrest, his reasons in writing: Provided that a Police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-Section, record the reasons in writing for not making the arrest."

In a very recent judgment, the Apex Court in Armesh Kumar vrs. State of Bihar and another, while dealing with such a similar matter, laid much emphasis on the point that Police officers should not arrest accused unnecessarily and they should scrupulously follow the provisions of Section 41(1)(a) and (b) of the CrPC in a routine manner. A Police

officer before arresting a person accused of an offence with imprisonment for a term which may be less than seven years or which extend to seven years with or without fine has to be satisfied that:

"such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the Police officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured."

The arresting officer is duty bound to record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid while making such arrest. In pith and substance, the Police officer before arrest must put a question to himself why arrest? Is it really required? What purpose it will serve? What object it will achieve? In fine, before arrest first the Police officers should have reason to believe on the basis of information and material that the accused has committed the offence and that ingredient of sub-clause 'a' to 'e' of clause-1 of Section 41 of the CrPC has been complied with. Similarly, provision of Section 41-A of the CrPC is also sacrosanct which is inserted by Section 6 of the CrPC (Amendment) Act, 2008, i.e. Act 5 of 2009. Section 41-A of the CrPC reads as follows:

"41-A. Notice of appearance before Police officer:

- (1) The Police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a



- cognizable offence, to appear before him or at such other place as may be specified in the notice.
- (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
 - (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the Police officer is of the opinion that he ought to be arrested.
 - (4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

The aforesaid provisions of law make clear that in all cases where arrest is not required under Section 41(1) of the CrPC, the Police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the Police officer and further mandates that if such accused complies with the term of the notice, he shall not be arrested unless for reasons to be recorded, the Police officer is of the opinion that arrest is necessary. This point was also earlier decided by the Apex Court in the case of Joginder Kumar vrs. State of Uttar Pradesh as reported in AIR 1994, Supreme Court at Page-1349.

After scanning the provisions of law and the admitted facts, the Commission is constrained to arrive at the irresistible conclusion that whatever the reasons may be, the then IIC, Kabisuryanagar PS, namely Sri S.L.K. Prasad, did not comply with mandate of law, especially when the parties much prior to the registration of Police cases were fighting out their matrimonial dispute including divorce proceeding and maintenance dispute. The more

serious allegation prima facie is that Police initiated the counselling when the matter was pending before the Judge, Family Court, Berhampur vide CP Mo.165/2012 and the maintenance case was pending in the Court of SDJM, Bhadrak vide Misc. Case No.474/2012. The petitioner also filed a photocopy of an agreement alleged to have been executed by Bhagaban Mishra in presence of one Ashok Kumar Udgata and Bhagaban Mishra and Nirupama Mishra on 3-9-2013 agreeing therein to pay 50% of his salary towards the maintenance of his wife and for construction of a house.

The Commission in its humble opinion observes that when the matters were subjudice and especially the divorce proceeding was pending in the Court of the Judge, Family Court, Berhampur and the case was posted for reconciliation by order dated 5-9-2013 only Police should have resorted its hands off attitude than to mediate in the matter by calling the parties to the Police Station. The action of the IIC, Kabisuryanagar PS, Sri S.L.K. Prasad is highly deplorable when he arrested a lady charged with bailable offences and forwarded her to Court, which appeared from the report of the DIG of Police, Southern Range, Berhampur. It is also very much astonishing that for the alleged offence like under Sections 294, 506, 342 of the IPC, a lady could be arrested and sent to Court in custody in Kabisuryanagar PS case No.217/2013. Since she is a woman having children and when the offences are bailable in nature, she could have been enlarged on bail by the arresting officer giving a direction or obtaining a bond from her to appear before the nearest Magistrate on a date fixed. Whatever the pressures may be on Police, but it is expected that our Police officers should keep their head straight and proceed in accordance with law and not in derogation of the mandate of law.

Thus, while condemning the action of Kabisuryanagar Police in this case, the Commission recommends the DG & IG of Police, Odisha, Cuttack to proceed against the errant Police officer of Kabisuryanagar



Police Station, namely Sri S.L.K. Prasad, IIC, Kabisuryanagar PS and disciplinary action as would be deemed fit and proper be taken which would be eye opener for other Police officers and would act as deterrent from committing such acts of highhandedness. Since all the matters are subjudice in appropriate Courts of law, the Commission refrains from expressing any other thing in the matter.

Before parting with the case, the Commission observe that it has no jurisdiction to restore possession of the house along with other household articles to the petitioner as alleged to have been taken away by his wife Nirupama Mishra as that order can only be passed by a competent Court of law.

With the aforesaid observations, the present proceeding stands disposed of.

OHRC Case No. 3225 of 2013

Sri Prabir Kumar Das, Advocate,
Orissa High Court, Cuttack
.....Petitioner.

Order Date :- 16-02-2015

The case is based on the complaint filed by Sri Prabir Kumar Das, Advocate, Orissa High Court and Human Rights Activist. He has alleged that a tribal girl student namely Anita Kuda aged about 11 years, a student of Class-V staying in the 100 seated S.T. Girls Hostel of Thana Colony Primary School, Kolab Nagar in the district of Koraput died due to the negligence of the School Authorities. The petition was sent to the Collector, Koraput, who got the matter enquired into and submitted a report vide his letter No.823 dt.10.3.14.

The petitioner appeared before the Commission on 4.12.14 and made an presentation highlighting his argument that the death of the student could have been prevented had the School authorities taken timely action.

The facts of the case as reported by the Collector, Koraput is that on 17.8.2013 the deceased girl student had complained of fever and the Sikhya Sahayika ,Smt.Sasmita Mishra gave her a paracetamol tablet . On 20.8.2013

once again she fell sick and by 9 P.M. she was in a serious state with clenched teeth and stiffness of her hands .She was shifted to the nearest PHC at Kolab Nagar, where she breathed her last within minutes of her arrival there. The Post-Mortem Report appended to the report of the Collector shows that the cause of death was due to severe anemia and the possibility of the death as a result of complication arising out of chronic malaria /recurrent malaria a natural disease, cannot be ruled out.

The question which needs to be examined now is whether the death of the poor tribal girl could have been prevented by timely action of the school authorities. We examined the report of the Collector, Koraput which is based on the enquiry conducted by the Asst. District Welfare Officer, Koraput .The report clearly states that late Anita was chronically ill and very often her guardians wanted to take her home for treatment. However, the Headmaster did not allow the student to go home in order to avoid her absenteeism. The report has further acknowledged that the Headmaster failed in health counseling of inmates due to inadequate knowledge and lack of proper attention towards the inmates. When the inmate of the hostel was chronically ill, any prudent Headmaster should have sent her for medical examination, particularly, because Kolab Nagar where the hostel is situated is not far from the District Headquarters Hospital. Not only did he not send her for her medical examination to the hospital of his own volition, he did not allow the student to be taken for treatment by her guardians when they approached him for the same. This betrays complete lack of responsibility of the Headmaster which led to the death of the girl student. It should be clearly borne in mind that small children are being left to the care of the School Authorities in Government run hostels and they have no wherewithal to obtain any medical assistance of their own. It is, therefore, the onerous responsibility of such authorities to ensure immediate medical attention whenever any inmate falls sick. It is



also his duty to take periodic preventive measures in order to preserve and protect the health and hygienic standard of such hostels. In the instant case the Headmaster of the school has utterly failed to discharge such responsibilities and he is liable for suitable disciplinary action. Since the death of the child was due to an act of omission by a functionary of the State, we recommend payment of compensation of Rs.2,00,000/- (Rupees Two Lakhs) to the parents of the deceased student by the SC & ST Development Department. The Commissioner -Cum-Secretary, SC & ST Development Department should also take steps to issue guidelines to the Headmasters of the Schools, where a large number of students stay in hostels, as to the protocol to be followed in case of sickness of a child and the record to be maintained in such cases. The compliance report should reach the Commission within 30 days.

Case No 3432 of 2014

Sri Prabir Kumar Das, Advocate

.....Petitioner

Order Date:-03-03-2015

The case is based on the petition filed by Shri Prabir Kumar Das, Advocate, Orissa High Court and Human Rights Activist. His petition dt. 21.10.2014 has brought to our notice the sad case of death of Class-VI student named Tilottama Patra of Nimakhandipentha Upper Primary School in Digapahandi Block of Ganjam District on 17.10.2014. It is stated that Miss Patra was a student of Class-VI. On 16.10.2014 she had gone to the toilet which was under construction during the recess period of the school when the wall of the toilet suddenly collapsed and she sustained injuries on her head and chest. She was taken to the ICU of the MKCG Medical College & Hospital, Berhampur, where she breathed her last on the night of 16/17.10.2014. The copy of the petition was sent to the Commissioner-cum-Secretary School and Mass Education Department, Govt. of Odisha and Collector & D.M., Ganjam. Reports have been received

from both the authorities and we have perused the same.

There is no discrepancy in the two reports one from the Commissioner-cum-Secretary School and Mass Education, Govt. of Odisha and the other from the Collector and D.M., Ganjam. Both the reports confirm that Miss Patra was a student of Class-VI of Nimakhandipentha Upper Primary School under Digakhandi Block and had gone to ease herself in the girls' toilet which was under construction by the School Managing Committee. The project had been sanctioned for a sum of Rs. 70,000/- on 26.12.2012. The construction work of the girls' toilet was taken up by the then Headmaster of the School, Sri Krishna Chandra Mohapatra, and it remained incomplete until 01.03.2014 when Sri Mohapatra was relieved on transfer and one Sri Jatia Mallick joined as Headmaster. The brick wall of the toilet was constructed up to the height of 5' 4" and the plastering of the wall was not done. Wooden members were kept inside the holes of the wall. The construction did not progress even after the joining of the new Headmaster. The unfortunate incident took place on 16.10.2014 when the deceased girl reportedly pulled one of the wooden members as a result of which the brick wall gave way and collapsed on her. The construction work has reportedly now been completed after the unfortunate incident. The School and Mass Education Department has initiated disciplinary action against Sri Jatia Mallick, the Headmaster of the School as well as Sri Krishna Chandra Mohapatra, the Ex-Headmaster of the School. After the unfortunate incident, the father of the deceased was paid Rs. 10,000/- from District Red Cross Fund on 17.10.2014 and subsequently he has been paid Rs. 1,00,000/- from Chief Minister's Relief Fund vide Cheque No. 040343 dt. 29.10.2014.

The above reports leave no doubt in our mind that the death of the unfortunate child was squarely due to the negligence and irresponsibility of the School Authorities. Construction of a toilet costing Rs. 70,000/- was not a completed feat of engineering.



That it remained incomplete for years together shows deplorable callousness on the part of the successive Headmasters of the School who have, in their wisdom, undertaken the responsibility to take up such construction which is not their primary duty. If, for some unavoidable reason, construction of the toilet had to be held up, the least that the School Authorities could have done was to bar entry of children into the half constructed room where layers of bricks were precariously perched. That such a structure did not attract the attention of supervising officers like the Block Level Education Officer or the sanctioning authority like the DPC, SSA speaks volumes about poor quality of supervision of School by functionaries of the School and Mass Education Department, who have been entrusted with such onerous responsibility. It is indeed tragic that it is only the death of a student which finally prompted the School

Authorities to wake up and complete construction of toilet in quick time. We are firmly of the view that the incident was entirely avoidable and could have been prevented if the concerned authorities had discharged their duties with due diligence. We, therefore, feel that this is a fit case for award of compensation for the omission and commission of the functionaries of the State. We accordingly, recommend compensation of Rs. 2,00,000/- (Rupees two lakhs only) to the father of the deceased girl over and above the amount of Rs. 1,10,000/- which was already been paid out of the Chief Minister's Relief Fund and District Red Cross Fund. The above recommendation be sent to the Commissioner-cum-Secretary School and Mass Education Department, Govt. of Odisha. She is requested to send a compliance report six weeks hence.





CHAPTER - 5

COMPENSATION AWARDED DURING 2014-15

As mandated under section 18 (a) (i), the Commission recommended Compensation/relief to the family members of the victims to be paid by different Government authorities. The details of the Compensation/relief awarded during 2014-15 are indicated below:-

Sl No	Case No	Name of the Petitioner Suo-Motu	Date of Award	Award Amount	Cause of Violation	Compliance by Public Authority
1.	2027/12	P.K Das	28-10-14	Rs. 3,00,000/-	To be paid to Minati Sethi, mother of the deceased Rakesh Sethi due to collapse of boundary wall of Siko Primary school in Khurda district.	Amount paid by Block Education Officer, Begunia on 13-08-2015
2.	1658/13	R.M Patel	01-11-14	Rs. 20,000/-	Due to Police Torture by IIC, Kuchinda PS, in the district of Sambalpur	Amount paid on 30-03-2015 by the IIC, Kuchinda PS, Sambalpur
3.	2586/13	P.K Das	27-11-14	Rs. 3,00,000/-	To be paid to parents of the deceased OM Pratik Rana due to collapse of back rest of cement chair in the premises of Govt. Primary School at Brahmanipali of Charmal PS of Sambalpur district.	Amount paid on 23-03-2015.
4.	3191/13	R. Mahanandia	28-11-14	Rs. 2,00,000/-	Drowned in well for negligence of a charitable institution.	Amount Paid on 31-03-2015 by Tahasildar, Boudh
5.	3129/14	P.K Das	22-12-14	Rs. 3,00,000/-	Electrocution during school hour to be paid to next keen of the deceased girl student of Patimunda Govt. U.P School under Balasore District.	Amount Paid by Collector, Balasore on 21-03-2015
6.	3127/14	P.K Das	19-01-15	Rs. 2,00,000/-	To be paid to next keen of the deceased blind student Bhagirathi Das due to drowning in a pond inside the school premises of Utkal Balasram, Cuttack.	Amount Paid by the Tahasildar, Dhamnagar on 31-03-2015



Sl No	Case No	Name of the Petitioner Suo-Motu	Date of Award	Award Amount	Cause of Violation	Compliance by Public Authority
7.	2388/14	P.K Das	22-01-15	Rs. 3,00,000/-	To be paid to parents of the deceased Jitendra Kishan due to fall in a open septic tank of Balaram High School under Kuchinda sub-division.	Amount Paid Rs.2,00,000/- on 10-03-2015 and rest Rs.1,00,000/- paid by DWO, Sambalpur vide bill no. 176/2015-16.
8.	1710/13	P.K Acharya	12-02-15	Rs.50,000/-	Police Torture by IIC Mahila PS, Sambalpur	Amount Paid by S.P, Sambalpur on 06-06-2015.
9.	3225/13	P.K Das	16-02-15	Rs.2,00,000/-	To be paid to parents of the tribal girl due to negligence of school authorities of Thana Colony Primary School, Kolab Nagar in the district of Koraput.	Amount not yet paid by the School and Mass Education Department and now the case is fixed to 29-07-2016.
10.	2630/14	P.K Das	18-02-15	Rs.5,00,000/-	To be paid to Sudam Raita, F/o- Late Sunita Raita due to non-release of stipend amount by ST/SC Development Department.	Amount deposited on 07-11-2016 in the S.B Account by the DWO, Gajapati district.
11.	3432/14	P.K Das	03-03-15	Rs. 2,00,000/-	To be paid to the father of the deceased girl Tilotama Patro of Nimakhandipentha UP School under Digapahandi Block in Ganjam District. due to collapse of toilet wall.	Amount paid on 18-01-2016 by District Education Officer, Ganjam to Smt. K.Rita Patro, Mother of the deceased Tilotama Patro.
12.	2025/14 2024/14	B.P Kanungo	20-03-15	Rs. 3,00,000/- Rs. 1,50,000/- Rs. 25,000/-	To the helpless widow of late Basanta Pradhan due to torture by Bolangir Police. To MD. Bilal Ansari due to police torture by Bolangir Police To Md. Fazal due to police torture by Bolangir Police.	Amount has already been paid by the Government of Odisha, Home Department on 22-05-2015.



CHAPTER - 6

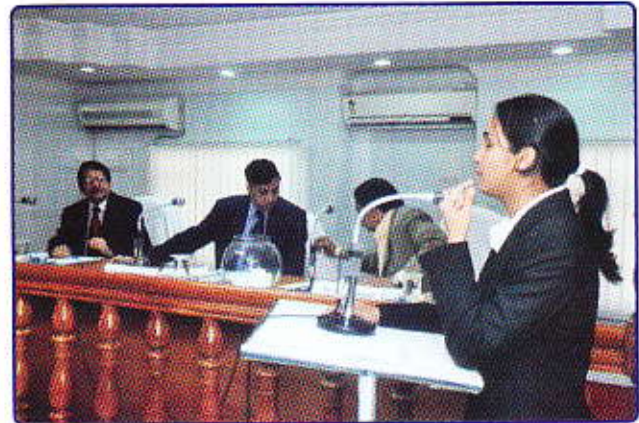
COMMISSION OBSERVES WORLD HUMAN RIGHTS DAY

1. Commission observed the World Human Rights Day on 10th of December, 2014. His Excellency the Governor of Odisha Dr. S.C Jamir was the Chief Guest of the occasion and Justice A.K Patnaik, Former Judge of Hon'ble Supreme Court of India was the Chief Speaker. A debate competition among law students of different colleges and University on the topic "Do Human Rights trigger Social Justice" was conducted on the occasion and

best performers was awarded prizes on the day. The "Peoples Beacon" the Annual Magazine of the Commission released on the occasion by the Chief Guest His Excellency the Governor of Odisha.

A seminar on "Human Rights and Social Justice" was also organized in association with the IIPA, Odisha Regional Branch on 09-12-2014 on the occasion.

Debate Competition conducted by OHRC on 7.12.2014





Wheel Chair donated by OHRC to handicapped persons on 10.12.2014



Observance of World Human Rights Day at Jaydev Bhawan on 10.12.2014





CHAPTER - 7

DETAILS OF SANCTIONED AMOUNT TOWARDS GRANTS / FINANCIAL ASSISTANCE TO DISTRICTS / INSTITUTIONS FOR THE YEAR 2014-15

Information, Education and Communication Activities in the State.

During the year 2014-15, Odisha Human Rights Commission, Bhubaneswar had taken

the initiative of creating awareness about human rights issues and subjects among different Districts & Institutions by releasing grants as mentioned below :

Sl. No.	Name of the Districts / Institutions	Amount released
1	S.P, Koraput	Rs.20,000/-
2	S.P, Mayurbhanj	Rs.20,000/-
3	S.P, Rourkela	Rs.20,000/-
4	S.P, Angul	Rs.17,500/
5	S.P, Balasore	Rs.17,500/
6	S.P, Bolangir	Rs.17,500/
7	S.P, Sambalpur	Rs.17,500/-
8	Indian Institute of Public Administration, Unit-1, Bhubaneswar	Rs. 20,000/-
	Total	Rs, 1,50,000/-

Seminar organized on 09-12-2014 by IIPA

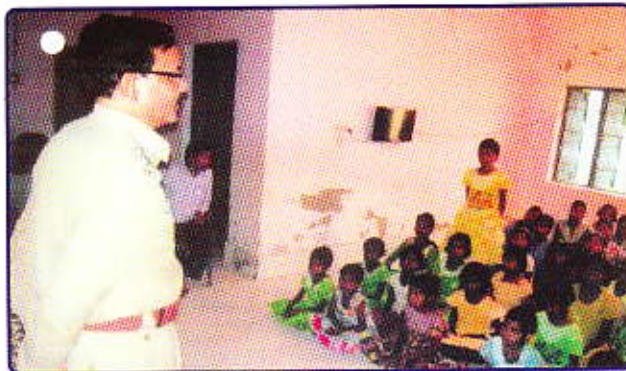




Human Rights Awareness Programme conducted by S.P, Bolangir



Human Rights Awareness Programme conducted by S.P, Mayurbhanj



CAMP COURT OF THE COMMISSON ON 22-01-2015 AT SAMBALPUR





CHAPTER - 8

BUDGET & FINANCE OF THE ODISHA HUMAN RIGHTS COMMISSION

- (i) (a) Government of Odisha provided a sum of Rs. 2, 32, 43,000/- in the State Budget under "Demand No.4-2014-Administration of Justice-Non Plan-103-Special Court-1348-State Human Rights Commission Establishment" to meet the expenditure of Odisha Human rights Commission for the Financial Year 2014-15.
- (b) Government of Odisha provided a sum of Rs. 20, 00,000/- in the State-Plan Budget under "Demand No-4-2014-Administration of Justice-State Plan-State Sector- 103-Special Court-1348-State Human Rights Commission Establishment" to meet the expenditure of Odisha Human Rights Commission for the Financial Year 2014-15
- (c) Government of Odisha also provided Rs. 30,00,000/- in the State Plan Budget under " Demand No-4-4059-Capital Outlay on Public works-State Plan-State Sector-01-Office Building -051-Constructions-2212-Construction of Building of Law Department-37114-Public Works" to meet the expenditure of improvement of the Office of Odisha Human Rights Commission for the Financial Year 2014-15.
- (ii) (a) The savings available under some Units of Expenditure under Non Plan were utilized by way of re-appropriation with the concurrence of Finance Department of the State Government to meet the requirement on other units of expenditure. A total expenditure of Rs. 1, 87, 30,000/- was made which was 80.6 % of the Budgetary provision of the year 2014-15.
- (b) The total Budget provision of Rs. 20, 00,000/- under State Plan was made and the said provision was spent completely in the year 2014-15.
- (iii) Unit wise provision made in the State Budget, amount augmented by way of re-appropriation, the expenditure made and amount surrendered under Non-Plan and State Plan are indicated in the statement at Annexure V & VI respectively.





CHAPTER - 9

RIGHT TO INFORMATION ACT, 2005

Smt. Shyamali Mohapatra, Deputy Secretary and Sri Asish Kumar Majhi, Section Officer are working as the Public Information Officer and Asst. Public Information Officer respectively of the Commission to take care of the applications received from the public & to furnish the requisite information to them under the Right to Information Act, 2005.

Sri Benudhar Behera, OAS (SAG), Secretary is working as the Appellate Authority of this Commission in this regard.

The details of applications and appeals received under the Act during the year 2014-15 are indicated below:

Details of RTI Applications

1.	No. of Application Received	78
2.	No. of Application disposed of within 30 days	66
3.	No. of Application pending but disposed of beyond one month	5
4.	No. of Application pending but are within one month	1
5.	No. of Application transferred to other Departments/organization	6

Details of 1st Appeal

1.	No. of Appeal received by the Appellate Authority	4
2.	No. of such Appeal disposed of within one month	4
3.	No. of Appeal pending	Nil

Details of 2nd Appeal with S.I.C.

1.	No. of notices received from S.I.C.	1
2.	No. of hearings attended by PIO/Appellate Authority	1
3.	No. of hearing in respect of which compliance submitted to SIC	Nil
4.	No. of hearing in respect of which compliance not submitted to SIC	Nil





ANNEXURE- I

Occupancy Position of OHRC during the year 2014-15

Sl.No	Post/Designation	Sanctioned	In Position	Vacancy
1	Chairperson	1	-	1
2	Member	2	1	1
3	Secretary	1	1	Nil
4	Director Investigation	1	1	Nil
5	Registrar	1	-	1
6	Joint Secretary	1	1(Deputy Secretary)	Nil
7	Addl. Supdt. of Police	1	1	Nil
8	Under Secretary	1	-	1
9	Dy. Supdt. of Police	2	2	Nil
10	Private Secretary	2	-	2
11	Inspector of Police	2	2	Nil
12	Section Officer	2	2	Nil
13	Personal Assistant	6	3	3
14	Senior Assistant	2	2	Nil
15	Accountant-cum-Cashier	1	1	Nil
16	Senior Stenographer	2	1	1
17	Junior Stenographer	3	2	1
18	Computer Operator	1	-	1
19	Junior Asst.	2	1	1
20	Despatcher-cum- Typist	2	2	Nil
21	Constable	3	3	Nil
22	Driver	4	4	Nil
23	Peon / Class- IV	8	8	Nil
	Total	51	38	13


ANNEXURE-II
Subject-wise classification of cases registered & disposed of during the year 2014-15

Sl.No.	Classification of cases	No. of cases
1.	Children	25
2.	Health	42
3.	Jail	52
4.	Anti-Social Activities	65
5.	Labour	55
6.	Minorities ST/SC	-
7.	Physically- handicapped	09
8.	Police, Paramilitary force	805
9.	Pollution	15
10.	Religion/ Community	30
11.	Service Matter	86
12.	Women	918
13.	Miscellaneous	2532
	Total no. of cases received during the year	4634
1.	Total number of cases dismissed in limine	1840
2.	Total number of cases taken up for hearing	2794
3.	Total number of cases pending from previous year	6656
4.	Total number of cases pending for disposal during the year	9450
5.	Total number of cases disposed of on hearing	1041
	Total no. of cases pending at the end of the year	8409

**ANNEXURE-III****Classification of cases taken up Suo-motu during the year 2014-15**

Sl.No.	Classification of cases	No. of cases
1.	Children	5
2.	Health	11
3.	Jail	52
4.	Anti-Social Activities	-
5.	Labour	-
6.	Minorities ST/SC	-
7.	Physically- handicapped	-
8.	Police, Paramilitary force	4
9.	Pollution	-
10.	Religion/ Community	-
11.	Service Matter	1
12.	Women	5
13.	Miscellaneous	8
	Total	86

ANNEXURE-IV**Subject-wise classification of cases disposed of during the year 2014-15**

Sl.No.	Classification of cases	No. of cases
1.	Children	8
2.	Health	6
3.	Jail	1
4.	Anti-Social Activities	5
5.	Labour	6
6.	Minorities SC/ST	-
7.	Physically Handicapped	-
8.	Police, Paramilitary Force	34
9.	Pollution	5
10.	Religion/Community	5
11.	Service Matter	13
12.	Women	236
13.	Miscellaneous	722
	Total	1041



ANNEXURE-V

**SURRENDER STATEMENT OF ODISHA HUMAN RIGHTS COMMISSION UNDER DEMAND NO.4-2014-
ADMINISTRATION OF JUSTICE-NON-PLAN-103-SPECIAL COURT-1348-FOR THE YEAR 2014-15**

MAJOR HEAD-2014-ADMINISTRATION OF JUSTICE-103-SPECIAL COURT

MAJOR HEAD	SUB-MAJOR HEAD	C.NO	DETAILS DESCRIPTION	B.E. FOR 2014-15(Trs.)	SUPPLEMENTARY/RE-APPROPRIATION FOR 2014-15(Trs.)	TOTAL PROVISION FOR 2014-15(Trs.)	DETAILS OF SURRENDER FOR THE YEAR 2014-15 (Trs.)	TOTAL EXPENDITURE FOR THE YEAR 2014-15(Trs.)	Reasons for surrender
136	1348	01003	PAY	72,20		72,20	17,30	54,90	Due to non filling up of the posts of Hon'ble Chairperson, Registrar, Private Secretaries and P.As. in the office of OHRC and non receipt of bills.
855	1348	01003	ARREAR PAY	-		-	-	-	
147	1348	01003	DP	-		-	-	-	
156	1348	01003	DA	75,81	-36(R) -1,58(R) -15(R)	73,72	12,21	61,51	
403	1348	01003	HRA	3,00	+36(R) +15(R)	3,51	9	3,42	
516	1348	01003	RCM	3,00		3,00	1,41	1,59	
523	1348	01003	OA	10,20		10,20	3,48	6,72	
	1348	01004	SALARIES FOR CONSOLIDATED PAY POSTS	17,50	+1,58(R)	19,08	NIL	19,08	
000	1348	06001	TE	5,45		5,45	1,57	3,88	
000	1348	07001	LTC	4,50		4,50	7	4,43	
074	1348	08001	ELECTRICITY DUES	7,80		7,80	1,55	6,25	
149	1348	08001	WATER CHARGE	1		1	1	NIL	
154	1348	08001	TEL.CHARGE	7,86		7,86	6,43	1,43	
397	1348	08001	MOTOR VEHICLE	10,00		10,00	NIL	10,00	
506	1348	08001	OTHER CONTINGENCIES	8,00		8,00	16	7,84	

Cont.....



MAJOR HEAD	SUB-MAJOR HEAD	C.NO	DETAILS DESCRIPTION	B.E. FOR 2014-15(Trs.)	SUPPLEMENTARY/RE-APPROPRIATION FOR 2014-15(Trs.)	TOTAL PROVISION FOR 2014-15(Trs.)	DETAILS OF SURRENDER FOR THE YEAR 2014-15 (Trs.)	TOTAL EXPENDITURE FOR THE YEAR 2014-15(Trs.)	Reasons for surrender
000	1348	78118	UP-GRADATION OF COMPUTER FACILITY	1,00		1,00	8	92	
000	1348	78012	COMPUTER CONSUMABLES	50		50	2	48	
000	1348	33011	SPARE&SERVICES	50		50	7	43	
000	1348	12001	CONSULTING CHARGES	60		60	58	2	
000	1348	12006	PAYMENT FOR PROFESSIONAL & SPECIAL SERVICES	3,00		3,00	10	2,90	
000	1348	41048	GRANTS	-		-	-	-	
918	1348	-	GRANT-IN-AID GENERAL (NON-SALARY)	1,50		1,50	NIL	1,50	
			TOTAL	2,32,43	0	2,32,43	45,13	1,87,30	
2052-0808-LAW DEPTT.			FESTIVAL ADVANCE			90	NIL	90	



ANNEXURE-VI

SURRENDER STATEMENT OF ODISHA HUMAN RIGHTS COMMISSION UNDER DEMAND NO.4-2014-ADMINISTRATION OF JUSTICE-STATE PLAN-STATE SECTOR-103-SPECIAL COURT-1348-FOR THE YEAR 2014-15 MAJOR HEAD-2014-ADMINISTRATION OF JUSTICE-103-SPECIAL COURT

MAJOR HEAD	SUB-MAJOR HEAD	C.NO	DETAILS DESCRIPTION	B.E. FOR 2014-15(Trs.)	SUPPLEMENTARY/-RE-APPROPRIATION FOR 2014-15(Trs.)	TOTAL PROVISION FOR 2014-15(Trs.)	DETAILS OF SURRENDER FOR THE YEAR 2014-15 (Trs.)	TOTAL EXPENDITURE FOR THE YEAR 2014-15(Trs.)	Reasons for surrender
506	1348	08001	OTHER CONTINGENCIES	20,00		20,00	NIL	20,00	
			TOTAL	20,00		20,00	NIL	20,00	



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