

(2016) 15 Supreme Court Cases 525 : (2016) 4 Supreme Court Cases (Cri) 695 : 2016 SCC OnLine SC 814

In the Supreme Court of India

(BEFORE DR A.K. SIKRI AND R.K. AGRAWAL, JJ.)

ANITA THAKUR AND OTHERS . . Appellants;

Versus

GOVERNMENT OF JAMMU AND KASHMIR AND OTHERS . . Respondents.

Writ Petition (Crl.) No. 118 of 2007[±], decided on August 12, 2016

A. Constitution of India — Arts. 21, 300, 32 and 226 — Public law torts — Tortious liability of Government — Police excesses/brutality — Fixing tortious liability on State when committed by employees in course of their employment — Principles summarised

— Held, (i) police misconduct resulting in violation of fundamental rights can lead to liability under public law apart from criminal law and tort law; (ii) pecuniary compensation can be awarded for such violation; (iii) State is liable to pay compensation not individual guilty police officials; (iv) Standard of proof for proving accountability of State for police brutality, torture and custodial violence is very high; and (v) doctrine of sovereign immunity not applicable in cases relating to violation of fundamental rights and hence cannot be used as defence in public law

(Para 18)

B. Constitution of India — Arts. 21, 32, 226, 14, 19 and 21 — Public law torts — Compensation — Police using excessive force even after bringing mob under control — Fundamental rights stood violated in present case — Fastening tortious liability on State, compensation to victims of excessive force awarded

— Held, petitioners turned peaceful protest into violent one and became unruly — Even police continued using excessive force beyond limits even after controlling mob — Police virtually made petitioners immobile — It is clear that police misused their powers — To that extent, fundamental rights of petitioners stand violated — Hence, compensation can be awarded to petitioners — Thus, Petitioner 1 was awarded with compensation of Rs 2,00,000 while Petitioners 2 and 3 were awarded with Rs 1,00,000 — Respondents directed to pay compensation within two months

(Paras 11, 18 and 19)

Held :

Initially it was the petitioners/protestors who took the law into their hands by

turning their peaceful agitation into a violent one and in the process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi-charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as

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injuries suffered by these petitioners are concerned, such a situation could clearly be avoided. It is apparent that to that extent, the respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated.

(Para 18)

Saheli v. Commr. of Police, (1990) 1 SCC 422 : 1990 SCC (Cri) 145; *Joginder Kaur v. Punjab State*, 1969 ACJ 28 : 1968 SCC OnLine P&H 247; *State of Rajasthan v. Vidhyawati*, 1962 Supp (2) SCR 989 : AIR 1962 SC 933; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527, *relied on* *State of J&K v. Suram Chand Sharma*, Civil Appeal No. 2948 of 2006, order dated 12-7-2006 (SC); *State of J&K v. Kamal Gorla*, Contempt Petition (C) No. 155 of 2007 in Civil Appeal No. 2948 of 2006, order dated 20-8-2007 (SC); *Anita Thakur v. State of J&K*, WP (Cri) No. 118 of 2007, order dated 1-10-2007 (SC), *cited*

C. Constitution of India — Arts. 19(1)(b), (c), (a) and (d) — Right to assemble and protest/take out protest march/raise slogans/demonstrate — Scope of — Reasonable restrictions can be imposed on freedoms — Administration can use force in controlled and specified manner to disperse such assembly, if it turns out to be unlawful or injurious — However, emphasised Administration needs to act within its limits while exercising its powers


— Held, under Art. 19(1)(a) citizens have freedom of speech — They can raise slogans in peaceful and orderly manner without using offensive language — Under Arts. 19(1)(b) & (c) citizens have right to assemble peacefully without arms — Citizens have right to move freely under Art. 19(1)(d) and can take out peaceful march — Distinguishing feature of democracy is giving space to legitimate dissent — Expression of grievances through direct action or peaceful protest is most cherished and a valuable aspect of political life in India

— However, these rights are subject to reasonable restrictions in interest of sovereignty and integrity of India — There is always possibility that public

assembly may become unlawful – For prevention of any injury or damage, administration and police are permitted to disperse such unlawful assembly and may involve use of force in controlled and specified manner – Legal provisions such as S. 268 IPC and Ss. 129 to 132 and Ss. 143 & 144 CrPC have provided wide array of powers to police including right to use reasonable force to disperse any unlawful assembly and maintain public order – Citizens have fundamental right of speech, assembly and free movement for peaceful protest however reasonable restrictions can be imposed by law – While exercising powers under law, authorities need act within limits of law and cannot indulge in excesses – Criminal Procedure Code, 1973 – Ss. 129 to 132, 143 and 144 – Penal Code, 1860, Ss. 268 and 141

D. Criminal Procedure Code, 1973 – Ss. 129 to 132 – Dispersion of unlawful assembly by use of force – Three essential prerequisites to be followed by Executive Magistrate

– Held, before ordering for use of force to disperse unlawful assembly, Magistrate needs to satisfy himself that: (i) there is an unlawful assembly with object of committing violence or assembly of five or more persons likely

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to cause disturbance to public peace; (ii) Executive Magistrate must order for unlawful assembly to disperse; and (iii) even after such order unlawful assembly does not disperse – Penal Code, 1860, Ss. 268 and 141

Held :

Holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The “right to assemble” is beautifully captured in an eloquent statement that “*an unarmed, peaceful protest procession in the land of ‘salt satyagraha’, fast-unto-death and ‘do or die’ is no jural anathema*”. It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle

for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.

(Para 12)

Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.

(Para 13)

On the other hand, there is always a possibility that a public rally may become unruly, which can mean damage to life and property. This is when a public assembly becomes "unlawful", which is defined in Section 141 of the Penal Code, 1860 (IPC). Under these circumstances, the district administration and the police are permitted to disperse the crowd to prevent injuries or damage. This may entail the use of force in a controlled and specified manner. Section 268 IPC defines "public nuisance" as any act "which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right". Further, Section 143 CrPC empowers an Executive Magistrate to prohibit the repetition or continuation of public nuisances and Section 144 CrPC permits the issuance of directions to members of the public to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray. These legal provisions provided a wide array of powers to the police, including the right to use reasonable force to disperse any unlawful assembly and maintain public order.

(Para 14)

Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become "unlawful". At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put in *Karam Singh*, 1979 SCC OnLine P&H 180 wherein the High Court held that three

prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd: First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Second, an Executive Magistrate should order the assembly to disperse. Third, in spite of such orders, the people do not move away.

(Para 15)

Karam Singh v. Hardayal Singh, 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180, approved

E. Constitution of India – Arts. 19(1)(b), (c), (d) and (a) – Demonstrations, Meetings and Strikes – Trend of growing violence resulting in destruction of public property and attack on policemen – Deprecated – Held, there are all kinds of protests from various sections of society of various kinds – Feelings connected with religion, ethnic, regional language caste and class divisions exploited to incite violence – It is unfortunate that more often than not such protestors destroy public/private property – When police try to control such mob, it violently targets policemen as well – This kind of violent and unruly demonstrations have become part of Indian democracy – Usage of force by police would further aggravate public anger against police – Criminal Procedure Code, 1973 – Ss. 129 to 132, 143 and 144 – Penal Code, 1860, Ss. 268 and 141

(Para 16)

F. Police – Police Atrocities/Police Excesses – Use of unnecessary force in maintenance of law and order by police – Tendency of violating human rights – Police need special training to deal with such violent challenges – Emphasised

– Held, though restoration of law and order is essential, but force beyond what is required is not to be used – Many time situations turn ugly or go out of control because of lack of sufficient training to police personnel – Special training is required for policemen to deal with these kinds of situations – There are many documents prohibiting use of unnecessary force – If force is required to be used, it has to be used only when it is absolutely necessary – Usage of force must be minimum and proportional to situation, and it must be discontinued as soon as danger to life and property subsides – Continuation of excessive force, failure to not stop usage of force when situation is controlled results in violation of human rights

(Paras 16 and 17)

G-D/57331/SR

Advocates who appeared in this case :

K.K. Venugopal and Prof. Bhim Singh, Senior Advocates [S.K. Bandyopadhyay, Dr (Ms) Chandra Rajan, B.S. Billowria and Dinesh Kr. Garg, Advocates] for the Appellants;

Sunil Fernandes, Ms Astha Sharma and Puneeth K.G., Advocates, for the Respondents.

Chronological list of cases cited

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1. WP (Cri) No. 118 of 2007, order dated 1-10-2007 (SC), *Anita Thakur v. State of J&K* 531f
2. Contempt Petition (C) No. 155 of 2007 in Civil Appeal No. 2948 of 2006, order dated 20-8-2007 (SC), *State of J&K v. Kamal Gorla* 531f
3. Civil Appeal No. 2948 of 2006, order dated 12-7-2006 (SC), *State of J&K v. Suram Chand Sharma* 530a, 531f
4. (1993) 2 SCC 746 : 1993 SCC (Cri) 527, *Nilabati Behera v. State of Orissa* 537b-c
5. (1990) 1 SCC 422 : 1990 SCC (Cri) 145, *Saheli v. Commr. of Police* 537b-c
6. 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180, *Karam Singh v. Hardayal Singh* 534c-d
7. 1969 ACJ 28 : 1968 SCC OnLine P&H 247, *Joginder Kaur v. Punjab State* 537b-c
8. 1962 Supp (2) SCR 989 : AIR 1962 SC 933, *State of Rajasthan v. Vidhyawati* 537b-c

The Judgment of the Court was delivered by

DR A.K. SIKRI, J.— In the present writ petition filed by the petitioners under Article 32 of the Constitution of India, the petitioners who are migrants of the State of Jammu and Kashmir (hereinafter

referred to as "the migrants") state that they had planned to take out a peaceful protest march up to Delhi for ventilating their grievances. However, when they reached near Katra in Jammu and Kashmir, the respondent authorities through their police personnel had beaten up and manhandled these migrants in a most brutal and barbaric manner on 7-8-2007. It is the allegation of the petitioners that this incident has violated their rights guaranteed to them under Articles 14, 19, 21 and 22 of the Constitution and prayers are made in the petition for taking criminal action against the erring officials, including Respondents 3 to 9, and also to pay compensation to each of the petitioners and other Jammu migrants who suffered serious injuries, in the sum of Rs 10 lakhs. Prayer is also made to order the special investigation into the said episode of 7-8-2007.

2. Giving detailed background of the grievances of the migrants leading to the said incident, it is mentioned that Ms Anita Thakur, Petitioner 1, is a General Secretary of the Jammu and Kashmir Panthers Party whereas Petitioner 2 is an advocate and also the Secretary of the said Party, who have been espousing the cause of the Jammu migrants (about 2200 families) who were forced to leave their homes between 1996-1999 in view of the terrorist attacks on these families. The third petitioner is a senior journalist who was also assaulted and arrested on 7-8-2007 for giving media coverage of the incident in question.

3. According to the petitioners, these migrants are living in most miserable conditions and it became difficult for them to survive. Out of these 2200 migrant families, about 950 families have been residing in broken huts of Talwara camp. For redressal of their grievances, a writ petition in the nature of PIL (PIL No. 534 of 1999) was filed in the High Court of Jammu and Kashmir wherein order dated 6-9-2002 was passed by the High Court directing that persons from Poonch, Rajouri, Doda, Udhampur and Jammu provinces, who had suffered and

been forced to migrate on account of militancy would be entitled to the same treatment as migrants from the Kashmir Valley. This order was challenged by the State of Jammu and Kashmir by filing SLP (C) No. 34 of 2003 in this Court.

4. In that SLP, the order dated 12-7-2006¹ was passed to the following effect:

"Pursuant to our direction, the Relief Commissioner (Migrants) filed an affidavit on 3-12-2004 and in the affidavit, the details are given regarding the relief measures given to the Kashmiri migrants

and it is stated that the relief is being provided to various migrants who are Kashmiri migrants and to migrants other than Kashmiri migrants. In view of the averments stated in the affidavit, we do not find any necessity to give further directions. However, the counsel for the respondents stated that some of the migrants are not being regularly paid the relief measures and since March 2004 they are not given any benefits. The Relief Commissioner may look into the matter and see whether they have been provided with all relief measures to which they are entitled as per the policy. If there are lapses on the part of the officials or any arrears to be paid to the migrants, the same shall be made available to them at the earliest. The Relief Commissioner would be at liberty to consider the migrant status of any person and if it is found that if such persons are not real migrants he would be at liberty to deny the relief measures to such persons. With these directions, the appeal is disposed of."

5. It is averred in the petition that in spite of the aforesaid order directing the Relief Commissioner to look into the complaints by the migrants, who claimed that they were not regularly provided relief measures since March 2004 and to provide all benefits to them, including arrears, if any, no positive action was taken by the respondents. This forced the petitioners to submit a memorandum to the Deputy Commissioner, Reasi stating that if the order was not implemented within 15 days, the migrants would resort to their protest march to Delhi and would meet the Prime Minister of India for implementation of this order. This was followed by another representation dated 23-7-2007 to the Chief Minister, Jammu and Kashmir wherein they threatened that on the Government's failure to implement the order, the migrants would go on strike.

6. As nothing happened, on 31-7-2007, the Talwara migrants started their peaceful protest march from Talwara towards Jammu to head to Delhi. According to the petitioners, the migrants were stopped about 6 km short of Katra Town, at Ghar Baba Jitto, after they had covered about 20 km towards Jammu. Police kept them in siege for 5 days. The protest marchers who were about 2000 in number including old persons, women and children were not allowed to proceed and were made to sit at that place till 7-8-2007, the fateful day.

7. On 7-8-2007, the following events occurred:

(i) At about 1 p.m. on this day, the three petitioners (all members

of the Jammu and Kashmir National Panthers Party) arrived at Katra, to speak with the authorities concerned regarding the plight of the migrants.

(ii) The petitioners conducted a one hour long discussion with the Dy. Commissioner, Reasi, the Tahsildar, Reasi, Superintendent of Police, Reasi and the SHO, Katra regarding the migrants' peaceful march.

(iii) The migrants resumed their peaceful march, and the petitioners joined the march to ensure that there was no undue harassment by the police.

(iv) At about 2 p.m., 500 armed policemen, blocked the bridge that the migrants were about to cross and began attacking the marchers with lathis and teargas shells.

(v) Petitioner 2 attempted to approach the police which included Respondents 6 to 9 to stop the attack, and was taken into custody after being brutally assaulted and having his leg broken. He stayed in police custody without medical aid till 9 p.m. when he was taken first to Katra Government Hospital and then shifted to Government Medical Hospital, Jammu at 11.30 p.m. Petitioner 1 then attempted to approach the police to secure medical aid for the injured migrants. As soon as she entered the police control zone, she was violently attacked by several police women, dragged on the ground for a long distance and put into a police jeep. Petitioner 1 was beaten inside the jeep and also at the police station. Petitioner 3 was also arrested for trying to cover the incident.

8. Petitioner 1 was admitted to Government Medical College Hospital, Jammu on 8-8-2007. Copies of medical reports of Petitioner 1 have been filed by the petitioners. The Bar Association of Jammu and Kashmir also started protest against the aforesaid criminal assault on Petitioner 2 by abstaining from courts on 9-8-2007. Petitioners 2 and 3 were released on interim bail on 10-8-2007 by the Judicial Magistrate, First Class, Katra pursuant to the directions of the High Court and were thereafter granted regular bail on 14-8-2007.

9. The petitioners filed Contempt Petition No. 155 of 2007 alleging violation of this Court's order dated 12-7-2006¹ wherein notice was issued by this Court on 20-8-2007². Thereafter, the present petition was filed with the prayers as aforesaid, in which show-cause notice was issued on 1-10-2007³.

10*. The respondents have appeared and denied the version of the petitioners. The official version which has surfaced on record in the form of response to the various averments made in the writ petition is that about 500 migrants on 1-8-2007 blocked the Reasi-Pouni Road near Baradari bringing the entire traffic on standstill. Dharna continued the entire day and night and the unruly crowd damaged a police vehicle. The leaders of the Panthers Party in discussions with the administration agreed to lift the dharna. However, they backtracked and the dharna continued. On 2-8-2007, the protestors started marching towards Katra. Administration at Sula Park requested them to go back. All offers of relief were turned down. On 3-8-2007, high officials of the State reached Serwad and persuaded the crowd to adopt a realistic and pragmatic approach. Suggestions of providing ration and cash relief for three months on a par with border migrants were given. Migrants initially agreed to it and it was decided to gather at Aghar Jitto Temple where the ration shall be distributed on the same day. However, the migrants later refused the offer and demanded cash relief on a par with the Kashmiri migrants. High officials camped at Serwad on 3-8-2007/4-8-2007 to persuade the migrants. On 5-8-2007/6-8-2007, negotiations continued. Directions were given to provide facilities of water, medicine, food along with milk packets for infants. Some of the demonstrators accepted the relief of the Government. However, insofar as the petitioners are concerned, instead of amicably sorting out the issue, they raised a new demand for providing arrears for last 40 months. Police authorities informed the migrants that the competent authority shall be informed and that they should return peacefully and not march ahead to disturb the ongoing Amarnath and Vaishno Devi Yatris. The agitated protestors, however, took strategic positions alongside the road and started pelting stones on the police personnel who were trying to initiate dialogues. Few of them even used their lathis which they were carrying. The crowd marched towards Balni Bridge where the police contingent reorganised. However, the demonstrators had turned violent and wanted to proceed to Katra. Keeping in view the security and in face of no other option, police resorted to mild lathi-charge to control the mob. The injured migrants and the policemen were taken to PHC-Katra. 17 policemen along with Mr Ashok Sharma (Respondent 6) got severely injured and were rushed to the hospital as well. The Executive Magistrate Tahsildar, Reasi after taking stock of the situation and attack on the police authorities by the mob and the resulted injuries on police officers and civilians ordered SP, Katra for lathi-charge and use of tear smoke to disperse the unruly mob. In the melee some persons from the mob including Mr Jhalmeria got injured. Respondent 6 was injured by the mob and was taken to the hospital. Respondent 7

was manhandled by Petitioner 1 who tore and threw away his ranks from his uniform.

11*. It becomes clear from the above that both the parties are accusing each other. At the time of hearing, the counsel for the parties stuck to their respective stands. In support of their versions, even the CDs containing video of the incident have been filed by both the parties. We have seen the CDs


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filed by both the parties. However, on going through the CD submitted by the respondent State, it becomes clear that the agitated protestors were the persons who were instrumental in triggering the incident inasmuch as it is they who took the first step in disturbing the peace. It is these agitators who started pelting stones on the police personnel and even used lathis while attacking the police officials. No doubt, these demonstrators wanted to go ahead with their march and they were restrained by the police from doing so. At the same time, this step taken by the police was at the instance of higher authorities and they were given orders that these demonstrators be not allowed to proceed with their march.

12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "*an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema*". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.

13. Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.

14*. On the other hand, there is always a possibility that a public rally may become unruly, which can mean damage to life and property. This is when a public assembly becomes “unlawful”, which is defined in Section 141 of the Penal Code, 1860 (IPC). Under these circumstances, the district administration and the police are permitted to disperse the crowd to prevent injuries or damage. This may entail the use of force in a controlled and specified manner. We also have Section 268 IPC which defines “public nuisance” as any act “which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right”. Further, Section 143 CrPC empowers an Executive Magistrate to prohibit the repetition or continuation of public nuisances and Section 144 CrPC permits the issuance of directions to

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members of the public to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray. These legal provisions provided a wide array of powers to the police, including the right to use reasonable force to disperse any unlawful assembly and maintain public order.

15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become “unlawful”. At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put by the Punjab and

Haryana High Court in *Karam Singh v. Hardayal Singh*⁴ wherein the High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd: First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Second, an Executive Magistrate should order the assembly to disperse. Third, in spite of such orders, the people do not move away.

16*. Before advertng to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas, etc. take place. It is unfortunate that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. In the process, when police tries to control, the protestors/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have come to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In this scenario, task of the police and law-enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful assemblies, police has to accomplish its

task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary⁵.

Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.

17. In those cases where assembly is peaceful, use of police force is not warranted at all. However, in those situations where crowd or assembly becomes violent it may necessitate and justify using reasonable police force. However, it becomes a more serious problem when taking recourse to such an action, police indulges in excesses and crosses the limit by using excessive force thereby becoming barbaric or by not halting even after controlling the situation and continuing its tirade. This results in violation of human rights and human dignity. That is the reason that human rights activists feel that police frequently abuses its power to use force and that becomes a serious threat to the rule of law.

18*. When we examine the present matter in the aforesaid conspectus, we find that initially it was the petitioners/protestors who took the law into their hands by turning their peaceful agitation into a violent one and in the

process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi-charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as injuries suffered by these petitioners are concerned, such a situation could clearly be avoided. It is apparent that to that extent, the respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award compensation to the petitioners. (See *Saheli v. Commr. of Police*⁶, *Joginder Kaur v. Punjab State*⁷, *State of Rajasthan v. Vidhyawati*⁸ and *Nilabati Behera v. State of Orissa*⁹.) The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give

rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence, cannot be used as a defence in public law.

19. Keeping in view the totality of the circumstances of the present case and finding that even the petitioners are to be blamed to some extent, as pointed out above, the only relief we grant is to award compensation of Rs 2,00,000 (Rupees two lakhs only) to Petitioner 1 and Rs 1,00,000 (Rupees one lakh only) each to Petitioners 2 and 3, which shall be paid to these petitioners within a period of two months.

20. The writ petition stands disposed of in the aforesaid terms.

[†] Under Article 32 of the Constitution of India

¹ *State of J&K v. Suram Chand Sharma*, Civil Appeal No. 2948 of 2006, order dated 12-7-2006 (SC)

² *State of J&K v. Kamal Gorla*, Contempt Petition (C) No. 155 of 2007 in Civil Appeal No. 2948 of 2006, order dated 20-8-2007 (SC), wherein it was directed:

"Issue notice to Respondent 3 only. Permitted to file additional documents."

³ *Anita Thakur v. State of J&K*, WP (Cri) No. 118 of 2007, order dated 1-10-2007 (SC), wherein it was directed:

"Issue notice returnable within six weeks."

* **Ed.:** Paras 10 and 11 corrected vide Official Corrigendum No. F.3/Ed.B.J./45/2016 dated 28-10-2016.

* **Ed.:** Para 14 corrected vide Official Corrigendum No. F.3/Ed.B.J./45/2016 dated 28-10-2016.

⁴ *Karam Singh v. Hardayal Singh*, 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180

* **Ed.:** Para 16 corrected vide Official Corrigendum No. F.3/Ed.B.J./45/2016 dated 28-10-2016.

⁵ These documents, inter alia, are:

- (a) Model Rules on the Use of Force by the Police against Unlawful Crowds (Adopted by the Inspectors General of Police Conference, 1964).
- (b) *Police Manuals*: For instance, the Kerala Police Manual, 1970 lays down a step-by-step procedure to deal with unlawful assemblies:
 - (i) The police must invariably secure the presence of a Magistrate where it anticipates a breach of peace.
 - (ii) The decision to use force and the type of force to be used is to be taken by the Magistrate.
 - (iii) Once the order for the use of force is given by the Magistrate, the extent of force to be used will be determined by the seniormost police officer.
 - (iv) The extent of force used must be subject to the principle of minimum use of force.
 - (v) Use of force should be progressive — i.e. firearms must be used as a last resort if tearsmoke and lathi-charge fail to disperse the crowd.
 - (vi) Common tearsmoke which causes no bodily injury and allows recovery of affected persons should be used.
 - (vii) When the crowd is large and the use of tearsmoke is likely to serve no useful purpose, the police may resort to lathi-charge.
 - (viii) Lathi-charge can only begin if the crowd refuses to disperse after suitable warning.
 - (ix) Clear warning of the intention to carry out a lathi-charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flag must be raised. If the police officer-in-charge is satisfied it is not practical to give a warning, she/he may order a lathi-charge without warning.
 - (x) Lathi-blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable.
 - (xi) The lathi-blows must not cease until the crowd is completely dispersed.
 - (xii) If the crowd fails to disperse through the lathi-charge, the Magistrate or the competent officer may order firing.
 - (xiii) The fullest warning in a clear and distinct manner must be given to the crowd to inform them that the firing will be effective.
 - (xiv) If after the warning, the crowd refuses to disperse, the order to fire may be given.

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- (xv) The police are not on any account allowed to fire except on a command given by their officer.
- (xvi) A warning shot in the air or firing over the heads of the crowd is not permitted.
- (xvii) An armed force should maintain a safe distance from a dangerous crowd to prevent being overwhelmed, or increasing the chances of inflicting heavy casualties.
- (xviii) Aim should be kept low and directed at the most threatening part of the crowd.
- (xix) Firing should cease the moment the crowd show signs of dispersing.
- (xx) All help should be rendered to convey the wounded to the hospital.
- (xxi) Police officers must not leave the scene of disturbance before satisfying themselves beyond reasonable doubt about the restoration of tranquility.
- (xxii) An accurate diary of all incidents, orders and action along with the time of occurrence should be maintained by the police. This will include an individual report by all officers involved in the firing.
- (xxiii) The number of fired cartridges and the balance of unfired cartridges should be verified to ensure ammunition is accounted for.
- (c) The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan international non-governmental organisation, mandated to ensure the practical realisation of human rights in Commonwealth countries. CHRI is headquartered in New Delhi and has offices in London and Accra (Ghana).
- (d) Various orders passed by the National Human Rights Commission.

* **Ed.:** Para 18 corrected vide Official Corrigendum No. F.3/Ed.B.J./45/2016 dated 28-10-2016.

⁶ *Saheli v. Commr. of Police*, (1990) 1 SCC 422 : 1990 SCC (Cri) 145

⁷ *Joginder Kaur v. Punjab State*, 1969 ACJ 28 : 1968 SCC OnLine P&H 247

⁸ *State of Rajasthan v. Vidhyawati*, 1962 Supp (2) SCR 989 : AIR 1962 SC 933

⁹ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : 1993 SCC (Cri) 527

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