

(2004) 05 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 38418 of 2001

George Kurian

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226

Citation : (2004) 2 KLT 758

Hon'ble Judges : N.K. Sodhi, C.J.;J.B. Koshy, J;A.K. Basheer, J

Bench : Full Bench

Advocate : P.B. Sahasranaman, K. Jagadeesh, T.S. Harikumar, Mohan Jacob George, Devan Ramachandran, K. Ramakumar, T. Ramaprasad Unni, T.K. Ajithkumar, P. Rajkumar, Saritha Varma, P.V. Sagar, T.S. Arunkumar, Bobby Augustine, B. Radhakrishnan Thottathil, V.P.K. Panicker, Sreelekha Puthalath and Siby Mathew and S. Parameswaran Party in Person, for the Appellant; Ajay, Sr. Government Pleader, P.S. Sreedharan Pillai, S.C.G.S.C., Santhosh Mathew, A.C.G.S.C., K. Radhakrishnan Sanjeev Kumar K. Gopal, Aysha Youseff, Molly Jacob, T.K. Mohammed Sharafudheen, C.I. Mumthaz, M.K. Damodaran, P.K. Vijayamohanan, T.P.Sajan, V. Chitambaresh, T.C. Suresh Menon, R. Raja Raja Varma, M.R. Valsa, Sreekanth K.R., Babu Joseph Kuruvathazha, T.C. Govinda Swamy, Martin G. Thottan, Mannattil Kumar, D. Heera, Murali PUrushothaman, N. Nagaresh, Rojo J. Thuruthipara, Govind K. Bharathan, Manu Mohan, P. Gopinath, K.B. Sajeesh, C.S. Sunil, P.R. Sreejith, T.A. Unnikrishnan and P.P. Thajudeen, for the Respondent

Judgement

J.B. Koshy, J.—All these petitions are filed in public interest annoyed by the fact that despite various judgments of this court and the Honourable Apex Court, there are frequent bandhs, forced hartals and general strikes in the State harassing general public causing trouble, inconvenience, loss and injury to them and a situation is created by unscrupulous, anti-national and anti-people groups who force majority of the people not to move about and force them in illegal detention in their own house by threat, coercion and force. Examinations to be conducted by the Universities and Government agencies are being postponed on

such days. Doctors who are going to the hospitals are being attacked. Government Transport Corporation themselves stop running their buses thus preventing the willing workers and employees from going to the work places. Previous experience on occasions of hartals and general strikes cast an obligation on the part of the Government to take preventive measures. It is the duty of the State and its instrumentalities and its officers to maintain discipline and order in accordance with the provisions of law. There is abdication of constitutional responsibility and dereliction of duty on the part of the Central and State Governments in not taking appropriate actions as directed by the decisions of this Court which were affirmed by the Supreme Court. It is also stated that State has not paid damages for the loss incurred by the public and no action is taken to recover damages caused to the property of the Government and public sector corporations.

2. There is no dispute regarding the legal aspects raised in these petitions. In *Bharat Kumar v. State of Kerala* 1997 (2) KLT 287 a Full Bench of this Court held that calling of a bandh and holding of it is unconstitutional and illegal. In paragraph 17 the Full Bench held as follows:

"17. No-political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

The following reliefs were granted in paragraph 18:

"..... As we find that organized bodies or Associations of registered political parties, by their act of calling and holding bandhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this court has sufficient jurisdiction to declare that the calling of a "bandh" and the holding of it, is unconstitutional especially since, it is undoubted, that the holding of "bandhs" are not in the interests of the Nation, but tend to retard the progress of the Nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organizations. We are inclined to the view that the political parties and the organizations which call for such bandhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organizers of such bandhs. We think that these aspects justify our intervention under Article 226 of the Constitution. In view of our discussion above, we allow these original petitions to the extent of declaring that the calling for a bandh by any association, organization or political party and the enforcing of that call by it is illegal and unconstitutional. We direct the State and its

officials, including the law enforcement agencies to do all that is necessary to give effect to this declaration." (Underlining by us.)

The Judgment of the Full Bench was affirmed by the Apex Court in *Communist Parry of India (M) v. Bharat Kumar and Ors.* 1997 (2) KLT 1007: AIR 1998 SC 184. The Apex Court observed as follows:

"..... .There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interfere with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraph 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

3. Paragraph 17 of the judgment of the Full Bench of this Court in *Bharath Kumar's* case (supra) was quoted with approval by the Constitution Bench of the Hon"ble Apex Court in *Ex-Capt. Harish Uppal v. Union of India* and Anr. 2003 (1) KLT 192 (SC): AIR 2003 SCW 43. In that Constitution Bench decision, the Apex Court observed as follows:

"For just or unjust cause, strike cannot be justified in the present day situation. Take strike in any field, it can be easily realized that that weapon does more harm than any justice. Sufferer is the society - public at large."

4. Making use of some of the observations in the judgment that voluntary hartals and strikes are different from bandh, political parties and certain organizations started to call bandhs in the guise of hartals or general strikes. In such notices also, as in the bandhs, it is stated by the organizers that milk supplies, newspapers, hospitals, medical shops, media etc. will be exempted. Like statutory authorities, those organizers were exempting very few items of essential services meaning thereby that if any other establishment is functioning, that will be stopped. Nomenclature is not at all important. As Shakespere has put it:

"What's in a name? That which we call a rose

By any other name would smell as sweet." (See: *Romeo and Juliet*).

Therefore, "bundh" cannot be forced on the people after renaming it as hartal or general strike. All shops and establishments are compelled to be closed and all vehicular movement is stopped by use of threat and coercion during the call for hartal or general strike. Daily wage earners, casual and temporary workers, manual workers etc. are the most sufferers in such days. In view of the frequent hartals and general strikes, no new entrepreneurs are investing in the State and many of the existing factories were already closed. Therefore miseries of unemployed persons are aggravated. In a State where educated unemployed

persons are many, these hartals and general strikes foreclose their hope for getting employment. Man days are lost. Wheels of production are halted so that invokers of the hartals and general strikes have the sadistic satisfaction in seeing that the State remains undeveloped forever. Citizens are prevented from going outside for whatever reason be there. Even when the hospitals are allowed to function, patients are not allowed to go to the hospitals as entire traffic is blocked and doctors are not allowed to go to hospitals for attending the patients. Many incidents are reported regarding personal assault of the doctors also. It is reported that one doctor lost his eye due to pelting of stone and another person while taking his son to the hospital also got stab injuries on the face during the day of a "peaceful hartal". In the guise of hartals and general strikes, bandhs were actually observed depriving majority of the citizens their fundamental rights and the State was a silent spectator. Many of the State owned transport vehicles were damaged and on declaration of hartal, State Road Transport Corporation itself had stopped plying of the vehicles which itself shows that even the Government is unable to protect its own vehicles or unable to give protection to its vehicles.

5. In view of the above circumstances, a Division Bench of this Court in Kerala Vyapari Vyavasayi Ekopana Samithi v. State of Kerala 2000 (2) KLT 430 has considered this aspect and held that forced hartal is also illegal. As a sequence to the interim directions given by this Court, when hartal was called on 9.2.1999, some directions were given by the Government and this Court recorded the above as follows in paragraph 9 of the above judgment:

"The decisions taken in a conference in which the Chief Secretary, Director General of Police and other police officers participated and in which certain decisions were taken as communicated by the Chief Secretary to all District Collectors in connection with the hartal call for 9.2.1999 is on the following lines:-

1 Adequate police protection should be given to all Government officers and establishments by posting police personnel. Nobody would be allowed to gather around such office premises with a view to prevent employee coming to office. Special attention in this regard would be paid to Central Government establishments.

2. The entire effective police force would be mobilized for the purpose of deployment on 9.2.1999. .

3. All likely trouble spots would be identified and police pickets posted at such places with a view to avert untoward incidents. Special police pickets would also be posted at sensitive locations where the supporters of the hartal may resort to road blocks, forcible closure of shops and blocking of traffic. Intensive mobile patrols would be organized from midnight on 8.2.1999 to midnight 9.2.1999. Adequate number of vehicles would be hired by the Supdts. of Police and Commissioners of Police for this purpose. They would be responsible for clearing road blocks and attending to calls of emergency. District Collectors will

commandeer vehicles of other Government Departments for law and order and other purposes, if required.

4. Protection should be extended to KSRTC to ply buses in convoy system. Police protection would be extended to business establishments and other individuals who seek protection.

5. Important housing colonies where Government employees reside would be covered by police pickets to ensure that the residents of such colonies are not put to difficulties by the supporters of hartal and are able to go to the offices if they so desire.

6. Fire Force personnel would be mobilized and put on the alert. Workers of the Municipalities and other local bodies would also be kept in readiness to come to the aid of police as and when required. The Electricity Board workers also would be requisitioned to be on the alert to attend to calls of emergencies.

7. Superintendents of Police/Commissioners of Police would give a press release reassuring the public of the elaborate police arrangements made in connection with the proposed hartal. They would indicate the telephone numbers of Circle Headquarters -at which the public should contact the police in case of emergencies.

8. Special arrangements would be made by the Superintendents of Police/Commissioners, of Police concerned in the three cities of Thiruvananthapuram, Calicut and Ernakulam for enabling air passengers to go to Airport. "

9. Police should promptly attend to complaints regarding designs or attempts of antisocial elements to disrupt normal life. Prompt and effective action should be taken against all such elements including preventive measures.

10. Immediate and effective action should be taken against supporters of the hartal, if they resort to picketing of trains. Possible places of picketing of trains should be identified and precautionary steps taken.

11. Adequate protection should be given to all Judicial Officers to attend Courts.

12. Processions would be allowed to be taken only in accordance with the instructions issued by the Hon'ble High Court of Kerala. Any violation in this regard would promptly be dealt with under the relevant provisions of law.

13. District Collectors would keep Executive Magistrates in readiness at respective Taluk Headquarters to assist the police.

14. Inspector General of Police (Zones) and Deputy Inspector General of Police (Ranges) would brief all officers of and above the rank of Sub Inspectors with a view to gear up the police machinery to deal with exigencies that may arise in connection with the proposed hartal. They should brief the officers specifically to implement the orders of the Hon'ble High Court of Kerala with regard to bundhs/hartals/processions in letter and spirit.

15. District Collectors and Commissioners of Police/Superintendents of Police will be responsible for ensuring that normal life is not disrupted and no untoward incidents take place during the hartal."

6. The Director General of Police also issued circular dated 4.2.1999. Thereafter, after considering the matter in detail and after considering the various decisions of the Apex Court and other High Courts, the Division Bench held as follows in paragraph 23:

"We do not think that it is necessary to advert to the decisions cited at the bar on the question whether the right of a party or organization includes the right to coerce an unwilling citizen into participating in a hartal called for by it or to stage a bundh in the guise of a hartal. We think that the principles settled in the bundh case affirmed by the Supreme Court in *Communist Party of India (Marxist) v. Bharat Kumar* 1977 (2) KLT 1007 : AIR 1998 SC 184 covers the situation in favour of the petitioners in that no party or organization or association can claim a right to compel another to participate in a hartal which it has called. There cannot therefore be any difficulty in holding that the enforcement of a call for hartal by force, intimidation and coercion would also be: an act in itself unconstitutional." (Underlining by us)

Thereafter, the Division Bench gave six concrete directions which are as follows:

"In the light of our conclusions as above, we allow these original petitions and grant the following reliefs:-

(i) We declare that the enforcement of a hartal call by force, intimidation, physical or mental and coercion would amount to an unconstitutional act and a party or association or organization that calls for a hartal has no right to enforce it by resorting to force or intimidation.

(ii) We direct the State, Chief Secretary to the State, Director General of Police and all the administrative authorities and police officers in the State to implement strictly the directives issued by the Chief Secretary dated 6.2.1999 and the directions given by the Director General of Police Dated 4.2.1999 and set out fully in the earlier part of this judgment.

(iii) We issue a writ of mandamus to the Election Commission to entertain complaints, if made, of violation of Section 29A(5) of the Representation of the People Act, 1951 by any of the registered political parties or associations, and after a fair hearing, to take a decision thereon for deregistration or cancellation of registration of that party or organization, if it is warranted by the circumstances of the case.

(iv) We issue a writ of mandamus directing the Election Commission to consider and dispose of in accordance with law, the representation Ext.P9 in O.P. No. 20641 of 1998, after giving all the affected parties an opportunity of being heard.

(v) We direct the State of Kerala, the Chief Secretary to the Government, the

Director General of Police and all other officers of the State to take all necessary steps at all necessary times, to give effect to this judgment.

(vi) We direct the State, District Collectors, all other officers of the State and Corporations owned or controlled by the State to take immediate and prompt action, for recovery of damages in cases where pursuant to a call for hartal, public property or property belonging to the Corporation is damaged or destroyed, from the perpetrators of the acts leading to destruction/damage and those who have issued the call for hartal."

The Apex Court affirmed the directions except directions (iii) and (iv) regarding cancellations of registration of political parties in the decision reported in Indian National Congress (I) Vs. Institute of Social Welfare and Others, .

7. Grievances of the petitioners is that in spite of these specific directions issued by this Court, political parties are frequently calling for bandhs in the guise of hartals and general strikes causing serious difficulties to the citizens. Government remains as a mere spectator. It is submitted that after the above judgments, more than a dozen general strikes and hartals were called every year and hartal takes toll of human lives, huge loss in the form of destruction of properties, burning of public vehicles like KSRTC etc., loss of work by poor workers on daily wages who are prevented from earning their livelihood, foreign tourists are not permitted to move around creating fear on the law abiding citizens. One of the tourists was attacked on the day of hartal forcing other tourists also to remain in their hotels and not to take their vehicles. All these acts are done to show that organizers of the hartal can claim that hartal was successful. On 20th February, 2003 and on 22nd March, 2003 there were State wide hartals. It is submitted that there were three hartals in the month of March 2003 itself. Even mushroom parties are calling for hartals and since the Government is not giving any protection, all hartals have become successful. Various incidents which took place on the hartals on 11th and 15th March, 2003 were specifically highlighted in these petitions. On 11th March, 2003, students in the State were writing crucial examinations in their life, namely, C.B.S.E. as well as I.C.S.E. examinations. Calls were made by the disturbed parents and other social organizations. It is complained that even the leader of opposition who supported the hartal has stated that Government may, however, take steps either to postpone the examination or the examinees may take other measures. Government of Kerala has noting to do with the conduct of C.B.S.E. or I.C.S.E. examinations. The hartal caused serious injury and mental agony to both the students and parents. The second hartal was called at a time when SSLC and C.B.S.E. examinations were going on and numerous students were prevented from attending the examination. The difficulties caused during the hartals were highlighted in O.P. No. 10537 of 2003 and it is submitted that since the Government is not taking any strong measures for giving protection to the students, there is constitutional breakdown. There is also a prayer to call the service of the Army if the State Government is unable to control the situation. In

O.P. No. 38418 of 2001, various newspaper cuttings were produced to highlight the atrocities created by anti-social elements during hartals creating anarchy in the State. It is also urged that what is done by these persons by calling hartals/ bandhs is criminal intimidation punishable u/s 503 of the Indian Penal Code and they are also committing offences under Sections 504 and 505 of the Indian Penal Code. In W.P. (C) No. 19665 of 2003, it is also prayed that there should be declaration that the people calling for such hartals have committed an unlawful activity as defined in Unlawful Activities (Prevention) Act, 1967 and action shall be taken. Ext.P1 is the news report with photograph which shows that a passenger in the KSRTC bus suffered severe head injuries due to stone pelting. The bus driver died due to heart attack following the same incident. In O.P. No. 10902 of 2003 petitioner prays for adequate police protection for business premises when general strike etc. are declared. In W.P.(C) No. 20078 of 2003 also various newspaper cuttings were produced and stated that in spite of the orders contained in the High Court and Apex Court judgments, the State Government has failed to guarantee the fundamental rights of the citizens by enforcement of law. It is also stated that severe injuries were caused to many citizens. Even police constables were injured and heavy loss was caused to private properties also and no steps were taken by the Government to award damages or to recover the damages. In O.P. No. 38418 of 2001 plea is that media must downplay bandhs, hartals etc. In W.P. (C) No. 26004 of 2003 also petitioner highlighted the nuisances during hartal and bandh days. Various incidents happened in those hartals were pointed out. It is also stated that apart from State wide hartals and general strikes, district-wise hartals and strikes are also declared quite often.

8. The stand taken by the various political parties is that they are not making any threat or compulsion for participating in the hartals or general strikes. They also claim that it is their fundamental right to strike or make demonstration. In *Kameshwar Prasad and Ors. v. State of Bihar and Anr.* 1962 Supp. 2 SCR 369 a Constitution Bench held that there is no fundamental right to resort to strike following another five member Bench decision in *All India Bank Employees' Association Vs. National Industrial Tribunal and Others*, . See also: *Radhey Shyam Sharma Vs. The Post Master General Central Circle Nagpur*, . Even as per Industrial Disputes Act, striking workers have no right to prevent workers who are not interested in participating in the strike. Notices calling for hartal exempting certain essential services alone show that it is a threat to all other establishments and services that they will not be allowed to function. Past experiences of hartals and general strikes declared proves use of force and coercion and loss of lives and destruction of public property and there are violations of fundamental rights of other citizens. Law abiding citizens who are willing to work are prevented from doing work or moving outside.

9. The counter affidavits filed on behalf of the Government show that not even a single case was filed against any of the political parties who called for hartals or general strikes to recover damages in spite of specific directions of the Full Bench

of this Court in paragraph 18 of Bharat Kumar's case (supra) which was affirmed by the Supreme Court. A reading of the counter affidavits show that Government was not sincere to implement the directions in the earlier judgments and its own circulars but also tacitly support the hartal callers. It is stated in the counter affidavit dated 26.8.2003 filed on behalf of the Government by the Pri. Secretary, Home Department, Government of Kerala in W.P. (C) No. 20078 of 2003 as follows:

"Maximum arrangements are made by police during hartal/general strike by any organization or political parties including mobile patrolling covering all major/minor roads and picket posts at the important junctions and major business establishments. Several criminal cases are also registered by the police against those persons involved in criminal activities in connection with hartals. The Government have never supported hartal or Bundh call. Hartal call may at times turn to create law and order problem and such situation is duly handled by the Government with all seriousness. So, with a view to avoid the inconvenience to the public and considering the safety aspects, the Government may declare holiday at times or postpone examinations. It is also submitted that the Government machinery is trying its best to prevent all kinds of violence and use of force in all hartals and other forms of agitations and processions."

Again, it is averred as follows:

".....When the political parties or organizations call for any hartal or general strike, effective police forces are being arranged for the protection of citizens. Police pickets, police mobile patrolling etc. are arranged as far as possible with the available force from the night of the prior day. Maximum arrangements are made by police during hartal/general strike by any organizations or political parties including mobile patrolling covering all major/minor roads and pickets posts at the important junctions and major, business establishments. It is admitted that in spite of these earnest efforts made by Government machinery, incidents of violence could occur sometimes and criminal cases have been registered by police department in connection with conduct of hartals on various days."

According to the petitioners, the above only shows that the Government is abetting the forced hartals and general strikes by declaring holidays and postponing examinations and Government is not acting effectively to prevent forced hartals. In the affidavit dated 20.12.2003 filed by the Principal Secretary it is stated that several hartals were called after the judgment of this Court and damages to the properties of the police department itself cost more than Rs. 1,63,000/- and loss of Rs. 98,88,596/- was caused to the public sector undertakings and no suits were filed to recover damages from the culprits or from the persons or political parties or groups who called hartals which resulted in the damages. But, it is stated that Ext. R1(d) circular dated 17.12.2003 was issued directing the subordinate officers to file cases. In spite of specific directions of the Full Bench which was approved by the Apex Court, Government

took about three years" time to make at least a circular to that effect. It is also submitted that 1,304 criminal cases were registered out of which 370 were referred as undetected and charge sheets were filed only in 788 cases and 690 cases are pending for trial. 51 persons were acquitted and convictions were entered only in seven cases. This affidavit dated 20.12.2003 itself would show that proper action was not taken by the Government.

10. It is clear to us from the affidavits and counter affidavits filed in those cases and past experience that whenever hartal is called by the political parties or organizations, they are putting the State to ransom. The fundamental rights of the citizens are violated and Government is not able to give adequate protection to the citizens. In the light of the past experience, it is for the persons who call hartals or general strikes to see that their followers are not using force or threat for preventing others from moving about and fundamental rights of others are not curtailed. Instead of stating that milk supplies, hospital etc. will be exempted as if others will not be allowed, in future notices calling of hartals and general strikes it should clearly state that nobody will be compelled to participate in the hartal or in the general strike and those who are willing to do their normal duties, can do so. Those who want to open the shops or ply the vehicles can do so and no persons will be prevented or obstructed and no force, coercion or violence will be used. It is also learned from the past experience that even though there may not be any call for using violence in the call for hartal, violence spreads and people are put to fear psychosis. Therefore, for damages caused during the strike and hartal days, people who are calling strike or hartals are vicariously liable to pay damages as held by the Full Bench and approved by the Apex Court in Bharat Kumar's case (supra).

11. State is responsible to pay damages to the citizens as damages to the citizens are caused due to the failure of the Government to give adequate protection. The State functionaries" responsible for culpable default of negligence ought to be made personally liable by Invoking the principle of strict liability combined with the fact that the defence of sovereign immunity no longer available to the State officials. The concept of compensation by the State by invoking the principles of strict liability was first evolved by the Supreme Court in Rudul Sah Vs. State of Bihar and Another, and later developed in the case of Sebastian M. Hongray v. Union of India AIR 1984 SC 1026 followed by a string of authorities including Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others, of the Apex Court. Government is unable to give protection even to run its own vehicles. A situation is being created so that even State Transport vehicles are not allowed to run and the students have to write C.B.S.E., I.C.S.E. examinations etc. under threat and in difficult circumstances. Patients are unable to go to the hospital and workers on daily wages are denied their wages etc. If such a situation is there, it will amount to constitutional breakdown. As admitted in the counter affidavit, if police is unable to cope up with the situation, they should call the help of Army. There are sufficient provisions in the Constitution for requesting the Army to help. Chapter X of the Code of Criminal Procedure

also prescribes the procedure to be adopted by the authorities for maintenance of public order and tranquility. Sections 130 and 131 of the Code of Criminal Procedure also authorize the District authorities to call the Army for help. The Government should authorize the District Officers to call Army or para-military forces as and when necessary. Unless strict measures are taken, threat to the citizens cannot be abated. It is for the State Government to consider whether help is needed from the Union Government under Article 355 of the Constitution of India if it is unable to control the situation. It is for the State Government to take proper stern action to control lawlessness in the State which may lead to constitutional breakdown, a situation which may attract Article 356 of the Constitution.

12. Before concluding, we refer to the decision of the Supreme Court in *James Martin v. State of Kerala* 2004 (1) KLT 513 wherein the Hon'ble Apex Court held as follows:

"19. Before we part with the case it needs to be noted that in the name of hartal or bandh or strike no person has any right to cause inconvenience to any other person or to cause in any manner a threat or apprehension of risk to life, liberty, property of any citizen or destruction of life and property, and the least any Government or public property. It is high time that the authorities concerned take serious note of this requirement while dealing with those who destroy public property in the name of strike, hartal or bandh. Those who at times may have even genuine demands to make should not lose sight of the overall situation eluding control and reaching unmanageable bounds endangering life, liberty and property of citizens and public, enabling anti-social forces to gain control resulting in all around destruction with counter productive results at the expense of public order and public peace. No person has any right to destroy another's property in the guise of bandh or hartal or strike, irrespective of the proclaimed reasonableness of the cause or the question whether there is or was any legal sanction for the same. The case at hand is one which led to the destruction of property and loss of lives, because of irresponsible and illegal acts of some in the name of bandh or hartal or strike. Unless those who organize can be confident of enforcing effective control over any possible turn of events, they should think twice to hazard themselves to such risk prone ventures endangering public peace and public order. The question whether bandh or hartal or strike has any legal sanctity is of little consequence in such matters. All the more so when the days are such where even law enforcing authorities/those in power also precipitate to gain political advantage at the risk and cost of their opponents. Unless such acts are controlled with iron hands, innocent citizens are bound to suffer and they shall be the victims of the high-handed acts of some fanatics with queer notions of democracy and freedom of speech or association. That provides for no license to take law into their own hands. Any soft or lenient approach for such offenders would be an affront to rule of law and challenge to public order and peace."

Therefore, it is the duty of the Government to control such disturbance. It is true

that when political parties and organizers will compel to impose their will on majority of the people to participate in the strike by using force, poor citizens, daily earning workers etc. will suffer. It is submitted on behalf of the petitioners that the paper reports and statistics show that daily earned workers are the most sufferers as they cannot get any work. Perhaps, the organizers who call the hartal or general strike will be happy if the production in the State go to a standstill and daily rated workers are not getting their daily wages so that number of dissatisfied and unemployed people will be on increase thereby further chaos can be created. According to the petitioners, their intention is not to better the conditions of these downtrodden people; but to increase their miseries so that there will always be martyrs and followers to participate in the agitations.

13. Already forced hartals and general strikes were declared to be illegal and unconstitutional by the Division Bench and approved by the Apex Court and they are equated to bandh and bandh like situations. But whatever name it is called, whether general strike, hartal or any other name, nobody can create a bandh like situation or obstruct the fundamental rights of others. The directions issued by the Division Bench and Full Bench as approved by the Supreme Court shall be strictly adhered to. Apart from the directions issued by the Full Bench in Bharath Kumar's Case and Division Bench quoted in paragraph 9 of this judgment as modified by the Hon'ble Apex Court, we issue the following directions also:

(1) Whenever a hartal or a general strike is called, the Government should take adequate measures to see that normal life of the citizens is not paralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience, if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing Army or para-military forces so that there should not be any constitutional breakdown and violation of fundamental rights of the citizens;

(2) The District Administration should be given sufficient direction to avail para-military force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;

(3) In cases of damage to public property, action should be taken to recover the damages from the persons who actually cause damages and also from the political parties, organizers and persons who give actual call for such hartal or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a situation which was created by anti-social elements and directions issued in this regard in paragraph 18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17.12.2003 (produced as Ext.R1(d) in W.P. (C) No. 20078 of 2003) shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17.12.2003 issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District Administration and Police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental rights of majority of the citizens in the guise of hartals and general strikes.