

(1967) 12 CAL CK 0008
In the Calcutta High Court

Case No : Matter No. 343 of 1967, Civil Revn. No's. 726 (W) and 733 (W) of 1967

Jay Engineering Works Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others
 Indian Oxygen Ltd.
and Others Vs State of W.B. and Others
 Bengal
Enamel Works Vs State of W.B. and Others

RESPONDENT

Date of Decision : 04-12-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, 141
Constitution of India, 1950 — Article 14, 166(1), 166(3), 21, 226
Criminal Procedure Code, 1898 (CrPC) — Section 100, 127, 151, 154, 157
Evidence Act, 1872 — Section 57(3)
Trade Unions Act, 1926 — Section 17, 18

Citation : AIR 1968 Cal 407 : 72 CWN 441 : 72 CWN 440 : (1967) 2 ILR (Cal) 121

Hon'ble Judges : B.N. Sinha, C.J.;B.N. Banerjee, J;B.C. Mitra, J;Amaresh Roy, J;A.N. Ray, J

Bench : Full Bench

Advocate : Subimal Roy and Milan Banerjee, Sankardas Banerjee, Sankar Ghosh and Shib Kumar Majumdar, In Civil Revn. No. 726 W of 1967, R.C. Deb, N.C. Chakraborty and Kanika Banerjee, In Civil Revn. No. 733W of 1967, for the Appellant;A.G., P. Banerjee and S. Bose, A.K. Dutt, General, P.K. Banerjee and Somendra Ch. Bose, In Civil Revn. No. 726 (W) of 1967, A.K. Dutt, General, P.K. Banerjee and S.C. Bose, (for Nos. 1 to 6) and A.P. Chatterjee and N. Goopta, (for Nos. 7, 8, 10-14, 16 and 17), In Civil Revn. No. 733(W) of 1967, for the Respondent

Judgement

Sinha, C.J.—This application and a number of other applications relate to a group of cases commonly described as "gherao" cases. The expression "gherao" is not entirely new, and already finds place in three Bengali dictionaries. But as will be presently described, it has now acquired a connotation and meaning which is entirely new. In its new garb it has acquired a semblance of enviable notoriety. News of gheraos are now widely published in news-papers and are avidly read by

the public Like many other words it may soon be considered as a contribution of West Bengal to semantics and I have no doubt that it will presently appear in all standard dictionaries in the English language The origin of the word "gherao" is not easy to ascertain. As I have already mentioned the word occurs in three Bengali dictionaries. In the dictionary compiled by Jnanendra Mohan Das, the word "gherao" is stated to have been derived from the Hindi word "ghirao" and means "covered or encircled". It is also mentioned that the word "gher" is derived from the Sanskrit word "ghri" which also means. -- "to cover or to encircle". The word "gherao" in this sense has also been mentioned in the "Chalantika" and in the "Biswakosh'", In the Sanskrit-English Dictionary by Dr. Monier Williams, Boden Professor of Sanskrit in the University of Oxford, the Sanskrit word "ghar" (gharayatiyitam) means "to cover". In Wilson's Glossary of Legal Terms, "gher" or "ghero" or "gherna" are Persian words which mean "to surround encircle fence or to bind a hedge.'" In Richardson's Persian Arabic Dictionary we come across the Persian word "gherra", which means "confinement not free" Having heard all the matters before us we have come to the conclusion that the word "gherao" may mean one of two things. Primarily, it means an "encirclement" in the sense of blockade. It may be a complete encirclement or a partial encirclement intended to blockade the egress and ingress from and to a particular office, workshop, factory or even residence. The second kind of gherao is an encirclement in depth that is to say a virtual occupation of the target to be "gheraoed" (an expression also in circulation by now) resulting in the prevention of ingress by the management or its staff Between these two meanings, there are a number of shades or nuances which will be described presently. After a few preliminary facts have been stated, a more precise definition will be attempted.

2. These applications under Article 226 of the Constitution were first of all moved before B. C. Mitra J. Subsequently, regard being had to the importance of the matter a larger Bench was constituted to hear them. In order to understand what they are about. I might briefly relate certain facts stated in the pleadings:

3. In the instant case, the allegations made in the petition are as follows: The petitioner No. 1 is a limited company, known as the Jay Engineering Works. Its principal business consists of the manufacture of Sewing machines and fans. It has a sales office known as the "Eastern India Usha Corporation" at No. 26 R. N. Mukherjee Road in Calcutta The said office employs, apart from the management staff, approximately 365 workmen. The petitioner No. 1 Ram Nath Gupta is the manager of the said office the petitioner No 3 Anand Prakash Goel is the office superintendent, the petitioner No 4. Srikesh Lahiri is the Area Supervisor and the petitioner No. 5 Sudhir Kumar Mukherjee is also an Area Supervisor and the petitioners Nos. 6 and 7, Baijnath Kapur and Babulal Toshi are supervisors, in the said office The respondent No 8, the Jay Engineering Workers Union is registered under the Trade Unions Act, 1926. The respondent No. 17 Raghunath Kushari is the executive member of the said union, while the respondents Nos. 9 to 16 and 18 to 28 are members of the said union. On or about 17th January, 1967, 18 employees of the sales office, including respondents No. 9 to 12 and 18 to 22

were retrenched. We are not concerned in this case with the legality of the retrenchment. On the 27th January 1967, at about 1 p.m. the retrenched employees along with 70 others, blockaded the said corporation's premises, completely obstructing the passage of personnel and goods, including food stuffs for the barricaded persons inside, who were wrongfully confined therein. The blockade was lifted at 3 A.M. on 28th January 1967 after police intervention, On the 1st March 1967, the present Government in West Bengal, came into office. On 2nd March, 1967 the retrenched workers, together with other employees numbering about 200 persons gheroad the manager (petitioner No. 2) and other officers at the office premises from 1 P.M., and the gherao continued for 33 hours, being lifted at 10 P.M. on 3rd March 1967. It is said that the said persons confined the manager, the petitioner No. 2 and the other officers, namely the petitioners Nos. 3 to 7, tampered with the company's property spoilt the walls and continuously shouted insulting and humiliating slogans against the confined persons. Supply of food to those confined was not permitted except for a nominal quantity at the will of the besiegers. Information was given to the police authorities at Hare Street Police Station, but no action was taken.

4. On the 17th April, 1967 at 11 A.M. the said retrenched workers, together with other employees numbering about 100 to 150 persons gheroad the manager and other officials at the said office and kept them under wrongful confinement. The besiegers, trespassed into the office, tampered with property and shouted insulting and humiliating slogans against the confined persons. Only a minimal amount of food was allowed to be taken in, at the will of the besiegers. Information was given to the police but no action was taken Subsequently, an application was made before the Chief Presidency Magistrate. Calcutta u/s 100 of the Criminal Procedure Code, who ordered the officer-in-charge, Hare Street Police Station to search and rescue the confined persons and produce them before him, The confined persons were accordingly rescued at about 10 P.M. on 18th April 1967.

5. Again on 29th May 1967, the Manager and other officers were gheroad and wrongfully confined in the office for over 5 hours, from 10-30 A.M. to 3-30 P. M. Information was given to the police but no action was taken.

6. The rule in this case was issued on 8th June 1967 and an interim injunction was issued directing that no effect should be given to a circular issued by Government dated 27th March 1967. It is the common case of the petitioners in this series of gherao cases, that the primary reason for the total inaction of the police, lies in the fact that the State Government, through its Joint Secretary, in its Home and Political Department, has issued two circulars as follows:

(1) No. 513 P. C. Dt. 28th March 1967, addressed to all District Officers and the Commissioner of Police, Calcutta.

(2) No. P-914 P. S. Dt. 12th June 1967, and it is by reason of these two circulars that the police have been reduced to total inaction. These two circulars, together

with the Cabinet decisions upon which they are based, as also a previous circular, being Memo No. 138-P. S. Dt. 7th February, 1956 will be considered presently. It will be appropriate to mention here that the learned Advocate General, appearing for the State Government and other officials has taken up a strictly proper attitude throughout the trial, in keeping with the traditions of his high office and has made it clear that in a case of such public importance, he does not wish to indulge in petty technical objections and will not withhold from the Court, any papers or documents that it wants.

7. Upon these facts the following question have been raised:

To (1) What is a "gherao"?

(2) Is "gherao" as practised in this case lawful?

(3) Are the circulars dated 22nd March 1967 and 12th June 1967 and/or the decisions, if any, upon which they are based lawful or competent?

(4) Did the respondents 6 and 7 fail to perform their legal duties either in obedience to the said circulars or otherwise?

(5) To what relief are the petitioners entitled to?

It is necessary to mention here that the facts in the various cases, although similar, are not identical. In matters other than the case of the Bengal Enamel Co. Ltd. we have instances of encirclement, whereas in that case, the allegation is one of ouster. But all the cases involve one thing in common, namely the determination as to whether the two circulars issued on behalf of the Government of West Bengal, one dated 27 March, 1967 and another dated 12th June, 1967 mentioned above, are competent, or whether they should be set aside or quashed or appropriate orders made in respect thereof. Another important point that is common in all these cases is as to what were the "legitimate trade union rights" of the workers in an industry. This latter point arises from a certain expression used in the circular dated the 12th June, 1967. The exact expression used therein is "legitimate labour movement" It is however admitted by all parties before us that it means "legitimate trade union rights" I propose to deal with these common questions of law in this application and then deal with the individual facts in each particular case. It will be convenient here to set out relevant parts of the said circulars and the Cabinet decisions upon which the two impugned circulars in this case are based chronologically.

"Government of West Bengal Home Department Political

From

Shri M. M. Basu I.C.S., Secretary to the Govt. of West Bengal

(1) The District Officer,

(2) The Commissioner of Police. Calcutta.

Memorandum No. 138-PS. dated Calcutta, the 7th February 1956

Subject:-- Action to be taken in cases of stay-in-strikes and "Gherao" or Coercive and confinement tactics resorted to by the employees of commercial and industrial undertakings.

Cases of stay-in-strike and "gherao or wrongful confinement of officers by employees of commercial and industrial undertakings in order to coerce the management to concede to their demands have often come to the notice of Government. It is considered necessary to indicate in broad lines the action to be taken in dealing with such occurrences. It is appreciated that each occurrence will have its own peculiar feature? and that District Officers will have to use their discretion in dealing with the situation as it develops The instructions outlined below are therefore meant to indicate the broad lines of policy in dealing with such occurrences. They are not intended in any way to fetter the discretion of the local officers in using their lawful powers according to the needs of the situation they are called upon to deal with.

"Gherao or wrongful confinement and criminal trespass.

2 Though workers may go on peaceful strike which are not illegal they have no right to resort to coercive methods like wrongful restraint, wrongful confinement and criminal trespass which are all cognizable offences. Such methods are also unwarranted as there is a machinery set up by law to deal with all industrial disputes.

3. It is necessary to emphasize that the police should never lay themselves open to the charge of inaction When the police receive information from any source whatsoever, regarding such occurrences or any apprehension of such occurrences they should immediately seek confirmation thereof and proceed to the scene of occurrence particularly if police help is asked for by the management A responsible police officer not below the rank of Sub-Inspector should be in charge of the party. On arrival at the place the officer should contact the management to find out if police intervention is necessary.

In a case where the management asks for police intervention, the police should:--

- (a) disperse the demonstrators if it be found that they are an unlawful assembly;
- (b) arrest those who have committed or are committing cognizable offences; and
- (c) take such other action as may be called for

4. When however the demonstration is found to be peaceful and/or police intervention is not asked for by the management the police should withdraw from the premises concerned. If in such case the officer-in-charge of the police party considers that there is apprehension of serious trouble, he should withdraw with his force to a suitable place within reasonable distance but not within sight of the demonstrators, after intimating the fact to the management and making arrangements for establishing quick contact in case the demonstration takes an

untoward turn involving lawlessness.

5. The above instructions will apply to cases where coercive methods are adopted by labourers at places other than a factory e. g. an office or any other place of business.

6. In all such cases the police should immediately on getting information of any such occurrence or as soon thereafter as possible send an intimation to the nearest District Magistrate, Sub-Divisional Magistrate or any other Magistrate having jurisdiction.

Stay-in-Strikes.

7. Strikes are governed by the Industrial Disputes Act, (Central Act XIV of 1947). The Act defines legal and illegal strikes. The District Officers' main concern will be the law-and-order aspect of the affair the industrial dispute itself being that of the Labour Department. There is provision in the Industrial Disputes Act itself for dealing with an illegal strike. The District Magistrate comes into the picture only where there is an apprehension of a breach of the peace over a strike of the stay--in-variety.

8. Factory workers have a right to enter the factory. Their staying in however becomes criminal trespass u/s 447 I.P.C. when it appears that they intend to intimidate insult or annoy the management or to commit any other offence. It follows therefore, that staying-in-peacefully for the purpose of appealing to the management to grant some concessions would not be an offence under the I.P.C. It would be advisable to avoid police action in such cases.

9. Peaceful stay-in-strike rarely remain peaceful for long. The workers get restive and frequently take law in their own hands. Often then, a serious threat to life and property results. In such circumstances, action suggested in paras 3 to 6 above should be taken. But District Officers where possible should ascertain before-hand from the local representative of the Labour Directorate whether the strike is legal or not -

10.

11.

Sd/- M.M. Basu, Secretary to the Govt. of West Bengal".

No 6/1 II

Decision in Cabinet held on the 14th March. 1967. Department

Cabinet considered the situation created by the "Gherao" of Industrial Establishments by their workers resulting in the confinement of the managerial and other staff and directed that in such cases the matter should be immediately referred to Labour Minister and his directions obtained before deciding" upon Police intervention for the rescue of the confined personnel.

Should be communicated to Secretary. Lab. Dept.

Sd/- A.K. Mukherjee Chief Minister.

IGP CP. Cal. All D.M.S. All S.P.S.

To AS Poll/J.S. Poll after HS has seen

Sd/- A.K Datt 17/3

Sd/- 18/3

Calcutta, The 17th March, 1967. No 513 P. C. Confidential.

Dt. 27th March, 1967.

West Bengal Home Deptt. Political

To

1. The District Officer, 2. The Commissioner of Police. Calcutta.

Ref: Government Memo. No. 138 P.S. dated 7th February. 1956.

In supersession of the instructions contained in the above mentioned memo, the undersigned is directed to state that it has now been decided that in cases of gherao of industrial establishments by their workers resulting in the confinement of managerial and other staff, the matter should be immediately referred to the Labour Minister and his directions obtained before deciding upon Police intervention for the rescue of the confined personnel.

Sd/- A.K. Dutt. Joint Secretary to the Government of West Bengal.

No 281. IV

Decision of Cabinet held on the 8th June, 1967 Home (Poll) Department

Subject 2:-- ISSUE of a fresh circular on action to be taken in cases of Gherao of Commercial and Industrial Establishments by their workers.

Cabinet noted that in pursuance of the High Court's injunction in this behalf orders have been issued to local officers directing that no effect is to be given to G. O. No. 513-PS dated 27th March 1967 until further instructions. Cabinet also decided that the circumstances in which the Circular was issued should be clearly explained in the different proceedings now pending in the High Court, it being left to the High Court to decide on the validity of the Circular.

Cabinet further directed that a fresh Circular should be issued to local officers on the following lines:--

"Government would like to impress upon all officers specially those connected with maintenance of law and order, that the Police must not intervene in legitimate labour movements and that in case of any complaint regarding unlawful activities in connection with such movements, the Police must first

investigate carefully whether their complaint has any basis in fact before proceeding to take any action provided under the law".

Calcutta

The 9th June. 1967

Sd/- A.K. Mukherjes Chief Minister.

V Government of West Bengal Home Department Political.

No P 914-P. S.

Calcutta the 12th June, 1987

From : Sri A.K. Dutt. I.A.S., Joint Secretary to the Govt of West Bengal.

To: 1. The District Officer. 2 The Commissioner of Police/Calcutta

Subject: Police action in labour movements.

Government would like to impress upon all officers, specially those connected with maintenance of law and order that the police must not intervene in legitimate labour movements and that, in case of any complaint regarding unlawful activities in connection with tush (sic) movements the police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under the law.

Sd/- A.K. Dutt Joint Secretary to the Government of West Bengal."

In respect of the Circular No. 513 P. C. dated 27th March, 1967 it may be pointed out that it states ex facie that it is -- "In supersession" of the instructions contained in Government Memo No. 138 P. S. dated 7-2-56 set out above. It is admitted that no authority can be produced to that effect. The "decision" mentioned in the said circular relates to the Cabinet decision dated 14th March 1967 set out above.

8. Let us now come to the two impugned circulars and see what they contain. The first circular dated 27th March 1967 may be analysed as follows:

(i) Instructions given previously in the Government Memo No. 138 P. S. dated 7th February 1956 superseded The previous circular with "Gherao as well as other matters like -- "Stay-in-strikes" "Removal of finished goods from factories on strike" etc. It is not at all clear whether it was intended to supersede these matters also

(ii) In case of eherao of industrial establishments by their workers, resulting in confinement of managerial and other staff, the matter should be immediately referred to the Labour Minister and no police intervention for the rescue of the confined personnel should be decided upon without obtaining his direction. It plainly means that where by means of gherao the managerial or other staff of an industrial establishment have been wrongfully confined and this comes to the

knowledge of the Police either by mean of an information lodged or other-wise they must first obtain the direction of the Labour Minister before taking action and act according to such direction.

Coming next to the circular dated the 12th June 1967 it may be analysed as follows:--

(1) It was to be followed by all authorities connected with the maintenance of law and order, particularly the police. As explained below, it can only mean the police and the magistracy.

(2) The police must not intervene in "legitimate labour movements", which is now admitted to mean "legitimate Trade union rights"

(3) When a complaint is made to the police regarding unlawful activities in connection with any "legitimate labour movements", the police, instead of following the procedure prescribed by law must first investigate the facts and if they are satisfied that the complaint has basis in fact then alone can any action in law be taken.

In respect of this circular, the most surprising thing is that it does not by itself refer to the High Court injunction which had been passed in the meantime

9. These two circulars were addressed to all "District Officers" and the Commissioner of Police, Calcutta. It is not ex facie clear as to what is meant by "District Officers", but the matter is made clear by the endorsement made in the cabinet decision dated 14th March 1967, showing that it was sent to the Inspector General of Police, All District Magistrates; All Superintendents of Police; and to the Commissioner of Police, Calcutta. The first circular speaks of "police intervention" at a Gherao but the second circular expressly mentions "All officers, specially these connected with maintenance of law and order", and asks them not to interfere in "legitimate labour movements. It will have to be considered whether this is not also an attempt to dictate to magistrates carrying out their judicial duties, under the Criminal Procedure Code.

Since the first circular interdicts the police from taking action in case of "gherao" without permission of the Labour Minister and "gherao" is obviously included within the expression "legitimate labour movements" in the second circular, we must examine the real meaning and significance of that expression.

10. I have already traced above the etymological origin of the word "gherao and indicated that it may be of two kinds. The ordinary kind is encirclement and blockade of the industrial establishment, including the office factory workshop or residence, where the person gheraoed is generally a person in managerial or supervisory position who happens to be present. The encirclement may be complete or partial. In the latter case the gates or doors are blocked, preventing egress and ingress There might be such blockade outside the premises on a public thoroughfare, or the persons blockading may trespass into, the land belonging to the industrial establishment The second kind of gherao is

encirclement in depth, that is to say, forcible possession of the industrial establishment and ouster of the real owner and the managerial and other staff.

11. Apart from this a gherao may have infinite variations. I give below some of the allegations made in the various cases before us:--

(1) In the instant case, encirclement of office and blockade of egress and ingress, wrongful restraint and wrongful confinement of managerial staff and others, assault, pre-venting any communication from outside, including the supply of food for long periods, destruction of property spoiling walls, shouting of insult and abuses.

(2) In C. R. No. 734(W) of 1967 (Cal) Hindusthan Iron and Steel Co. v. State of West Bengal Encirclement, intimidation of loyal workers, physical violence, wrongful confinement of the Labour Adviser and Labour Officer and other members of the Staff, Noisy meetings held inside the factory disrupting normal work Dragging officers from their offices and keeping them confined in a small room attached to the Blacksmith's shop. A foreman severely beaten and manhandled and confined in a room. Owners insulted and forcibly prevented from going inside the factory.

(3) In C. R. No. 726 (W) of 1967 (Cal) Indian Oxygen "Ltd. v. State of West Bengal -- Declared a "Public utility service" under the Industrial Disputes Act and as "eSectionsential service" and "Protected place" under the Defence of India Rules 1962.

Strike although illegal under the Industrial Disputes Act. Encirclement of all officers present at Head Office and Calcutta branch and all senior officers at Taratola Road Branch. Compelling members of the staff to quit the factory and office premises and to hand over the keys of the factory. Occupying the office and factory premises for long stretches. Confining officers within rooms and cubicles and preventing them from leaving the same under threats of dire consequence. Preventing them from getting food and even to attend calls of nature. Cutting off electric connections from the rooms in which they were confined. Preventing technical officers from attending to their work increasing the peril of an explosion, (of explosive Gases). In all these cases, it is stated that the police were informed and letters were written to the District Magistrate and others, but no step or action was taken, because of the prohibition contained in the two circulars mentioned above. The above facts in other matters are merely stated here to show the nature of the complaints. I must make it clear that, all the complaints are not factually admitted and I shall deal with them in the respective Judgment delivered in the said matters. Let us see however how the matter stands in the instant case The material allegations of fact are contained in paragraph 12 of the petition As stated above, there are allegations that the manager and other officers were gheraoed by certain employees and, wrongfully confined for long periods without food, destruction of property and the shouting of insults and abuses All this was done to force the petitioners to take back

certain retrenched personnel. It is alleged that in spite of information given to the police, they took no action subsequent to March 1967. Only two affidavits have been filed in this case. One is by Nirmal Kumar Banerjee, Officer-in-charge of the Hare Street Police Station and the other is by Amal Kumar Dutt, Joint Secretary Home (Political) Department of the State of West Bengal, who has signed the two impugned circulars. As regards the officer-in-charge of the Hare Street Police Station, he deals only with the period subsequent to the order of this Court made on 8th June 1967. There is no denial of the allegations made in respect of the period prior thereto made in paragraph 12 of the petition. In fact, these allegations have not been denied at all. We must take it therefore that in spite of informations given of "gherao" and the commission of cognizable offences, he took no action and rendered no help, until he was forced to do so under orders of this Court or of the Chief Presidency Magistrate. On the question as to whether he was prevented from carrying out his lawful duties as a result of the interdict contained in the two circulars, he maintains a discreet silence. The affidavit of the Joint Secretary, Home (Political) department is even more uninformative. He says that an "administrative" circular was issued on March 27, 1967, whereby the police authorities were directed to take instructions from the Labour minister before taking action in regard to Gherao in industrial establishments. He does not say as to who authorised him to say that the previous circular of 7th February 1956 stood superseded. He says that after the issue of an injunction by this Court the operation of the Circular dated March 27, 1967 was stayed and a "fresh" circular dated 12th June 1967 was issued. No particulars have been given about the alleged "stay". He concludes by expressing a touching regard for the provisions of the Criminal Procedure Code, and submits that the petitioner might have received complete relief under that Act without throwing any light on the point as to why its provisions were allowed to be wantonly violated and under which of its provisions, the petitioner could have obtained complete relief when the police were themselves prevented from doing their duty as prescribed by law.

12. The result is that, so far as the facts are concerned, they are more or less admitted in this case.

13. In view of the observations made above we might now define the word "gherao" is a physical blockade of a target, either by encirclement or forcible occupation. The "target" may be a place or a person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial and is invariably accompanied by wrongful restraint, and/or wrongful confinement, and occasionally accompanied by assault criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences complained of are cruel and inhuman, like confinement in a small space without lights or fans and for long periods without food or communication with the outside world. The persons confined are beaten, humiliated by abuse and not allowed even to answer calls of nature and subjected to various other forms of torture, and are completely at the mercy of

the beseigers. The object is to compel those who control industry to submit to the demands of the workers, without recourse to the machinery, provided for by law and in wanton disregard of it. In short to achieve their object, not by peaceful means, but by violence.

14. I shall first of all proceed to examine the provisions of the Indian Penal Code, the Code of Criminal "Procedure, and the Calcutta Police Act (The Police Act 1861 and the Calcutta Suburban Police "Act do not apply in this case) in order to see whether a "gherao" of the description mentioned above contravenes the law or not, and what are the remedial measures prescribed therein, and how far they have been obstructed by the two impugned circulars.

15. I shall first of all deal with the Indian Penal Code. As is well known, the original Act was compiled by the first Indian Law Commission presided over by Lord Macaulsy and is acclaimed by jurists all over the world to be a brilliant piece of legislation. The Indian Penal Code and the Code of Criminal Procedure, have been widely followed in the Middle East, the far East and In Africa.

16. Chapter VA of the Code deals with criminal conspiracy and we are concerned with Section 120A which is set out below:

"120A. Definition of Criminal conspiracy. When two or more persons agree to do, or cause to be done.-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance "thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object"

It is a cognizable offence, if the offence which is the object of the conspiracy is a cognizable offence. It will be necessary to come back to it, while dealing with Section 17 of the Trade Unions Act 1928.

Chapter III of the Code deals with offences against public tranquillity. Section 141 deals with unlawful assemblies. The relevant part is set out below:

"141 Unlawful Assembly.--An assembly, If five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.....

Second

Third.....To commit any mischief or criminal trespass or other offence, or

Fourth.....By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property.....or to enforce any right or supposed right, or

Fifth -- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do. or to omit to do what he is legally entitled to do".

It is a cognizable offence.

17. Section 146 is rioting. Whenever force or violence is used by an unlawful assembly or by any member thereof, in prosecution of a common object of such assembly, every member of such assembly is guilty of the offence or rioting. It is a cognizable offence.

Chapter XVI of the Code deals with offences affecting the human body. Section 339 deals with wrongful restraint and Section 340 deals with wrongful confinement. The relevant part thereof are set out below:

"334. Wrongful restraint. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.--The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

340. Wrongful confinement. -- Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person"".

Both are cognizable offences.

Section 351 deals with assault. Section 357 deals with assault or criminal force in attempt wrongfully to confine a person. This is a cognizable offence. Section 378 deals with theft. This is a cognizable offence.

Section 440 deals with "mischief". It runs as follows:

"440. Mischief committed after preparation made for causing death or hurt.-- Whoever commits mischief, having made preparation for causing to any person death or hurt or wrongful restraint, or fear of death, (sic) of hurt, or of wrongful restraint shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine""

It is a cognizable offence.

Section 441 deals with criminal trespass. It is set out below:

"441 Criminal trespass. -- Whoever enters into or upon property in the

possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with Intent to commit an offence, is said to commit "criminal trespass".

It is a cognizable offence.

Section 442 deals with house trespass, which it, also a cognizable offence.

18. A gherao, of the description mentioned above, invariably involves the commission of offences under Sections 330 and 340 and may involve offences under one or more of the Sections mentioned above.

19. Let us now come to the relevant provisions of the Criminal Procedure Code. Section 54 provides that any police officer may, without an order from a magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of having been so concerned.

Under Section 127, any Magistrate or officer in charge of a police station may command any unlawful assembly or any assembly of five or more persons likely to cause disturbance of public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly. It applies to the police in the town of Calcutta. Chapter XIII of the Code deals with preventive action of the police. It is undoubtedly the duty of the police, not only to apprehend those that have committed an offence, but also to take steps to prevent it being committed. Perhaps, prevention is the more important phase of their duty and is illustrative of the homely phrase -- "Prevention is better than cure".

The relevant sections in this chapter are Sections 149 and 151 which are set out below:

"149. Police to prevent cognizable offences.--Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence

151 Arrest to prevent such offences.--A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented" Part V of the Code deals with the procedure of giving information to the police and their power to investigate. Section 154 deals with investigation into cognizable cases. It is set out below:

"154. Information in cognizable cases.--Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a

police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduce to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

Under Section 156 any officer in charge of a police station may without the order of a Magistrate investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. Under Sub-section (3) a Magistrate empowered u/s 190 may order such an investigation.

20. Information given u/s 154 is called a First Information Report and involves certain formalities. But the police are not required to sit on their haunches at the Thana premises, waiting for some one to come and give a written or signed information. It is their duty to keep themselves informed and power is given to act even on suspicion. The relevant part of Section 157 is set out below:

"157. Procedure where cognizable offence suspected. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order prescribe in this behalf in proceed to the spot, to investigate the fact and circumstances, of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided as follows:

Where local investigation dispensed with: (a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot.

Where police-officer in charge sees no sufficient ground for investigation. -- (b) if it appear-- to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case"

In each of cases mentioned in Clauses (a) and (b) the officer in charge has to state in his report, the reasons for not fully complying with the requirements of that section and forthwith notify to the informant, if any the fact that he will not investigate the case

21. A search warrant for the rescue of a person wrongfully confined can only be issued by a magistrate u/s 100 of the Code. Cognizance by a magistrate is dealt

with by Section 190, the relevant part of which is set out below:--

"190, Cognizance of offences by Magistrates (1) Except as hereinafter provided, any Presidency Magistrate District Magistrate of Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a report in writing of such facts made by any police officer;
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion that such offence has been committed"

I now come to the Calcutta Police Act 1866, which applies in this case. The important section is Section 10-A, the relevant part whereof is set out below :--

"Section 10-A (1) It shall be the duty of every Police-officer-

- (a)
- (b) to the best of his ability, to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences, and to lay such information and to take such other steps consistent with law and with the orders of his superiors as are best calculated to bring offenders to justice or to prevent the commission of cognizable offences, or the commission of non-cognisable offences within his view.
- (c)
- (d) to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension there is sufficient reason
- (e).
- (f) to discharge such duties as are imposed upon him by law for the time being in force "

The other Police Acts mentioned above are not applicable to this case and will be dealt with in cases where they are applicable. It will be observed that, while certain provisions of the Criminal Procedure Code are couched in words which merely give power to the officer-in-charge of a police station to act in the case of cognizable offences, the above provision makes it his duty to take steps to prevent commission of cognizable offences and to take such other steps as are best calculated to bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension there is sufficient reason.

22. We next come to the Constitution and its provisions, such as are relevant in the present case It must first be stated that our Constitution is based on "The Rule of Law". Justice Douglas in his Tagore Law Lecturer notes with pleasure that

the Indian Constitution is based on the Rule of Law and that it establishes a government of law and not by men. Chief Justice Lord Hewart, in his celebrated book -- "The New Despotism" says "What is meant here by the "Rule of Law" is the supremacy or the predominance of the law, as distinguished from mere arbitrariness, or from some alternative mode, which is not law, of determining or disposing of the rights of individuals *** The underlying contrast, the permanent antithesis is between the supremacy of the law on the one hand and, on the other hand, the arbitrary, which may easily Drove to be the capricious, exercise of lawless power. Nothing perhaps is more profoundly repugnant to the English mind than that authority should be so irresponsible or uncontrolled, that it should operate at pleasure or in the dark, that men should live in an atmosphere of uncertainty as to the nature of the rights they enjoy or the penalties to which they are exposed, or that among fellow citizens there should be one code for one class of persons and a different code for others.

"With us", as Professor Dicey says, "every official from Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen. The Report abounds with cases in which officials have been brought before the Courts and made in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial Governor, a secretary of State, a military officer and all subordinates though carrying out the commands of their official superior, are as responsible for any act which the law does not authorise as in any private and unofficial person

.....Everyone, whatever his position. Minister of State or Government official, soldier or Policeman, is governed by the ordinary law of the land and personally liable for anything done by him contrary to that law, and is subject to the jurisdiction of the ordinary Courts of Justice, civil and criminalNo one who is charged with a violation of the law can effectively plead, either in a civil or in a criminal court that his act was done in obedience to the command of a superior, even the command of the King himselfHe cannot authorise any wrongful act so as to justify the wrongdoer "

In our Constitution, the law is paramount There are three branches of the Government the legislature, the judicial and the executive. The legislature is entrusted with the making of the laws which are all subject to the over-riding provisions of the Constitution. The Judiciary is in charge of administering the laws It is always for the judiciary to say as to what the law is, whether it has been observed or violated and to punish the offende. The residuary power is vested in the executive; who govern the land, subject to the laws. This, is emphasised in Article 256 which runs as follows:--

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State". The reason for this lies in the fact that the rule of law demands that power in the hands of the executive cannot be coupled with the

determination by Itself as to whether it has been exercised according to law. That would at once result in the deprivation of the liberty of the citizen Lord Denning in "Freedom under the law" says: --

"All power corrupts Total power corrupts absolutely And the trouble about it is that an official who is the possessor of that power often does not realise when he is abusing it. Its influence is so insidious that he may be believing that he is acting for the public good when, in truth all he is doing is to assert his own brief authority. The Jack-in-office never realises that he is being a little tyrant."

Mr. Sen has cited before us the classical case of *Entick v. Carrington*, *Howards State Trials* 1030 (1765-19 *State Tr.* 1029). In that case the Secretary of State issued warrants which were executed by officials, to search houses, seize papers and to seize the persons from whom the papers were seized and bring them with the papers to the Secretary of State It was argued on behalf of the Secretary of State that such power is essential to good government, and the only means of quieting clamours and sedition. Lord Camden said:

"This power, so claimed by the Secretary of State is not supported by one single citation from any law book extant If it is law, it will be found in our books. If it is not to be found there, it is not lawThe great end, for which men entered society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by private law are various. Distresses, executions, forfeitures, taxes etc. are all of this description, wherein every man by common consent gives up that right, for the sake of justice and the general good. By the laws of England, every invasion of private property, be it so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing, which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact. he is bound to shew by way of justification that some positive law has empowered or excused him. The justification is submitted to the judges who are to look into the books; and if such a justification can be maintained by the text of the statute law or by the principles of common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant and the plaintiff must have judgment."

This is also the law of this land, under the Constitution Life, liberty and the enjoyment of property cannot be disturbed or taken away, except under the authority of law. The executive must at all times obey the law and be continuously ready to show to the Courts, whenever called upon that they have done so. This has been expressed in felicitous language by the Judicial Committee of the Privy Council, in *Eshugbavi Eleko v. Officers Administering the Government of Nigeria* 1931 AC 662 = (AIR 1931 P. C. 248), where Lord Atkin said:

"The Governor acting under the Ordinance acts solely under executive powers, and is in no sense a Court. As the executive he can only act in pursuance of the powers given to him by law. In accordance with British Jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British Justice that judges should not shrink from deciding such issues in the face of the executive."

This is also the position under our Constitution and has been followed by the Supreme Court in the case of *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, .

23. I may now enumerate the precise provisions of the Constitution which have been relied upon, in this case. Part III of the Constitution deals with Fundamental Rights which the Constitution guarantees. No law which violates its provision can be said to be good law. Under Article 12, --"the State" includes the Government. Article 13(2) lays down that the State shall not make any law which takes away or abridges the rights conferred by this Part of the Constitution, and any law made in contravention of the Clause shall to the extent of the contravention, be void. Under Clause (3) (a), the expression "law" includes any order or notification. Article 14 enjoins that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 19(1)(d) lays down that all citizens shall have the right to move freely throughout the territory of India. This is subject to the provisions of Clause 2 (5), granting power to the State to make any law imposing reasonable restriction on such right. Article 21 lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 256 has already been set out above, which provides that the executive power of every State shall be so exercised as to ensure compliance with the law made by Parliament. Before I finally deal with the crucial point as to whether two impugned circulars are valid, it will be necessary to examine another branch of the law. In the circular dated 12th June, 1967 the expression used is "Legitimate labour movements" The argument advanced is that the effort made by Government was to protect only such legitimate right as the worker has against his employer. The learned Advocate General has argued that the expression used above, refers to legitimate trade union rights and it is not disputed that this is what the expression was intended to mean It will therefore be necessary to examine what those rights are. This is of the greatest importance, for if it is found that the Trade-Union rights are such that they make gheraos lawful then the circulars cannot be assailed as invalid.

24. Before the World War I (1814-18), there was no Industrial legislation in India and the idea of settling industrial disputes by legislation was not known. The ordinary principles of master and servant governed the relations of the employer and the employee in an industrial concern. During the war, manufacturers in this country made phenomenal profits and there was a significant increase in the

employment of industrial labour. The holding of the International Labour Conference at Washington in 1919 in which India participated raised the consciousness of labour to their own plight. The spasmodic occurrences of strikes led to important amendment in the Factories Act in 1922 but no step was taken to bring about amicable relations between labour and its employer, by means of legislation. The provinces of Bengal and Bombay took the initiative to consider and report on the practicability of creating a machinery to settle industrial disputes. It is significant that a Committee was appointed in Bengal which was not in favour of intervention or any special legislation regarding labour disputes. Bombay however was in favour of legislation establishing industrial courts. Legislation however was inevitable in the face of growing conflicts between capital and labour and we find a number of statutes being passed, e. g. the Workmen's Compensation Act 1923, the Mines Act of 1923; and the Trade Unions Act of 1926. In 1929, the first Indian Trade Disputes Act was passed, which has now been replaced by the Industrial Disputes Act 1947. In 1932 was passed the Criminal Law Amendment Act 1932, as a result of the Civil Disobedience movement In furtherance of the recommendation of a Royal Commission, was passed the Payment of Wages Act 1936 and the Employment of Children Act, 1938. In 1942 Rule 21 was incorporated in the Defence of India Rules to prevent strikes and lock-outs. The origin of trade unionism in India may be traced back to 1890 when workers of Bombay organised a union called the Bombay Millhands Association. In England, trade unionism existed under the Common Law but it existed under several handicaps and had to be developed by continuous legislation. In 1921, the Madras High Court granted an injunction restraining the Madras Textile Labour Union Officials from influencing labourers in the Buckingham and Carnatic Mills, from breaking their contract with their employers by means of a strike with a view to obtain increased wages. This led to intensive agitation and resulted in the passing of the Indian Trade Unions Act (XVI of 1926) which came into force on 1st June 1927. The main object of the Act is to give registered trade unions a legal and corporate status and their executive and members immunity from civil and criminal liability in respect of strikes. It was amended in 1947 by the Indian Trade Unions (Amendment) Act 1947 which primarily deal with the recognition of Trade Unions but the provisions have not yet come into force as the Central Government has not to this day issued the requisite notification.

25. All parties have agreed before us that, what is described as "legitimate labour movements" in the circular of 12th June 1967, is nothing but "Trade Union rights", which are contained in the Sections 17 and 18 of the Indian Trade Unions Act (XVI of 1926) but are subject to Section 7 of the Criminal Law Amendment Act 1932. Reference may also be made to the Cognate Act, the Industrial Disputes Act XIV of 1947.

25A. Section 17 of the Trade Unions Act 1926 is set out below:--

"Section 17. Criminal conspiracy in trade disputes -- No officer or member of a

registered Trade Union shall be liable to punishment under Sub-section (2) of Section 120B of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence."

Section 15 sets out the object for which the general funds may be spent. Apart from the specified objects, there is an omnibus clause empowering the appropriate Government to add to the list by notification in the Official Gazette.

Section 18 is set out below:--

"Section 18 Immunity from civil suit in certain cases. (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered Trade Union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which the member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills

(2) A registered trade union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such persons acted without the knowledge of or contrary to express instructions given by the executive of the Trade Union".

As regards Section 17 the immunity given is of a limited nature and must be clearly understood. Section 120B of the IPC is really the punishing section in respect of Section 120A set out in an earlier part of this judgment. What Section 17 provides is that, an agreement to do things in furtherance of the objects set put in Section 15 will not amount to a criminal conspiracy Firstly, it will be observed that those objects are limited to the objects for which the funds of a Trade Union can be spent and do not relate to general objects. If in furtherance of such a limited objective, there is an agreement to commit an illegal Act or an act which is not illegal, by illegal means, then such an agreement will not amount to an offence u/s 120A. But to all this there is a blanket exception, namely that an agreement to commit an offence will never be excused. The relevant part of Section 7 of the Criminal Law Amendment Act 1932 (23 of 1932) is set out below: "Section 7. Molesting a person to the prejudice of employment or business (1) whoever :--

(a) with intent to cause any person to abstain from doing or to do any act which such person has right to do or to abstain from doing, obstructions or uses violence to or intimidates such person or any member of his family a person in his employ or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place or interferes with any property

owned or used by him or deprives him of or hinders him in use thereof or.

(b) loiters or does any similar act at or near the place where a person carries on business in such a way and with such intent that any person may thereby be deterred from entering or approaching or dealing at such places shall be punished with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or both....."

The Act is to come into operation in such areas as the Central Government, by notification directs. It has been applied to various district of West Bengal. The general impression is that it applies in the City of Calcutta, but I must mention that we have not been able to lay hands on the precise notification in respect of it. The object of the section is to punish picketing which takes the form of molestation of a person to the prejudice of his employment or business. In *R. S. Ruikar v. Emperor*. AIR 1935 Nag 149, the Court was dealing with a case of picketing. While it was held that peaceful strike or peaceful picketing was permissible, molestation in course of picketing was held to come under the mischief of Section 7 of the Criminal Law Amendment Act 1932. Grille J C. said as follows :--

"The next contention is that there is a definite conflict between Section 7 Criminal Law Amendment Act and the Trade Unions Act of 1926. It is contended that the valuable right given to Trade Unions to declare a strike and their immunity from liability for criminal conspiracy or to civil suits in connection with the furtherance of a strike is taken away if Section 7 Criminal Law Amendment Act is held to be applicable to trade disputes. I am unable to see any conflict. Trade Unions have the right to declare strikes and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as Trade Unions Act permits, but there is nothing in that Act. which apart from immunity from criminal conspiracy allows immunity from any criminal offence".

It was held that the accused had rightly been convicted of having abetted an offence punishable u/s 7. namely molestation while picketing.

26. Sections 17 and 18 of the Indian Trade Unions, Act and Section 7 of the Criminal Law Amendment Act 1932 are based on the English law but it must not be thought that they are identical. Let me set out briefly the history of Trade Union legislation in England, Trade Unionism existed in England from medieval times, but the first attempt at legislation was inimical to it and consisted of wage fixing laws. The Combination Act of 1800 made all Combination of workmen to regulate conditions of their work illegal. All contracts, covenants and agreements for obtaining an advance in wages, altering the hours of work, preventing workmen hiring themselves or attempting to induce them to leave work, were declared illegal. As a result of the work of the Benthamite reformers was passed the Combination Laws Repeal Act 1824. This Act expressly removed all criminal liability for conspiracy for combining to alter certain conditions, of work or to

induce persons to leave, refuse or return to work It however contained penal provisions against the use of violence, threats and intimidation. It was replaced by the Combination Laws Repeal Act Amendment Act 1825. which narrowly defined the combinations which would be free from criminality. The 1825 Act did not expressly legalise strike and lock-outs or the persuasion of persons to leave, refuse or return to work It was nevertheless recognised in decided cases that the exercise of the right to combine for the purpose of raising wages or altering the hours of work necessarily involved the right to withhold labour or employment for that special purpose. In addition to penalising violence, threats and intimidation, the 1825 Act applied also to "molestation" and "obstruction" The latter was somewhat eased by the Molestation of Workmen Act 1859. As a result of a Royal Commission, the Trade Unions Act 1871 was passed. It legalised Trade Unions and instituted a system of voluntary registration conferring a special legal status and imposing obligations. The Act makes it clear that the members of a trade union shall not be liable for criminal conspiracy because its purposes are in unlawful restraint of trade A number of deficiencies were sought to be removed by the Amendment of 1876. The Trade Unions Act of 1871 did nothing to alter the criminal law except as to conspiracy. Amendment of the law relating to violence, threats, and molestation was made by a separate Act passed in the same year, namely the Criminal Law Amendment Act 1871 which repealed the Acts of 1825 and 1859 and substituted other provisions making it an offence for any person to use violence, threats, intimidation, molestation or obstruction with a view to coercing an employer to act in certain specified ways e. g. to become a member of a trade union, quit work etc. A mere threat to strike was however not an offence. For the purpose of the Act, "molestation" and "obstruction" were defined as meaning the persistent following of a person, hiding his tools, clothes and property watching or besetting him etc. Except these specified items, no person was to be liable to punishment for doing or conspiring to do any act on the ground that it restrained or tended to restrain the free course of trade. The next statute was the Conspiracy and Protection of Property Act 1875 which replaced the 1871 Act. Under this Act, any act done in combination would not be criminal unless the act itself, when done by one person, would be a crime. The prohibition against violence, intimidation, persistent or disorderly following, hiding tools and watching and besetting continued, It made peaceful picketing lawful making it clear that attending a place in order merely to obtain or communicate information was not to be deemed as watching or besetting. Various legal decisions however threw doubts on the rights conferred by the existing statutes and to remove (them) was passed the Trade Disputes Act 1906. It made peaceful picketing lawful as well as peaceful persuasion to strike. It was followed by the Trade Disputes and Trade Unions Act 1927 This was the outcome of the 1926 strikes and sought to restrict trade union activities in many ways. It declared certain strikes and lock-outs to be illegal and excluded them from protection. The definition of "strike" was curtailed. The definition of "intimidation" made stricter so as to make picketing impracticable altogether. The Act was bitterly resented by the trade unions and was repealed in its entirety by the

Trade Unions Act 1946 passed by the Labour Government which came to power in 1945. This was followed by the Industrial Disputes Order 1951. It did not prohibit strikes or lockouts but retained in modified form provisions for settlement of disputes by arbitration. In 1959 the order was revoked and the terms and conditions of Employment Act of 1959 were passed.

27. It will thus be seen that the Indian Law is based on the English law but the provisions are not identical. In our law there are no specific provisions as to strikes or picketing or molestation or watching and besetting etc. All that there is, can be said to be contained in the Indian Trade Unions Act 1926 or the Amendment Act 1947 (which deals with the matter of recognition of trade union), the Criminal Law Amendment Act 1932 and the Industrial Disputes Act 1947. The last mentioned Act does not affect or regulate Trade Unions as such, but certain provisions e. g. which make strikes illegal under certain circumstances, are of interest. Certain provisions of the Defence of India Rules are also pertinent. It will be seen however, from a perusal of all these statutes that both in the English as well as the Indian Law, regulating Trade Unionism violence, molestation, intimidation or the commission of offences against the Criminal Laws of the land, are inhibited.

28. Before I proceed further, I have to set out certain concessions made by the Learned Advocate General, in order to shorten the proceedings.:-

1. If the impugned circulars are executive orders and found to be violative of the Constitution or constitute an invasion of the rights of a citizen or are contrary to any provision of law, then the persons affected by it might apply to Court, which can strike them down, in a properly framed application.

2. If a person or number of persons wrongfully, restrain or wrongfully confine another person or persons it is elementary that the matter comes under Sections 339, 340 read with Sections 341, 342 of the IPC as the case may be, and cannot be saved by Section 17 of the Trade Unions Act 1926 or indeed any provision thereof. A combination of industrial workers cannot claim immunity from being charged with criminal conspiracy, if they conspire to commit an offence. Whether there was a conspiracy to commit an offence is a matter of fact, the onus of proving which, is on the petitioner. The commission of an offence is not excused by any other law.

29. Much of our task has been minimised by reason of the fact that the learned Advocate General has conceded that neither Section 17 nor 18 of the Trade Unions Act exempts an agreement to commit an offence or the commission of an offence except to the limited extent, laid down in Section 17 of the Trade Unions Act. It is therefore not necessary to delve into the authorities for such a proposition: but since certain decisions have been cited before us I shall briefly notice some of them here. The first case cited is an English case *Tynen v. Balmer* 1966 62 All F.I.R. 133. The facts in that case were as follows. While a strike was in progress at the English Electrical Co., Ltd. factory at Liverpool certain

workmen, gathered in pickets were walking down in a circle in the mouth of the main entrance of the factory extended into a service road which was a part of high-way Two police constables were on duty outside the factory and they saw the appellant leading about 40 strike pickets in circular movement. The police constable requested the appellant to stop the circular movement, expressing the view that it was an obstruction. The appellant replied no, I am challenging your authority" and continued with the circling movement. At this, the police constable arrested him and charged him with the offence of obstruction. u/s 2 of the English Trade Disputes Act, 1906 it is provided that it shall be lawful if one or more persons acting on their own behalf or on behalf of the trade union, attend at or near a house or place where he or they work or the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or abstain from working. The Recorder held that the pickets were not attending merely for the purpose set out in Section 2, but that their object was to seal off the high-way and cause vehicles approaching the premises to stop. He held that the Trade Disputes Act, 1906 did not protect the appellant because the facts established disclosed an offence, and the conviction was justified. This finding was upheld in appeal by the Queen's Bench Division. In an American case, National Labour Relations Board v. Fansteel Metallurgical Corporation (1938) 306 US 240 : 83 Law Ed 627, the union of the workers in the Fansteel Metallurgical Corporation, Chicago decided upon a "sit down strike" by taking over and holding two of the respondents' "Key" buildings. These were thereupon occupied by about 95 employees. Work stopped and the remainder of the plant also ceased operation. The superintendent accompanied by the police went to each of the buildings and loudly announced that the men who had seized the plant were discharged for seizure and occupation of the buildings. The men took no heed of it and continued to occupy the building and the respondent obtained from Court an injunction order requiring the men to surrender the premises, but the men refused to obey the orders and writs of attachment were issued by the court There was a pitched battle, and at first the men successfully resisted the Sheriff, but ultimately were over-powered and removed. Most of them were eventually fined and given jail sentences.

It was held that the conduct of the workers justified their discharge. The workmen had the right to strike but no licence to commit acts of violence or to seize their employers' plant Chief Justice Hughes said as follows: --

"For the unfair labour practices of the respondent the Act provided a remedy..... reprehensible as was that conduct of the respondent there is no ground for saying that it made the respondent an outlaw or deprived it of its legal rights to the possession and protection of its property. The employees had the right to strike but they had no license to commit acts of violence or to seize their employers' plant. We may put on one side the contested question as to the circumstances and extent of injury to the plant and its contents in the efforts of the men to resist eviction. The seizure and holding of the buildings was itself a wrong apart from any act of sabotage. But in its legal aspect the ousting of the

owners from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labour dispute or of an unfair labour practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and Order which lies at the foundation of society".

Watching and besetting are not encouraged by Trade Union Laws anywhere in the world. The term "to beset a place" given in the Oxford dictionary is "to set about, to close round, hem in, surround or occupy a place". Under the Canadian Law, if the watching and besetting amount to a nuisance or a trespass or an unlawful assembly, there is no protection. A mass picket surrounded the business premises during a strike and the accused has prevented employees from entering the plant and had counselled or procured pickets acting under their control or authority. This be-setting was found unlawful. *R. v. Doherty and Stewart* 2 CR 293 (Canadian see "Labour Relations in Canada" Crysler pp. 30). In *Dalmia Cement Ltd. v. Naraindas Anandji Bechar* AIR 1939 Sind 256 it was held that Section 18 of the Trade Unions Act did not excuse trespass into another's property. Lobo J. said:--

"It does not appear to me in the first instance that Section 18 of Act 16 of 1926 is any bar to the present suit. If the section is carefully read and if the object of the Legislature is carefully considered it will be clear that whereas ordinarily a person is liable in tort if he deliberately brings about a breach of contract of employment between employer and employee, the section provides that a registered trade union or an officer or member thereof is protected from a suit or a legal proceeding if he induces some person to break a contract of employment or interferes with the trade business or employment of some other person, in contemplation or furtherance of a trade dispute etc The important and significant words in the section are "on the ground only"

The section does not afford immunity to a trade union or to an officer thereof for an act of deliberate trespass" The word "strike" has been defined in the Industrial Disputes Act 1947 in the following manner :--

"Section 2(q) -- "Strike means a cessation of work by a body or persons employed in any industry acting in combination, or a concerted refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment".

A Strike which is lawful is a recognised instrument in the hands of labour, which aids them in any concerted movement to improve their position vis-a-vis the management. Mere absence from work does not amount to a strike. There should be evidence to show that the absence was the result of some concert between the workmen, that they would not continue to work. Strike, when it is lawful is a legitimate weapon in the hands of worker. A gherao may or may not

amount to a strike, but when accompanied by violence or the commission of any offence, can never be lawful. It will be useful to notice some decided cases about strikes. In *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, the Supreme Court was deciding a case of a tools down strike. In that case what happened was that a number of workmen entered the factory and started a tools down strike and thereupon the officers made reports to the General Manager who made an order suspending these workmen. After the recess, when the gates were opened, 76 workmen in spite of the warning of the gate-keeper forcibly entered the premises of the mills and also entered the workshop, the boiler house and the mill house and continued to stay there threatening violence. In a letter written to the General Manager, he was told that if he did not mend his illegal mistakes and did not take the workmen back on duty, he would be responsible for a breach of the peace. The General Manager directed an enquiry to be held but at the enquiry the workmen did not turn up. The appellant company made an application u/s 22 of the Industrial Disputes Act before the Labour Appellate Tribunal for permission to dismiss the 76 workmen. The workmen in their turn filed an application u/s 23 of the Act for action to be taken against the appellant for having contravened Section 22(v) of the Act by resorting to an illegal lock-out and inflicting other punishments without obtaining prior permission of the tribunal. The appellate Tribunal found in favour of the workers. It held that there was an illegal lock-out and permission to dismiss the workers was refused. They were directed to be reinstated. The Supreme Court held that the Appellate Tribunal was in error. *Bhagwati T. said as follows:--*

"The workmen had forcibly entered the premises of the mills in spite of the warnings of the watchmen and the Jamadar and had also entered the workshop, the boiling house and the mill house and continued to stay there threatening violence. In their letter dated June, 3, 1952, they had also threatened the General Manager that if he did not take the workmen back on duty he would be responsible for any breach of peace. This was though evidence of their mentality and the management naturally apprehended breach of peace at the hands of these workmen".

It was held that there was no lock-out and that permission should be granted to dismiss the workmen u/s 22 of the Industrial Disputes Act. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court was considering the case of certain employees of the Bank who staged a pen-strike and refused to vacate their seat when called upon to do so. Certain subversive and violent acts were also alleged. *Gaiendragadkar. J. (as he then was) said:*

"The history of the trade union legislation in England shows that the trade union movement had to wage a long and bitter struggle to secure recognition for the workmen's right to organise themselves into unions and to exercise their right of collective bargaining if necessary by the use of weapon of strikes. In America a similar struggle took place. and, as we have just pointed out, it was marked by violence on the part of both capital and labour, because the employer's theory of

hire and fire offered by relentless resistance to the workmen's claim to form unions and to resort to strikes for trade union purposes. In *William Truax v. Michael Corrigan* (1921) 66 Law Ed 254 :157 U. S. 312, Mr. Justice Brandies in his dissenting judgment has given an illuminating account of the history and progress of the trade union movement in the United States, in England and the colonies the dissenting opinion delivered by Mr. Justice Brandies has been subsequently treated as an authoritative exposition of the problem of trade union and the history of its growth and development

Fortunately as the Indian Trade Union Act 16 of 1926, the Industrial Employment (Standing Orders) Act XX of 1926 and the Industrial Disputes Act 14 of 1947 show our Legislature has very wisely benefited by the experience of other countries in the matter of the development of the trade union movement and has made progressive just and fair provisions governing the important problem of industrial relationships the formation of trade unions and the settlement of industrial disputes. It can justly be claimed that though we have witnessed capital-labour conflicts in our country on the whole neither party has departed from the pursuit of peaceful methods....."

It was held that a pen-down strike was a strike within the meaning of the definition of Section 2(q) of the Industrial Disputes Act A pen-down strike occurs where workmen enter the premises of their employment and refused to take the tools of their trade in their hands and start their, usual work. Such refusal under a common understanding not to continue work if a strike. The strikers, however, have no right to stay within the industrial establishment beyond office hours without permission. Mr. Acharya appearing on behalf of the respondent union has argued that in this case, *Gajendragadkar, J.* (as he then was) had held that workers, could enter the premises where they worked and do anything they liked to put pressure on the management to concede their demands. He has pointed out to a passage in his judgment at page 176 (para 47). I regret to say that Mr. Acharya has misread the Judgment. In this part of the judgment, the learned Judge was considering the question whether the workers could be said to have contravened Section 441 of the Criminal Procedure Code He pointed out that even if the entry was unlawful, it could not be presumed that this was done with the intent of insulting or annoying the employer. The knowledge this might be the inevitable result of their action was not enough. The learned Judge was not laying down any such broad principle as was advocated by Mr. Acharya. On the contrary he strikes down violence on the part of strikers, as being against the law. In *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, and *O.K. Ghosh and Another Vs. E.X. Joseph*, it has been held that the right to strike is not a fundamental right guaranteed by the Constitution. The right to form an association is guaranteed by Article 19(1)(c) but where rules have been framed prescribing that a government servant will not be entitled to join a strike this is not a violation of the Constitution and cannot be struck down whereas a provision that he cannot form any association or become a member of any association not recognised by government would be violative of the fundamental

right under Article 19 and should be struck down.

30. Section 17 of the Indian Trade Union, Act 1926. is based on Section 3 of the English Conspiracy and Protection of Property Act 1875, as amended by Section 5(3) of the Trade Disputes Act 1906. With regard to this provision. Lord Evershed in *Rookes v. Barnard* 1964 AC 1129 says as follows-

"My Lords, I am indeed conscious of the fact that the view upon the supposed case entertained by your Lordships appears to have the support of no less an authority than that of Lord Lereburn. who was Lord Chancellor at the time of the passing of the Trade Disputes Act, 1906. I have in mind the celebrated passage in his speech in *Con-way v. Wade* 1909 AC 506. "It is clear that, if there be threats of violence, this Section gives no protection for then there is some other ground of action besides the ground that it induces some other person to break a contract" and so forth. So far there is no change. If the inducement be to break a contract without threat or violence, then this is no longer actionable, provided always that it was done "in contemplation or furtherance of trade dispute" In this respect there is a change. If there be no threat or violence, and no breach of contract, and yet there is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills, there again there is perhaps a change. It is not to be actionable, provided that it was done "in contemplation of furtherance of a trade dispute."

It will be noticed however that both Sections 17 and 18 of the Trade Union Act 1926 fall far short of the rights conferred by the English Acts. The common characteristic however is that both inhibit violence, intimidation and molestation

31. The net result of the decision set out above is that Sections 17 and 18 of the Indian Trade Unions Act grant certain exemption to members of a trade union, but there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of a trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. Such strikes must be peaceful and not violent and there is no exemption where an offence is committed. Therefore, a concerted movement by workmen by gathering together either outside the industrial establishment or inside, within the working hours is permissible, when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence then the exemption is lost. Thus, where it resorts to unlawful confinement of persons, criminal trespass of where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed. I now come to a consideration of the real point in this case, namely the two impugned circulars. The learned Advocate General dealt at length with the circular dated the 7th February 1956 the relevant part whereof has been set out above. He argued that this circular which was issued by the previous Government of West Bengal, contained many unlawful directions. He

pointed out that the same infirmity as contained therein is not to be found in the two impugned circulars in this case. For example, he points out that in this circular when, police received information regarding a gherao involving wrongful restraint, wrongful confinement and criminal trespass which are all cognizable offences the direction was to proceed to the scene but on arrival the police should contact the management and only intervene where the management asked for police intervention. Even if there was an unlawful assembly or a cognizable offence has been committed. They were to withdraw at a distance unless the management wanted assistance. It was also provided that where there was a serious threat to life and property the police were to ascertain from the local representative of the labour Directorate whether the strike was legal or not. Where removal of finished goods from the factory was interrupted, thus committing a criminal offence, the district officer was invariably to consult the Labour Department to find out what should be the appropriate time for intervention. The learned Advocate General argues that the impugned circular dated the 27-3-1967 was really an attempt to supersede the illegal directions contained in the earlier circular and there is nothing in it which is contrary to law. First, of all, we are not concerned in this case with the 1956 circular. I think that there is much in what the learned Advocate General says about its illegality. The learned Advocate General has argued that in the 1956 circular, the pride of place was given to the management. Nothing was to be done without consulting the management. The present Government did not like this emphasis and gave no privileged position to the management, but were more concerned with labour. That is why recourse was directed to the Labour Minister. He says that today, labour has become restive because of the great delay in labour adjudications and implementation of their awards. All that was done by the impugned circular was to give an opportunity to the labour Minister to intervene and settle disputes, preventing violence. It is impossible for us to say whether the policy of Government has changed or whether the change is more beneficial to employers or the employed. We should have thought that a Government to be worth the name should represent both the employer and the employed and protect their rights impartially and in a manner which will be of the greatest assistance to national progress. For national progress, what is required is the rapid industrialisation of the country, the modernisation of existing industries, the increase of production, the increase of export and the increase of per capita earning. This can only be achieved in an atmosphere of peace and co-operation between labour and the management. How this can be achieved by encouraging violence, and intimidation or the playing of one against the other by successive Governments is beyond my comprehension. However the point to be considered by us, at present is as to whether the two impugned circulars contravene the law. I shall now deal with the circular dated 27th March 1967. The first thing that should be noted is that it speaks of a "gherao" and states on the face of it that it is applicable to a case where an Industrial establishment is gherao by its workers resulting in the confinement of its managerial and other staff. It is obvious that the word "confinement" means wrongful confinement, bringing it within the

ambit of Section 340 of the Indian Penal Code. The learned Advocate General points out that this circular is confined to police intervention for the "rescue" of the confined personnel. He argued that the Criminal Procedure Code does not provide for any kind of "rescue" by the Police, and can refer only to Section 100 of the Code which gives power to a Magistrate to issue a search warrant and when such a warrant is issued, the police can search for a person and rescue him. According to him, there is nothing in this circular which prevents the Magistrate from doing so. In my opinion this is not a substantial argument. It is true that the word "rescue" is not to be found in the Criminal Procedure Code, but it can mean one of two things. Assuming, as the circular does, that an industrial establishment is gheraoed by its workers, resulting in wrongful confinement of its managerial and other staff, rescue could be effected either by the issue of a search warrant u/s 100, and this can only be by a Magistrate, or it can be done by action under either Section 54 or 127 of the Code. Section 54 provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. If the person found to be committing the cognizable offence of wrongful restraint or wrongful confinement be arrested, then the persons confined would be able to escape or be rid of the wrongful restraint or wrongful confinement, and would thereby be "rescued". Next, we have Section 127. Section 127 of the Code lays down that any Magistrate or the officer-in-charge of a Police station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly. In the case of a "gherao" contemplated under the circular, the officer-in-charge, if he finds that there is an unlawful assembly can take steps to disperse the same and for this no order of a Magistrate is necessary. If the unlawful assembly or an assembly of five or more persons likely to cause disturbance of the public peace, be dispersed then the confined persons would be able to escape or be rid of the wrongful restraint or confinement and thus can be said to be "rescued". Let us see whether the circular prohibits or obstructs action u/s 54 or 127. The learned Advocate General argued that in the present case it was not a practicable proposition to arrest hundreds of persons who were found gheraoing the managerial and other staff. In my opinion, in order to test the legality of the circular, we are not confined to the present case. If the circular prohibits or obstructs the carrying out of a power or duty or even the discretion granted under the Code, under any circumstances, then it would be bad. As I read the circular, even in a case where the officer-in-charge can easily take steps u/s 54 or 127 he cannot do so because of the absolute prohibition contained in the circular which says that he must immediately refer to the Labour Minister and his direction be obtained before deciding upon any police intervention. The Criminal Procedure Code does not require the officer-in-charge to obtain any such direction. The obtaining of direction naturally means that the Labour Minister may allow, prohibit or delay

action being taken by the Officer-in-charge. Let us take a simple case. A manager is confined in a room with a single door. This door is blocked by let us say 10 persons who had wrongfully confined the manager. The Officer-in-charge upon information received finds that there is such a confinement and let us assume that he has sufficient police force in his command to arrest the persons u/s 54. But he cannot do so, because under the circular he has to refer the matter to the Labour Minister who may or may not be available immediately. It is well known that Ministers are going about the country trying to meet the violent situation which is spreading all over the State, and also they are frequently visiting Delhi. It may be days before the officer-in-charge can get into contact with the Labour Minister. Therefore, although he has a right u/s 54 of making an arrest of persons whom he plainly sees committing a cognizable offence, then and there, he cannot arrest them until the Labour Minister directs him to do so. This is entirely violative of the Code and constitutes the addition of provisions to it which are not there. Let us next take Section 127. If the officer-in-charge finds that there is an unlawful assembly or an assembly of five or more persons likely to cause a disturbance of the public peace, then u/s 127 he can at once take steps to disperse the same. The learned Advocate General has pointed out that this power is discretionary. I will assume that this is so. but let us take the case where the officer-in-charge has found that there is an unlawful assembly or an assembly as mentioned in Section 127 and he wants to use his discretion in favour of dispersing the same. Under the law he is not liable to take directions from anybody and yet the circular adds to the law or else is violative of it. because it says that the Officer-in-charge cannot do so without first referring the matter to the Labour Minister. Apart from the very impracticable course of laying down that such an urgent action can be taken only upon reference to the Labour Minister who, as I have pointed out, may not be available for days, the point is that the circular lays down a fetter which is not to be found in the law. Therefore, what it lays down is clearly violative of the provisions of Section 54 or 127 of the Code. In course of the argument, we expressed a doubt as to whether the provision for obtaining the direction of the Labour Minister was in accordance with the Constitution. According to Article 154 of the Constitution the executive Government vests in the Governor. Under Article 163 the Council of Ministers is to advise the Governor in the exercise of his functions. Under Article 166, the Governor by making rules known as "Rules of business" may delegate his power to the Ministers. The various Ministers are given separate portfolios. For example, the Chief Minister is now in-charge of the Home and Political Department. This is separate from the Labour Department which is under the Labour Minister. The Ministers together constitute the cabinet and there is joint responsibility. According to the rules of business, the cabinet has got definite functions. It is the cabinet alone which can lay down policy. The Chief Minister may refer any matter within the jurisdiction of a particular Minister to the cabinet. Where a matter involved two or more Ministers, the matter can be referred to the cabinet. A cabinet decision is to be executed by the Secretary. In this case, we are concerned with the Home and Political Department, because

the direction to be given are to the police, which is under the Home and Political department. It seems to me very doubtful whether the cabinet can give direction that a matter coming within the jurisdiction of one Ministry must always be performed, after reference to another Ministry. The original delegation is by the Governor to the Ministers. There cannot be a redelegation. The direction in the circular that a matter which appertains to the Home and Political Department must always be performed upon reference to a Minister, in charge of another Department, namely Labour, does not appear to me to be legal. If this is possible then the delegation by the Governor can be wholly defeated. The cabinet may say that all matters relating to the Home and Political Department must be done according to the instructions of the Minister for Public Works. This would destroy the delegation by the Governor. It is not however necessary for us to pronounce a final opinion on this point because the ground that I have mentioned above is quite sufficient to make the circular invalid. I prefer to rest on the sound that the provisions of the circular are contrary to certain provisions of the Code and add burdens which are not to be found in the Code and is therefore invalid and cannot be allowed to remain operative. Legislation cannot be made by cabinet decision, so its decisions cannot be allowed to affect it. In my opinion, this ground is a sufficient reason why this circular should be declared illegal and contrary to law. I shall now come to the second circular dated 12th June 1967. This circular was issued after the interim injunction was passed by this Court, in an earlier application. I am of the opinion that this circular is nothing but an attempt to continue the effects of the first circular, the implementation of which had been staved, by casting it in a different language and trying to make it look inoffensive. Firstly, it will be observed that it does not state that the first circular was either superseded or suspended. We are informed by the learned Advocate General that on the 3rd June 1967 a direction was issued upon every one concerned to the effect that the first circular stood suspended pending the court proceeding. No particulars have been given in the affidavits in any of the proceedings about any such communication. I will deal with the obscure description "legitimate labour movements" used in the circular presently. Since it is not disputed, I will assume that it means "legitimate trade union activities as the learned Advocate General suggests it to be. He argues that this is a harmless communication stating that lawful trade union activities on the part of labour were not to be interfered with, but where there was any unlawful activities in connection with the same, then the police must make a preliminary enquiry to satisfy themselves that the complaint was bona fide before proceeding to make any further investigation as contemplated by law. This, he says, if permitted by law, because the police are not bound to act on wild information's or on any and every news that comes to their ears. In my opinion, the position is not at all as simple as he claims it to be. The circular says that when any complaint is made regarding unlawful activities in connection with "legitimate labour movements" that is to say, a legally valid trade union activity, which would include an offence committed in connection therewith, the police, before taking "an action provided under the law" must make an investigation that the complaint has a basis in fact.

He wishes us to add certain words to the circular, which will make the above quotation read as "any action provided under the law, in respect of the making of investigations." It is not permissible for us to make any such addition. We must consider the circular as it stands. If "any action" means what it says the learned Advocate General admits that he is in difficulty. Let us see what those difficulties are. In Section 154 of the Code, where a person goes to a police station and gives information regarding the commission of a cognizable offence, it is mandatory, and in this respect no discretion is given, that the officer-in-charge should reduce it to writing by him or by some one under his direction. It should then be read over to the Informant and signed by him and the substance thereof entered in a book to be kept by such officer. This is called a F. I. R. or First Information Report. That being the law we at once find that the second circular directs a departure from it. Where an information is given by a person of the commission of a cognizable offence to the officer-in-charge of a police station, he must no longer proceed at once to take down the F. I. R. as laid down imperatively u/s 154 but must first make an investigation as to whether the complaint has any basis in fact. The word "investigation" has been defined by the Code in Section 4 (e) the relevant part whereof is as follow:

"Investigation" -- "investigation" includes all the proceedings under the Code for the collection of evidence conducted by a police officer."

In *H. N. Rishbud v. State of Delhi* AIR 1958 SC 196 at p. 201 investigation under Ch. XIV of the Code has been described as follows:

"Thus under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) ascertainment of the facts and circumstances of the case (3) discovery and arrest of the suspected offender (4) collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons (including the accused) and reduction of their statements to writing, if the officer thinks fit, (b) search of places of seizure of things considered necessary for the investigation and to be produced at the trial and (5) formation of the opinion as to whether on the material collected there to a case to place the accused before a Magistrate for trial....."

The learned Advocate General says that no investigation was intended to be made, but merely a preliminary enquiry: Firstly, that is not the words used. The word "Inquiry has been separately defined in the Code (4K). In any event, no preliminary inquiry is provided for in the Code when a personal complaint is made at a police station, as a preliminary to taking down the F. I. R. The direction is, therefore violative of Section 154 of the Code. In the course of argument the learned Advocate General said that in some cases information was given over the phone and by telegram. It is only in a few cases that letters were written. He argued that any information given on the telephone or telegram did not constitute a F. I. R. See *The Public Prosecutor Vs. Chidambaram and Another*, , and *Kachi Hazam Vs. Seraj Khan*, .

I think that much of what has been said in these judgments have now become archaic. One of them describes a telegram as to more than "village gossip". However, for our present purposes it is unnecessary to differ with these cases. I will confine myself to the case where a person actually goes to the police station and gives information of the commission of a cognizable offence. If the circular violates the provision of Section 184 in such a case, it must be held to be violative of the law. u/s 154, if a person goes to a police station and gives information of the commission of a cognizable offence then the F. I. R. must at once be taken down. In fact postponing taken down of F. I. R. and making an investigation before this is done has been repeatedly said to be illegal and not warranted by law. In *Emperor v. Kamoukuki* (1907) 11 Cal WN 554, the facts were as follows: A, finding his brother M to be missing gave information to the Sub-Inspector of the police, but the latter did not record it u/s 154 of the Code. Nevertheless he commenced investigation and after four days when the matter had so developed that there was some reason to believe that M had been murdered, he for the first time recorded a statement as a first information. It was held by a Division Bench of this Court that such a practice was altogether contrary to the provisions of Section 154 and a statement recorded under such a circumstance cannot be recorded as a first information. The Court said:

"Such a practice is altogether contrary to Section 154 of the Code. The first information if recorded as directed by Section 154 at the time when it is made is a considerable value at the trial because it shows on what materials the investigation commenced and that was the story then told. Any statement recorded as in this case several days after the commencement of the investigation and after there had been some development, is not only no first information but has very little or no value at all as the original story, because it can be made to fit into the case as then developed".

There are numerous cases upon this point which is not necessary to state here. It is plain therefore that blanket direction, that whenever a complaint is made, even of the commission of a cognizable offence, in connection with any trade union actively the officer in charge must first make an investigation into the complaint and satisfy himself that it is based on fact before taking any action whatsoever, is violative of Section 154 of the Code.

32. I now come to Section 157 of the Code. According to this section, where the officer-in-charge of the police station receives information or even otherwise has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, that is to say a cognizable offence, his duty is to forthwith send a report to the Magistrate and to proceed or to depute somebody to proceed, to the spot to investigate the facts and to take measures necessary for discovery and arrest of the offender. P posed a question to the learned Advocate General as to whether it is the same thing to say that a person has reason to suspect, the commission of an offence and that he is satisfied that it has a basis in fact. He has not been able to dispute that they are different. u/s 157. all that is necessary

is that from the information received or otherwise, the officer-in-charge must have "reason to suspect" that a cognizable offence has been committed. But the circular requires him to investigate as to whether the information received from a complaint has any basis in fact, before he can take any further action. I will give an example. A man who lives as a recluse is visited from time to time by his only nephew who is a shady character. The man is found murdered. The officer-in-charge may have reason to suspect that under the circumstances, the nephew has committed the murder. But if it is a question of being satisfied that there was a basis in fact, he would have to find out as to which other persons visited him, whether he paid a visit at or near the time when the murder was committed, whether there was any motive for example whether the nephew was likely to inherit the estate of the deceased, whether he was in stringent financial circumstances etc etc. It is only these investigations that will convince him that there was a basis in fact in the complaint against the nephew of having committed the offence. These are two entirely different things. Let us take a concrete case. The officer-in-charge receives certain information. He is not satisfied that it has a basis in fact but from the information received, he has reason to suspect that a certain person is guilty of a cognizable offence which he can investigate u/s 156. It is his duty at once to act u/s 157 and to take the steps mentioned therein, namely to forthwith send a report to the Magistrate, to proceed to the spot and make investigation and to discover and to arrest the offender, if necessary. But the circular prohibits him from doing so. The learned Advocate General has drawn out attention to the proviso but even under the proviso all that is said is that if the officer-in-charge sees no sufficient ground to enter into an investigation he shall not investigate the case, but even in such a case he must give a report to the Magistrate. The proviso makes the circular even more unlawful because it makes an investigation compulsory, while the second proviso grants a discretion. Even where the officer-in-charge wishes to exercise his discretion in favour of the complaint, he cannot do so. It is clear therefore that the second circular is violative of the provisions of Section 157 of the Code. Even if a discretion is granted under it, the circular takes away that discretion. I am also, by no means satisfied that apart from police officers, the circulars did not attempt at interference with the duties and powers of magistrates. In the circular dated 12th June, 1967, it is expressly stated that all officers connected with the maintenance of law and order should not interfere in legitimate trade movements. Both the circulars were addressed to "District Officers", and it is quite clear from the materials placed before us that they included all district magistrates. It is reasonable therefore to think that, when an application is made u/s 100 of the Code complaining that a person has been wrongfully placed under confinement, still the Magistrate is required by the circular to sit down and consider whether he was interfering in a "legitimate labour movement", and also to ask the police to make an investigation into the facts before he can make any order, while the section powers him to issue a search warrant straightaway if he himself has reason to believe that a person has been confined under such circumstances that the confinement amounts to an offence. I am glad however to

note that no Magistrate has so far needed any such direction and that search warrants are being readily issued and remain the most effective antidote to these lawless gheraos. However, the possible mischief which the circulars might occasion if not struck down, must engage our anxious consideration. It would be shocking if Ministers are allowed to issue circulars to control the judicial duties of Magistrates. That would be the end of all constitutional government.

33. I have no doubt in my mind that the beautifully vague wordings of the second circular dated 12th June 1967 was an attempt to maintain the mischief of the earlier circular dated 27th March 1967, without making it appear that the interim injunction of the 8th June 1967 was being violated. As I have mentioned above the expression "legitimate labour movement" is meaningless in the context in which it appears. Even before us, learned counsel admitted that it meant "Legitimate Trade Union rights" and nothing more. Even that, is a complex breach of the law. Did the State Government think that an officer-in-charge of a police station was competent enough to decide as to what was a "legitimate labour movement" or was likely to have sufficient knowledge of what constituted an unlawful act under it? On the contrary, it must have been thought that this kind of a vague expression would mean that no officer-in-charge would take the risk of interfering in a gherao which was claimed by its perpetrators to be a legitimate labour movement, a claim backed by the labour Minister. It was doubtlessly thought that by such an insidious manoeuvre, the paralytic effect of the first circular would be kept up without there being an open contempt of the order of the Court. In fact this object was fulfilled, because the paralysis has continued. I now come to the constitutional provisions. The first constitutional provision mentioned above is Article 19(1)(d). But as Article 19 remains suspended during the period of emergency, which is still in operation, it would be futile to discuss the point. The next Article mentioned is Article 14 which provides for equality before the law and which strikes down discrimination. It provides that there shall be equality of laws and the equal protection of the laws. While normally, it applies to laws, it can also be made applicable to executive fiats. This appears from a decision of the Supreme Court *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, . The relevant facts in that case were as follows. Section 64 of the Income Tax Act 1922 enjoins that an assessee shall be assessed by the Income Tax Officer having jurisdiction over the area where he resides or carries on business. Section 5 (7A) provides that the Commissioner of Income Tax may transfer any case from one Income Tax Officer subordinate to him, to another, what happened was that the appellant carried on business in Calcutta and was always assessed by the Income Tax Officer Dist. (III) (I) Calcutta. By an order, purporting to be made u/s 5 (7-A), all his cases were transferred to the Income Tax Officer Ranchi. It was held that this order was bad. S. R. Das C. J. said:

"It is enough for the purpose of this case to say that the omnibus order made in this case is not contemplated or sanctioned by Sub-section (7-A) The Income Tax authorities have by an executive order, unsupported by law, picked out this petitioner and transferred all his cases by an omnibus order unlimited in point of

time. This order is calculated to inflict considerable inconvenience and harassment on the petitionerTherefore the reality of the discrimination cannot be gainsaid. In the circumstances this substantial discrimination has been inflicted on the petitioner by an executive fiat which is not founded on any law and no question of reasonable classification for purposes of legislation can arise. Here, the "State" which includes its Income Tax department has by an illegal order denied to the petitioner as compared with other Bidi merchants who are similarly situate, equality before the law and the equal protection of the law and the petitioner can legitimately complain of an infraction of his fundamental right under Article 14 of the Constitution.

Coming back to the facts of the instant case, we find that the executive government by an executive fiat, has determined that the managerial and other staff of an industrial establishment when subjected to a gherao, which involves the commission of several cognizable offences like wrongful restraint, wrongful confinement, criminal trespass, assault etc. will be subjected to a different procedure in law than any other person or persons subjected to the same. While, in all other cases, the Police must act in accordance with the Criminal Procedure Code and the relative Police Acts applicable, in their case no action is possible except under the direction of the Labour Minister. There is therefore a clear discrimination, because such persons who have been illegally gheraoed do not constitute a separate class, to whom the ordinary law should not be applied. This is of course, quite apart from the fact, that the executive government had no right to pass orders which are contrary to the law, as was also the position in the Bidi Supply case (supra).

34. It has been clearly established that there can be discrimination both as regards the substantive law as well as in procedure see" Budhan Choudhry and Others Vs. The State of Bihar, . In Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, an order of the I. T. Commissioner was struck down as violative of Article 14 S. R. Das, C J. said as follows : --

"Coming now to the language of the Article it must be noted first and foremost that this Article is. in form an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other Articles, e. g. Article 19 do. The obligation thus imposed on the State no doubt enures for the benefit of all persons, for, as a necessary result of the operation of this Article, they all enjoy equality before the law. That is, however, the indirect, though necessary and inevitable, result of the mandate. The command of the Article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy. The next thing In notice is that the benefit of this Article is not limited to citizens, but is available to any person within the territory of India. In the third place it is to be observed that, by virtue of Article 12. "the State" which is by Article 14 forbidden to discriminate between persons includes the Government and Parliament of India and the Government and the Legislature

of each of the States and all other local or other authorities within the territory of India and under the control of the Government of India. Article 14 therefore, is an injunction to both the legislature as well as the executive organs of the State and the other subordinate authorities It is not necessary for the purposes of this appeal to consider whether the executive order is a "law" within the meaning of Article 13; our right to the equal protection of the law is protected against the vagaries, if any, of the executive Government also. In this connection the observations of Lord Atkin in 1931 AC 662 = AIR 1931 248 (Privy Council) are apposite. Said his lordship at P 670 that according to British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except when he can support the legality of his act before a Court of justice. That apart the very language of Article 14 of the Constitution expressly directed that "the State" which by Article 12 includes the executive organ shall not deny to any person equality before the law or the equal protection of the law. Thus Article 14 protects us from both legislative and executive tyranny by way of discrimination"

In a recent case. *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, the Supreme Court has held that what a legislature cannot do the executive could not do and executive discrimination is also bad Also the Court said : --

"Article 14 says that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. This doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by our Constitution. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person must be supported by some legislative authority"

In my opinion, therefore, the two impugned circulars are violative of Article 14 of the Constitution, and we are not precluded from granting relief, merely because they are executive directions or orders and not legislative or judicial

35. The next Article in the Constitution said to be infringed is Article 21. I have not however appreciated, how this Article applies to the facts of this case. It certainly applies to all persons irrespective of the fact as to whether he is a citizen or not, but it has its limitations Its object is to serve as a restraint upon the Executive so that it may not proceed against the life or personal liberty of the individual save under the authority of some law and in conformity with the procedure laid therein. But, by the impugned circulars, the Government was not proceeding against the life or, personal liberty of the petitioners. If they were deprived of their personal liberty, it was by the persons who staged a gherao and not by the circulars. The circulars may have affected the promptness or effectiveness of the rescue by the police but I think that it would be going too far to hold that they were the proximate cause of any deprivation of life or personal liberty of the petitioners. As Patanjali Sastri. J. said in *A.K. Gopalan Vs. The State of Madras*, . if the executive merely contravened the law. the principle laid down

by Lord Atkin in 1931 AC 662 = (AIR 1931 PC 248) (supra) would be sufficient authority for the Court to interfere, no constitutional protection is needed. It was further held that "deprivation" under Article 21 means total deprivation and not mere restriction. The mere curtailment of free movement came under Article 19 and it must be done directly and not indirectly (page 35 para 7. per Kahia. C. J.) Even under Article 21, the curtailment must be direct as was held in Kharak Singh Vs. The State of U.P. and Others, , where Ayyangar, J. said: --

"We consider that there is no sub-stance in the argument. In dealing with a fundamental right such as the right to free movement or personal liberty, that only can constitute an infringement which is both direct as well as tangible....."

35-A. I now come to some preliminary objections taken as to the maintainability of the application. The learned Advocate General has pointed out that in this application the first petitioner is a limited company, namely Jay Engineering Works Ltd. and the petitioners Nos. 2 to 7 are individuals. He has further pointed out that in some of the other applications only a company or a firm is the petitioner. He takes the objection that a company is not entitled to take advantage of Article 19 or 21. So far as a company is concerned it has been clearly laid down by the Supreme Court, in The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, that a company registered under the Indian Companies Act, 1956 was not a citizen within the meaning of Article 19 of the Constitution and cannot ask for the enforcement of a fundamental right granted to citizens under Article 19. In the Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, it was held that Article 18 did not apply to companies and corporations who had a separate entity from their shareholders and were not citizens. In the latter case, it was indicated that Article 14 applied in such cases. Inasmuch as I have held that Article 19 remains suspended during the emergency and that it would be futile to deal with the rights under it, nothing further need be said. So far as Article 21 is concerned, the Learned Advocate General has argued that it did not apply to companies or corporations by virtue of its own terms. It is "obvious that a company or corporation cannot be deprived of either "life" or "personal liberty", or at least it is difficult to see how it could be so. As I have already stated above, that Article 21 does not apply to the facts of this case, it is not necessary to deal with the same. In these cases where the company also is the plaintiff only Article 14 may be invoked. The next point taken is that the frame of the application is defective in cases where a company or a firm is made a joint petitioner with individuals. It is argued that the cause of action in the case of company or a firm is not the same as that of an individual. A company or a firm can not be the subject-matter of unlawful re-straight or unlawful confinement. There may be criminal trespass or mischief to property belonging to the company or firm, but not offences which could only affect Individuals. He argues that where different parties having different causes of action join in one application, the whole application is defective. He has cited a decision of mine in Ganesh Nayak v. Land Acquisition Collector (1961) 65 Cal WN 908. In that case, the facts were as

follows: Certain properties were sought to be acquired under the Land Acquisition Act by the Land Acquisition Collector, Calcutta. Objections were preferred by a number of persons interested in different parts of the property. The objections were heard and thereafter the acquisition proceeded and subsequently awards were made, for compensation. With regard to these awards, different parties took different attitudes, some made applications for reference u/s 18 of the Land Acquisition Act. but others did not. Some of them had not preferred objections at all at any time, either to the acquisition or to the award I held that under the circumstances. 25 persons who had taken different proceedings and different attitudes to the acquisition and award could not be joined in one application and since it was bound to fail with regard to some, because they had already availed themselves of an alternative remedy by way of reference, the whole application should fail and no effective order could be made in one application. The decision, however was dependent on the facts of that case and I do not think it can be applied here In my opinion, the preliminary point should fail because of the following reasons: The jurisdiction conferred by Article 226 of the Constitution known as the writ jurisdiction does not lay down the procedure to be followed in applications made in that jurisdiction. For quite some time, none of the High Courts had framed any rules about it and we all followed the analogy of the CPC in matters other than habeas corpus) and our High Court rules, mutatis mutandis. This High Court was perhaps the first to make rules but the rules do not cover everything. It is implied that where the rules do not expressly cover a point of procedure the existing procedure and practice would be followed. That is also implied in rule 30 The rules do not provide for the various contingencies that arise in the matter of determining as to who should be parties to an application. The English practice is that all persons who have a joint interest or a common interest should be made parties, but not if they have entirely separate and distinct causes of action. The same is the position in America. Ferris in his "Extraordinary Legal Remedies" says:

"The rule is that persons having a common and joint interest in the subject matter In controversy may be joined as relator, while those having separate and distinct rights may not "

Let us now see, what the position is under the Civil Procedure Code. Order 1 Rule 1 of the CPC provides that all persons who join in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, and if such persons brought separate suits, any common question of law or fact would arise. If we read word "application" in the place of "suit" plainly the present application is maintainable. In the Code of 1882, persons would only be joined as plaintiffs who had the same cause of action. But under the present Code, there are only two conditions. Firstly, their right to relief should arise out of the same act or transaction or the same series of acts or transactions. In other words, the transactions must be related, but not necessarily be identical. Alternatively if such persons brought separate suits

there would arise any common question of law or fact. In the instant case, both the conditions are satisfied. The gravamen of the complaint of both the Company had the firm on the one hand and the individuals on the other hand is the "gherao and all that went with it. So far as the individuals are concerned, they were wrongfully confined or restrained or assaulted. So far as the company or firm are concerned, there is criminal trespass, mischief to goods and property etc. The "transaction", namely the events that took place, are however related to the same gherao. The common complaint is with regard to the two impugned circulars which, according to all the petitioners, inhibited police help. Therefore, there is a common question of law involved namely the legal and constitutional effect of the circulars. Reference may also be made to Section 141 of the Code It provides that the procedure provided in the Code with regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of civil Jurisdiction. By implication, therefore, the principles of Order 1 Rule 1 can be applied. The learned Advocate General has argued that there are decisions of various High Courts, to the effect that neither Section 141 nor Order 1 Rule 1 of the Code applies to applications in the writ Jurisdiction. There are conflicting decisions of different High Courts upon this point. In *Management of Rain Bow Dyeing Factory Salem and Others Vs. Industrial Tribunal, High Court Buildings, Madras and Another*, it was held that Order 1 of the CPC cannot be applied to writ proceedings on the strength of Section 141, Inasmuch as a writ proceeding cannot be held to be in the nature of a civil suit. In *Bharat Board Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others*, Bose. J. (as he then was) held that where a common or class Injury was done, the joinder of all persons affected in making one application was permissible. Full Bench of the Patna High Court -- *Collector of Monghyr and Others Vs. Maharaja Pratap Singh Bahadur and Others*, held that a writ application under Article 226 was not a civil proceeding because the jurisdiction was an extraordinary jurisdiction and not a jurisdiction for declaring civil rights.

36. These decisions are however no longer good law. because the Supreme Court has held in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, that a writ application was a civil proceeding even if it gives an extraordinary remedy. Therefore, the principle laid down in Section 141 should apply in this case and Order 1 Rule 1 cannot be excluded. In *Bimal Behari v. State of West Bengal*. (1962) 66 Cal WN 912. Banerjee, J. held that upon an analogy of Section 141 of the Code, the provisions of Order 1 R. 8 of the Code applies to a writ petition There are numerous cases of this and other High Courts to the same effect. If this were not so, substitutions, amendments and various other procedural matters, not expressly provided in the Rules, could never be effected. Coming back to the facts of this case, we find that the incidents are related. In fact they relate to the same gherao, and both the company and the other petitioners base their case upon a common question of law namely the invalidity of the two circulars and discrimination under Article 14. I hold that upon an analogy of Section 141 of the Code, read with Order 2 Rule 1, the

application as framed is maintainable. The next objection taken is that neither of the impugned circulars are judicial or quasi-judicial acts and therefore, a writ of certiorari does not lie. So far as the form of relief is concerned it has now been held in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, that Article 226 of the Constitution is couched in comprehensive phraseology and it ex facie confers a wide power to the High Court to reach injustice wherever it is found. The High Court cannot only issue writs in the nature of prerogative writs as understood in England, but also issue directions, orders or writs other than prerogative writs. The High Court can mould the relief to meet the peculiar and complicated requirements of this country. The next case to be cited is a Supreme Court decision, in *R.L. Arora Vs. State of U.P.*, . In that case, certain notifications were issued under the Land Acquisition Act for acquisition of certain lands. The Supreme Court allowed the appeal and set aside the order of the High Court and quashed the notification u/s 6 of the Act and the proceedings resulting therefrom. Certainly nobody can say that a declaration u/s 6 of the Land Acquisition Act is either a judicial or quasi-judicial act. Still it was quashed. There was some argument as to whether we are entitled to make an order for restoration for possession. This is not a relief asked for in this case, so we shall deal with it in the appropriate judgment. Although the Supreme Court decisions make the position quite clear, it might be mentioned that in a Bench decision of the Allahabad High Court the same principle was followed. In *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, Sapru, J. held that ordinarily the High Court does not interfere with administrative orders, but it was not precluded from doing so. The words of Article 226 of the Constitution are wide enough to make an order possible even though it does not fall within the category of certiorari. The learned Advocate General has himself cited a case *Kosaraju Venkata Subbaya, Vivekananda and Others Vs. The Government of Andhra Pradesh and Another*, which lays down the correct principle of law. as follows: --

"The other ground on which I am inclined to negative the contention of the petitioners is that the impugned action of the Government falls exclusively within its administrative sphere and it therefore cannot be called in question in these writ proceedings. This is not to say that every administrative action taken or order passed by the Government is immune from scrutiny by this Court in exercise of its wide powers under Article 226 of the Constitution. But there are well-understood limits set to the exercise of judicial review under Article 226. These limits recognise the necessity to allow the Government a reasonable amount of discretion to enable it successfully to carry on the administration of the country. Therefore, even marking the area of the Courts' power rather widely I must say that only those administrative acts and orders which disregard or contravene a statute or statutory rules which are in excess of the authority of the Government and which fail to observe the rules of natural justiceare amenable to the jurisdiction of the Court under Article 226"

In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies*

District, I and Another, it was held that the High Court will interfere, where executive authority acts without jurisdiction. In that case, the Court was considering the issue of a notice u/s 34 of the Income Tax Act. 1922. S K. Das. J. held as follows: --

"Mr Sastri next pointed out that at the stage when the Income Tax officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without Jurisdiction where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences."

I think, that there is no difficulty in striking down the circulars, although they are administrative orders. In the instant case, the complaint is that Government has disregarded the provisions of law in issuing the two impugned circulars and was interfering with statutory provisions, without the slightest justification in law. The test for interference is therefore passed.

37. The next preliminary point taken is that there existed an alternative remedy and therefore an application in the writ jurisdiction did not lie. It is settled law that an application in the writ jurisdiction will not be entertained if there exists an equally efficacious and adequate remedy at law. It is argued that the alternative remedy is contained in Section 100 of the Criminal Procedure Code. This relates to the issue of a search warrant by a magistrate. I fail to see how this is an alternative remedy at all. The law enjoins that the officer in charge of a police station, upon information being lodged or received or otherwise, should act in a particular manner for preserving law and order, giving instant relief to those who are the victim of its violation and for the prevention of crimes. Magistrates have been allocated their own and separate powers and duties but these are not alternative methods They are completely separate, and are mostly in the nature of judicial powers. These two functions may be supplementary but are not in the alternative. Let us visualise the case of manager of an industrial unit, suddenly encircled by a hostile group of workers several hundreds strong, shouting insults, cutting off all egress and ingress from or to his office, assaulting him. cutting off electricity and telephone and also exercising various acts of torture. In such a situation is he expected to calmly sit down, frame a petition of complaint to the magistrate to issue a search warrant, engage a lawyer to move it, take the order of the magistrate to the police and get himself rescued? No sensible person would suggest that he is in a position to do so or that it affords him an adequate alternative remedy. Besides, it has been held that where a fundamental right has been affected the existence of an alternative remedy is no bar to a writ application, see *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, and *Himmatlal Harilal Mehta Vs. The State of*

Madhya Pradesh and Others, In Himmatlal's case, it was also held, as in the instant case, that the alternative remedy was too onerous and therefore not adequate. Police action is immediate and also preventive, it cannot always be supplanted by magisterial orders which involve delay and a more elaborate procedure. Thus it is not an alternative remedy which is always equally efficacious or adequate. This principle has also been laid down by the Supreme Court in Kharak Singh Vs. The State of U.P. and Others, . Avyangaar, J. said:

"Similarly it was agreed that the petitioner or persons against whom such action was taken might be within their rights in ejecting the trespass and even use force to effectuate that purpose, but for what was a mere tort or nuisance the jurisdiction of this Court under Article 32 could not be invoked. These submissions proceed on a basic fallacy. The fact that an act by the State Executive or by a State functioning acting under a pretended authority gives rise to an action at common law or even under a statute and that the injured citizen or persons may have redress in the ordinary Courts is wholly immaterial and, we would add, irrelevant for considering whether such action is an invasion of a fundamental right. An act of the State executive infringes a guaranteed liberty only when it is not authorised by a valid lawIt is wholly erroneous to assume that before the jurisdiction of this Court under Article 32 could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law afforded and has yet not obtained proper redress, for when once it is proved to the satisfaction of the Court that by State action the fundamental rights of a petitioner under Article 32 has been infringed, it is not only the right but the duty of this Court to afford relief to him by passing appropriate orders in that behalf".

In A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, . the Supreme Court held that the proposition that an alternative remedy is bar to the exercise of the writ jurisdiction was not correct. There were no inflexible rules on the subject. The matter was one of discretion and in a matter so pre-eminently one of discretion it is not possible, or even if it were it would not be desirable, to lay down any inflexible rule which should be applied with rigidity in every case which comes up before the Court. Also see Union of India (UOI) Vs. T.R. Varma, and State of Uttar Pradesh v. Mohammad Noon AIR 1958 SC 86. The present case involves the question of executive authority exceeding their jurisdiction and passing illegal orders. The matters are such as affect the interests of the public at large and raise questions of immense public importance. So, even if other remedies were available, this Court should not throw out the application upon that ground alone. Before I make my general observations upon certain matters raised before us by the Learned Advocate General T should like to summarise my findings: they are as follows:

(1) The relationship between labour and management in India has undergone a tremendous change in the last four decades. India has to an extent lined herself up with the progressive views adopted in this respect in England and America

and many other Western countries.

(2) To-day, organised labour and collective bargaining are recognised forces in a modern State.

(3) This end has been principally achieved by recognising the right of labour to organise itself into registered Trade Unions, and by such Unions asserting the rights of organised labour by means of inducing beneficial legislation, mutual insurance and collective bargaining. as also by the use of recognised methods like strikes, picketing and peaceful demonstrations, in aid of their demands.

(4) The old law of master and servant has ceased to govern the relationship of labour and management To-day such relationship is governed, either by industrial or labour legislation, or by mutual agreement between the parties. The Government is no longer actuated by a policy of laissez faire. in such matters.

(5) It is however a mistake to think that the rights acquired by labour are unrestricted. As long as the State permits industry to be carried out by the employment of private capital, it has to respect the conditions under which such capital can be deployed and has to look after the interest of both labour and the management

(6) In western countries, the trade-union laws are far more advanced because the norms under which industry operates are far more advanced There cannot be identity of laws between rich nations like England and America and a poor nation like India, which is only on the threshold of an industrial revolution.

(7) But there is one common thread between the trade union laws of the West, and the law in India. Both draw the line at violence, intimidation, and the violation of the law relating to crimes.

(8) In India the law relating to crimes is principally contained in the Indian Penal Code, the Criminal Procedure Code, the Police Acts and several provisions contained in industrial laws like the Industrial Disputes Act 1947 which have declared certain acts to be unlawful acts or offences attracting penal punishments

(9) The Indian Trade Unions Act 1926, has provisions exempting liability of the members of "a trade union, both civil and criminal

(10) Section 17 of the Act exempts members of a trade union from being charged with the offence of criminal conspiracy where the agreement is for the furtherance of any of the objects mentioned in Section 15.

(11) But there is a blanket provision in Section 17 that an agreement to commit an offence is not exempted

(12) Section 18 gives immunity from civil liability in certain cases. No officer or member of a trade union is liable for any act, on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade business or employment of some other person or with

the right of some other person to dispose of his capital or of his labour as he wills.

(13) Where Section 7 of the Criminal Law Amendment Act is applicable, molestation, violence or intimidation, loitering and persistently following a person have been declared as offences. These are usually connected with the act of picketing.

(14) There are no express provisions in the Trade Unions Act regulating strikes or picketing but these are recognised weapons in the armoury of labour. The word "strike" in its broad significance has reference to a dispute between employer and his workers, in the course of which there is concerted suspension of employment. In a strike, employment relations continue but there is a state of belligerent suspension.

(15) There are many varieties of strikes e.g. stay-in-strike, tool-down strike, pen-down strike etc. But there is no provision in law which exempts a workman taking part in a strike, from the criminal laws of the land, excepting Section 17 of the Trade Unions Act and no exemption from civil liability except Section 18 of the said Act.

(16) Neither Section 17 or 18 of the Trade Unions Act, exempts a workman, if he commits an "offence" which means, an offence under the criminal laws of the country, save and except the limited ground upon which he is exempted from being charged with criminal conspiracy u/s 17.

(17) Any act of violence, which amounts to the commission of an offence is never excused. An agreement to commit an offence is expressly excluded from the purview of Section 17.

(18) A "gherao" is the physical blocking of a target, either by encirclement or forcible occupation. The "target" may be a place or a person or persons, usually the managerial or supervisory staff of an industrial establishment. The blockade may be complete or partial. If it is accompanied by wrongful restraint and/or wrongful confinement, or accompanied by assault, criminal trespass, mischief to person or property, unlawful assembly and various other criminal offences, used as a coercive measure to controllers of industry to force them to submit to the demands of the blockaders. Such a gherao is unconstitutional, that is to say, violative of the provisions of the Constitution, and unlawful, that is to say, violative of the laws of the land. In the instant case we are not concerned with a peaceful gherao but with a gherao of the latter kind.

(19) A "gherao" is not an offence as such mentioned in the Indian Penal Code. But it is an act indulged in by labour, against the management and where it is accompanied by confinement, restraint or other offences under the criminal law of the land, the fact that it is done by members of a Trade Union, and used as an instrument of collective bargaining, gives rise to no special treatment or exemption from liability under the law. All workmen, guilty of wrongfully restraining any person belonging to the management, or wrongfully confining

him. during a gherao are guilty u/s 339 or 340 of the Indian Penal Code and have committed cognizable offences for which they are liable to be arrested without warrant and punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both, for wrongful restraint and for imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or both, for wrongful confinement, where the confinement extends to three or more days the punishment is imprisonment of either description for a term which may extend to two years or with fine or with both. Where the confinement is for ten or more days the punishment is imprisonment of either description for a term which may extend to three years. There is a further liability to fine Where there is a concerted intention to commit an offence, it amounts to criminal conspiracy u/s 120A of the Indian Penal Code and is not saved by Section 17 of the Trade Unions Act 1926

(20) Where other offences are committed they are punishable with various terms of imprisonment and fine or with both.

(21) The police have the duty under the law to prevent the commission of crime, to apprehend those as are guilty of its commission and to preserve law and order as provided in the Criminal Procedure Code and the various Police Acts which are applicable in a given case.

(22) The magistracy has functions in relation to the preservation of law and order and the apprehension of criminals and dealing out punishments as are contained in the Criminal Procedure Code or other laws.

(23) The Government in India is based on the Constitution

(24) The Constitution has vested the Government of the land in three separate bodies the legislature the judiciary and the executive.

(25) The legislature is entrusted with the making of the laws, in accordance with the limitations imposed by the Constitution.

(26) To be valid, all laws must pass the test of constitutionality

(27) The judiciary is entrusted with the interpretation of the laws, the administration of laws in Courts, and the determination as to whether laws have been transgressed and what punishment is to be meted out to the transgressor

(28) The residuary power is vested in the executive government, which must govern according to the laws.

(29) The Constitution of India is based on the "Rule of law", which means that the law is paramount, that it must be administered alike to all persons high or low, that no one is outside its purview and the executive authority must be prepared at all times to show to the Courts that they have acted in accordance with the law.

(30) The Criminal law of the land is principally contained in the Indian Penal Code and the Criminal Procedure Code. The former lays down the substantive law and the latter the procedural law. There are Police Acts which are applicable in various jurisdictions. Various other Acts have declared the commission of certain acts to be penal offences.

(31) It is the legislature alone that can make laws. The Courts alone have jurisdiction to interpret it and declare its true purport and meaning.

(32) Once the laws are made, whether substantive or procedural, neither the Governor, nor the Cabinet, nor the ministers, nor a subordinate executive authority has the power to add to or detract from its content, to interfere with its working or to affect any discretionary power given under it unless such power is clearly granted under the Constitution or the laws.

(33) Where, any such authority purports to exercise such power or do any act, in excess, of jurisdiction any person whose legal right is affected may come to the writ Court and the writ Court will strike it down.

(34) The exercise complained of may be an executive fiat or administrative order. But where it is in excess of jurisdiction, or contrary to law or mala fide or fraudulent or in colourable exercise of power, the Court has ample power to strike it down.

(35) The exercise of power by the High Court under Article 226 of the Constitution, is not restricted by the artificial rules regarding the issue of high prerogative writs by the Court of Kings Bench in England. It can issue such writs or give such orders or directions in such form as are necessary to do complete justice between the parties.

(36) Where there is an alternative remedy at law, which is equally efficacious, the writ Court does not usually grant relief, but there is no inflexible rule in that respect and there is no absence of jurisdiction. Where however there is a violation of the fundamental right guaranteed by the Constitution the Court is bound to grant relief and the existence of an alternative remedy is irrelevant.

(37) Where there is a gherao, accompanied by the commission of an offence, e.g. wrongful confinement, the executive government has no power to give directions, pass orders or issue circulars to the police or the magistracy to the effect that the procedure to be followed by them should be in any way different from or at variance with what has been laid down by the Criminal Procedure Code or the Police Acts or any other law governing such procedure.

(38) A direction that, in the case of gherao with wrongful confinement which is a cognizable offence u/s 340 of the Indian Penal Code, no action should be taken by the police except after obtaining direction from the labour minister, is utterly unlawful and not warranted by the law. The labour minister has no power or authority under the law to give directions to the Police before taking action where such an offence has been committed or is said to have been committed. The

action that the police or magistrate shall take under such circumstances is provided for in the Criminal Procedure Code and the relative Police Acts. By executive fiat such procedure cannot be altered or supplemented or varied

(39) What is legitimate trade union law, is contained in the Trade Unions Act 1928. Neither Section 17 or 18 of the said Act exempts a person who commits an offence under the Criminal Laws, save and except u/s 120A of the Indian Penal Code under circumstances mentioned in Section 17 from being proceeded against according to law.

(40) There is no special procedure that should be adopted when an offence is committed by members of a Trade Union even in an attempted enforcement of their power of collective bargaining. The procedure applicable is the ordinary procedure to be adopted in the case of such infraction outside the Trade Unions Act. The executive government has no power, jurisdiction or authority to add to or detract from such laws or give executive directions that the procedure should consist of any kind or special investigation, which must be done, at a stage not contemplated by the Criminal Procedure Code

(41) The precise moment when the police or the magistracy should act, the way they should act the procedure they should follow when an offence has been committed or is said to have been committed or is apprehended, is laid down by law. The executive government in the absence of a legal provision has no jurisdiction to add to or detract from the same or direct any variation thereof or inhibit or delay the implementation of the same in accordance with law. Where there is any attempt to do so, the Court will strike it down

(42) The two circulars dated 27th March 1967 and 12th June 1967, mentioned above are contrary to law without jurisdiction and must be declared to be invalid and be quashed

(43) The circulars being out of the way, the Police and the Magistracy must act as if they had never been issued. No direction of any minister need be obtained before taking action according to law, when such action is prescribed under the Criminal Procedure Code, or the law relating to crimes.

(44) u/s 154 of the Criminal Procedure Code, when information is given relating to the commission of a cognizable, offence at a police station, the officer in charge is bound to take immediate steps as mentioned therein. Where from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate he shall forthwith act in the manner mentioned in Section 157.

(45) In action on the part of the police who are the guardians of law an order is reprehensible. Even where a discretion is given, it must be exercised reasonably and with due regard to the fact that complaints of the commission of a criminal offence is a compulsive matter and it is not open to the Police to act or not to act according to their sweet will and arbitrarily. It would be the end of all

constitutional Government if the Police were called upon to consider the political affiliation of either the complainant or the accused in a criminal case. They should not be so pusillanimous as to bow down to every unlawful order passed by the executive authority. If they act contrary to law or refrain from acting in accordance therewith they do so at their peril and will be answerable to the Courts. The duty of the police is not only to promptly answer to a complaint alleging the commission of an offence but it is their duty to prevent the commission of crimes. Where they fail to do so, they may render themselves liable to certain penal provisions contained in the Code.

38. Before I proceed to answer the questions raised, in the light of my findings stated above, I would like to deal with a matter referred to by the learned Advocate General in his argument. He argues that if the Court comes to the conclusion that the circulars are unlawful, they may be struck down, but he invites us to hold that the Government issued them with the best of intentions, thinking them to be for public benefit. He points out that the ideology of different government cannot always be the same. For example, the ideology of the Conservative and Labour Governments in England have not remained identical. Hence, if in the said circulars emphasis has been shifted from management to labour, no adverse inference can be drawn. Secondly, he has urged that the Court cannot take any notice of newspaper reports, unless the same have been proved according to law. He cites a decision of the Supreme Court in *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, . In that case, certain statements of the Chief Minister of Andhra as published in newspapers were relied on. What happened was that certain newspaper extracts were produced but no attempt was made to prove that the Chief Minister in fact made those speeches, although the Chief Minister did not admit having made them. It was held that, as no affidavit had been filed by any person who had attended the meetings addressed by the Chief Minister and heard him make such statement, the extracts could not be received in evidence. In the instant case, various extracts from the "Statesman" have been annexed to the petition. In the petition itself, it has been stated that from time to time orders and/or decision and/or instruction have been issued by the Bengal Government as appears from such press reports. The press reports contain reference to various statements having been made by the Chief Minister or the labour Minister. While the Chief Minister has never advocated violence or the deliberate withholding of the police, the labour minister Shri Subodh Banerjee is repeatedly reported to have said that he will not "allow the use of the police" in case of labour agitations. In one instance he is reported to have said -- "I have allowed a dual between the employees and the employers in West Bengal and the police has been taken out of the picture so that the strength of each other may be known" It is a pity that the labour minister has not himself sworn an affidavit in this case admitting or denying whether he made such picturesque statements. But since I have no affidavits before me about the statements made by the ministers, I think it would be wiser to ignore the actual words reported to have been said. We are however

competent to take notice of the fact that it has by now become notorious that gheraos of the description as have taken place in this case have been happening widely in West Bengal and also of the part that is being played therein by the Trade Unions We cannot shut our eyes to what is by now general information, that as a result of indiscriminate gheraos attended with violence, industry, trade and commerce in West Bengal are coming to a stand-still Expansion of Industrial Undertakings have been stopped Industrial Undertakings are closing one by one, and we have the dismal picture of thousands of workers being thrown out of work just when the food situation had become perilous and prices have soared beyond the means of the common man. Instead of labour, profiting by such movement thousands of them are today on the verge of starvation It is the lesson of history that whenever Trade Unionism has exceeded bounds and become militant, for example the Strikes in England in 1926 and the Civil disobedience movement in 1932, when trade Unions tried to take advantage of the same, there has been a retrogression in the forward march of Trade Unionism Once again we are about to find history repeating itself So far as the ministers are concerned, we are prepared to concede that mala fides on their part has not been established. So far as the Chief Minister is concerned, although he seems to have used the word "gherao" somewhat indiscriminately, even the press reports show that he has referred to peaceful gherao where all the workers were pursuing their legitimate trade union rights within the bounds of the law. We have already held that as long as recognised trade union activities are indulged in peacefully and without committing an offence, there is nothing to complain, because it is permissible in law. It is however, different so far as the labour minister is concerned. Whether he was acting in ignorance of the law it is difficult to say, because rightly or wrongly the law presumes that every one is acquainted with the law. But if it is a question of whether, what he did was done accidentally or deliberately, we are constrained to hold that from the materials placed before us, there can be no doubt whatsoever that whatever was done by him was done deliberately. I do not think that it is at all difficult in this case to pierce the veil and get at the truth. Trade union leaders have never been satisfied with the rate at which workers' rights were evolving. All over the world, the rights of workers were very meagre to start with. When the Industrial Revolution took place in England, it was private capital which owned all the industries, and law was moulded in their favour and as Government followed the doctrine of Laissez-faire, the dice was loaded heavily against labour and in favour of the management. It is said however that "a lot of water has flown under the bridges in all the capitals of the world since 1834 when the Tolpuddle martyrs" were sentenced to transportation by the English Court for the offence of illegal conspiracy of forming association of workers." To-day, organised labour is a recognised force in the modern State. In many western countries trade unions are treated virtually as the fourth Estate of the realm and industrial labour properly functioning through trade unions can be one of the pillars supporting the State in any programme or policy of industrial development But all evolution must be gradual and a sudden metamorphosis cannot be brought about by

violence It has never succeeded in the West and it can never succeed in India The recognised weapons in the hands of organised labour, namely strikes picketing etc., if carried out within legal limits are potent weapons in the hands of labour What a few trade unionists in West Bengal have been trying to do is to jump the process of evolution and immediately bring to the worker more concession more benefits, and more larger than even their counterparts in rich western countries have managed to achieve. It is a simple proposition that the more advanced an industry is. the greater the production the larger is the share of labour in the profits. The impatient trade unionists, however, have completely lost sight of this. They are not interested in the development of industry or an increase in its profits. All that they want is an immediate increase in the share of labour in it. irrespective of the fact whether the larger demand can possibly be met by the industry or whether it would destroy It altogether. In Western countries, especially in America trade unions make it their duty to see not only that labour gets a proper share of the profits but also that conditions are created in which industry itself may thrive, leading to greater production and therefore, a greater share in the profits for labour including a rise in wages, amenities, and improvement in conditions of service. In this country, trade unions consider it no part of their duty to think of the industry. They want by violent means to extort for labour, what according to them is their due. It must never be forgotten that we have labour laws, Every possible eventuality has been provided for in such laws. If it is thought by the trade unions that the labour laws are inadequate, or that they call for revision or improvement then what should be done is to agitate for their amendment or repeal If employers do not carry out the order passed in industrial adjudications, there are procedures provided for their enforcement A maior complaint is delay in judicial determination of labour cases. Since it is said that it is happening in the highest judicial body, it shows that the difficulty, if any, is in the system. Probably it indicates the necessity of providing for more judges, more courts and more summary proceedings. To achieve this there are constitutional methods and I fail to see how rights of workers will be improved by wrongful confining a few managers and supervisory staff and beating them up. Even if there be some temporary advantages gained by gheraos. the effects cannot be lasting. The bad blood that will be generated will take decades to drain There can be little doubt that encouragement from high quarters has resulted in a small group of militant trade unionists creating for themselves, an enviable notoriety which" they would otherwise not have achieved Emboldened by such encouragement, they have become successful in rendering the forces of law and order ineffective so that they could with impunity use violent methods against the management and terrorise them into submission. Thus a small group of determined and violent men are holding up the whole industrial world to ransom There is no doubt in my mind that the labour minister has deliberately assisted in the spread of this evil in the industrial world and the two impugned circulars are in aid of it. Before the present government took office, the main obstacle in the way of this violence were the police and the magistracy who were responsible for the keeping of law and order in the country. The impugned circulars are a crude

attempt to immobilise the forces of law and order, so that the owners and managers of industries can be confined, restrained, assaulted and tortured with the result that they may be compelled to accede to the demands of labour, however unreasonable they might be. It is however forgotten that such crude methods are likely to destroy industry itself and in order to enrich one limb at the cost of another what is being done is to kill the whole organism. Before I conclude. I have to relate with great regret and a feeling of horror, certain things which took place in this Court while we were actually hearing the gherao cases. While hearing arguments to the effect that gheraos did not exist in West Bengal, or if they existed at all, were peaceful and non-violent, we suddenly witnessed with astonishment the sight of a gherao taking place in the High Court itself. Violent crowds invaded the precincts of the court and a band of organised demonstrators stood underneath our windows, shouting deprecatory slogans to the effect that the Constitution should be scrapped, that gheraos will continue whether the court decrees it or not and various other slogans which need not be repeated here. Things came to such a pass that I had to adjourn the court and to get in touch with the Chief Minister and to tell him that if this sort of thing continued I would close the courts sine die. I record with pleasure that the Chief Minister at once took steps to protect the courts from such unseemly invasions but it has been found necessary to keep a largo posse of notice to prevent another breach of the peace. Orders u/s 144 had to be promulgated in the roads surrounding the High Court. Such a thing has never happened in this Court during its hundred years of existence, and I do not think it has happened anywhere else in India. We have, therefore, had a visual demonstration of what a gherao means and what it can achieve. If a group of militant trade unionists could dare to terrorise the courts in this fashion, it can well be as imagined as to the depths to which we have been degraded and to the utter helplessness into which industries have been thrown, as a result of these lawless activities. The learned Advocate General said that it was a small group of people dedicated to violence that seemed to be at the root of all the troubles that are taking place and not the Government But this is the inevitable result of fostering violence and there is little to marvel in it. I may recall the story of the thirsty desert-traveller in the Arabian Nights who picked up a bottle and thinking that it contained life saving water opened the bottle and out of it emerged a huge genii which threatened to eat him up. If I remember the facts aright the traveller did not find it so very easy to get the genii back into the bottle The least we can do therefore is to strike down the offending circulars, hoping that it might strengthen the instruments of law and order and help in the re-establishment of peace in this unfortunate land.

39. The mere existence of a Constitution cannot assure liberty amongst men. As Judge Learned Hands has said, Liberty lives in the hearts of men and it is only when men really thirst for liberty that they will get it, so far as the Judges of this Court are concerned, we feel more pity than anger against those who vainly tried to terrorise us in the Court. I shall conclude with the words of Justice Douglas in

his Tagore law Lectures where he explained the matter succinctly

"The judiciary has no army or police force to execute its mandates or compel obedience to its decrees. It has no control over the purse strings of Government. Those two historic sources of power rest in other hands. The strength of the judiciary is in the command it has over the hearts and minds of men. That respect and prestige are the product of innumerable judgments and decrees, a mosaic built from the multitude and cases decided

Respect and prestige do not grow suddenly; they are the products of time and experience. But they flourish when judges are independent and courageous. The Court that raises its head against the mob may be temporarily unpopular; but it soon wins the confidence of the nation. The Court that fails to stand before the mob is not worthy of the great tradition

The judiciary is in a high sense the guardian of the conscience of the people as well as of the law of the land....."

40. It is this public conscience that we have proceeded to exercise in this judgment of ours, hoping that it will contribute to the restoration of peace in West Bengal. In the gathering darkness I hope its voice shall be heard and obeyed. I now proceed to answer the questions as follows:

(1) This issue has been answered in Clause 18 of my analysis given above.

(2) No

(3) The circulars dated 27th March, 1967 and 12th June, 1967 are unlawful and incompetent. We are not called upon to say anything about the Cabinet decisions.

(4) Yes. We, however, hold that this was not a deliberate violation of the law as it is not unnatural for subordinate officials to carry out the mandates of their superiors, but in future they must act according to the law as laid down in our judgment

(5) So far as the last point is concerned, we make the following order:

41. The Rule is made absolute and we quash the two impugned circulars dated 27th March, 1967 and 12th June, 1967 and we issue a writ of Mandamus upon the respondents Nos. 1 to 7 restraining them from giving effect to the same. The respondents Nos. 6 and 7 are directed to proceed in accordance with law, in conformity with the observations made in this Judgment. An order of injunction is made restraining respondents Nos. 9 to 28 from interfering with the right of egress and ingress of the petitioners Nos. 2 to 7, from and to the office of the petitioner No. 1, situate at 26, R. N. Mukherjee Road, Calcutta. There will be no order as to costs

Banerjee, J.

42. I am in general agreement with most of the views expressed by my lord the Chief Justice. Regard, however, being had to the public importance of the

questions raised. I have decided to deliver a separate judgment. In so doing, I may repeat a good deal of what his Lordship has already said, but that is better than leaving anything unsaid or said with lesser or different emphasis

43. "Gherao" is a comparatively new form of demonstration, which is being largely resorted to by labourers in this country. Generally it assumes the form of keeping the management or the managerial staff of industrial and other establishments in wrongful confinement. thus depriving them of their personal and other liberties. Occasionally, it assumes the form of physical surrounding of such establishments, thus shutting off access of the management thereto, thereby depriving them of their right to property. The last mentioned form may be described as encirclement in depth, so deep that the encircling persons overrun the establishments themselves and shut out the management Once commenced. "Gheraos"" tend to degenerate into further criminal activities, for example wrongful restraint, trespass mischief, annoyance, intimidation and worse. The object of both the forms of "Gherao" is to coerce the management and make them concede to the demands of the labour

44. It is the duty of the executive government to preserve law and order, to prevent crimes and to apprehend criminals. It is equally the duty of the executive government to see that legitimate trade union activities, for example a strike may be carried on unhampered by illegitimate interference by the police or others. In an attempt to strike a balance between the two duties the respondent State Government, then controlled by a Congress Ministry, issued, on February 7th 1956. the following instructions, of doubtful utility contained in a circular, addressed to all District Officers and also to the Commissioner of Police. Calcutta: (see para 7)

45. After recording the circular (see para 7) the judgment proceeds: I omit, from the quotation above, instructions regarding "removal of finished goods from factories on strike" because they do not concern me in this Rule

46. After the last General Election, there was a Non-congress Ministry formed in this State. Shortly thereafter, on March 14, 1967 the Cabinet took the following decision: (see para 7)

The above decision was communicated to all District Officers and also to the Commissioner of Police, Calcutta, on March 27, 1967, by the Joint Secretary Home (Political) Department of the respondent State Government, in the following language:

After recording circular (see para 7) the judgment proceeds: I need notice, at this stage, that the Cabinet decision quoted above did not expressly decide to supersede the instructions contained in Memo No. 138 P. S. dated 7th February 1956 Those words were added to the communication of the decision, entirely on the responsibility of the Joint Secretary. Home (Political) Department of the respondent State Government.

47. The check put upon prompt police action by the circular, aggrieved a number of persons and several applications, under Article 226 of the Constitution, were moved before my learned brother B. C. Mitter J. presiding over the Constitution Bench of this Court, inter alia complaining against the illegality of the instruction. His Lordship issued Rules Nisi and by interim orders of injunction restrained the State Government and the Police from giving effect to or acting under the said instruction

48. The Cabinet, therefore, had to think over again, in the light of the interim order and arrive at a fresh decision. This decision was taken on June 8, 1967. in the following language (see para 7)

After recording the decision (see para 7) the judgment proceeds: The purport of the decisions was conveyed to all District Officers and the Commissioner of Police, Calcutta, on June 12 1967, by a Joint Secretary in the Home (Political) Department of the respondent State Government, in identical language indicated by the Cabinet decision.

49. I may mention here that the instructions contained in Memorandum No. 138 P. S. dated February 7 1956. and the two Cabinet decisions, dated March 14, 1967 and June 8, 1967 were not annexed to the petition not to the affidavits "in-opposition" and "in-reply" They were produced, at our request, by the learned Advocate-General and, for the purposes of this case only, he waived all objections to production, including objection based on privilege. The legality and the validity of the instructions contained in the circulars dated March 27 and June 12, 1967 are being challenged in this Rule

50. I need now shortly relate the case pleaded by the petitioners

54. After stating the facts in paras 50 to 53 (see paras 3 to 8 and 11) the judgment proceeds The workmen respondents and their Union did not use any affidavit-in-opposition because they entered appearance at too late a stage and elected to contest the Rule on points of law only

55. Annexed to the petition are quotations from certain reports appearing in a well known daily known as "the Statesman on several dates. Some of them are set out hereinbelow:

(i) The Statesman dated March 10, 1967, Labour Minister Meets Trade Union Leaders.

"One of the questions discussed on Saturday's conference related to "gheraos". The minister is understood to have said that these were legitimate to certain points but "gheraos involving right and property" were different. An I N. T. U. C. representative is said to have described "gherao" as illegal confinement, **"

(ii) The Statesman dated April 8, 1967.

Government Trying to Stop Gheraos--

Statement by Mukherjee.

* * * * "Mr. Gangadhar Pramanik, had tabled the question on "gheraos". Another member of the same party, Dr. Nalinakshya Sanyal, pursued it with supplementaries, Dr. Sanyal and those in the opposition made repeated attempts to ascertain the Chief Minister's views on "gheraos", which according to them were wrongful confinements and hence illegal.

The Chief Minister dodged this specific question several times. It was, he said, a matter of opinion. An employer could go to a law Court to find out when a "gherao" by workers became illegal. He added that it was difficult to distinguish between a stav-in-strike and a "gherao".

How long after a gherao began could it be regarded as a law and order problem? There was no time limit, answered the Chief Minister, who explained the procedure now being followed by the labour Department, when the Labour Minister thought that it was no longer a labour management dispute, he informed the Chief Minister about it. The Chief Minister, in his turn would then ask the police to interfere and take necessary action

How was it possible for the management to inform the Labour Minister and the Chief Minister about a continuing "gherao"? The Chief Minister replied that on many occasions people had telephoned him after midnight seeking his help and he had taken steps to meet the situation. Only at two places employers had gone to law courts to

secure release of confined officers.

* * * * * A congress member asked Mr. Mukherjee if every "gherao"" raised the question of law and order "It may" replied the Chief Minister. It was towards the end of the barrage of supplementaries that the Chief Minister opened up a little find stated the Government's policy. Dr Zeinal Abedin (C) asked if it was a fact that the Government was encouraging "gheraos" Mr Mukherjee said it was not. "Are you trying to stop it?" Dr. Abedin put in a supplementary. "Yes. we are trying to do so". the Chief Minister said

***** (iii) The Statesman dated May 8, 1967.

Gherao A Labour Problem, says Mukherjee.

*****The Chief Minister was asked to comment on a joint statement on the labour situation in West Bengal issued recently by Mr. L. N. Birla, President of the Federation of Indian Chambers of Commerce and Industry and Mr. R. H Mody, President of the All India Organisation of Industrial Employers.

He said "I do not agree with their observation that the problem of gheraos has assumed menacing proportions, and that rowdiness has gained tacit official support. I also disagree with their point that workers are being incited and coerced by antisocial elements to organize gheraos."

"I would like to point out in this context that the workers have some genuine grievances and those should receive the sympathetic consideration of the management. Their main grievance relates to the non-implementation of the awards of industrial tribunals on workers' wages", he said.

Mr. Mukherjee said that it would not be proper to mix up all incidents of gheraos with cases of violation of law and order. A gherao was essentially a labour problem when workers resorted to stay-in-strikes to press their demands. That was part of the workers' democratic and legitimate trade union rights, he said.

The United Front Government is determined to protect the trade union rights of the workers and, accordingly, the State's police force has been directed not to intervene in the democratic and legitimate trade union movements of the workers, said the Chief Minister.

(iv) The Statesman dated May 10, 1967.

Lace of Agreement on "Gheraos"

Mr. Jaisukhlal Hathi, Union Labour Minister, today opened the annual Labour Ministers' conference here with an appeal for "continuous co-ordination" of policies among the Central and State Governments, but it was soon evident that his efforts to achieve this would not prove easy.

It was principally on the question of "gheraos" that Mr. Hathi found lack of agreement among the State Ministers, The West Bengal Labour Minister. Mr. Subodh Banerjee in fact, delivered a speech in which he made that (?) was virtually a forthright defence of labour's right to resort to "gheraos"

In his inaugural speech, Mr. Hathi had spoken of his "grave misgivings" over the "gherac" phenomenon and of the "devastating effect on the morale of the supervisory and managerial personnel and on production and investment"

Mr. Banerjee found few among the other State Ministers to support him. Most others agreed that "gheraos" were an un-health development, though Mr. Manjaram of Kerala declared that when workers acted in "desperation", they should not be restrained unless similar restrictions were placed on employers also. * * * *

The Statesman dated May 11, 1967

Gheraos "Jungle Laws Says Tata.

"Mr. Banerjee also declared that he would not allow the use of police in cases where the workers were agitating legitimately. His view was challenged by the Assam Labour Minister, Mr. K. B. Tripathi, who thought that Labour Ministers should not take upon themselves the responsibility of deciding when a law and order situation arose.

PTI adds: Mr. Tata describing gheraos as the operation of "Jungle Law" charged the West Bengal Government with collusion with labour in the latter's resort to

gh"eraos. If this "ugly situation" was not checked in time it would give rise to very dangerous problems in the country. He warned that if the Centre did not act quickly in the matter, "it will be your turn tomorrow".

Repudiating the charge of connivance with labour brought against the West Bengal Government, Mr. Subodh Banerjee argued that if workers had genuine grievances they had a moral and ethical right to agitate for redress. He claimed that 44 of the 152 Gheraos in his State in the past two months were the result of the termination services of workmen by retrenchment, suspension or dismissal.

* * * * Justifying the Government's action in refusing to allow police intervention in legitimate democratic trade union activities, he said that, with the exception of one case, there had been no violence during the gheraos in his State. The Government, he said, was pursuing a progressive labour policy and would not budge an inch under any pressure *****

(vi) The Statesman dated May 14, 1967 Government Will not Take Sides: Banerjee

West Bengal's Labour Minister, Mr. Subodh Banerjee told reporters in Calcutta on Saturday that he had received some complaints of workers being harsh or cruel to people confined during gherao demonstrations. He believed that workers were sufficiently conscious to remove causes of such complaints if any

Referring to the State Government's labour policy Mr Banerjee said that police had been used as strike-breakers during the last 20 years. The Government would not ask police to interfere in a legitimate democratic trade union movement of workers.

The Minister denied that the Government had ever encouraged or instigated workers to resort to gherao demonstrations. During Labour-management disputes or workers' demonstrations its attitude would be one of strict neutrality. It would not take sides. *****

56. Annexed to the affidavit-in-reply is another extract from the Statesman, dated June 20, 1967, to the following effect. Mr. Subodh Banerjee, West Bengal Labour Minister, addressing the open session of the Orissa State conference of United Trade Union Congress here yesterday said, "The sons of the soil must get preference in employment in Rourkela Steel Plant".

Considering the constitutional legislation and the socio-economic condition of the country at present, which is based on capitalism. It is impossible to bring about any basic change in the labour law.

To safeguard the interest of the working class people, "I have allowed a duel between the employees and employers in West Bengal and the police has been taken out of the picture so that the strength of each other may be known * * * *"

57. The learned Advocate-General objected to any reliance being placed on the press reports set out above, because according to him, they were not admissible

in evidence, in the absence of affidavits by the correspondents or the reporters. He is right in this contention and the stand taken by him finds support from the decision of the Supreme Court in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, . I do not intend to proceed on the basis of the press reports and come to the finding that either the Chief Minister of West Bengal (Mr. Ajoy Kumar Mukherjee) or the Labour Minister (Mr. Subodh Banerjee) actually said all that the press reported. I take notice of them because they go to show that Gheraos and the Government attitude towards them met with adverse reception in many quarters and this is such a notorious fact that I am entitled to take judicial notice of thereof.

58. I need at this stage, clear the ground of the misconception that, a "Gherao" is a form of stay-in-strike and as such a legitimate form of demonstration by workmen. This misconception threw a cloud upon some of the arguments advanced on behalf of the respondents.

59. There is a definition of the word "strike" in Section 2(q) of the Industrial Disputes Act 1947, in the following language:

"Strike means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment".

Thus, a cessation of work by a number of workmen or a concerted refusal by them to continue to work with the object of bringing pressure upon the employer to accept their demands is the essential feature of a strike. In the nascent form of strikes, workers used to stay away from the place of employment. By so doing they succeeded in depriving the employer of the labour force needed to run his establishment and making him suffer heavily in the economic field. The economic sanction behind the strike gave it the strength of pressure tactics. If strikers keep themselves within the bounds set in Section 2(q) of the Industrial Disputes Act and if there be no violence or danger to life and property, then this form of demonstration is lawful. The executive Government need not interfere with lawful strike, excepting for the purpose of bringing about industrial peace by conciliation or industrial adjudication. In course of time, strike has developed variant forms, known as stay-in-strike, sit-down-strike-, pen-down-strike or tools-down-strike. In the latter forms of strike, workmen not only cease or refuse to work but in addition thereto enter the place of employment remain in possession, but do not wield their pen or tool. In his book on Labour Disputes and Collective Bargaining (volume 1 page 311) Iudwig Teller says:

"The sit-down-strike has been defined is occurring whenever a group of employees or others interested in obtaining a certain objective in a particular business forcibly take over possession of the property of such business, establish themselves within the plant, stop its production and refuse access to the owners or to the others desiring to work.

* * * * The sit-down strike should more accurately be defined as strike in the traditional sense, to which is added the element of trespass by the strikers upon the property of the employer."

In the case of *The Punjab National Bank Ltd. Vs. Its Workmen*, , the Supreme Court had to consider the question whether a pen-down strike was a strike within the meaning of its definition in Section 2(q) of the Industrial Disputes Act and observed (at p. 179)

"On a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees enter the premises of the Bank and refuse to take their pens in their hands, that it would no doubt be a strike u/s 2(q). The main grievance of the Bank is that these employees not only sat in their places and refused to work but they would not vacate their seats, when they are asked to do so by their superior officers. Such conduct may introduce an element of insubordination, but that is a different matter. In our opinion, therefore, the pen-down strike in which the employees participated in the present case cannot be said to be outside Section 2(q) of the Act."

Thus, to commence a strike and thereafter to go inside the place of employment and there to remain idle is the limit of a legitimate stay-in-strike. To add to it further elements of disorder and crime, as are commonly practised in "Gheraos" has the effect of denaturing even a stay-in-strike into a criminal activity and depriving it of the protection given to lawful strikes.

60. I need now draw a line of distinction between "Gherao" and picketing. It was contended, though feebly, that "Gherao" was stay-in-strike coupled with militant picketing. Now, picketing is resorted to by striking workmen in order to induce non-striking workmen to join in their ranks and to take concerted action against the employer. The force behind collective bargaining lies in collection of strength, that is to say man-power, behind bargainers and so long as such collection of strength, by inducement or persuasion, remains peaceful, picketing may be permissible as part of lawful strike. But if the manner of picketing ceases to be peaceful or causes obstruction or annoyance or endangers public peace, picketing ceases to be lawful. Thus if a picket commits private annoyance, as by violently and continuously banging the doors, shouting insulting, obstructing ingress or egress or otherwise seriously interfering with the enjoyment of factories or business premises, by those thereto entitled, or if a picket commits public annoyance, such as behaving in a manner calculated to cause breach of the peace, unreasonably obstructing highway, the right to picketing ceases, and nothing protects the picketers from civil or criminal liabilities or their unlawful acts.

61. Norman A. Citrine, in his book *Trade Union Law* (second edition, pages

452-453), gives further example of how picketing may degenerate into unlawful activity, in the following language:

"if the picketing is carried out in such numbers or otherwise in such a manner as to be likely to intimidate those subject to it or to obstruct or molest them against their will it will be unlawful. Any show or threat of violence or any other lawful threat likely to create fear in the mind of a reasonable man will render picketing unlawful and may make it criminal. Pickets are therefore not entitled, in order to compel people to listen to them, to obstruct them by deliberately standing in their way or catching hold of their arms Nor are they entitled to obstruct the passage of vehicles laying down in the highway in front of them. Neither may they continue to pester i.e. "molest" those persons who do not wish to listen and have requested them to desist".

Thus, strikes, whether in the form of stay-in or sit-down strikes whether accompanied by picketing or not, must keep themselves within permissible limit and must not resort to criminal activities or civil wrongs, save in so far as they are protected by the Trade Unions Act

62. Having thus cleared the ground of the misconception, which tends to confuse Gheraos with lawful strikes of the stay-in or Bit-down variety, I now proceed to examine the extent of protection given to labour demonstrations by strikes or otherwise, under the provisions of the Indian Trade Unions Act 1926.

63. Organising the unorganised is the creed of trade union workers. The strike, the boycott and the picket lines are the primary weapons of organised labour. Unionisation and collective bargaining would have little value without the right to use these economic weapons. Trade unionism of the British pattern has been conceded to workmen of this, country by the Indian Trade Unions Act 1926. Under this Act, it is possible for the workmen to unite and bargain collectively, which goes to satisfy a basic need of workmen, the natural human desire to participate in decisions affecting their lives as working men They may re-inforce their bargaining by use of economic powers in their hands namely, strike, picket lines and boycott. The Trade Unions Act, however, puts certain limitations on trade union activities. The lawful activities of trade unionism are to be found in Section 15 of the Act. which I set out below:

15. The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely:--

- (a) the payment of salaries, allowances and expenses to officers of the Trade Union;
- (b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;
- (c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade

Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) allowances to members or their dependants on account of assurance on the lives of members or under policies insuring members against sickness, accident or unemployment;

(h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependents of members;

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the appropriate Government in the official Gazette

The extent of immunity from crimes in trade union activities is to be found in Section 17 of the Trade Unions Act. which reads as follows (See para 25A) Section 120B(2) of the Indian Penal Code, referred to in Section 17 of Trade Unions Act. is couched in the following language

120B(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both

The expression "Criminal Conspiracy" is defined in Section 120A of the Indian Penal Code, as hereinafter stated: (See para 16). Thus, the immunity from crimes granted to trade union activities, u/s 17 of the Trade Unions Act. does not extend to an agreement to commit an offence or to commission of offences pursuant to such an agreement

64. The extent of immunity from tort in trade union activities is to be found in Section 18 of the Trade Unions Act, which reads as follows: (See para 25A). The

legal position as regards immunity from civil and criminal liability for trade union activities has been thus aptly summarised in the case of AIR 1935 Nag 149;

"Trade Unions have the right to declare strikes and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as the Trade Unions Act permits, but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence would u/s 17, Trade Unions Act make them liable to commit criminal conspiracy."

With the aforesaid observations I respectfully agree

65. Having thus stated the law regarding limits of trade union activities, I have now to see what are the duties of the police when they come to know of criminal activities. There is an Act known as the Calcutta Police Act 1866. Section 10A of the Act lays down the duties of police officers, from which I set out the relevant clauses: (See para 21).

66. Then again, the Code of Criminal Procedure invests the police with certain powers and also casts certain duties upon them. u/s 54 of the Code.

"54 (1) Any police officer may without an order from a Magistrate and without a warrant arrest.....

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or creditable information has been received, or a reasonable suspicion exists of his being so concerned,"

Section 141 of the Indian Penal Code defines: "Unlawful Assembly" (See para 16). Chapter IX of the Code deals with unlawful assemblies. Sections 127 and 128. in that Chapter, read as follows:

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns. may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer, soldier, sailor or airman in the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law

Chapter XIII of the Code deals with preventive action by the police. Sections 149, 150 and 151. in that chapter, are to the following effect: (See para 19).

150. Every police-officer receiving information of design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. It is noteworthy that Sections 149 and 150 are couched in peremptory language.

67. Chapter XIV of the Code deals with information to the police and their power to investigate. Sections 154, 155, 156 and 157 in that chapter are couched in the following language: (See also para 19)

155. (1) When information is given to an officer-in-charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. (1) Any officer in charge of a police station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area without the limits of such station would have power to enquire into or try under the provisions of Chapter XV relating to the place of enquiry or trial.

(2) No proceeding of a police-officer in such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above mentioned

It is noteworthy that Sections 154, 155 and 157 are also couched in peremptory language.

68. The functions, powers and the duties of the Police being thus laid down by law, the executive must not interfere therewith, except in so far as such interference, if any may be permissible by law. Indian citizen live under the "Rule of Law" and Article 256 of the Constitution enshrines that rule in the following language:

"The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply

in that State and the executive power of the Union shall extend to giving such directions to a State as may appear to the Government of India to be necessary for that purpose."

Did the executive Government of the State of West Bengal contravene the sacred rule enshrined in Article 256 of the Constitution in issuing the impugned circulars? If they did, their action must be condemned in the plainest language because the executive can only act in pursuance of the powers given to it by law and cannot interfere with liberty property and rights of citizens except on the condition that the legality of such interference may be supported before the Court of law *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, Per S. R. Das C. J. reiving on 1931 AC 662.

69. The learned Advocate-General sought to impress upon this Court that the Cabinet decisions dated March 14, 1967, and the instruction issued under circular, dated March 27 1967 were not actuated by political motives or mala fides. He submitted that even under the earlier circular, dated February 7, 1958, the police was required:

(a) to seek confirmation of the information received in respect of Gheraos and then to proceed to the place of occurrence, (Para 3).

(b) on arrival at the place of occurrence, to contact the management to find out if police intervention was necessary (Para 3).

(c) If the management asked for police intervention then only to disperse demonstrators in unlawful assembly, arrest offenders and take such other actions as were called for (Para 3)

(d) if the demonstration was found to be peaceful or if police intervention was not asked for by the management, to withdraw from the premises concerned to a suitable place within reasonable distance but not within sight of the demonstrators after intimating the fact to the management and making arrangement for establishing quick contact in case ,the demonstration took an untoward turn involving lawlessness (Para 4).

The learned Advocate-General may be right in his submission that the above instructions of 1956 made police actions dependant on the desire of the management and fettered the independent discretion vested in them to prevent lawlessness and apprehend criminals according to law. I need not go further in this matter, because the validity of the aforesaid circular is not in dispute before me. The learned Advocate-General submitted that the impugned instructions, contained in the circular dated March 27, 1967, were better than the first one, inasmuch as directions from the Labour Minister were substituted in place of instructions from the management in respect of police action against "Gheraoing" workmen. He rounded up this branch by his submission with the argument that in issuing the circular of March 27 1967, the Government may have erred (which of course he did not concede) but it would be wrong to describe the motive

behind the circular as mala fide or political. I am not myself sure of any mala fide motive behind the circular of March 27, 1967. Uncertain as I am on the point, I do not find that the respondent State Government was actuated by mala fides in causing issue of the circular of March 27, 1967, I do not, however, accent the argument that politics did not play a part in causing issue of the circular. The suddenness with which the older circular of 1956 was changed, shortly after the last general election and formation of a new Ministry of miscellaneous political combination induces me to think that an orientation in the political outlook, with a pro-labour bias, caused production of the circular of March 27, 1967. This is, however, irrelevant, if the circular was otherwise good and valid

70. The question, therefore, is whether the Government group of respondents acted within then jurisdiction and competency in taming the impugned circular of March 27, 1967 or whether impugned circular was Illegal, unconstitutional and beyond the jurisdiction of the State Government to make.

71. It was contended by the learned counsel for the petitioners, that the impugned circular of March 27, 1967 offended against Articles 19, 14, and 21 of the Constitution.

72. On account of the proclamation of emergency, which is now in operation, the challenge based on Article 19 may not now be available to the petitioners. Further, the petitioner No. 1 being an incorporated company and as such not a citizen under the constitution is not entitled to the rights guaranteed under Article 19.

73. The challenge based on Article 14, however stands on a different footing. The impugned circular of March 27, 1967. directs that in cases of "Gheraos" of industrial establishments by their workers, resulting in confinement of managerial and other staff, the matter should be immediately referred to the Labour Minister and his direction obtained before deciding upon police intervention for rescue of the confined personnel. The direction, it followed, will have this effect that the police, of their own, will not decide where and when to intervene for rescue of persons wrongfully confined or otherwise subjected to criminal activities by Gheraoing workmen They will await direction from the Labour Minister and act according to such directions. If the Labour Minister thinks that the police need not intervene, for reasons good or bad, the circular seeks to restrain the police from exercising their lawful power and discharging their legal duties. Allegiance to the circular makes the police neglect their peremptory duties under the Calcutta Police Act and the Code of Criminal Procedure, which I have quoted hereinbefore, even in respect of cognizable offences that a Gherao may entail. Managerial and other staff of industrial and other establishments have been singled out for this sort of differential treatment by the police, who need not, in cases of wrongful confinement of other persons, seek such direction from the Labour Minister Now the underlying object of Article 14, as stated by S R. Das. C J. In *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, is:

"to secure to all persons, citizens or non-citizens the equality of status and of opportunity referred to in the glorious preamble of our Constitution. It combines the English doctrine of the rule of law and the equal protection clause of the 14th Amendment to the American Federal Constitution which enjoins that no State shall "deny to any person within its jurisdiction the equal protection of the laws" There can, therefore, be no doubt or dispute that this Article is founded on a sound public policy recognised and valued in all civilised States. Coming then to the language of the Article it must be noted, first and foremost that this Article is, in form, an admonition addressed to the State and does not directly purport to confer any right on any person as some of the other Articles, eg., Article 19, do. The obligation thus imposed on the State no doubt, enures for the benefit of all persons, for, as a necessary result of the operation of this Article, they all enjoy equality before the law. That is however, the indirect, though necessary and inevitable, result of the mandate. The Command of the Article Is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy. The next thing to notice is that the benefit of this Article is not limited to citizens, but is available to any person within the territory of India. In the third place it is to be observed that, by virtue of Article 12, "the State" which is, by Article 14, forbidden to discriminate between persons includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Article 14, therefore, is an injunction to both the legislative as well as the executive organs of the State and the other subordinate authorities. Our right to equality before the law is thus completely and without any exception secured from all legislative discrimination. It is not necessary, for the purpose of this appeal to consider whether an executive order is a "law" within the meaning of Article 13 for even without the aid of Article 13, our right to the equal protection of the law is protected against the vagaries, if any, of the executive Government also. The very language of Article 14 of the Constitution expressly directs that "the State" which by Article 12 includes the executive organ, shall not deny to any person equality before the law or the equal protection of the law. Thus Article 14 protects us from both legislative and executive tyranny by way of discrimination."

Again, in the *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, Subba Rao. J (as he then was) said:

"This subject has been so frequently and recently before this Court as not to require an extensive consideration. In *State of U.P. Vs. Deoman Upadhyaya*, , I have described briefly the doctrine of equality thus:

"All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept: equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to the

ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purposes for which it is made"

I would add to the said statement the following caution administered by Brewar, J, in *Gulf, Colorada and Santa Fe Rly. Co. v. Ellis*. (1897) 165 US 150:41 LED 666:

"While good faith and a knowledge of existing conditions on the part of a Legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or Corporations to hostile and discriminating Legislation is to make the protecting clauses of the 14th Amendment a mere rope of sand, in no manner restraining state action"

It shall also be remembered that a citizen is entitled to a fundamental right of equality before the law and that the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Over-emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptible deprive the Article of its glorious content That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification."

Also, in the case of Writ Petition No. 230 of 1966 (unreported)=(Since reported in *Satwant Singh Sawhney Vs. D. Ramarathnam*, Assistant Passport Officer, Government of India, New Delhi and Others, Subba Rao C. J. observed;

"The doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by our Constitution One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority: See the *State of Madhya Pradesh v. Thakur Bharat Singh*. AIR 1957 SC 1170. Secondly such a law would be void, if it discriminates or enables an authority to discriminate between persons without just classification".

I need not multiply reference to case laws on the point. The relevant principles that I collect from the above decisions are:

(a) that there is a mandate upon the State (including its executive organs) not to deny to any person equality before the law and equal protection of the laws.

(b) that the command IB directed to the state (including its executive) and the ready of the obligation thus imposed is the measure of the fundamental right, which every person within the territory of India is to enjoy.

(c) that persons are entitled to the fundamental right of equality before law and equal protection of law and that the doctrine of classification is only a subsidiary rule evolved by Courts to give a practical content to the said doctrine.

(d) that a law would be void, if it discriminates or enables an authority to discriminate between persons without just classification

(e) that every executive action, if it is to operate to the prejudice of any person must be supported by some legislative authority.

74. Now, the, managerial and other staff of industrial establishments are entitled to equal protection of criminal laws of this country. In so far as workmen exceed the legal limits of strike or picketing and resort to crimes, as parts thereof, they act as ordinary criminals. The facts that they are labourers and are agitating for betterment of their conditions of employment do not afford them any immunity. The managerial and other staff of industrial establishments, who are affected by such crimes are entitled to equal protection of law against such crimes and to equal assistance from the police, like all other persons.

75. The duties of the police under the Calcutta Police Act, include the duty to prevent commission of crimes and apprehend criminals. That Act does not of course prescribe the procedure under which such duties are to be performed, but the procedure is to be found in the Criminal Procedure Code. The Code inter alia, prescribes how dispersal of unlawful assemblies is to be effected, what preventive action against cognizable offences is to be taken, how information about commission of cognizable offence is to be recorded and how further investigation thereafter is to be made. I have hereinbefore quoted the relevant sections of the Code of Criminal Procedure in extenso and need not repeat them. The impugned circular of March 27, 1967 debars the police from deciding upon any intervention before obtaining direction to that effect from the Labour Minister. Thus, the Labour Minister has been imposed as the sole authority to decide what action the police should take in matters covered by the impugned circular. He stands as a barrier between policemen and their duties.

76. Now, if the impugned circular of March 27, 1967 had not been there, the police might have, of their own, taken such action as was called for to prevent unlawful assemblies of "Gherao-making" workmen, to disperse them and to apprehend and arrest persons committing crimes like wrongful confinement or wrongful restraint. By reason of the circular, they stand neutralised, until such time as the Labour Minister chooses to activate them. Thus, the managerial and other staff of industrial establishments are deprived of prompt police intervention, which others enjoy if they are subjected to similar crimes. There is no reason, so to deny them the equal protection of law.

77. Assuming for the sake of argument. that managerial and other staff of industrial establishments form a distinct class and stand on a different footing from others, when confronted with trade union activities of unionized workmen, that distinction is lost when such workmen resort to crimes and keep the managerial and other staff in wrongful confinement. When a unionized activity denatures itself into a crime, it oversteps the limits of trade union activity. Against criminal activities of trade union men, the managerial and other staff of industrial establishment do not form any distinct class, which may be differentiated, and they are entitled to equal protection of law like anybody else. Thus, in so far as the impugned circular, dated March 27, 1967, denied to such persons, prompt police intervention against crimes, it offended against Article 14 of the Constitution.

78. The learned Advocate-General tried his best to minimise the effect of the impugned circular on the rights of the petitioners under Article 14. He contended that the police had certain discretion in the exercise of powers or in the discharge of duties under Sections 54 (1), 127, 128, 149 and 151 of the Code of Criminal Procedure and no-body was entitled to police intervention, under those Sections, as matter of right. Even if this be the legal position, the discretion is vested in the police and the police is not required, under the law, to seek directions from the Labour Minister and be guided by his discretion. The impugned circular of March 27, 1967 has this effect that it makes the statutory discretion vested in the police dependant upon somebody else's discretion. Under what law the circular imposes the Labour Minister on the police in the matters mentioned above could not be explained There is none so far as we can see. We, therefore, hold this to be an additional infirmity in the impugned circular.

79. Then again, Section 154 of the Code of Criminal Procedure does not leave any discretion in the police. That section requires that every information relating to the commission of a cognizable offence, if given orally to the officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 155(1) of the Code imperatively requires that when information is given to an officer-in-charge of a police station of the commission, within the limit of such station, of non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate. Section 157(1) of the Code requires that if from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed to that spot, to investigate the facts and circumstance of the case, and if necessary, to take measures for the discovery

and arrest of the offender.

80. The duties cast upon the police officer to record the first information report u/s 154 of the Code is not discretionary but is imperative. The police officer must record the information if given in a manner prescribed by the section. This must brook no delay. There is good reason why this is so. In the case of *King Emperor v. Bhut Nath Ghose* (1903) 7 Cal WN 345, Prinsep, C. J. observed:

"In nearly every trial, it is important that it should be known to the judicial officer what were the facts given out immediately after the occurrence and reported to the Police and the object of a first information is to render him so acquainted." Also in the case of (1907) 11 CWN 554 this court observed:

"The first information, if recorded as directed by Section 154 at the time that it is made, is of considerable value at the trial because it shows on what materials the investigation commenced and what was the story then told. Any statement, recorded as in this case several days after the commencement of the investigation and after there had been some development, is not only no first information but has very little or no value at all as the original story, because it can be made to fit into the case as then developed"

Then again, the investigation that the police may start on information received must not be interfered with by anybody not even by Courts of law This is the view taken by the Privy Council in AIR 1945 18 (Privy Council) and by the Supreme Court in *State of West Bengal Vs. S.N. Basak*, In the last mentioned judgment. Kapur J. observed

"As to the powers of the Judiciary in regard to statutory right of the police to investigate the Privy Council in AIR 1945 18 (Privy Council) observed as follows:

"The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order ii only to be obtained by leaving each to exercise its own function, always, of course subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code, to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that Section was enacted. But this is not so. The Section gives no new powers, it only provides that those which the court already inherently possesses shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of that Act."

With this interpretation which has been put on the statutory duties and powers of the police and of the powers of the Court we are in accord

81. The impugned circular of March 27, 1967 interdicts police intervention, for

rescue of wrongfully confined personnel by Gheraoing workmen, before directions are obtained from the Labour Minister. This may have the effect of debarring the police from recording a first Information report taking up investigation and deciding upon intervention for prevention of crimes and apprehension of criminals. In so far as the impugned circular does so, it introduces illegal executive interference in legal duties to be performed by the police, which has no legislative sanction behind it. In imposing the Labour Minister between the police and their duties¹- the executive offended against the law of the land, acted illegally and offended against the rights of the petitioner under Article 14 of the Constitution.

82. I now take up for consideration the third ground of attack on the impugned circular based on Article 21 of the Constitution- Under that Article, no person is to be deprived of his life and personal liberty except according to procedure established by law. The expression "life", used in the Article means, as stated by Field. J in *Munn v. Illinois* (1876) 94 US 113:

"Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg. of the putting out of an eye. or the destruction of an other organ of the body through which the soul communicates with the outer world".

The expression "personal liberty", in Article 21, means as stated by the Supreme Court in *Kharak Singh Vs. The State of U.P. and Others*, (per Subba Rao, J.):

"a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or "indirectly brought about" by calculated measures."

(underlined (here into " ") for emphasis). Now, an incorporated company is not a person and has no life or personal liberty. Therefore, the petitioner No. 1 is not entitled to protection under Article 21. The other petitioners who are the officers of petitioner No. 1 are no doubt entitled to protection under Article 21. The impugned circular indirectly interferes with the personal liberty of the petitioners other than petitioner No. 1, but does not wholly deprive them of such liberty. The quantum of this Indirect interference may attract the protection in Article 21 of the Constitution. But since the deprivation is not total and direct and since Ayyangar, J. in delivering the majority judgment in *Kharak Singh Vs. The State of U.P. and Others*, , emphasised upon the directness aspect of the deprivation, I do not venture to say that the impugned circular may also be condemned under Article 21.

83. In the view that I take, I hold that the impugned circular of March 27, 1967 is bad from several points of view, namely.

(a) it is bad because it is a piece of illegal executive interference with the statutory duties of the police.

(b) it is bad because the executive instead of ensuring compliance with the Calcutta Police Act and the Criminal Procedure Code by the police, put impediments in their way and interdicted them in the performance of their statutory duties, without legal authority.

(c) It is bad because it is a piece of executive action having the effect of denying equal protection of law to a number of people without a rational classification and without a justifiable cause.

(d) it is bad because the executive action has no support of law behind it and amounts to arbitrary interference with the legal right? of certain people

Such an act is likely to have dangerous consequences, I do not doubt the wisdom of allowing trade unionism to grow from power to power. I do not dispute the right of workmen to agitate for betterment of their industrial lives. I desire however, to emphasise that such an agitation must be kept within lawful bounds and must not be allowed to degenerate into criminal activity. An executive, which neglects this aspect, forgets that there is the contagious interaction by men in a crowd which tends to show itself spectacularly in mass hysteria, the release of civilized inhibitions and susceptibility to emotional suggestions. The Calcutta Police Act and the Code of Criminal Procedure invest the police with power and authority to see that crimes are not committed on the pretext of some political, economic or social "isms", for example, trade unionism. Left undisturbed by executive interdicts they may curb or prevent crimes and bring offenders to book. That is a measure of social control provided by the law of this land against lawlessness. "It is remarkable what an edifying effect the proximity of a constable may have on morality", says Alien in his book on Queen's Peace (p. 1241 In my opinion, the learned author does not exaggerate. The social innovator, however laudable his objects, who thinks of neutralising the police so that agitations by workmen, in the vague name of labour movement, may go on unhampered, fails to weigh seriously the danger to social stability involved in such action. Uncontrolled and defiant militancy of the workers, coupled with police neutrality in lawlessness, may cause compulsive abdication of authority on the part of management. No industry can thrive in such circumstances. If top executives in industrial establishments venture not to face their own labour for fear of being Gheraoed, wrongfully confined and subjected to other humiliations, without hope of lawful protection, one wonders how industrial establishments may carry on. If industries do not flourish, I wonder how workers' (demands?) may be fulfilled. A circular, like the one that I have to consider, not only renders ineffective a viable and effective organisation like the police but also psychologically inhibits policemen from making any move to face law and order situation. When this happens Rule of Law ceases to exist effectively

84. We have, during the hearing of this case. ourselves seen an exhibition "Gherao" inside our court room. Supporters of "Gherao tactics" entered our court room in a disorderly fashion, disrespectfully stayed inside as if to overrun the Court and went out noisily only to assemble on the road by the side of our court

room and shout deafening slogans in support of Gheraos and in disparagement of the dignity of this Court. All these happened because the management of several industrial concerns ventured to approach this Court to ventilate their grievance against Gheraos and police inaction and seek relief and because we were engaged in hearing them. The well-known method of meeting counsel's arguments by equally learned forensic arguments was forgotten and preference was shown to the crude and uncivilized method of bowling down lawyer's arguments by shouting slogans. All the time, the small police force in the Court premises stood by. They appeared to have no power to take action. The Chief Minister had to be contacted over this incident. He, in his belated wisdom, caused promulgation of an order u/s 144 of the Criminal Procedure Code, around the Court premises, with instruction to the police to see that such incidents did not recur. I find that there is a sizable police force stationed in and around this Court house even today. That is not an edifying spectacle. Rule of law best thrives when a Court of law is regarded as a sanctuary or a temple of justice. Armed policemen are misfits at such a place. The dignity of a Court cannot be maintained on the prop of regulation "lathis" or police guns. Such dignity must rest on public faith in justice administered by Courts of law and in public regard for law and order. But such is the state of affair in this country today, that agitators find the road open to invade Courts of law. The executive government allows this to happen first and then suddenly wakes up to take extreme measures. One should say that it was thoughtless of the executive to have allowed the law and order situation so much to deteriorate. Sworn as we the Judges are to perform the duties of our office without fear or favour, affection or ill-will, such demonstrations are of irrelevant consideration, so far as the trial of the cause before us is concerned. I mention this matter only to emphasise upon the disorderliness that prevails and the deterioration that law and order have suffered. If the highest judiciary of the State may be treated by rampaging agitators with so much disrespect and disorderliness, I do not know how far they may go in respect, of others.

85. I now turn to examine the validity of the other circular dated June 12, 1967. This circular was issued, as hereinbefore noticed, because the Constitution Bench of this Court had issued an interim injunction restraining the Government and the police from giving effect to the circular dated March 27, 1967. The later circular removes the Labour Minister from the picture but fails to remove the mischief. In the first place, I do not understand what is meant by the expression "legitimate labour movement". A labour movement need not necessarily be an economic movement for betterment of the lives of labourers. It may include a political movement to grab power, to dominate and to change the social order. The legitimacy of such a movement may be anybody's guess. In trying to ascertain the meaning of the well-known expression "in contemplation or furtherance of a trade dispute", Lord Loreburn L. C. experienced difficulties and expressed himself in 1909 AC 506 in the following language:

""These words are not new in an Act of Parliament; they appear in the

Conspiracy and Protection of Property Act. 1875. I think they mean that either a dispute is imminent and the act is done in expectation of and with a view to it, or that the dispute is already existing and the act is done in support of one side to it. In either case the act must be genuinely done as described, and the dispute must be a real thing imminent or existing. I agree with the Master of the Rolls that the Section cannot fairly be confined to an act done by a party to the dispute. I do not believe that was intended. A dispute may have arisen, for example, in a single colliery, of which the subject is so important to the whole industry that either employers or workmen may think a general lock-out or a general strike is necessary to gain their point. Few are parties to, but all are interested in, the dispute. If, however, some meddler sought to use the trade dispute as a cloak beneath which to interfere with impunity in other people's work or business, a jury would be entirely justified in saying that what he did was done in contemplation or in furtherance, not of the trade dispute, but of his own designs, sectarian, political, or purely mischievous, as the case might be."

The difficulties which beset the expression "legitimate labour movement" are greater, because it is not an expression used in statutes and has not yet been judicially interpreted. The expression is used in some new tangled philosophies with imports unknown or vaguely known. If the police be interdicted from interfering with "legitimate labour movements" they may wonder and not venture to condemn any movement started by the labour, as illegitimate and consequently may not move at all even if law and order breaks down as a result thereof. In the next place, even if somebody ventures to complain against unlawful activities in connection with such movements, the police stands directed at first to "investigate carefully" whether the complaint has, any basis of fact, before taking action provided by law. Ex-facie, there is a ban imposed on the functions to be lawfully performed by the police, before they complete their researches on the problematic question whether the activities complained of fall out-side the bounds of "legitimate labour movement" Thus, the police may not even record a first information report, u/s 154(1) of the Code of Criminal Procedure on receipt of oral information of commission of cognizable offences, because that is also an action provided under the law and wait until such uncertain future when their researches are complete- The opinion formed by the police, on completion of such researches may be worthless. It is for the Courts of Law and not for the police to pronounce upon the legitimacy of a movement. Thus the second circular has the effect of denying equal protection of law to certain persons, namely, the managerial staff of industrial and other establishments. In my opinion this circular is insidious. It is a crude attempt to put a semblance of presentability on a previous illegal circular, which the executive had not the shadow of jurisdiction to make. To borrow from the language used by Scott L. J. in *Blackpool Corporation v. Locker*. (1948) 1 All ER 85 at p. 95:

"The attempt was so great a breach of Constitutional propriety that I do not know of any legal epithet suitable for it and this Court is not concerned with the

Minister's responsibility to Parliament. From the Judicial point of view, I content myself with laying that it was a brutum fulmen*****"

86. The learned Advocate-General argued that it was permissible for the police to carry out a preliminary investigation before deciding upon what action to take in a particular matter. He relied upon several decisions of this Court in support of this contention, namely, Kachi Hazam Vs. Seraj Khan, , Nemai Adak and Others Vs. The State, and State v. Ram Ajodhya Singh, AIR 1986 Cal 348. This may be the legal position. But the liberty granted to the police to carry out a preliminary investigation does not absolve them from performance of their statutory duties compulsorily enjoined. Those duties must be performed whenever occasions arise Nothing should fetter the police in such matters, nothing should debar them and nothing should interfere, unless law permits.

87. The second circular of June 12, 1967, in so far as it prohibits the police from taking any action provided by law before completing a careful investigation, interferes with the duties of the police, which the ex-ecutive has no jurisdiction or competency to do.

88. I need add that the second circular of June 12, 1967 was meant for all officers, specially those connected with maintenance of law and order. The circular was addressed to all District Officers and to the Commissioner of Police, Calcutta. Under the expression District Officers, District Magistrates were not excluded. The Criminal Procedure Code invests the Magistracy with diverse powers in the matter of maintenance of law and order. The circular thus intended to interfere not only with the powers and duties of the police but also of the Magistracy. I am happy to note that the Magistracy did not pay any heed to the circular and issued search warrants, u/s 100 of the Code of Criminal Procedure, whenever there was an application made for search of persons wrongfully confined and their removal from such confinement. In not heeding to the circular and in caring to be guided by law only, the Magistracy acted in the best of its traditions and upheld the dignity of the high office.

89. Since I am of the opinion that the second circular of June 12, 1967 suffers from the same infirmities as attached to the first circular of March 27, 1967, I condemn the second circular also in the same manner that I did in respect of the circular dated March 27, 1967.

90. Both the circulars being thus unlawful and unconstitutional deserve to be quashed and sat aside.

91. The learned Advocate-General contended that in the instant case, the police did not fail to carry out their lawful duties. I have my doubts. In the affidavit-in-op-position filed by the Officer-in-charge of Hare Street, Police Station, he does not specifically deny the statements that although the police had been informed of the unlawful demonstrations on March 27, April 17, and May 29, 1967, the police did not take any action. The police officer merely says that he began enquiries about the occurrences taking place in the sales office of petitioner No.

1, after receipt of the injunction order from this Court and kept himself informed thereafter. His inaction on the earlier occasions, mentioned in the petition, have not been explained and that is a point against the police. If information about cognizable offences be sent to the police, they have certain duties to discharge. Failure to discharge such duties is illegal and for such illegalities they deserve condemnation. If the police inaction was caused by executive circulars, that may minimise the effect of omission to perform their duties but do not wholly absolve them.

92. The learned Advocate-General took certain objections to the maintainability of the present application. Those technical objections have been dealt with by the judgment of my Lord the Chief Justice, which I have heard, and I fully agree with his reasons for overruling those technical objections.

93. Mr. S. K. Acharya, learned counsel for the respondent trade union, submitted that this Court should not hold any particular workman or workmen guilty of specific offences committed in connection with the Gheraos, because such a finding may prejudice them, if they have to face criminal trials for having committed such offences. I desire to put an end to all such misapprehension. The allegations of criminal activities in connection with Gheraos have been expressly made in the petition. They have not been specifically controverted by any affidavit-in-opposition. This alone may not amount to proof of such offences in a criminal trial. For the purpose of granting relief to the petitioners, suffice it for my purpose to hold that the petitioners approached the police with definite case of criminal activities, committed against them by certain workmen, in connection with Gheraos. That case stands uncontroverted before this Court. The police failed to act on the information because of the existence of the impugned circulars. Since the circulars were illegal and since the police inaction out of deference to the circulars, were unlawful the circulars and the police inaction deserve my severe condemnation. I do not go beyond and I do not hold that any of the workmen respondents were proved guilty of specific offences.

94. For the sake of convenience, we decided that the following points should be specifically dealt with in this Rule, namely.

1. What is Gherao?
2. Is Gherao, as practised in this case, lawful?
3. Are the circulars dated 27th March 1967 and 12th June 1967 and/or the decisions, if any, upon which they are based lawful?
4. Did the respondents Nos. 6 and 7 fail to perform their legal duties either in obedience to the circulars or otherwise?
5. To what reliefs are the petitioners entitled?

My answers to the above points are here-inbelow set out:

1. Etymologically, "Gherao" means encirclement. Encirclement by a crowd may

be due to various reasons, say for example, there may be encirclement of a popular leader by an admiring crowd, the leader himself enjoying this form of demonstration. Encirclement may also be made by a hostile crowd, say of workmen, who elect wrongfully to confine the management, so as to coerce them to concede to their demands "Gherao" as such, that is to say simple encirclement, is no offence under the Criminal Law of this country. But a "Gherao" accompanied by violence and diverse forms of crimes resulting in wrongful confinement or wrongful restraint of the encircled person or persons, is a criminal activity, not because it is encirclement but it is encirclement "with more" The form of "Gherao" that I have to consider is encirclement "with more", which is criminal and punishable under the law.

2. The Gherao as practised in this case, I find on the materials on the record, was unlawful.

3. The circulars, dated March 27 and June 12, 1967, and the cabinet decisions upon which they are based are unlawful There is no legislative authority behind the executive action The action was discriminatory in so far as it denied to wrongfully confined or wrongfully restrained managerial staff of industrial establishments, prompt police intervention as provided for by the law of the land in so doing the executive violated its duties under Article 256 of the Constitution.

4. The respondents police officers failed to perform their legal duties, in trying to obey the impugned circulars

5. I agree with the form of relief indicated in the judgment by my Lord the Chief Justice and need not repeat the same. This Rule should be made absolute to the extent indicated in the judgment of his Lordship the Chief Justice and I express my agreement with him.

Ray, J.

95. I agree with the judgment and order passed by my Lord the Chief Justice.

Amaresw Roy, J.

96. I agree with the views of law generally and conclusions reached by My Lord the Chief Justice in his judgment just delivered and I concur fully with the answers his Lordship has provided to the points at issue and also the order his Lordship has proposed in that judgment. In view of the importance of the points involved and the arguments advanced on those points by contending counsel on both sides. I propose to deal with some of the salient points and briefly state my reasons for the conclusions arrived at and the order that should be issued by making this Rule absolute.

97. At the outset it is necessary to state the circumstances in which this Rule issued and the manner by which this Special Bench was constituted as also some of the important events that happened during the hearing of the case, along with several other cases referred to this Special Bench.

98. This Rule was issued upon application moved on 8th of June 1967 before the Hon'ble brother B. C. Mitra, J. In the Constitutional Writ jurisdiction under Article 226 of the Constitution of India praying for (a) Writ or order in the nature of Certiorari for quashing and cancelling circulars dated 27-3-1967 and 12-6-1967 (b) writ or order in the nature of Mandamus directing not to give effect to those two circulars and (c) also writ or order of or in the nature of prohibition restraining or prohibiting the respondent from giving effect to the said circulars. Besides those prayers for writs interim orders were also prayed for as also injunctions restraining some of the respondents from acting in a particular manner which because of certain characteristics has been given the generic name of Gherao Characteristics of those acts alleged and also the terms of the prayers made in the petition will have to be discussed in detail on the facts of particular case and consequences brought about thereby for considering the appropriate writs or orders if any the petitioners can claim as appropriate relief prayed for in the case.

99. By the order of B. C. Mitra, J. rule nisi issued calling upon the respondent to show cause why the Writs prayed for should not be issued it was also directed in the order issuing the Rule that at the hearing of the application records, document, orders or proceedings relating to the orders and/or decisions and/or directions of 27th March 1967 and 12th June, 1967 be produced Interim Order restraining respondents 1 to 7 till the disposal of the application from enforcing and/or taking any steps and/or giving any effect to the two circulars above mentioned was granted and the respondents Nos. 8 to 29 were restrained from taking part or indulging in any activity with the object of raising wrongful confinement or obstructing and interfering with the petitioners' right of free movement within office premises, respondents Nos. 8 and 7 were directed to restrain the respondents 8 to 29 till the disposal of the application from indulging in any such activities.

100. The Rule so issued by the learned Judge was made returnable on 20th of July 1967. That returnable date was extended by a fortnight by an order made by the learned Judge on 19th July 1967, which order was obtained on mentioning the matter before him in Court.

101. B. C. Mitra, J. also made an order directing that this matter along with two other matters be placed before the Hon'ble the Chief Justice for appropriate orders because he was of the view that the question raised in this application involved substantial question of law as to interpretation of the Constitution and in his Lordship's opinion the application ought to be heard and disposed of by a larger Bench. The Chief Justice then constituted this Bench of 5 Judges, Before this Bench the matter appeared on 7th of August 1967 on which date directions were given regarding Affidavits-in-Opposition and Affidavit-in-reply and the matter was directed to be set down for hearing on 4th September, 1967.

102. On 4th of September, 1967 when the case was called on for hearing, on the oral prayer of the counsel for petitioner, respondent No 29 was struck off from

the proceedings On behalf of respondent No. 8, Jay Engineering Workers" Union their counsel Mr. N. N. Guptoo prayed for permission to enter appearance in the proceedings on that date That prayer was allowed on the oral prayer of the learned counsel by recording a minute that he was permitted to argue on behalf of the said respondent No 8. But his prayer for using affidavit at that late stage was disallowed. The Minute was in these terms:

"The respondent No. 29 be struck off from the cause title and this proceeding will continue as against the rest.

At this stage Mr. Gooptu says that he has been instructed on behalf of the respondent No. 8 J Engineering Workers" Union, to appeal and contest this application. This is objected to by the petitioners on the ground that the respondent No. 8, though duly served had not entered appearance as yet nor used any affidavit.

However, after hearing the parties, we find there would be no objection if the respondent No 8 wants to make submissions and Mr. Guptoo also agrees that he will not use anv affidavit and that he will address the Court on points of law.

On this condition the respondent No. 8 is permitted to enter appearance and contest this application and the necessary power therefore may be filed by tomorrow.

Mr Guptoo however, shall not be precluded from arguing that his client has not committed any offence"

It may be mentioned here that after the learned counsel for the petitioner Mr. Subimal Roy had concluded his opening arguments in support of the Rule, on 8th September, 1967, an application on behalf of the respondent No. 8 was moved before us seek-ing permission to enter appearance and for filing an affidavit, in the alternative, to be allowed to cross-examine two persons who had sworn affidavits on behalf of the petitioners That application was heard on 8th of September, 1967 and on hearing the learned counsel Mr. S. Acharya who appeared in support of that application, it was rejected by this Bench in view of the Minutes dated 4th of September, 1967 mentioned above.

103. Facts relevant for the disposal of this Rule urged in support of the prayers made by the petition are (See Paras 3 to 6).

104. Two months thereafter on 27th March, 1967 the Government of West Bengal issued a circular or instructions to the District Magistrates, Commissioner of Police of Calcutta and others what should be done in cases of gherao of industrial establishments by their workers resulting in the confinement of the managerial and other staff, and directed that in such cases the matter should be immediately referred to the Labour Minister and his directions obtained before deciding upon police intervention for the rescue of the confined personnel. Source of petitioners" information about that circular has been mentioned to be publication of the news in public press, particularly a news item in "Statesman"

Calcutta dated June 4, 1967 A copy of the circular was annexed to the petition as annexure "B" and it is in these terms: (See para 7).

105. Certain informations about statements made by some of the Ministers of West Bengal in public and also information about discussions at conference and proceedings of the State Legislative Assembly have been referred to in the petition on the basis of publications in the press, particularly. The Statesman. Calcutta of 19th March, 1967, 8th April 1967, 8th May, 1967. 14th May, 1967, 4th June, 1967 and 28th June, 1967.

106-110. (After narrating the facts (See paras 3 to 6) the judgment proceeds): On behalf of respondents Nos. 1 to 7 one affidavit sworn to by Sri Amal Kumar Dutt, Joint Secretary. Home Political Department of the Government of West Bengal has been filed; in paragraph 4 of that affidavit it has been stated: (See paras 11 and 7).

111. (After recording the affidavits (Set para 11) and circular (See para 7) the judgment proceeds.) In that state of pleadings in the petition and the averments in the affidavit? filed in this Court. Mr. Subimal Roy in support of the Rule has urged that the facts alleged in the petition are admitted and the Court should proceed on that basis.

112. The learned Advocate General Mr. A K Dutt appearing on behalf of respondents Nos. 1 to 7 in obedience to the directions in the Order issuing the Rule regarding production of records and documents, has produced before us the originals of the circulars dated 27th March, 1967 and 12th of June, 1967 and he has also disclosed and produced in Court the Cabinet Decision in the Confidential File of the Government of West Bengal, one dated 14th March, 1967 and the other dated 8th June, 1967. He has also produced the original of Government memo No. 138-P-S. dated 7th February, 1956 which has been referred to in the circular dated 27. March, 1967. The learned Advocate General has also made reference to a letter dated 3-6-67 in the confidential file of the Government and the minutes of Cabinet proceedings dated 3rd of June, 1967.

113. That upright and proper attitude on the part of the learned Advocate General has been in consonance with usual fairness of conducting litigation on behalf of the State which this Court has been accustomed to see in the past and it has not only earned admiration of the Court but also has been fully appreciated and frankly congratulated by several eminent counsel who appeared for petitioners in several cases. It should be put on record however, that in respect of the Cabinet Decisions the learned Advocate General made it clear that those are privileged documents but privilege is not being claimed in this instance only to enable the Court to do proper justice to parties. So this should not be treated as a precedent and he does not waive the principle that Cabinet Decisions are privileged documents.

114. At the commencement of the hearing, after Mr. Subimal Roy on behalf of the petitioners had addressed the Court to apprise us of the matters he will rely

on, points at issue were set down:

- (1) What is Gherao?
- (2) Is Gherao as practised in this case, lawful?
- (3) Are circulars dated 27th March 1967 and 12th June, 1967 and/or the decision if any upon which they are based lawful or competent?
- (4) Did the respondents Nos. 6 and 7 fail to perform their legal duties either in obedience to the said circular or otherwise?
- (5) To what relief are the petitioners entitled?

115. In this petition, as also in the petitions in every case before this Bench the word "Gherao" has been used in English both as a noun and verb. That word appears also in the two impugned circulars and the Cabinet proceedings and Cabinet Decisions of the West Bengal Government on which those circulars are based. The Memo No. 138 dated 7th February 1956 has also used the word Gherao.

116. In fitness of things therefore, the first question for us to ascertain is what is Gherao? Undoubtedly it is a well-known word used in Bengali parlance to which picturesqueness has been added by ornamental language employed in well known Ben-Kali Newspapers for connoting a particular activity which is prevalent for about a decade. The root, of which this word is a derivative, may be traced to Jh /kkrw in Sanskrit and ?ksj in Persian languages. Wilson in his Glossary of Legal Terms has mentioned it to be a Persian word which means "to surround" or "encircle". Dr. Boden Williams, Boden Professor of Sanskrit in Oxford University in his famous Sanskrit-English dictionary mentions the root as Sanskrit ?ksj which seems to me to be a confusion between Persian and Sanskrit it may well be that the Persian word Jh /kkrw itself has been indented from Jh /kkrw in Sanskrit which is more ancient of those two classical languages. Without attempting a research for fixing the original root for the word in any of those classical languages, it is enough for our purposes to notice that not only colloquial but also in elegant and chaste Bengali ?ksyk & f?kys in different spellings can be seen in world famous literary works of Bankim Chandra Chatterjee and poems of Rabindra Nath Tagore both of whom were men of mid-Nineteenth century. Meaning of that word as a verb is to surround or encircle. In fc?dks"k (Vol 6) which is an authoritative Dictionary of Modern times the word ?ksyk has been given the meaning csLVu- The word ?ksyko itself is mentioned in dependable Bengali Dictionary pyafrdkand there it means csLVu- vcjks/k. To us counsel for the parties have commended that meaning. It is clear therefore, that the word "Gherao" means to encircle, surround, beset or beset. For that meaning the word has been used in the circulars issued by Government of West Bengal in 1956 and in 1967. In both of them appears language rendering that Gherao involves illegal or wrongful confinement or restraint.

116A. In Memorandum No. 138 P. S. dated 7th February 1956 subject mentions

"Stay-in-strikes and Gherao" or coercive and confinement tactics"

Then under the heading "Gherao or wrongful confinement or criminal trespass it says:

"Though workers may go on peaceful strikes which are not illegal, they have no right to resort to coercive methods like wrongful restraint wrongful confinement and criminal trespass which are all cognizable offences"

In circular dated 27th March 1967 appear the words:

"In cases of Gherao of industrial establishments by their workers resulting in confinement of managerial and other staff".

Circular dated 12th June 1967 says:

"Police must not intervene in legitimate labour movements unlawful activities in connection with such movements"

117. That connotation of the word Gherao used in the petition before us has been sought to be Riven by describing the Incidents in para 12 (a), (b) and (c) and then in para 14 it is said:

"14. Your petitioners state that the word "gherao" is not a term of law, but as practised contemporaneously, it means and/ or results in encirclement or wrongful restraining of a person's free movement and/ or wrongfully keeping confined a person or persons so as to prevent that person or persons from proceeding beyond a certain circumscribing limit, usually the factory or the office premises of the employer. In the above sense a gherao amounts to wrongful restraint and/or wrongful confinement as per Sections 339 and 340 of the Indian Penal Code. Your petitioners further state that the above offences are cognisable offences under the said Indian Penal Code. "Gherao" is also a deprivation or total loss of personal liberty which includes, inter alia, the right to move, eat or sleep or work where one likes".

118. The Counsel for petitioner has emphasised the particular acts and methods alleged to have occurred in this case. On behalf of the respondents, neither the State or its officers, nor the Union of workers or individual workers have denied the incidents, though on behalf of the latter commission of any criminal offence and unlawful act has been denied in course of the arguments.

119. Taking all those materials into careful consideration, connotation of the word Gherao may safely be understood. For the purposes of deciding this case the controversy whether Gherao involves criminal offence will have to be considered also. But what is beyond controversy is that Gberao means--

Collective action by large number of persons surrounding, encircling or besetting some other persons or place for the purposes of using coercive methods to compel acceptance of demands or claims generally resorted to by workers and employees against the authority or employers or their officers and staff.

That collective action may be by Union of Workers or by a group of employees who are not a registered Trade Union. It may be a strike as defined in labour laws or it may not be so. Even when it is a strike so defined, it may be a lawful and peaceful strike or it may be unlawful and violent involving criminal offences.

120. Surrounding or encircling or be setting and thereby putting the subject of that act under restraint, may or may not be by committing an act of trespass on property, but inevitably results in wrongful restraint and even wrongful confinement, which are offences defined and punishable by Indian Penal Code.

121. Coercive method may be attended with violence and it may result in degrees of assault; even without actual assault, show of force or putting the subject to fear of injury may amount to intimidation or extortion depending on the purpose for which that coercive method is employed.

122. Other unlawful acts and other offences of mischief or theft may result from such coercive methods, though that need not happen in every instance of Gherao.

123. While those are possible and probable consequences of acts of individuals participating in the demonstration or strike which has been called "Gherao", resulting in criminal offences by individual authors of those acts the collective action may be result of previous decision arrived at by agreement amongst several persons for taking such action That agreement, if it is one to do (or cause to be done) an illegal act or an act which is not illegal by illegal means, will be a criminal offence defined in Section 120A, I. P. C. as criminal conspiracy when such agreement is to commit an offence or in other case when an overt act besides the agreement is done by one or more of the parties to the agreement in pursuance thereof.

124. An agreement which is conspiracy but which is not criminal conspiracy may be abetment by conspiracy defined in Section 107 I P. C. and that abetment is criminal offence, if the act abated is a criminal offence.

125. If the act which is offence is done by 5 or more persons participating in it by sharing a common object within Section 141 I. P. C. that group of persons becomes an unlawful assembly and when force is employed in pursuance of that common object, it may amount to offence of riot punishable u/s 147 I P C.

126. For that purpose Counsel for petitioner has urged that Court should take judicial notice of the newspaper reports of many incidents reported every day as "Gheraos" having happened in many places in West Bengal in different circumstances, for different purposes and in many different manner Those are said to be notorious facts and matters of contemporary history within Section 57(13) of Evidence Act, and as such evidence to help the Court by giving an understanding of the meaning of Gherao though not evidence of truth of those matters reported.

127. Our understanding of what is connoted by Gherao has been helped by what happened "in faci curiae" before this Bench on 12-9-1967 during the arguments

of Mr. Sankardas Banerjee in another case. That was a sort of demonstration that created some noise inside and outside the Court, more outside than inside, suggesting that it was an attempt to "Gherao" the High Court in course of which there was no violence, nor any of the offences under Indian Penal Code mentioned above, except an offence u/s 228 of that Code and also the grave offence of contempt of Court "in fact curtae" was committed. That incident illustrates that the relation of any particular offences that may be involved in a particular Gherao, with Gherao's itself, is only incidental and not fundamental in its nature.

128. Those illustrations, in my view, only show the different manifestations of the coercive element in Gherao. Distinctive character of Gherao is existent in it of coercive method in one form or other. Without coercive method Gherao does not exist. Such coercive method in Gherao may take many forms and fabrications. It may be by shouts and noises raised by slogans. Not only encirclement of person and place attended with slogans and shouts or noise and clamour, but also crowding of public places and roads may be of a degree which is nuisance in law, but not an offence defined in Indian Penal Code or any other special law. In some cases the congregation may be peaceful or it may be disorderly and violent to the extent of disturbing public order causing breach of public peace, and thereby it may cause disturbance of law and order, or even may amount to the serious offences punishable under Indian Penal Code or one or more special laws.

129. Such concerted action predicates previous agreement which may be conspiracy to abet (Section 107. I. P. C.); prior concert to do an act and participation in the act may make each individual participating in it with common intention, liable as a principal offender if the act done is a criminal offence (Section 34. I. P. C.). It may also come within criminal conspiracy as defined in Section 120-A I. P. C. and in that event participation in the agreement itself will make each individual liable to be punished u/s 120-B, I. P. C. If elements of common object mentioned in Section 141 I. P. C. are present, then the congregation will be an unlawful assembly (Section 143 I. P. C.) and when force is added it will be riot (Section 147 I. P. C.)

130. Those illustrations only help to bring out the feature that it is the nature of coercive method employed that gives it the character as a Gherao and therein lies the distinction between a Gherao and a Strike.

131. Gherao. If staged during working hours necessarily involves abstention from work and to that extent it is akin to strike. But strike is by itself a weapon of collective bargaining and coercive part in a strike is only the concerted abstention from work by all or a section of workers Gherao however is something more than a mere strike in so far as coercive method employed in Gherao is something more than abstention from work only That additional element essential in Gherao is besieging or encircling or besetting the subject of Gherao, which inevitably results in wrongful restraint and wrongful confinement of that subject. Any other or more offences may also be committed during a Gherao.

131A. But Gherao may be staged outside working hours and also at places which are not places of work. At those hours and at those other places Gherao cannot be equated with strike. Even a stay-in-strike or tool-down strike or pen-down-strike in factory, office or other places of work when continued outside office or working hours results in trespass and if it is indulged with any of the intentions mentioned in Section 441 I. P. C it will constitute the offence of criminal trespass punishable by Section 447 I. P. C. and may also constitute other aggravated forms of criminal trespass, punishable by Sec 448 I. P. C. and Sections that follow in the Penal Code.

132. In so far as a Gherao may in many cases be a strike plus the characteristics mentioned above that distinguishes Gherao from a strike, it is relevant to ask to what extent strike or similar trade union activities often mentioned as bona fide labour movement are legitimate and protected by immunities under law in India.

133. Strike has been defined in Section 2(q) of Industrial Disputes Act, 1947 (Act XIV of 1947) thus:

"Strike means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue work or to accept employment. "

134. What is important to notice is that by this definition strike includes only cessation of work or refusal to continue work by concert or combination. It does not include prevention of other persons who may be willing to continue work, by any means either inducement or picketing or threat, far less by any of the coercive methods of unlawful acts or violence or criminal offence. But inducement or peaceful picketing itself is not a criminal offence and right to resort to strike as a trade union activity or bona fide labour movement is certainly legitimate; but coercive methods to prevent other persons against their will is unlawful and may amount to not only tort, but also criminal offences. Liability for such acts both civil and criminal attaches to every person for his individual acts and also to the collective body acting in concert. Agreement to do an unlawful act may amount to criminal conspiracy for which every participant in such agreement is liable.

135. Immunity from liability of the offence of criminal conspiracy and from civil suits in certain cases has been provided in Sections 17 and 18 of Trade Unions Act, 1926.

136. (After mentioning the Sections (See para 25A1 the judgment proceeds:) In Section 17 above, immunity extends only to the specified offence punishable under Sub-section (2) of Section 120B of Indian Penal Code and that even is circumscribed by the last phrase in that Section "Unless the agreement is to commit an offence". It means that any criminal conspiracy punishable under Sub-section (1) of Section 120B I. P. C. Is not covered by the immunity nor is any criminal conspiracy by agreement to commit any offence. No other offence also is

covered by the immunity u/s 17.

136A. In Section 18. Immunity from civil liability is from suit or other legal proceeding for any act "On the ground only that such act induces some other person to break a contract of employment or that is in interference with trade etc....." A suit or legal proceeding on any other ground is not within immunity provided in this Section.

137. On the side of the petitioners and the respondents the learned Counsel have discussed English Law on the subject For the purpose of better understanding of the true import of these provisions in Indian Law the learned counsel for the petitioners has contended that the provisions in our Trade Unions Act, 1926 are based on Common Law of -England and two English statutes. Earliest English Statute referred to is an Act of 1875 (38 and 39 Vict Ch. 86). Section 3 of that English Statute corresponds very closely to what is provided in our Trade Unions Act, 1928 in Sections 17 and 18 quoted above and definition of strike in Industrial Disputes Act, 1947 has been taken from English Statutes.

137A. My Lord the Chief Justice has elaborately dealt with that subject. I need only briefly mention that right to form Trade Union for collective bargaining in Industrial establishments in England is based on Common Law of that country. But the right to get protection of bona fide trade union activities or legitimate labour movement had to be provided for in England in Trade Disputes Act of 1906 (1906 Chap. 47). Important landmark in Common law of England and interpretation of provisions of those Statutes by judicial pronouncements on the extent of immunity in trade union activities may be located in several decisions of House of Lords placed before us by Mr. Subimal Roy

138. Those decisions in England were in the background of new trends of thought in the social philosophy that had appeared in England and America and also in the industrialised countries of Europe and had been nursed by European and English scholars in liberal atmosphere of England before the close of nineteenth century. With the turn of the century not only industrial organisations were undergoing new orientations but also labour movements were gathering momentum to give shape to trade union organisations in those countries for forging the useful and effective weapon of collective bargaining, in the form of strikes.

Judicial decisions till then were hard at pains to ascertain within the provisions of Statute of 1875 (38 and 39 Vict Ch. 86), what is bona fide trade dispute and what are the extents of legitimate trade union activities. English decision cited before us and discussed in detail by my Lord the Chief Justice show that those were held to be questions of fact for the jury to decide. Common Law of England has always frowned on breaches of contract and torts arising from inducing others to commit such breaches. Combined deliberations culminating in agreements and actions of trade unions were till then exposed to actions in both civil and criminal Courts. British Parliament enacted the Statute of 1906 (Trade

Disputes Act) to meet that situation by giving immunity to combined deliberations and actions organised by trade unions for staging strikes in industrial establishments. Law in England remained so not only during the First World War and the years of reconstruction of social economy after that avalanche, but also between the two World Wars and even during and after the Second World War. During the era between the two world wars, law was reviewed by House of Lords in the case of *Sorrel v. Smith* (1925 AC 700). In that case Lord Cave in his judgment discussed Common Law to reach the conclusion that trade union activity will not be actionable (at page 712 of the report) and the Lord Chancellor in his judgment (at page 714 of the report) added a rider to that proposition that to merit such immunity there must not be committed any criminal offence in course of trade union activity.

139. In the meantime affairs in our country had not remained static. Industry had expanded, new thoughts of social justice and labour policy not only were generated but also were expressing themselves in the wake of national movements for political changes for achieving independence. Looking back into our history under British regime, one may trace the origin of trade unionism in India to 1890 when workers of Bombay organised a union, and first collective representation of claims by workers in 1884 at a conference of factory workers to draw up a memorandum to the Factory Commission appointed by Government of Bombay. Since 1918 trade unions were growing both in number and volume, but they did not enjoy legal status and workers' right to organise in collective bodies or resort to strike for collective bargaining was not recognised under any law in India.

140. In 1921 Madras High Court in *Buckingham and Carnatic Mills* case held trade unionism as illegal conspiracy and granted injunction restraining Labour Union officials from influencing labourers to break their contract of service by means of strike. That decision apparently followed Common Law of England. Public opinion in India was roused thereby to the extent that following a resolution in the Legislative Assembly in Delhi on 1st March 1921 demanding legislation for protection of bona fide trade union activities. Government of India introduced a Bill in 1925 which was enacted as Indian Trade Unions Act (Act XVI of 1926). It came into force on 1st June 1927.

141. That Act was substantially enlarged in its scope by the amending Act of 1947 (XLV of 1947) providing for obligatory recognition of representatives of Trade Union and also specified certain acts as unfair practices on the part of recognised Trade Unions and certain other acts as unfair practices on the part of the employers. But Sections 17 and 18 of the parent Act have remained exactly as they were originally enacted. Even the amending Act however in Clause (1) of Section 2 it has been provided "Strike has the meaning assigned to it in the Industrial Disputes Act 1947 (XIV of 1947). Illegal strike means a strike which by virtue of any law for the time being in force and irregular strike means an illegal strike or a strike declared by a Trade Union in contravention of its Rules referred

to in Clause D of Section 28(D)" Two other definitions in Section 2 of Trade Unions Act 1926 may be quoted here "(g) Trade dispute means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises" (h) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

142. Law relating to Trade Union and labour movements in respect of the rights, obligations, and liabilities, both civil and criminal, has been so codified in India by provisions in those statutes. Definite progress in enlarging labour rights have been achieved Though in our country a late start was made, our law is not less progressive.

143. Though strike was a rare phenomenon in Indian industry before the First World War, Strikes appeared in violent form after the War in 1920 not only in certain industrialised area of India but also in England and European countries. British Trade Disputes and Trade Unions Act were passed in 1927 and British Industrial Courts Act was Passed in 1919. Based on those two English Acts, first Indian Trade Disputes Act was passed in 1929 (VI of 1929). That legislation was experimental for 5 years and was made permanent in 1934. That Act was amended in 1938 by Act XI of 1938. Soon thereafter however, the Second World War broke out and Rule 81 (A) of Defence of India Rules 1939 empowered the Government to make particular or special order to prohibit strike or lock-out in connection with trade disputes, unless reasonable notice was given and also to refer disputes to conciliation or adjudication and to require employers to observe such terms and conditions as may be specified and to enforce the decision of the adjudicators. That emergency provision was kept in force by the Emergency Power Continuance Ordinance of 1946. In 1947 Industrial Disputes Act (Act XIV of 1947) was passed and it came into force on the first 01 April, 1947. Trade Disputes Act of 1929 was repealed by this Act. Industrial Disputes Act of 1947 has been variously amended but the definition of the "Strike" in Section 2(q) has remained as it had been originally enacted.

144. By the laws thus codified in India not only rights to form Trade Union have been recognised but also trade union activities have been given certain immunities under Sections 17 and 18 of Trade Union Act. The machinery for settling industrial disputes has been set up under Industrial Disputes Act of 1947. The learned Counsel for the petitioners in the several cases before us took pains to discuss English Law for showing that in England trade union rights are

based on English Common Law though legislation has recently been undertaken to regulate industrial disputes in that country also. Law in England up to the Second World War has been elaborately discussed in the judgment of House of Lords in the Crofter Hand-Woven Harries Tweed Co. v. Veitch 1942 AC 435.

145. My Lord the Chief Justice has discussed the progress of thought and changes in law introduced in England and America for comparing with law contained in Sections IV and 18 of our Trade Unions Act of 1926. I generally agree with the learned Chief Justice and I need only mention that even in 1964 in the case of Rook v. Bernerd reported in 1964 AC 1129 law in England on this subject was found by the Court of English Judges sitting in the House of Lords to be inadequate and requiring a change.

146. After the case of 1964 AC 1129 was decided in the House of Lords, a new Act has been passed in the British Parliament in 1965, entitled Trade Disputes Act 1965 (Act 1965 Chap. 48). Long title of that Act is "An Act to prevent actions on tort or of reparation being in favour of certain acts done in contemplation or furtherance of trade disputes" Section 1 therein provides "an act done after the passing of this Act by a person in contemplation or furtherance of a trade disputes (within the meaning of the Trade Disputes Act (1906) shall not be actionable in tort on the ground only that it consists in his threatening". This provision had become necessary because in the case of 1964 AC 1129, House of Lords had held that Inducement by persuasion only was within immunity under Trade Disputes Act 1906 (1906 Chap. 47) and the new Act has made it clear that inducement by threatening also shall not be actionable in tort. It has to be noticed however, that even in England the latest legislation above mentioned does not extend the immunity to criminal action if inducement is by any act which is a criminal offence. In that respect, in my view Indian Law has been similar u/s 17 of the Trade Unions Act 1926. In view of that law it has been contended on behalf of the petitioner that Trade Unions Act 1926 and Industrial Disputes Act 1947 altogether lay out one comprehensive code regarding rights of Trade Union and beyond what is provided in those two Acts, there is no immunity in civil or in criminal liability. That proposition has not been contested by the learned Advocate General of West Bengal Mr. Ajit Kumar Dutt. He has stated before us in clear and unequivocal terms that on behalf of the State of West Bengal the position he is taking is that, if in course of Gherao an offence of wrongful restraint punishable u/s 341, I. P. C. Is committed, the person confined can certainly seek legal remedy and that if combination of industrial workers have conspired to commit an offence, they cannot claim immunity either in criminal or in civil Court. The learned Advocate General has categorically stated that law in India is that strike is a trade union right, but in exercise of that right criminal offence must not be committed By that commendably bold and refreshingly clear stand the learned Advocate General has helped to restore the prestige and bona fides of the parties he was representing to a large extent because in that part of his advocaov he has assured the Court that State of West Bengal and the Government of the State is aware of the law of the country and

with the help of their legal Advisors they intend to abide by that law.

147. On behalf of the union of workers their Counsel Mr. Acharya has neither contended that Gherao does not involve criminal offences nor that such offences when committed are not liable to be punished. His contention has been that Gherao is a form of strike and strike as such is not Illegal. If there be committed criminal offences in course of strike or Gherao, proper forum is a Criminal Court to try such allegations. Allegations of criminal offence should not be tried in civil proceedings like the present one under Article 226 of the Constitution. He pointed out the circumstances due to which the union of workers did not file any Affidavit-in-Opposition and could not traverse the allegations made in the petition; he urged that such silence should not mean admission of those allegations. Particularly so because there has been an application made in the Criminal Court of Magistrate u/s 100 Cr. P. C. and in Criminal trial accused has a right to remain silent. By those contentions Mr. Acharya only sought to attack the maintainability of this proceedings and reliefs prayed for. They are separate issues altogether and have no bearing on first three issues I am now dealing with.

148. I have already discussed above the main characteristics of Gherao and whether a Gherao is an aggravated or escalated form of strike or not. In its main characteristic's it involves a coercive method by commission of wrongful restraints and even wrongful confinement which are penal offences under the Indian Penal Code. As Gherao involves one or the other criminal offence it is unlawful. Neither the individual participant in a Gherao, nor the combination of the workers which in the collectivity is the trade union, can claim immunity either u/s 17 or Section 18 of the Trade Unions Act 1926, if the agreement is a criminal conspiracy within the definition in Section 120A of the Indian Penal Code or any event act in course of the Gherao is any other offence punishable under that Code or any other law. The learned Advocate General himself has very fairly pointed out that Criminal Law Amendment Act of 1932 in Section 7 has made violence resorted to in a strike a specific offence under that Section punishable with substantive imprisonment irrespective of it being any particular offence under the Indian Penal Code or not, in the areas where that special Law has been made applicable any violence in a strike is an offence. Right to strike which our law recognises does not give any right to indulge in acts of violence or commission of any criminal offence either by individual worker or by a Trade Union collectively. For those reasons discussed above I have reached the conclusion that Gherao is a coercive method in which minimum appendage that distinguishes Gherao from strike is a criminal offence of wrongful restraint punishable u/s 341 I P. C., and such Gherao is not a legitimate trade union activity and therefore does not enjoy immunity from legal action either u/s 17 or Section 18 of Trade Union Act, 1926 and a? such it is clearly unlawful.

149. As I have held that acts connoted by Gherao in its very nature involve criminal offences of wrongful restraint and wrongful confinement, it is enough to state my conclusion that Gherao as has been shown to have been practised in

the case involved those offences and also other offences punishable under Indian Penal Code.

150. So I need not discuss in detail the allegation of facts in the petition and contentions of the parties in their Affidavits in this case, but I need state that I fully agree with what My Lord the Chief Justice has held on those points.

151. For the reasons I have stated above regarding the law applying to Gherao, I am clearly of the view that Gherao as practised in this case is unlawful to the extent that thereby several offences like unlawful restraint (Section 341), unlawful confinement (Section 342) and criminal trespass (Section 448) have been committed. Those are all cognizable offences and for that reason there is no immunity in law in respect of liability for those criminal offences even though those were committed by workmen in an industrial establishment for enforcing their demands by trade union activity. In this proceeding it is not necessary to consider if other offences like Criminal Conspiracy (Section 120B), Extortion (Section 384) and Intimidation (Section 503) were also constituted by those acts. For answering the third issue which requires us to consider whether the two circulars issued by West Bengal Govt. are lawful and competent actions, it is relevant to ascertain what are the duties of Police when information concerning such offence or apprehension of such offence is received. As starting point of such enquiry it has to be remembered that though minimum offence involved in Gherao is wrongful restraint, which itself is a cognizable offence as defined in the Code offences both non-cognizable and cognizable of Criminal Procedure, not unoften other of very serious nature may and do occur in course of a Gherao. In fact in the case before us allegations have been made that very serious offences of various nature, all cognizable offences have been committed in each of the Gheraos complained of. So it is necessary first to deal with the arguments advanced on both sides about the law applying to Police and the duties that law imposes.

152. No doubt best known Statute on the subject is Code of Criminal Procedure which deals with powers and duties of police and Magistrate and also lays down the procedure for exercise of those powers from the stage of an information of an offence when police action is needed upto the end of a trial in Court. Police as a force of law is created and regulated by the Police Act of 1861. For Calcutta and its suburbs there are the Calcutta Police Act 1866 and Calcutta Suburban Police Act.

153. Before examining the provisions of Cr. P. C., our attention, has been drawn to those Statutes which are older than present Code of Criminal Procedure which was enacted in 1898 and has been subject of some procedural amendments in 1923 and 1955. The Police Act of 1861 is existing law continuing in force by dint of Article 13 of the Constitution and is by its content and nature supplemental to Criminal Law of India. Section 2 provides for constitution of the police force; Section 3 provides that power of superintendence of the force vests in State Government and prohibits any other authority being authorised by State

Government to supersede or control any police functionary. Then Section 23 provides : --

"23. The duties of Police Officers. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority to collect and communicate intelligence affecting the public peace; to prevent the commission of offence and public nuisances; to detect and bring offenders to justice and to apprehend the persons whom he is legally authorised to apprehend for whose apprehension sufficient grounds exist, and it shall be lawful for every police-officer for any of the purposes mentioned in this Section, without a warrant of entry and inspect any drinking shop gaming-house or other place of resort of loose and disorderly characters".

154. Section 10A of Calcutta Police Act 1866 and Section 4A of Calcutta Suburban Police Act are almost similar though careful comparison will show that there are some differences in particulars which are important in themselves but need not be emphasised for our present purpose.

155. It need however be noticed that omission to perform the duties enjoined has been made an offence by Section 29 of Police Act 1861 it is in these terms : --

"29 Penalties for neglect of duty, etc. Every Police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission * * * *

or who being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour for a period not exceeding three months or to both".

156. These sections speak for themselves in clear and unequivocal terms what is provided as duty of police by use of the words "It shall be duty of every police officer". That has been emphasised on behalf of petitioners in support of their contention that law in India enjoins that police must act in the manner provided in these Sections. To omit to do so would be not only dereliction of duty but also violation of emphatic command of law. These very duties have been incorporated in Criminal Procedure Code as powers of the Police which they can exercise in respect of cognizable offences even without orders of Magistrate. Whole body of law thus envisaged is the procedure established by law for maintaining law and order which is basis of peace of the community as a whole, and protection of personal liberty of individual members of the community and prevention of crime against, person and property of each individual. Criminal P. C. elaborates the procedure for performance of the duties so directly enjoined.

157. The learned Advocate General argued before us that what those Acts say as duty are only advice to police, because those powers have to be read together with provisions of Cr, P C. In which he endeavoured to locate discretion left to police either to act or not to act in a particular manner within Chap 16 of that Code Apparent strain that be put upon himself and the language of the Sections quoted above left no doubt in my mind that he has laboured hard to build a presentable argument, but his enormous labour tended to result only in abortion of reason Language in the Sections cannot bear the strain, not can Mr. Dutt's accustomed reasonableness and profound knowledge of law He cited a judgment of Allahabad High Court delivered by Gyanendra Kumar. J sitting singly in the case of Mohammad Ali Vs. Sri Ram Swarup and Others, in support of the proposition that the provisions of Section 23 of the Police Act 1861 are only advice to police But on examining that judgment we find that the learned Judge of Allahabad High Court did not hold so. What his Lordship held is:

"It is true that it is the duty of a police officer to prevent the commissions of all offences (cognizable or non-cognizable) and public nuisances, but that does not mean that the mode of such prevention to be employed by the police officer concerned would be only by apprehension or arrest of the persons concerned A public officer can apprehend or arrest only those person? "whom he is legally authorised to apprehend" and that too on sufficient grounds The legal authority to arrest is circumscribed by the provision of Section 151 Cr. P. C. and can be exercised only in cases of cognizable offences where their commission cannot be otherwise prevented it is a well-established principle of Interpretation of Statutes that as far as possible the various enactments have to be read in harmony with one another. Therefore the provisions of Section 151 Cr. P C and Section 23 of the Police Act have to be read together"

158. I have no hesitation, therefore, to reject Mr Dutt's contention that any of the provisions of Cr P C. lacks harmony with duties enjoined in provisions of the existing laws I have quoted above

159. As relevant provisions in the Criminal Procedure Code regarding power of Police for preventing crime Section 54 in Chapter V. Sections 127 and 128 in Chapter IX, Section 149, 150 and 151 in Chapter XIII and whole of Chapter XIV with particular emphasis on Sections 154 156 and 157 have been discussed before us.

160. The learned Advocate General made endeavour to induce us to hold that those of the Sections in Chapters V to XIII which give power to police, leave a discretion not to use that power, because the word "may" cannot be read as "must" in that context in my view that argument is erroneous and the error is by neglecting the words "without order of Magistrate" occurring in those Sections that mention cognizable offence But Mr. Dutt in his profound knowledge of the branch of law, himself made it clear that this argument of his does not hold in the case of Sections 127 and 128 in Chapter XIII which deals with unlawful assemblies

161-162. More elaborate argument was addressed by him when on Chapter XIV, he contended for his proposition that duties enjoined by Sections 154 and 157 Cr. P. C. are discretionary because in the first telephonic or telegraphic information has been held to be not an F. I. R. for the reason that Section 154 requires that it "shall be signed by the person giving it", and in the other (Section 157), action of the Police Officer is dependent on "reason to suspect". Both these contentions have to be stated only to be rejected for the reason that the provisions in those two Sections do not give any discretion at all though they contemplate that the Police Officer may act differently in different circumstances, act he must in one way or the other.

163. The terms of Section 154 are imperative, (After stating the Section (See para 19) the judgment proceeds:)

163A. This Section clearly enjoins three duties:

- (1) Every information shall be reduced to writing; if given orally shall be read over to informant after it has been reduced to writing
- (2) Whether given in writing or reduced to writing shall be signed by the person giving it
- (3) Substance thereof shall be entered in a book in such form as State Govt. may prescribe.

There is duty certainly to read over to informant oral information reduced to writing and written information being signed by person giving it. But the duty to enter in the prescribed book every information is not dependent on these requirements being fulfilled. That prescribed book is the General Diary Book of the Police Station.

164. Those requirements of signature of the person giving information may have to be fulfilled later, if information was received over Telephone or by Telegraph. That may affect admissibility and value of the document in a criminal trial. But that has nothing to do with the duty of police. Large volume of judicial decisions cited by Mr. Dutt are not relevant to the point we are considering in this case. They are all on the point whether the information so recorded will be admissible in evidence in criminal trial or will be hit by Section 162 Cr. P. C. as statement to police after investigation has commenced.

165. u/s 157 Cr. P. C. duty to inform Magistrate and to commence investigation is not dependent on the manner in which information has been received nor on any formal F. I. R. being recorded at all. Section 157 provides (After mentioning the Section (See Para 19) the judgment proceeds:)

166-167. Not only Section 157, but the whole series of Sections in Chapter XIV up-to Section 190 point to the nature and purpose of actions enjoined on police. In my judgment in the Full Bench decision reported in A.K. Roy Vs. State of West Bengal, I had occasion to summarise those Sections and there I expressed my

view (to which T still adhere) In these words:

"This summary of the relevant sections in Chapter XIV clearly point to one necessity in law more than any other, that the Magistrate has to be reported to at every step of investigation regarding the way the police has taken in that matter during investigation and if the police has not started investigation, to appraise the Magistrate of the reasons therefor; the investigation must culminate in the report u/s 173, whatever view the police may have taken and even when police releases the accused on the view that evidence is deficient that must be upon a bond to appeal before the Magistrate if and when so required. The whole focus of investigation is therefore directed to the Magistrate's function u/s 190 Cr. P. C. In the matter of taking or refusing to take cognizance. That is the purpose of investigation by police and it is not an end in itself"

168. It follows that the duty enjoined on the police to report to the Magistrate any Information of cognizable offence (whether he records an F I R or not and whether he Investigates or not) Is absolute. There is no discretion even if police officer does not fully comply with what is provided in Sub-section (1) of Section 157 or does not commence Investigation at all The learned Advocate General fairly conceded that to be the effect of Section 157 Cr. P C Further the learned Advocate General also took pains to remind us that investigation under Chapter XIV may commence, as it often does, without a formal F. I. R. u/s 154 being recorded at all. That unmistakably shows that power and duty to Investigate is quite independent of Section 154. Police must perform those duties even when information of cognizable offence has been given by telephone or telegraph.

169. These powers and duties under Cr. P. C. properly understood are in perfect harmony with the duties enjoined by Section 23 of the Police Act, 1861, Section 10A of Calcutta Police Act, 1866 and Section 4A of Calcutta Suburban Police Act. Instead of being in conflict, they are complementary to each other. It is the particular fact of each case that determines the manner of performing those duties and exercise of those powers. One does not circumscribe the other. Combined effect of Sections 154 and 157 therefore may be summarised thus:

(1) Whenever an information relating to the commission of a cognizable offence is given to an Officer-in-Charge of Police Station, substance thereof shall be recorded in General Diary.

(2) If given in writing, it shall be signed by the person giving it.

(3) If given orally it shall be reduced to writing and shall be signed by the person giving it.

(4) If from information received or otherwise the Officer-in-Charge has reason to suspect the commission of a cognizable offence

(i) he shall forthwith send a report of the same to a Magistrate.

(ii) he shall proceed in person or depute a subordinate officer to the spot.

- (iii) he shall investigate the facts and circumstances of the case.
- (iv) If necessary he shall take measures for discovery and arrest of the offenders.
- (5) (a) If information is against a person by name and the case is not of a serious nature, he need not proceed or depute any one to the spot.
- (b) If he thinks that there is no (sic) cient ground for entering on investigation, he shall not investigate, but in that case he shall state in his report to Magistrate his reasons for not fully complying with Sub-section (1) of Section 157.
- (6) If he does not investigate at all he shall notify the informant also.

Present Code of Criminal Procedure was enacted in 1898 to consolidate and amend the law relating to Criminal Procedure and replaced its predecessor Statutes bearing same short title which were (1) Act XXV of 1861 (2) Act X of 1872 and (3) Act X of 1882 in general it lays down the procedure for investigation, inquiry and trial of all offences under Indian Penal Code or any other law. In doing so the Code also defines powers and duties both of Magistrate and of Police Officers for prevention of crimes and apprehension, arrest, and detention of accused persons during investigation, for cognizance of offences taken by Magistrate, and for keeping the peace. The Police Act of 1861 and Calcutta Police Act of 1866 are enactments providing for police organisation and they deal with powers and duties of police for prevention of offences and detection of offenders. Those statutes enjoin the duties and Criminal Procedure Code regulates the manner of performance of those duties.

170. Informations to the police relating to offences already committed give rise to necessity of powers of investigation by police for taking measures for discovery and arrest of offenders and for collecting evidence for trial. Those are contained in Chapter XIV of the Code which begins with Section 154 dealing with information in cognizable cases Besides Section 154, Chapter XIV contains other Sections laying down powers and duties police has to perform. Supreme Court has observed in H.N. Rishbud and Inder Singh Vs. The State of Delhi, .

171. "Trial follows cognisance and cognizance is preceded by investigation" To that 1 may venture to add that information of offence committed or apprehended activates Police to commence investigation.

172. In the scheme of Cr. P. C. Investigation is a normal preliminary to an accused being put up for trial for a cognizable offence That scheme in Chapter XIV shows that the importance of the powers that has been given to the police and the duties that have been enjoined thereunder for enabling the Magistrate to get the information regarding corpplaints made to the police alleging commission of cognizable offences. Even when that complaint alleges an offence which is non-cognizable, the Magistrate has been given power u/s 156 to direct police to investigate non-cognizable offences also. When that permission is given to the police, they investigate into facts and circumstances of the non-cognizable offence u/s 155 of the Code.

173. That analysis of the provision in Chapter XIV of Cr. P. C. unmistakably shows that powers and duties of police therein provided are for the sole purpose of providing materials to the Magistrate for taking cognizance of criminal offence, by collecting evidence regarding facts and circumstances of the alleged incident, detecting the accused person and apprehending him for bringing him before the Magistrate for the purpose of trial if a charge is framed and for awarding punishment if found guilty at the trial. Punishment for a criminal offence is itself a prevention of crime because it is corrective, and deterrent in its effect not only on the particular accused but also on prospective delinquents. So information activates police and duties performed by police activate Magistrate. To interdict police from this normal activity results in suspending Magistrate's functions also.

174. The provisions in the Police Act 1861 and also in the other two Acts operating in the limited areas of Calcutta and suburbs of Calcutta enjoin duties on police for prevention of crimes and protection of the community as a whole and individual members of the community against criminal offences. Due performance by Police of those normal duties is the essential necessity of legal procedure that protects life and liberty. In my view there can be no doubt therefore that those provisions are integral parts of procedure established by law for the protection of life and liberty of every person in the community. Those duties are so important that in the Police Act 1861, Section 29 provides that any violation of those provisions is punishable. In Indian Penal Code Section 119 provides

"119 Public servant concealing design to commit offence which it is his duty to prevent -- Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent.

Voluntarily conceals, by any act or illegal omission the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

If offence be committed -- shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence or with both;

If offence be punishable with death etc. or. If the offence be punishable with death or (imprisonment for life), with imprisonment of either description for a term which may extend to ten years;

If offence be not committed. -- or, if the offence be not committed shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence or with both"

175. Illustration under that Section is revealing enough to disabuse any notion

that provisions defining duties of police in the statutes mentioned above are merely instructions and may be neglected as matters of discretion.

176. As I have said already, definite scheme in Chapter XIV is that information activates the police, report made by police about that information activates the Magistrate who in his turn may direct the manner of investigation and action that police should undertake. Early Sections in Chapter XIV call for particular notice for proper understanding how this machinery of law is designed for efficient working. When police performs the imperative duty of making a report u/s 157 Cr. P. C. to Magistrate regarding an information of a cognizable offence received u/s 154, the Magistrate may control and guide the investigation by exercise of powers u/s 159 Cr. P. C. besides directing police to start investigation by order under Sub-section (3) of Section 156 At the end of the investigation, if police submits a negative report u/s 173 of Cr. P. C. even then the Magistrate on consideration of materials collected by investigation may take the positive action of taking cognizance u/s 190 Cr. P. C. That has been the Full Bench decision of this Court reported in AIR 1962 Cal 337 (FB).

177. Another result directly flowing from that report of police u/s 157 Cr. P. C., may be by Magisterial order u/s 100 Cr P C

177A. Section 100 Cr. P. C. Is in these terms:

"100 Search for persons wrongfully confined. -- if any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence. he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper."

178. That warrant is in the nature of a writ of Habeas-Corpus for rescue of a confined person by intervention of police directed by Magisterial order. In exercising that power the Magistrate as an officer concerned with maintenance of law and order and also with protection of safety and personal liberty of all individuals proceeds to take action provided under the law for deciding if the person confined should be rescued by police intervention

179. Only by keeping in mind those powers, duties and functions of the police and the Magistrate under the prevailing law in India applicable to West Bengal the third issue arising in these cases can be answered

180. Of two circulars in issue, first is dated 27th March 1967 and the second 12th June 1967 They are set out below.

180A. (After mentioning the circulars (See Para 7) the judgment proceeds:) Story of their origin and events leading to their issuance has been brought to our notice in correct sequence by the learned Advocate General, That story furnishes

the events mentioned below in the form of list of dates:

7th February 1956-- Memorandum No. 188.PS 14th March 1967 -- Cabinet decision 27th March 1967 -- 1st circular No 518-PS confidential 2nd June 1967 -- B. C. Mitra J. Issued Rule in first application by and issued injunction restraining Govt. of West Bengal from giving effect to circular G. O. No. 518-PS dated 27th March 1967 until further instructions.

8th June 1967 -- Cabinet decision directed that a fresh circular be issued to local officers. 12th June 1967 -- 2nd circular No. 914.PS dated 12th June 1967 issued.

181. The circular dated 27-3-1967 is direct offspring of Cabinet Decision of 14th March 1967 in that Cabinet Decision disclosed by the learned Advocate General there is no mention at all of Memorandum No. 138-PS dated 7th February 1956 nor its supersession. Yet in the circular issued by Joint Secretary Sri A K Dutta we find reference to Memo, of 7th February 1956 and text of the circular begins by saying "In supersession of the instruction contained in the above mentioned Memo" First and foremost this addition to what appears in relative Cabinet Decision is very striking indeed, because the supersession of previous Memo appears to have been by the Joint Secretary over the head of the Cabinet. That is a loud divergence between Cabinet Decision and its implementation by Joint Secretary. The previous Memo was issued under signature of a Secretary. Even at that, could the Joint Secretary supersede it on his own without being authorised by the Cabinet? if that previous Memo of 1956 was issued on the authority of the then Cabinet or even of a particular Minister, then transgression of authority by the Joint Secretary in issuing present circular in those terms is shocking indeed

182. The learned Advocate General has told us that records made available to him include the minutes of the Cabinet meeting of 14th March 1967 and there is mention of supersession of previous Memo in the minutes of Cabinet meeting. That only (sic) another stage of deviation between minutes and record of decision based on that minute to the other between the Cabinet decision as recorded and its implementation by the Joint Secretary. It remains a mystery if it was manipulation consciously made and if so, was it by same agency that had access to Cabinet papers at both the stages?

183. What appears in subsequent Cabinet Decisions on the same subject indicates that fortes were active at that level not only to undo the derision of Cabinet by the manner of implementation but also to go back upon derisions themselves to reverse previous actions taken for obeying interim injunction issued by this Court under Orders of B. C. Mitra J

184. However that may be the Cabinet Decision dated 8th June, 1967 mentions that "Cabinet noted that in pursuance of High Court injunction in this behalf orders that have been issued to local officers directing that no effect is to be given to G O No 513 PS dated 27th March 1967" The learned Advocate General]

informed us that Government files show that on 3rd June orders had been sent to that effect. But text of that order or circular of 3rd June 1967 is not before us. Contents of the second paragraph of Cabinet Decision of 8th June 1967 however, adhering to the language have been fully adopted in the circular dated 12th June 1967. In the absence of the text of whatever order may have been made and in the rendering of the affidavit-in-opposition on behalf of the State Government Circular of 12th June 1967 is the only action that has been averted and disclosed to have been taken by the State Government after the injunction against circular dated 27th March 1967 was granted by this Court. Instead of being an obedience to that injunction, the circular of 12th June 1967 has the look of deliberate and blatant disobedience of that injunction in much more emphatic language than that of 27th March 1967.

185. In effect those two circulars by their language and emphasis have interdicted any police action in performance of their duties enjoined by law that I have discussed above. The first dated 27th March 1967 shows awareness and acknowledges that Gherao results in confinement, yet directs that before deciding upon police intervention for rescue of confined personnel the matter should be immediately referred to the Labour Minister and his direction obtained. On the face of it this circular has countermanded all that law enjoins on police as imperative duty on receiving information of wrongful confinement which is a cognizable offence. It is against the provisions of Statutes and the action is undoubtedly unlawful. It has also interfered with Magistrate's judicial function u/s 100 Cr. P. C. In so far it directs that before deciding upon police intervention for rescue of confined persons, the matter should be referred to a particular Minister and his directions obtained. No louder interference by executive with judicial function of the Court of Magistrate can be imagined.

186. The other circular of 12th June 1967 is a worse illegality. First, it disobeys the injunction of the Court deliberately by counteracting whatever orders may have been issued on 3rd June 1967 as is mentioned in the Cabinet Decision of 8th June 1967. Moreover it expressly affects Magistrate's judicial function when it says "Impress upon all officers, specially those connected with maintenance of law and order", then it interdicts that police must not intervene even in case if any complaint regarding unlawful activities in connection with labour movements: in the last portion it directs that police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under the law. In this part it is consciously flouting provision of law in express terms in total effect it is not only running counter to the provisions of Sections 154 and 157 Cr. P. C. but also it is setting up a new code of procedure and action for police prescribing a sequence of action completely against the sequence enjoined by Section 157 Cr. P. C. In that aspect it is legislating to repeal that Statute.

187. Cabinet in recording the decision on 8th June and Joint Secretary by issuing the circular on 12th June have exceeded executive function and thereby violated

the Constitution of India which in Article 256 commands:

"Article 256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose"

188. Even as a Ministerial order is in consonance with Cabinet Decisions, the question arises what power, the Cabinet or the Council of Ministers as the collective body or any particular Minister as an individual authority, has to issue directions on police regarding their functions. To that question specifically asked the learned Advocate General Mr. Dutt in his characteristic clarity and boldness returned the answer that any individual Minister has no power in law to order police not to do what law lays down as duty of police; but the learned Advocate General said that it is doubtful if the Council of Ministers as collective body can do so. That doubt of Mr. Dutt obviously implies that a Cabinet Decision may be exercise of authority of the State Government if it were so, then that action could be thought to be an exercise of power of Superintendence of the Police that vests in the State Government u/s 3 of the Police Act 1861. That contemplation of the learned Advocate General is in my view clearly untenable and the doubt he expressed is no more than misapprehension that the Cabinet is the State Government. It is not so under the Constitution. The Council of Ministers is the creation of Article 163 of the Constitution and it exists only to aid and advise the Governor in exercise of his functions. It is true that political implication in our democratic Constitution is that the Governor acts according to the advice of the Ministers except in so far as he is authorised by the Constitution to exercise his functions or any of them in his discretion. But even then the action has to be, in accordance with Article 166, expressed to be taken in the name of the Governor if it is an executive action of the Government like exercise of powers given by Section 3 of the Police Act 1861. Neither Council of Ministers nor individual Minister in charge of any Department has any power or authority under any Statute law it is the State Government that is the executive authority and exercise of that authority in law can only be in the manner directed by Article 186 a) of the Constitution.

189. The Committee of the Council of Ministers which is called Cabinet is not a body that Constitution creates or mentions, Cabinet is recognised only by Rules of Business promulgated by Governor under Article 166(3) of the Constitution. The manner how the Cabinet and individual Ministers transact the business of the Government of the State is regulated by rules made by the Governor under Article 166(3) of the Constitution. The learned Advocate General referred to those rules called Rules of Business in his endeavour to justify the action of Cabinet by those circulars to put Police under the thumb of Labour Minister. He drew our attention to the arrangement in the Rules of Business that Part I provides for allocation of business by Rules 4 to 10. Rule 4 directs that business

of the Government shall be transacted in the departments specified in the First Schedule. Entry Nos. 9 and 10 in Part II of Home Department in First Schedule allocates Public Order and Police to Home Department. Directions to end control of Police therefore vests in Minister-in-Charge of Home Department and cannot be put in the hands of Minister-in-Charge of Labour Department even by a Cabinet Decision without violation of the Rules of Business made by Governor in exercise of powers given by Article 166(3) of the Constitution. The learned Advocate General sought to meet that violation by referring to Entry No. 3 in Part II of Labour Department of First Schedule of the Rules of Business. That entry is

3. Offences against laws with respect to any of the matters in List II with which the department is concerned (entry 64 of List II of Constitution)

That Entry certainly does not put either matter of Criminal Justice or police duties in respect of penal offences under Indian Penal Code within the competence of Labour Minister. More germane is Rule 52 of Part I of the Rules of Business to which also the learned Advocate General made reference. That Rule clearly provides:

"52. The Secretary or the Joint Secretary-in-Charge of a department shall be responsible for the due execution of sanctioned policy and for the discipline and efficiency of the Officers in the department."

It puts beyond doubt that the Council of Ministers or its Committee called the Cabinet only sanctioned Policy, due execution of which is the responsibility of the Secretary or the Joint Secretary-in-Charge of the department concerned with the subject matter. It is not for Minister-in-Charge of the department, far less Minister-in-Charge of another to give directions on any particular subject. Police being under Home Department it is violation of the Rules of Business to direct Police or Magistrate to take directions from Labour Minister. It is more so, not less, when that violation is by Cabinet Decision. The Cabinet Decisions in so far they put those matters under direction of Labour Minister over the head of the Home Minister clearly violated the Rules of Business which are Constitutional Rules not amenable to change or modification by Cabinet or Council of Ministers. It was incompetent and unlawful decision and action. For the reasons mentioned above I hold that the two circulars dated 27th March 1967 and 12th June 1967 and the Cabinet Decision on which they are based are neither lawful nor competent.

B.C. Mitra, J.

190. I agree with the judgment delivered by my learned brothers on this Bench and would give my reasons for doing so.

191. The questions raised in this writ petition are of momentous importance, and that is so because the petitioners have thrown a challenge to the authority of the State Government to suspend by an executive fiat the operation of the laws of the land, which impose various duties upon the authorities in charge of

maintenance of law and order. The direct consequence of this suspension of the operation of the laws of the land has been an invasion of the fundamental rights guaranteed to the petitioners under the Constitution and a breach of statutory duties of public servants. These questions are of added importance because there is a challenge to the right claimed by the workmen of the petitioners to indulge and participate in certain activities to compel the petitioners to accept the demands of the workmen and remove their alleged grievances

192. The activities of the workmen which furnished the occasion for the issue of two circulars by the State Government, which are the subject matter of challenge in this petition, are now commonly known as "gherao". This term is not to be found in the English Dictionary, nor in any of the statutes of this country. Etymologically the origin of this term is Sanskrit and Persian and as commonly known now it means encirclement by the workmen of the employers or their managerial staff followed by various hostile manifestations, which some times take crude and obnoxious forms of physical and mental torture in one case it is alleged to have taken the form of occupation of the factory or business premises by the employees to the exclusion of the employers therefrom. The encirclement invariably occurs to compel and coerce the employers to accept the demands of the workmen. The effect of the encirclement is that the employers and their managerial staff are unable to move out of their office or place of business and they are thus held in detention until they agree to satisfy the demands of the workmen or until their rescue or release is secured by an order for that purpose from a Magistrate. This, in brief, is the cause, the purpose and effect of "gherao", the legality of which is the subject matter of challenge in this petition.

193. It is not necessary for me, and I refrain from narrating the facts which have already been referred to at length in the judgments delivered by my learned brothers on this Bench, except in so far as it will be necessary to refer to the fact to deal with the questions raised in the several writ petitions which are before us.

194. It became clear to us that the events that have happened, and that are still happening have put the life, liberty and property of the employers in jeopardy. This situation has been created because the arm of law has been restrained and withheld by the Executive Government, and in consequence thereof the protection to which the employers are entitled, has been denied. An atmosphere of uncertainty and frustration prevails in the industrial activities in the State, and this has been created not so much by operation of economic forces, as by the enforcement of certain directives in two circulars issued by the State Government. The employers and their managerial staff are unwilling to attend to their duties because of the fear of confinement and physical and mental torture, which they have suffered in consequence thereof. They sought the relief to which they are entitled, but that was denied to them and this denial of relief is based on the instructions and directives conveyed to public servants through the two circulars. The enforcement of these instructions, it is claimed by the petitioners, has led to the total suspension of the protective forces created by law, which

would otherwise have come into operation to save the situation. I shall now proceed to examine the different contentions canvassed before us by learned Counsel for the petitioners. But before doing so, I shall refer to three circulars which were issued by the Government of West Bengal to District Officers and the Commissioner of Police, Calcutta. The first circular is dated 27th March, 1967 and it runs as follows:

195. (After giving the circular (Set Para 7) the judgment proceeds:) By this circular an earlier circular dated February 7, 1956 was sought to be superseded. But it is strange that there is nothing in the Cabinet decision, which was produced before us by the learned Advocate General, to indicate that the Council of Ministers constituting the State Cabinet decided to supersede the earlier circular of February 7, 1956. That decision merely provided that in the case of confinement of the managerial and other staff of industrial establishments, the matter should be immediately referred to the Labour Minister and his directions obtained before Police intervention for rescue of the confined personnel.

196. Before referring to the circular dated June 12, 1967 which was issued by the State Government, after the rule was issued by this Court, and also an injunction restraining the State Government from giving effect to the circular dated February 7, 1956, it will be necessary to refer briefly to the circular dated February 7, 1956 which was sought to be superseded by the said circular of March 27, 1967. The circular was intended to convey instructions to the relevant authorities for action to be taken in case of stay-in-strikes and "gheraos" or coercive confinement by employees of commercial undertakings. In the first place, the District Officers were directed to use their own discretion in dealing with the situation. In the second place, it was stated that although peaceful strikes were not illegal, the employees have no right to resort to coercive methods, namely, wrongful restraint, wrongful confinement and criminal trespass which were all cognizable offences. These actions were stated to be unwarranted as there was a machinery to deal with industrial disputes. In the third place, it was emphasised that the police should not expose themselves to a charge of inaction, and they were told that on receiving information of any incident, or apprehension of any incident, they should proceed to the scene of occurrence in charge of an officer not below the rank of a Sub-Inspector. In the fourth place, the police, in cases where police intervention was requested by the management, were to disperse the demonstrators if they constituted an unlawful assembly; arrest those who committed or were committing cognizable offence; and take such other action as might be called for. In the fifth place, if the demonstration was found to be peaceful or no intervention was asked for by the management, the police were to withdraw from the scene of occurrence. In the sixth place, the police were directed to inform the District Magistrate or any other Magistrate having jurisdiction.

197. Regarding stay-in-strikes it was stated that stay-in into factories became criminal trespass u/s 447 of the Indian Penal Code when it appeared that the

workers intended to intimidate, insult or annoy the management or committed any other offence. It was further stated that peaceful stay-in-strikes rarely remained peaceful and frequently the workers took the law in their own hands and in such cases the workers were to be dispersed or arrested as directed in the case of wrongful confinement.

198. The circular concluded by conveying instructions relating to removal of finished goods from factories on strike. It is not necessary to refer to these instructions for the purpose of this application. It is this circular of February 7, 1956 which was sought to be superseded by the circular dated March 27, 1967. But as I have said earlier there is nothing in the circular dated March 27, 1967, to indicate that the State Cabinet intended supersession of the earlier circular of February 7, 1956.

199. I now turn to the circular dated June 12, 1967 which is annexure "A" to the affidavit-in-opposition affirmed by Amal Kumar Dutt on August 26, 1967. This circular is as follows : --

200. (After mentioning the circular (See Para 7) the judgment proceeds:) By this circular the police were directed not to intervene in legitimate labour movements and even in cases of complaint regarding unlawful activities they were not to take action immediately and before taking any action they were to investigate carefully whether the complaints had any basis in fact. Quite plainly, this circular was intended to and did in fact stay the hands of the police even if they thought that immediate action was necessary. There was a mandate upon them, by the State Government, to make a further investigation if there was any basis in fact for the complaint lodged with them. The executive fiat was, therefore, intended to have precedence over the mandate of law. It is noteworthy, however, that the circular dated March 27, 1967 was neither withdrawn nor modified by the circular dated June 12, 1967 and therefore the "circular of March 27 1967 still remains in full force.

201. Mr. Subimal Roy, learned Counsel for the petitioners, contended that the statutes in force in this country did not afford any support to or sanction for the said two circulars namely, the circular dated March 27 1967 and the circular dated June 12, 1967. He argued that the two impugned circulars did not and could not legalise activities which were contrary to the laws in force in support of this contention. Mr. Roy referred to Sections 17 and 18 of the Trade Unions Act, 1926. Section 17 of the Act provides for immunity for officers and members of trade unions from punishment under Sub-section (2) of Section 120-B of the Indian Penal Code in respect of agreement made between member? of the trade union for furthering the objects of the trade unions. But it was submitted that an agreement to commit an offence was not entitled to any immunity or protection u/s 17 of the Act, which excluded an agreement to commit an offence from the scope of immunity provided in that Section. It was argued that while an agreement for furthering the objects of a trade union was entitled to protection, an agreement to commit an offence was not entitled to any such protection and

was punishable under the law relating to crimes While Section 17 dealt with criminal conspiracy in trade disputes. Section 18 of the Act it was argued, dealt with immunity from civil suit. Sub-section (1) of Section 18 of the Act provides that no suit or legal proceedings could be maintained in Civil Court against a trade union or any officer or member thereof for acts done in furtherance of a trade dispute on the ground only that such acts induced others to break a contract of employment or that it was an interference with the trade or business or employment of some other person. Sub-section (2) of Section 18 provides for immunity of a trade union in respect of tortious acts done in contemplation of a trade dispute. It was argued that the Trade Unions Act, 1926 did not create or secure any immunity for the employees of the petitioner No. 1, assuming they were members of the trade union, in respect of cognizable offences under the Indian Penal Code, Therefore, it was submitted, the employees of the petitioner No. 1 who had participated in "gherao" were liable to be dealt with by the police under the provisions of the Criminal Procedure Code and the Indian Penal Code. But the criminal laws of the land could not be enforced against the employees, it was argued, and police were prevented from following the procedure laid down in the Code of Criminal Procedure by the two impugned circulars; but for these circulars the police would have taken the steps which the law enjoined and would have prevented the commission of offences under the law relating to crimes. The acts of the employees in holding and participating in a "gherao" did not fall it was argued, under any of the general exceptions in Chapter IV of the Indian Penal Code and therefore the employees who committed various offences under the Indian Penal Code in holding the "Gherao" would have been dealt with by the police, but for the restraint imposed upon them by the two impugned circulars.

202. In support of this contention, Mr Roy firstly relied upon a decision of the Judicial Commissioner Nagpur, reported in AIR 1935 Nag 149 in that case the accused was charged and convicted with the offence of abetment of molestation u/s 7 of the Criminal Law Amendment Act, 1932, and sentenced to six months imprisonment. The accused was the President of a Trade Union and had decided to call a strike of textile worker in Nagpur. The strike was called but did not meet with success and thereupon picketing was resorted to. The accused thereafter delivered speeches supporting the strike and encouraged picketing. It was contended on behalf of the accused that a trade union was immune from liability for criminal conspiracy or civil suits in connection with the furtherance of a strike. It was held that there was nothing in the Trade Union Act which, apart from immunity from criminal conspiracy, allowed immunity from any criminal offence. The next case relied upon by Mr. Roy is a decision of the Judicial Commissioner Sind reported in AIR 1939 Sind 256 in that case it was held that Section 18 of the Trade Union Act did not afford any immunity to a trade union or to an officer thereof for an act of deliberate trespass.

203. It was next contended that Sections 17 and 18 of the Trade Union Act, 1926 were of no avail to the workers in support of "gherao". Section 17 secured immunity for officers and members of a registered trade union in respect of

criminal conspiracy arising from an agreement for the purpose of furthering the objects of a trade union as specified in Section 15 of the Act. But an agreement to commit an offence was clearly excluded from the immunity provided in Section 17. It was argued that in so far as the workers committed various offences under the Indian Penal Code, no protection could be claimed by the workers u/s 17 of the Act. Section 18, on the other hand, secured immunity from civil suits or other legal proceedings in any civil court in respect of acts done by a trade union in furtherance of the trade dispute. It was submitted that the wrongful acts of the workers in this case were offences under the Indian Penal Code and therefore in any event the protection afforded by Section 18 in respect of civil liability could not be invoked. In support of this contention reliance was placed on a decision of the House of Lords reported in 1964-1 All ER 367 in that case it was held that at common law there was a tort of intimidation by a threat to a person other than the plaintiff, to do an unlawful act made with the object of damnifying the plaintiff thereby causing loss to him and for that purpose there was no distinction between a threat to do a tortious act and a threat to break a contract with the person threatened. It was held that a person who lost his employment because of a threat to strike was entitled to recover damages for the tort of intimidation. To my mind, this decision is of no assistance to the petitioners as all that was decided in this case was that the tort of intimidation was actionable at common law but I am not concerned in this application with a civil injury giving rise to the cause of action in damages, but with the question whether Section 17 of the Trade Union Act, 1926, would afford any protection to the workers for criminal offences committed by them

204. It was however, submitted that in this case neither the respondent-workers nor the State Government had claimed that "gherao" was protected u/s 17 or Section 18 of the Trade Union Act, 1926, and therefore it was not necessary to consider if "gherao" was justified under either of the two Sections. But even if such immunity was claimed it was argued, the provisions in Section 17 would afford no protection as offences under the Indian Penal Code had been committed and no action had been taken by the police in spite of information being lodged with them

205. The next contention of Mr. Roy was that "gherao" was an offence under Sections 339 and 340 of the Indian Penal Code as the management of the petitioner No. 1 had been prevented for 33 hours commencing from 1 p.m. on March 2, 1967 and terminating at 10 p.m. on March 3, 1967 from coming out of the office premises. A similar "gherao" was held at the office for 35 hours commencing from 11 a.m. on April 17, 1967. A third "gherao" was held for over 5 hours commencing from 10-30 a.m. on May 29, 1967. On each of these occasions, it was argued, the police were informed and asked to take necessary action, but no action was taken by the police to bring the "gherao" to an end or to secure the release of the employees of the petitioner No. 1 who were surrounded and confined. Such confinement, it was argued, was wrongful restraint under Sections 339 and 340 of the Indian Penal Code and was a

cognizable offence. The police, it was argued, were bound to take action in the matter, when informed about the wrongful confinement, but in spite of such information, no action was taken by the police

206. It was next argued that "gherao" was a criminal trespass u/s 441 of the Indian Penal Code. The assembly or gathering of the employees of the petitioner No. 1 who participated in the "gherao" clearly had as its object intimidation, insult and annoyance of the petitioners Nos. 2 to 7. Even assuming, it was argued, that the respondents Nos 8 to 28 had lawfully entered into the office premises of the petitioner No. 1 these employees remained in the premises not for the purpose of discharging their duties as employees of the petitioner No. 1, but for intimidating, insulting and annoying the petitioners Nos. 2 to 7. That being the position, it was argued, that the respondents Nos. 8 to 28 committed an offence u/s 441 of the Indian Penal Code.

207. It was next argued that it was a mandatory duty of police officers u/s 54(1) of the Code of Criminal Procedure read with Section 10A(1)(b) of the Calcutta Police Act, 1866, to arrest any person who had been concerned in any cognizable offence or against whom a reasonable complaint had been made or credible information had been received and further to take such steps consistent with law and with the orders of the superiors as were best calculated to bring the offenders to justice or to prevent the commission of cognizable offences. In this case, it was submitted, there was no doubt that cognizable offences had been committed by the respondents Nos. 8 to 28 and there was equally no doubt that information had been lodged with the police authorities about the commission of the offences. Section 54(1) of the Code of Criminal Procedure gave the police the power to arrest without warrant or order from a Magistrate any person against whom a reasonable complaint had been made or credible information had been received that such person was concerned in any cognizable offence. The failure on the part of the police to take action in spite of information received was it was argued, a breach of duty on their part. The duty is imposed upon the police under the Code of Criminal Procedure and the Calcutta Police Act. and the police, it was argued, were bound to discharge their statutory duties. The impugned circulars, it was further argued, had "the effect of paralysing the police force and also of inducing the police to commit a breach of their statutory duties.

208. Mr Roy next referred to other duties imposed upon the police force by Section 127(1) of the Indian Penal Code which required a police officer to command an unlawful assembly or any assembly of 5 or more persons likely to cause disturbance of the public peace, to disperse; Section 149 which required a police officer to interpose for the purpose of preventing the commission of a cognizable offence; Section 154 which required a police officer to record the complaint lodged by the petitioner in a book; Section 157(1) which required that the police officer who had reason to suspect the commission of an offence, to send a report to the Magistrate and to proceed or depute one of his subordinates to the spot to investigate the facts and circumstances of the case. Referring to

these different Sections of the Indian Penal Code, it was argued, that the Code of Criminal Procedure was a comprehensive Code, which dealt with the manner and the method in which the police officers were to act not only for the apprehension and punishment of persons guilty of criminal offences, but also prescribed the steps to be taken for the prevention of commission of such offences. It was argued that all these different Sections of the Criminal Procedure Code had been violated by the impuened circulars.

209. The next contention of the learned counsel for the petitioners was based on Section 119 of the Indian Penal Code. That Section. provides that if a public servant who by any act or illegal omission concealed the existence of a design to commit an offence or made any representation which he knew to be false, he would be liable to the penalty provided in that Section, it was argued that the police officers in this case by then omission to take steps to prevent the commission of offences under the Indian Penal Code had exposed themselves to the penalty provided by Section 119. In other words, it was submitted, that if a public servant failed to discharge the duties imposed upon him by law, either by an overt act or by omission he did so at his own peril.

210. Reli ince was next placed upon various other Sections of the Indian Penal Code and the Criminal Procedure Code which defined other offences and the manner in which they were to be dealt with by the police.

211. The various Sections of the Indian Penal Code to which reference was made, were firstly Section 347 which provided that wrongful confinement of a person for extorting from him any property or valuable security or for constraining him to do anything illegal should be punished with imprisonment of either description for a terra which might extend to three years and should also be liable to fine. Reference was next made to Section 348 which provided among other things that whoever wrongfully confined any person for the purpose of satisfying any claim or demand should be punished with imprisonment of either description for a term which might extend to three years and also should be liable to a fine. Relying upon these Sections, it was argued that wrongful confinement of the supervisory and managerial staff was to compel them to concede the demands of the workers and there was therefore, clearly the commission of a cognizable offence u/s 348. Reference was next made to Section 441 which provides, inter alia, that whoever having lawfully entered into or upon the property of a person, unlawfully remains there with intent to intimidate insul" or annoy such person or with the intent to commit an offence, commits "criminal trespass". It was argued that even assuming that the workers were entitled to enter the factory premises, they unlawfully remained in the premises for the purpose of intimidating the petitioners and to commit the offence of wrongful confinement and therefore the workers were guilty of criminal trespass which again was a cognizable offence. The punishment for criminal trespass is provided in Section 447 and such punishment is imprisonment which may extend to three months or fine which may extend to Rs. 500 or both. Reference was next made

to Section 448 which deals with punishment for house-trespass and also to Section 503 which deals with Criminal intimidation it was argued that "gherao" was also an offence u/s 503 as the petitioners were threatened with injury to compel them to do acts which they were not legally bound to do, namely, to concede the illegal demands of the workers.

212. It was argued that the workers by staging a "gherao" had committed cognizable offence under the various Sections of the Indian Penal Code mentioned above, and having committed such offences they were liable to be dealt with by the police according to the procedure laid down in the Code of Criminal Procedure.

213. It was next argued that the provisions of Section 4A of the Calcutta Suburban Police Act 1866 also applied and u/s 4A(1)(b). It was a mandatory duty of every police officer to obtain intelligence concerning the commission of cognizable offence or designs to commit such offences and to take such steps consistent with law and with the orders of the superiors, as were best calculated to bring the offenders to justice or to prevent the commission of cognizable offences. This provision in the Act, it was argued was a mandate upon every police officer to obtain intelligence concerning cognizable offences and also to take steps to prevent the commission of the same. In this case the police officers totally failed to carry out the mandate of law as they took no steps to apprehend the offenders or to prevent the commission of the various cognizable offences mentioned above.

214. Reference was next made to Clause (f) of Sub-section (1) of Section 4A of the said Act which provided that it was the duty of every police officer to discharge such duties as were imposed upon him by any law for the time being in force. The Code of Criminal Procedure imposed various duties upon the police officers and they were bound to discharge those duties according to the provisions in Sub-section (1) of Section 4A of the Calcutta Suburban Police Act, 1866.

215. It was next argued that Sec, 23 of the Police Act, 1861, also defined and imposed duties on police officers. The compulsive force of the two impugned circulars, it was argued, prevented the police officers from discharging their duties u/s 23 of the Police Act. 1861.

216. Reliance was next placed upon various provisions of the Code of Criminal Procedure in support of the contention that the Code prescribed the manner and the method in which the police officers were to discharge their duties. The first Section referred to is Section 149 which provided that every police officer might interpose for preventing and shall to the best of his ability prevent the commission of a cognizable offence. Section 150 of the Code provides that every police officer receiving information of a design to commit a cognizable offence shall communicate such information to his superior officer and to any other officer whose duty it is to prevent the commission of any such offence. In this

case, it was argued, information was sent to the police officers of the wrongful confinement by the employees and they were bound to take steps provided in Sections 149 and 150 of the Code. But this they failed to do. The next Section relied upon was Section 151 which authorised a police officer knowing of a design to commit cognizable offence to arrest any person who was designing to commit the offence if the commission of the offence could not be prevented by other means and upon Section 154 of the Code which provided that every information relating to the commission of a cognizable offence if given orally shall be reduced to writing and if given in writing shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer. It was argued that Section 154 of the Code imposed a duty upon a police officer to whom information was given whether orally or in writing, to record the information in a book without any enquiry whatsoever. The police officers in this case it was argued, were prevented from even making the entry in the book of information received by them of the commission of cognizable offence, Reference was next made to Section 157(1) of the Code which provided that if an officer-in-charge of a police station had reason to suspect the commission of an offence, either from information received or otherwise, which he was empowered to investigate u/s 156 of the Code, he should forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and should proceed in person or should depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case. This Section, it was argued was of great importance because in this case although the police officer had information of the actual commission of a cognizable offence, he neither sent a report to a Magistrate nor proceeded to the spot for enquiry nor deputed anyone for that purpose.

217. Relying upon the various provisions of the Criminal Procedure Code mentioned above it was argued that the duties imposed upon the police officers under the various Sections of the Code were mandatory in nature and none but the Legislature could dispense with the performance of the duties of the police officer by amendments of the provisions of the Code of Criminal Procedure. The impugned circulars, it was argued sought to introduce a new criminal law, and a new criminal procedure, which had the effect of totally paralysing the police force of the State in regard to their duties for prevention of cognizable offences and apprehension of the offenders. The circular dated March 27, 1967, it was argued, directed the District Magistrates and the Police Officers not to do the duties which the law imposed upon them, until the Labour Minister of the State Government was pleased to permit them to discharge their duties or to withhold such permission. The circular dated June 12, 1967 which was issued after an injunction was issued by this Court restraining the State Government from giving effect to the circular dated March 27 1967 was, it was submitted, equally mischievous and illegal. By this circular the police were directed not to intervene in legitimate labour movements. No statute it was argued, had defined what was a legitimate labour movement and it was left entirely to the discretion of the

officer-in-charge of the police station to decide if a particular cognizable offence was a legitimate labour movement. Secondly, it was argued that even when there was a complaint as to unlawful activities, the police instead of performing their duties under the Code of Criminal Procedure must first investigate whether the complaint had any basis in fact before proceeding to take the action which the law enjoined. Therefore, it was argued the police were prevented from even recording the information received regarding the commission of a cognizable offence u/s 154 of the Code of Criminal Procedure until a preliminary investigation, not enjoined by law, was carefully conducted by them. Furthermore, it was argued, the circular dated March 27, 1967, was neither withdrawn nor modified by the circular dated June 12, 1967, and therefore the earlier circular remained in full force with all its vices, and the net result of the two circulars was that the police were told in clear and unambiguous terms that they must not take any steps even though cognizable offences were committed and even though information was received by them of the commission of such offences until firstly the matter was referred to the Labour Minister, and his permission obtained for taking steps and until thereafter a careful investigation was made by the police if there was any truth in the complaint made. The effect was, it was argued, that an unrestricted charter was granted to all manner of lawless elements to take the law into their hands and break the same at their own sweet will, having this assurance that none would be apprehended, much less punished for whatever they might do.

218. On this aspect of the case, it was submitted, that the sanctity of the freedoms guaranteed by the Constitution and the rights and privileges conferred upon a citizen to move freely, to own and possess property, and to carry on trade and business enshrined therein, had been recklessly invaded by the State Government by the two impugned circulars, which in effect and in substance directed the police to do nothing even when they were informed that life and property were in jeopardy. Reliance was placed on the classic statement of the right to private property and the protection afforded by the law of the land by Lord Campbell in *Entick v Carrington*, Howell's State Trials pp 1030-63 : (1765-19 State Tr 1029) which is as follows:

"The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law, are various. Distresses, executions forfeitures, taxes, etc., are all of this description; wherein every man by common consent gives up that right, for the sake of justice and the general good. By the laws of England, every invasion of private property be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action though the damage be nothing; which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact he is bound to shew by way of justification that some positive law has

empowered or excused him The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law if no such excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment."

219. In support of the contention that an entry in the diary should be made immediately on receipt of information that a cognizable offence had been committed and not several days after the commencement of the investigation, reliance was placed on a decision of this Court reported in, (1907) 11 Cal WN 554 and also upon another decision of this Court reported in (1903) 7 Cal WN 345

220. It was next argued that the State Cabinet had no power or jurisdiction to interfere with the statutory right of the police officer to investigate into the circumstances of a cognizable offence u/s 156 of the Criminal Procedure Code. It was argued that even the High Court had no jurisdiction to interfere with such an investigation by a police officer and in support of this contention, reliance was placed on a decision of the Supreme Court in *State of West Bengal Vs. S.N. Basak*, . It was further argued that since the High Court could not, in exercise of its revisional jurisdiction, interfere with an investigation u/s 156 of the Criminal Procedure Code, an executive fiat of the State Government could not be issued to restrain the police officers from discharging their duty and since in this case such a fiat had been issued, the two impugned circulars must be struck down.

221. It was next contended that the two impugned circulars made it clear that the State Government arrogated to itself the power to legislate by executive orders, it was argued that the Code of Criminal Procedure and the Indian Penal Code had laid down the manner in which offences were to be dealt with by police officers either for preventing the commission of the offences or for punishing the offenders. Furthermore the provisions of the Calcutta Suburban Police Act. 1866, and of the Indian Police Act 1861. Imposed upon the police various duties in so far as the first circular dated March 27, 1967, directed the police not to take any action for rescue of persons confined in discharge of the duties imposed upon them by the statute without reference to the Labour Minister, it was argued the circular was an attempt to legislate to suspend the operation of the statute law. The State Government, it was argued had no power to arrogate to itself the power to legislate so as to suspend the operation of the statute law. The circular dated June 12 1967 it was argued, suffered from the same vice, as by that circular the police were directed not to intervene in legitimate labour movement and even after a complaint regarding unlawful activities in connection with such movements was received, the police were directed first to investigate whether the complaint had any basis in fact before proceeding to take action. It was argued that this circular also had the effect of suspending the operation of the statute law embodied in the Code of Criminal Procedure and the Indian Penal Code. Upon receipt of complaint by a police officer it was argued he was bound in law to take certain steps and the circular dated June 12 1967, prevented him

from taking steps which the law required him to take.

222. It was next argued that the act of the State Cabinet in issuing the circular was a treason against the Constitution. It was argued that the Ministers had taken the oath set out in Form No. V of Schedule III of the Constitution and by this oath the Ministers had undertaken to uphold the Constitution and to bear true faith and allegiance to the Constitution. Article 256 of the Constitution required that the executive power of every State should be so exercised as to ensure compliance with the laws made by Parliament. This provision in the Constitution has been, it was argued, deliberately violated and this, it was submitted was a treason against the Constitution.

223. The argument that the executive usurped the legislative function was developed by contending that the impugned circulars made it abundantly clear that the executive Government was attempting to arrogate to itself the power to legislate. It was argued that the circular dated March 27, 1967. was a direction upon the District Magistrate and the Commissioner of Police, Calcutta, that even when there was unlawful confinement of managerial and other staff of employers, no action should be taken for rescue as required by law, but that the matter should be referred to the Labour Minister and his directions obtained before deciding upon police intervention for the rescue of the confined personnel. Relying upon this circular it was submitted that it was plain that the intention of the State Government was that even where a cognizable offence by wrongful confinement was committed by the workers, the police must refrain from doing what the law enjoined them to do and instead of discharging their duties imposed by law the matter should be referred to the Labour Minister whose directions should be acted upon. The provisions in a statute, it was argued, could only be altered by an amendment duly made. But in this case in so far as alterations were sought to be made by an executive circular, it was submitted, it was clearly an attempt on the part of the State Government to alter the criminal law and criminal procedure by an executive order, though such alteration could only be made by an amendment duly made by the Legislature. It was clearly an attempt, it was argued, to stop the police from doing what the law required them to do, and to take orders from a Minister of the State Government with regard to what they should do, in complete disregard to the provisions of the Code of Criminal Procedure and the Indian Penal Code. It was further contended that "gherao" took place and people were wrongfully confined, and continued to do so confined, because the impugned circulars were acted upon not only by the police but by the Magistracy, to whom also the circulars were directed.

224. The next contention of Mr. Roy was that the fundamental rights guaranteed under Article 19 of the Constitution had been violated. It was argued that the right to move freely under Clause (d) of Article 19(1) and the right to carry on occupation, trade or business under Clause (G) of Article 19(1) had been violated as the respondents Nos. 6 and 7 failed to discharge the duties imposed upon them by law by reason of the directions or instructions given to them by the two

impugned circulars. It was argued that the respondents Nos. 6 and 7 were compelled to remain inactive and ignored their statutory duties by the directions contained in the said two circulars. In other words, it was argued, that the petitioners' right to move freely and carry on the business had been guaranteed by the Constitution and the statute had imposed various duties upon the police to punish and to prevent offences and furthermore, police officers were bound in law to carry out the duties imposed upon them. But the police had been restrained by the impugned circulars from discharging the duties which the law had imposed upon them, and in consequence of such restraint the fundamental rights guaranteed to the petitioners had been violated.

225. It was next argued that the fundamental rights conferred by Article 21 of the Constitution had been violated by the respondents. Article 21 guaranteed protection against deprivation of life or personal liberty except according to the procedure established by law. It was argued that there was a guarantee not only of life and personal liberty but there was also a guarantee that life and personal liberty would not be interfered with except according to the procedure established by law. But in so far as personal liberty was interfered with by the two impugned circulars, it was argued that it must be held that there was interference with life or personal liberty by a method which was entirely contrary to the procedure established by law in other words, it was argued, that a person could be deprived of his life or personal liberty only by the procedure prescribed by the law of the land. But in this case there was interference with life and liberty by an executive fiat, namely, the two impugned circulars. Interference with personal liberty, it was argued, was not by procedure established by law, but by a method entirely unknown in law.

226. It was next argued that while Article 21 created and conferred rights, the statutes, namely, the Indian Penal Code, the Code of Criminal Procedure, the Suburban Police Act and the Indian Police Act provided the remedies for protection of such rights and also for punishment of all persons who attempted to deprive a person of his personal liberty. Article 21 conferred rights and if such rights were interfered with or obstructed, the remedy of the person whose rights were so interfered with was, it was submitted, to obtain protection provided in the law of the land. This remedy available to a person was totally destroyed and annihilated by the impugned circulars which had the effect of suspending the operation of the statute law which provided the remedies for protection of the rights conferred by Article 21.

227. It was next contended that the law of the land not only provided a remedy to a person who was aggrieved by violation of the rights under Article 21, but it also imposed a duty upon the police and if such duty was duly discharged the rights conferred under Article 21, it was argued, would be amply and suitably protected. But the police were restrained and prevented by the impugned circulars from discharging their duties and thereby affording to aggrieved persons the protection to which they were entitled by reason of the invasion of

their rights under Article 21. This invasion of the rights under Article 21, it was argued, took place not by a procedure established by law, but by entirely unwarranted, unauthorised and illegal method, namely, by staying the hands of the police by executive fiat embodied in the two impugned circulars. The negative injunction in Article 21, it was argued, carried with it the positive right to enjoy life and liberty and immunity from interference with life and liberty except by procedure established by law.

228. In support of this contention, reliance was placed on a decision of the Supreme Court in *Kharak Singh Vs. The State of U.P. and Others*, . In that case the vires of Regulation 236 of the U. P. Police Regulations was challenged on the ground that it infringed the fundamental rights guaranteed by the Constitution. This Regulation provided for keeping in touch with suspects by secret picketing of the house, domiciliary visits at night, periodical enquiry by officers, reporting by constables and chowkidars of movement of the suspects etc. It was held that Clause (b) of the Regulation which provided for domiciliary visits at night were violative of Article 21 as there was no law on which the same could be justified and therefore the Regulation must be struck down. Dealing with the question of violation of Article 21, Ayyangar, J. who delivered the majority judgment, held at p. 1302 of the report as follows: --

"We have already extracted a passage from the judgment of Field, J. In (1876) 94 US 113 at p. 142 where the learned Judge pointed out that "life" in the 5th and 14th Amendments of the U. S. Constitution corresponding to Article 21, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs -- his arms and legs etc. We do not entertain any doubt that the word "life" in Article 21, bears the same signification. Is then the word "personal liberty" to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? it might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to "assure the dignity of the individual" and therefore of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as "personal liberty" having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any pre-conceived notions or doctrinaire constitutional theories."

In this case Subba Rao, J. (as he then was) who delivered the minority judgment, however, went further and held that not only Clause (b) of Regulation 236 but the other Clauses relating to secret picketing, periodical enquiries by officers into the reputed habits etc., the reporting by constables of movements and absence from home, the verification movements and the collection of record

on a history sheet of all informations bearing on conduct were also unconstitutional on the ground that they infringed both Article 19(1)(d) and Article 21 of the Constitution Dealing with the question of personal liberty in Article 21 his lordship held at page 1360 of the report as follows:

"We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachment on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. If so understood, all the acts of surveillance under Regulation 236 infringe the fundamental rights of the petitioner under Article 21 of the Constitution."

229. It was next contended that the circular dated June 12, 1967 violated Article 14 of the Constitution. In the first place, it was argued that it was not defined or indicated which movement was to be treated as a legitimate labour movement and no criteria or guidance had been provided for determining what class of movements was to be treated as a legitimate labour movement. In other words, it was argued that unrestricted, unguided and uncanalised power had been given to the police to determine if a particular movement was to be treated as a legitimate labour movement. In the second place, it was submitted, the duties of the police u/s 154 of the Criminal Procedure Code could be exercised only after they had in exercise of their uncanalised power to determine if a movement was a legitimate movement, come to the conclusion that it was not a legitimate labour movement and further that there was some basis in fact with regard to the allegations made it was argued that no standard or criteria or guidance having been provided in the said circular, different tests could be applied by the police in determining the question left to their discretion. In support of this contention, reliance was placed on a decision of the Supreme Court in *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, . In that case the vires of Section 3 of the Lushai Hills District (Trading by Nontribals) Regulation were challenged as violative of Article 19(1)(e) and (g) of the Constitution. The appellant, a non-tribal, started trading in the tribal area under a temporary licence which could be issued at a time for a year only. He applied for and obtained renewal upto May 31, 1960, but his application for a further renewal was refused and he was directed to remove his properties within a specified time and a penalty was imposed in default of his compliance with the order. The majority of the Supreme Court was of the view that the Regulation nowhere provided any principles or standards on which the authority was to act in granting or refusing to grant a licence and that no principles or standards having been laid down in the Regulation, there were no restraints or limits within which the authority could act in refusing to grant or renew a licence, and therefore the power of refusal was left entirely unguided and untrammelled. It was further held that the Regulation did not contain any provision laying down what was and what was not a proper cause for refusal, nor did they provide a guiding criteria on which the authority could decide to grant or to refuse a licence or its renewal. The majority accordingly held that the impugned Regulation was unreasonable

restriction on the fundamental right guaranteed under Article 19(1)(g) of the Constitution. This decision, however, is not an authority on the contentions of the learned Counsel relating to Article 14 of the Constitution. The next case relied upon on this question was also a decision of the Supreme Court, in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, . In that case the validity of a settlement u/s 8-A of the Taxation on Income (Investigation Commission) Act, 1947 was challenged. The question of discrimination among tax evaders was raised and dealing with Article 14 it was held that the Article was an admonition addressed to the State which enured for the benefit of all persons who necessarily enjoyed equality before the law. It was further held at p. 158 of the report:--

"The command of the Article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy. The next thing to notice is that the benefit of this Article is not limited to citizens, but is available to any person within the territory of India in the third place it is to be observed that, by virtue of Article 12. "the State" which is, by Article 14, forbidden to discriminate between persons includes the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India". Relying upon these observations it was argued that the State Government could not so far as criminal offences were concerned make a distinction between two classes of offences namely those committed by participants in a legitimate labour movement and other offences committed by other groups in classes of persons.

230. It was argued that definite and positive information of criminal offences had been furnished to the police officers, namely looting of stores and threat of burning and breaking down the factory and machinery by telegrams dated May 31, 1957, copies of which are included in annexure "S" to the petition. It was argued that in spite of the fact that information was in fact furnished to the police officers no steps were taken by them in obedience to the said circular dated June 12, 1967 it was submitted that by reason of the inaction of the police officers in the matter of discharge of their duties under the Indian Penal Code, the Criminal Procedure Code, the Police Act, 1861 and the Calcutta Suburban Police Act, 1866 there was a clear denial of equal protection of laws enjoined by Article 14 of the Constitution.

231. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or equal protection of laws within the territory of India. It was argued that by the impugned circulars the State Government had denied to the petitioners the protection of the law to which they were entitled, when cognizable offences were committed to injure the petitioner its servants and agents. A clear discrimination was made by the Circulars, it was argued, between the petitioners who were victims of "gherao", in consequence whereof it

had been deprived of its property and assets, and others who were entitled to the protection of the laws of the land where offences were committed against them. The discrimination arose from the operation of the circulars which directed the police not to obey the law or carry out their duties imposed by law for relief to the petitioners. It was further argued that uncanalised and arbitrary powers were conferred upon the police by the impugned circulars by reason whereof the petitioner had been deprived of the equality before the law and the equal protection of laws in support of this contention, reliance was placed on a decision of the Supreme Court in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, in that case by an omnibus order made by the Central Board of Revenue the petitioner's case was transferred from Calcutta to Ranchi. This order was challenged on the ground that it infringed the fundamental right of the petitioner under Articles 14, 19(1)(g) and 31 of the Constitution. It was held that the question of reasonable classification need not be considered as the Income Tax authorities had by an executive order, unsupported by law picked out the assessee and transferred all his cases unlimited in point of time it was further held that where substantial discrimination was inflicted on a person by an executive fiat which was not founded on any law, no question of reasonable classification for the purpose of legislation could arise. Reliance was also placed on another decision of the Supreme Court in *Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, . Reference was made to the observations of Subba Rao. J. (as he then was) who delivered the minority judgment, at p. 240 of the report which are as follows: --

"It shall also be remembered that a citizen is entitled to a fundamental right of equality before the law and that the doctrine of classification is only a subsidiary rule evolved by the courts to give a practical content to the said doctrine. Over-emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content. That process would inevitably end in substituting the doctrine of classification for doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification "

It was submitted that there was no difference between Subba Rao J. and the majority view of the Supreme Court on this question.

232. On the question of the power of an executive authority to issue circulars whereby a person would be deprived of his property, reliance was also placed on a decision of the English Court of Appeal in. (1948) 1 All E. R. 85. In that case a notice of requisition was served by the town clerk of a municipal corporation in exercise of the delegated authority of the Minister of Health. The owner of the property refused to vacate the premises and thereupon an action was commenced for damages for trespass and an injunction. Referring to an order of the Minister purporting to confirm the town clerk's action, Scott, L. J. held at p. 95 of the report as follows:--

" I can only suppose that this was an attempt to put into a semblance of legal form the decision of the Minister expressed in the letter of August 20, which incidentally, the Minister had not the shadow of jurisdiction to make The attempt was so great a breach of constitutional propriety that I do not know any legal epithet suitable for it, and this Court is not concerned with the Minister's responsibility to Parliament. From the Judicial point of view I content myself with saying it was a *brutum fulmen* but obviously intended, and improperly so intended, to help the corporation in their endeavour to get Legal possession." Relying upon this decision it was argued that in this case also the Council of Ministers had no shadow of authority to issue the impugned circulars.

233. Referring to the circular dated June 12, 1967, it was argued that this disclosed a new despotism. It was despotism because it nowhere defined what was a legitimate labour movement and left it entirely to the police to determine whether a particular movement was a legitimate labour movement or not, and secondly even after coming to a conclusion that the movement was a legitimate labour movement, but before taking any action on a complaint made to the police, they were directed to investigate carefully if the complaint had any basis in fact before proceeding to take any action under law This is the new despotism, it was argued, which was introduced by the Council of Ministers by the two impugned circulars. Complaints were made to the police in writing and yet no action was taken to prevent the wrongful acts by the workers by reason of the impugned circulars

234. Dealing with the question of relief, it was submitted that although it was an administrative order it could be quashed by an appropriate order made by this Court under Article 226 of the Constitution and in support of this contention, reliance was placed on the decision of the Supreme Court in. ATR 1962 SC 764. It was next submitted that a direction should be issued on the police to perform their duties according to law and a further direction should be issued to the State Government to act according to law.

235. It was next argued that there was no adequate alternative remedy, firstly, because this Court alone in exercise of its writ jurisdiction could strike down the offensive circulars, secondly, an order for rescue and relief u/s 100 of the Criminal Procedure Code was not an alternative remedy, as after a release the person rescued was liable to be the victim of a "gherao" once again and the relief granted by the Magistrate was not a relief against the police or the State Government who had issued the circulars, but a relief arising from a particular criminal offence of wrongful confinement

236. It was next argued that an application u/s 100 of the Criminal Procedure Code could not be an adequate alternative remedy as the person confined would have to move an application before a Magistrate even time there was such a confinement, and release obtained from the confinement on the basis of one order would not prevent further confinement in future. It was argued that an order for release from a Magistrate could be obtained only after the offence of

wrongful confinement had been committed. Then again, it was argued an order u/s 100 of the Criminal Procedure Code could not be treated as an alternative remedy as the order was not directed against the police to discharge their duties in law, but the order was intended solely and primarily to obtain the release of the persons confined, from detention. Lastly it was submitted that an order from a Magistrate for rescue and release u/s 100 of the Criminal Procedure Code could not be held to be an alternative remedy as the State Government and the police officers could not. In such proceedings be directed to act according to law.

237. In support of the contentions mentioned above, reliance was placed on a decision of the Supreme Court in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, .

238. In support of the contention that an appropriate order should be made directing the police to exercise the powers conferred upon them by law, reliance was placed on a decision of the Mysore High Court in *Writ Petn. No. 1021 of 1967 (Mys) Mysore Machinery Manufacturers Ltd v. State of Mysore* (unreported). In that case the management of the factory had applied to the Commissioner of Police for removing dismissed workers who had occupied the factory's premises it was held that if cognizable offences were committed the police had to act and exercise such of the powers vested in them as were necessary.

239. It was next argued that the relief which the petitioners needed was a writ or order quashing the impugned circulars. He argued that even though the circulars were administrative orders, they could be quashed by the writ Court by an order to that effect. In support of this contention, reliance was placed on a decision of the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . In that case it was held that the High Court could issue writs in the nature of prerogative writs, but the scope of those writs were wider than the prerogative writs in England and that the High Court could also issue directions, orders or writs other than prerogative writs and also could mould the reliefs to meet the peculiar requirements of this country. But it was also held in that case that a writ of certiorari could be issued only to quash a judicial or quasi-judicial act and not an administrative act. Reliance was next placed on a Bench decision of the Allahabad High Court reported in *The Sunni Central Waqf Board U.P., Lucknow and Another Vs. Intizar Husain and Others*, . In that case it was held that though administrative orders could not be quashed by a writ of certiorari, such orders could be quashed by the Court in exercise of the general powers conferred upon it under Article 226 of the Constitution to issue directions and orders and that an order passed without jurisdiction which adversely affected the petitioners ought ordinarily be set aside. Reliance was also placed on an earlier Bench decision of the Allahabad High Court reported in *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, . It was held that ordinarily the High Court did not interfere with administrative orders, but if there were reasons to think that the impugned order had been influenced by extraneous considerations the High Court had, irrespective of the question whether the order

could be classed as falling within the category of "certiorari" or not, ample authority under Article 226 of the Constitution to interfere with it by a proper order or direction. It was also held that the words of Article 226 were wide enough to cover an order of that description, and that the High Court had power under Article 226 of the Constitution to issue directions and orders as well as writs and in exercise of that power it could direct that an administrative order ought to be quashed. The next case relied upon was a decision of the United States Supreme Court reported in (1912) 229 US 162:57 LEd 1135. *W W Degge v. F H. Hitchcock*. In that case an application was made to review a fraud order made by the Postmaster-General. While holding that the writ of certiorari did not lie for reviewing or setting aside an administrative order, it was held that at common law a writ could be issued to officers and tribunals only because there was no other method of preventing injustice. It was further held that, the writ of certiorari was one of the extraordinary remedies and being such it was impossible to anticipate that exceptional facts may arise to call for its use. Relying upon this decision, it was submitted that the facts in this case were of an extraordinary nature, as circulars had been issued by the State Government to prevent police officers from discharging their duties and these circulars had a devastating effect on the maintenance of law and order.

240. Relying upon the decisions mentioned above it was argued that the fundamental rights guaranteed by the Constitution implied that there was a remedy available to a person whose right has been invaded. Any impediment or bar imposed upon such a remedy, except the restrictions imposed by the Constitution itself, it was argued, must be struck down. In so far as the impugned circulars restricted the remedy available to the petitioners in this case under the law of the land, namely, the Indian Penal Code, the Code of Criminal Procedure and the Calcutta Police Act, 1866, it was argued, these circulars must be struck down. In other words, it was submitted that by executive orders, the remedy available to the petitioners in law was sought to be suspended or barred, and therefore such executive orders must be held to be bad and struck down in exercise of the power of this Court under Article 226 of the Constitution.

241. The next question canvassed before us was how far the workers of an establishment could take recourse to acts which were offences under the Indian Penal Code in furtherance of a trade dispute. On this question, reliance was placed upon Halsbury's Laws of England. 3rd Ed. Vol. 38 p. 65 paragraph 75 where it had been stated that having regard to the English statutes namely, Conspiracy and Protection of Property Act, 1875 and Trade Disputes Act, 1906. an agreement or combination by two or more persons to do any act in contemplation or furtherance of a trade dispute was not indictable as a conspiracy if such act when committed by one person would not be punishable as a crime. On this point, reference was made to a recent decision of the Queen's Bench Division in (1966) 2 All ER 133. In that case something, very much like a "gherao" with which we are concerned in this case occurred. There was a strike at a factory and some 40 pickets began to walk in a circle in a service road which

was part of the highway near the main entrance of the factory. One of the objects of the circling manoeuvre was to seal off the area occupied by the circle and bring traffic to a stand-still. The leader of the pickets declined to direct the pickets to desist from the encircling movement as requested by the police, as the movement obstructed the highway. It was held that the circling manoeuvre amounted in law to a nuisance, as the pickets were there not only for the purpose of peacefully persuading others from abstaining from work as provided in Section 2 of the Trade Disputes Act, 1906 but also for the purpose of causing obstruction to vehicular traffic approaching the factory and that what was done was something beyond what was authorised by the statute.

242. Relying upon this decision, it was argued that in this country protection for a conspiracy was available u/s 17 of the Trade Unions Act, 1926, only so long as the activities of the officers and the members of the trade union did not amount to an offence under any law. But the activities complained of clearly established that several provisions of the Indian Penal Code and the Code of Criminal Procedure had been violated by the workers and that being so, it was argued, they were not entitled to the protection of Section 17 of the Trade Unions Act, 1926.

243. The next contention on behalf of the petitioner was that a sit-down strike was lawful within certain limitation, and that if a sit-down strike went beyond the limits prescribed by law such a strike would be illegal and the employer would be at liberty to take any action against the workers who participated in such a strike. In support of this contention, reliance was placed on a decision of the United States Supreme Court in (1938) 306 US 240: 83 LEd. 626. In that case there was a sit-down strike by the workers who refused to leave the plant whereupon the employers discharged the workers for the seizure and retention of the building and plants. The National Labour Relations Board directed reinstatement of the workers who participated in the strike and it was held that it was beyond the authority of the Board to order reinstatement of employees discharged by the employer for seizure and retention of the plant and buildings. This decision, to my mind, is not of much assistance to the petitioners as it turned on the provisions in Section 21 of the National Labour Relations Act. Reliance, however, was placed on a decision of the Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, . In that case there was a pen-down strike by the employees of the bank and it was argued that the strike was illegal as it was a criminal trespass u/s 441 of the Indian Penal Code. It was, however, held that a pen-down strike was legal if the strikers were peaceful and non-violent and did nothing more than occupy their seats during office hours. It was submitted that even in the case of the sit-down or pen-down strike, if the employees became violent or remained in the employer's premises or place of business beyond office hours, such conduct resulting in violence or continued occupation of the premises beyond the "re-scribed hours would be unlawful and must, therefore be treated as criminal trespass.

244. It is on the facts set out above and the contentions advanced on behalf of the parties that the questions in this writ petition have to be examined. In my view there can be but, one answer to the question if the activities known as "gherao" in the shapes and forms which they had taken are contrary to the laws of the land. The shapes and the forms which such activities had taken as disclosed in the petition now before us, leave no room for doubt in my mind that there is no sanction in law whatsoever to support the legality and validity of such activities. Wrongful confinement, wrongful restraint, criminal trespass, criminal intimidation, unlawful assembly and house trespass are all cognizable offences punishable under the Indian Penal Code. It these offences, that the workers had committed. There are penal provisions for punishment of these offences. The justification sought to be put forward in defence of such activities was that the workers were seeking redress of their grievances. It was urged that the grievances of the workers were not removed by the employers and therefore they had resorted to "gherao" which according to the workers was justified. The question is whether there is any sanction in law for such activities and whether this Court can uphold them having regard to the provisions in law. The only statutory provisions to be looked into to see if "gherao" is justified are Sections 17 and 18 of the Trade Unions Act, 1926. Section 17 deals with criminal conspiracy in trade disputes and Section 18 deals with immunity from civil suits. We are not concerned in this application with the question of immunity in respect of civil injury. The question before us is whether there is any immunity in respect of criminal offences committed by the workers. u/s 17, members and officers of 3 trade union are immune from liability u/s 120-B of the Indian Penal Code in respect of any agreement between the members for the purpose of furthering the objects of a trade union as specified in Section 15 of the Act; but this immunity does not extend to an agreement to commit an offence. It is clear, therefore, that no protection is available to the members of a trade union for any agreement to commit an offence. The charge against the employees in the writ petitions now before us is that they committed various offences under the Indian Penal Code mentioned above. The question is whether there was such an agreement among the workers as to exclude them from the immunity afforded by Section 17. When a group of workers, large or small, combined to do an act for the purpose of one common aim or object it must be held that there is an agreement among the workers to do the act and if the act committed is an offence, it must be similarly held that there is an agreement to commit an offence. The materials before us in this writ petition make it abundantly clear that the workers acted in a combination to achieve a common aim or object and it must, therefore, be held that there was an implied agreement among them for the purpose of achieving the common aim. It must also be held that in achieving that common aim they committed offences under the Indian Penal Code and in that view of the matter the immunity created by Section 17 of the Act is not available to the workers, assuming that all of them are members of a registered trade union.

245. It was contended on behalf of the petitioners that the workers had not claimed the protection either of Section 17 or of Section 18 of the Trade Unions Act, 1926, and therefore this question need not be considered by this Court at all. In my view, even if a claim to immunity under Sections 17 and 18 of the Act has not been put forward on behalf of the workers, this Court should take into consideration the provisions of the statute in deciding the question of legality of a "gherao". On the materials before us, I hold that the employees are not entitled to immunity created by Section 17 of the Trade Unions Act, 1926. It is not necessary for me and I accordingly refrain from expressing any views with regard to Section 18 of the Act as the question of immunity from civil liability is not involved in the writ petitions now before us.

246. Turning now to the question of criminal offences under the Indian Penal Code and the breach by the police officer of the duties imposed upon them by the Code of Criminal Procedure, the Calcutta Police Act, 1866 and the Police Act, 1861. The case made out by the learned Counsel for the petitioners was that offences under Sections 339, 340, 348 and 441 of the Indian Penal Code had been committed by the workers of the petitioners. It was argued that these offences were cognizable offences under the Criminal Procedure Code and therefore upon receipt of information the police should have taken the steps prescribed by the Criminal Procedure Code. But instead of taking the action prescribed by law, even after receiving information of the commission of cognizable offences the police remained completely Inactive.

247. For the purpose of this application it is not necessary for me to go into the question if the workers are guilty of the offences under the various sections of the Indian Penal Code, which the petitioners contend they had committed. An adjudication or finding on the question of the guilt of the workers under the said sections of the Indian Penal Code is, in my view, outside the scope of this application. The only question is if complaints had been made against the employees for offences under the Indian Penal Code and if such complaint required the police officers to discharge the duties imposed upon them by the Code of Criminal Procedure, the Calcutta Police Act 1866 and the Police Act, 1861. On the materials I am satisfied that complaints were in fact made by the petitioners regarding the commission of the offences under the Indian Penal Code. These complaints made by the petitioners called for police action prescribed by the Code of Criminal Procedure. There is ample evidence to show that the police remained completely inactive even after repeated complaints were lodged with them about the commission of the offences

248. The various sections of the Code of Criminal Procedure which have imposed duties upon the police for the prevention of cognizable offences and apprehension of the offenders are Sections 54(1), 127(1), 149, 150, 151, 154, 155(1) and 157(1). These Sections of the Code of Criminal Procedure give the police ample powers not only to apprehend the offenders after an offence is committed but to arrest persons without a warrant or order from a Magistrate, if

he was aware of a design to commit a cognizable offence or if the offence had already been committed, a reasonable complaint had been made or credible information received or reasonable suspicion existed. The mandate of the law had been ignored by the police and they were restrained from taking action which they were bound in law to take by the impugned circulars.

249. The learned Advocate General, appearing for the State of West Bengal and the Police Officers contended that the police had discharged the duties which the law imposed upon them. He argued that in some cases investigation had been started on the basis of the complaints received, arrests had been made and cases were pending before the Criminal Courts. It was, therefore, argued that it could not be said that the police remained completely inactive. On the materials before us it must be held that there is no substance in this contention. There are ample materials to show that complaints had been lodged with the police over the telephone, by letter and by telegrams and such complaints remained unheeded.

250. Apart from the manner and method of prevention of offences and apprehension of offenders under the Criminal Procedure Code Section 10A(1) of the Calcutta Police Act, 1866, and Section 23 of the Police Act 1861, prescribe duties of the police for the prevention of commission of cognizable offence, public nuisance, detection of offences and apprehension of persons for whose apprehension sufficient grounds existed if was the duty of the police to apprehend the persons against whom a reasonable complaint had been made of the commission of a cognizable offence. The learned Advocate General contended that though the power to detect and arrest offenders had been conferred generally by the provisions of the Calcutta Police Act, 1866, and the Police Act 1861, the procedure to be followed was the procedure laid down in the Criminal Procedure Code But the statutes have imposed duties upon the Police and those duties must be discharged by them and indeed they are meant to be so discharged A failure to discharge the statutory duties by the police. " whatever may be the reason for such failure, must be condemned But in so far as the inaction of the police was induced, and indeed compelled by the two impugned circulars in this case the censure of this Court must truly and squarely fall on the State Government who was responsible for issuing directives to the District Officers through the impugned circulars To the question of the validity, propriety and legality of the circulars. I shall turn presently. But before doing that I shall refer to the provisions of the Code of Criminal Procedure whereby police officers are required to take positive and definite actions with regard to cognizable offences. The first Section to be referred to is Section 54(1). Under this Section a police officer may, without an order from a Magistrate or without a warrant, arrest a person who has been concerned in a cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. The powers conferred upon a police officer u/s 54(1) are very wide in nature and he is empowered to make an arrest upon a reasonable complaint or credible

information or reasonable suspicion. Similar power to make an arrest has been conferred upon a police officer by Section 151. Under this Section a police officer knowing of a design to commit a cognizable offence may arrest without orders from a Magistrate and without a warrant the person so designing. The next Section to be referred to is Section 149 whereby a police officer has been given the power to interpose for the purpose of preventing and has also been directed to the best of his ability to prevent the commission of a cognizable offence. u/s 150 a police officer receiving information of a design to commit a cognizable offence is required to communicate such information to his superior officer and also to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. Section 154 prescribes that if information relating to the commission of a cognizable offence is given orally, such information shall be reduced to writing and be read over to the informant and further that such information whether given in writing or reduced to writing, when given orally, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept for that purpose. Section 156(1) provides that any officer-in-charge of a police station may without the order of a Magistrate investigate any cognizable case which a Court having jurisdiction in the area would have power to enquire into or try under the provisions of Chapter XV of the Code. The last Section to be referred to is Section 157(1) which provides that if a police officer has reason to suspect the commission of an offence either from information received or otherwise, he shall forthwith send a report to a Magistrate empowered to take cognizance of the offence and shall proceed in person or shall depute a subordinate officer to proceed to the spot to investigate the facts and circumstances of the case for the discovery and arrest of the offender.

251. Under the various Sections of the Code of Criminal Procedure mentioned above, powers have been conferred upon police officers to arrest without a warrant or order in the circumstances mentioned above. He has also been given the power to make an entry on receipt of a complaint and to make a report to a Magistrate and it is his duty either to proceed personally to the spot or depute a subordinate officer to investigate and arrest the offender. Quite plainly, these powers have been conferred upon the police officer for the purpose of prevention of an offence as also for apprehending the offender. It is these statutory duties which the police failed to discharge and were restrained from discharging by reason of the impugned circulars. The learned Advocate General contended that the powers conferred by these Sections upon the police officers were discretionary in nature and not mandatory, and in every case before action was taken by a police officer upon receipt of a complaint of a cognizable offence or even if he had reasonable grounds to suspect that a particular person had committed a cognizable offence, he was not bound to take the steps prescribed by the Code of Criminal Procedure and that it was open to the police officer either to take or not to take the action which the law enjoined. In my view, there is no merit in this contention of the learned Advocate General. The duties of the

police officers created by the Calcutta Police Act, 1866 and the Police Act 1861, are by no means duties which a police officer is at liberty to discharge or avoid discharging. Those duties are mandatory in nature. In discharging those duties, however the procedure laid down in the Code of Criminal Procedure must be followed by police officer. But to hold that a police officer has a discretion in the matter of discharging the duties imposed upon him by the Calcutta Police Act, 1866 and the Police Act, 1861 in accordance with the procedure laid down in the Code of Criminal Procedure would produce very serious consequence. Such a consequence would amount to conferring upon the police officers an option which the legislature never gave them.

251A. I shall now refer to the two impugned circulars to examine how far the terms of those circulars rendered the police inactive or prevented them from discharging their duties under the provisions of the various statutes discussed above.

252. The circular dated March 27, 1967 stated that it had been decided that in case of "gherao" of industrial establishments by their workers, resulting in the confinement of managerial and other staff, the matter should be referred to the Labour Minister and his directions obtained before deciding upon police intervention for the rescue of the confined personnel. The object of the circular quite plainly was to paralyse the police force in every case where there was a "gherao" resulting in confinement of managerial and other staff. That is so because the circular made it clear that no action should be taken by the Police for rescue of the persons confined without first obtaining the directions of the Labour Minister. This clearly was a mandatory restraint order on the police force. It is abundantly clear that the object of the circular was to stop the police from taking any action, whatever might be the nature of the offences committed by the workers participating in the "gherao". The participants in the "gherao" might commit the worst of cognizable offences, yet the police: must not move, even after receiving information or complaint or even if they had reasonable grounds to suspect that a cognizable offence had been committed. The sole arbiter to decide if the law of the land should take its own course, or should not be enforced at all, is the Labour Minister of the State Government. It was for him to decide if police should intervene for the purpose of rescuing the confined personnel, and if he decided that there should be no such rescue, the confined personnel must stand condemned and remain in confinement indefinitely and suffer loss of life and limb from the physical torture which in some cases had been freely and wantonly inflicted. That is the logical and only consequence of this circular.

256. To turn now to the circular dated June 12 1967. This circular, it should be recalled, was issued after an injunction was issued by this Court restraining the State Government from enforcing or giving effect to the circular dated March 27, 1967. I should at once point out that in spite of the injunction issued by this Court, the State Government did not think it fit to cancel or withdraw the circular

dated March 27 1967. In justification of the failure or omission to withdraw or cancel that circular, the learned Advocate General submitted that cancellation or withdrawal was not done because the question of validity of the circular dated March 27, 1967, was sub judice. Even assuming that, that was the true reason for not withdrawing or cancelling the earlier circular nothing prevented the State Government from applying to this Court for leave to modify or cancel that circular. But no such attempt was made by the State Government

257. This circular starts by stating that officers connected with the maintenance of law and order should see that the police do not intervene in legitimate labour movements. As I have noticed earlier, there is nothing in the circular to indicate what class of labour movements should be treated as legitimate and what class should be treated as illegitimate or unlawful. It is left to the officer-in-charge of a police station to decide if a particular movement is to be treated firstly as a labour movement and secondly as a legitimate labour movement. Even assuming that a particular movement is a legitimate labour movement, such a movement may, at any stage of the movement, become an unlawful labour movement by reason of the violation of the law relating to crimes. There is nothing in the circular to indicate what the police should do in a case where a movement started as a legitimate labour movement but later degenerated into an unlawful movement by reason of violation of the law. It is next provided in the circular that if any complaint regarding unlawful activities in connection with such movements is received, the police must first investigate carefully whether the complaint has any basis in fact before proceeding to take any action provided under the law. In substance and in effect, even after receiving the complaint regarding unlawful activities the police force was rendered altogether impotent. They were not to exercise their power of arrest u/s 54 or Section 151 of the Code of Criminal Procedure, nor could they even make an entry of a complaint received in a book as directed by Section 154 nor could they send a report to a Magistrate or proceed to the spot to investigate as provided in Section 157. In short the police was required to first investigate carefully whether the complaint was true before taking any of the various steps under "the Criminal Procedure Code to which I have referred earlier. Such an investigation to be performed carefully to find out if the complaint was true, might take days or weeks or even months, yet this investigation must be completed, before a complaint was recorded in writing as prescribed by Section 154 of the Criminal Procedure Code. It is difficult to conceive of a situation where the entire police force of the State could be more completely and thoroughly paralysed. The operation of the law of the land was suspended by an executive fiat and the victims of "gherao" who were suffering wrongful confinement and in some cases physical torture must wait in bated breath until the police had finished their careful Investigation, if the complaint made on their behalf had any basis in fact. This was the situation which was introduced by the impugned circulars. It was contended by the learned Counsel for the petitioners that the State Government arrogated to itself the power to legislate by executive fiat. Although this contention cannot be

upheld in that extreme form it must be held that the laws of the land can be altered or amended only according to the procedure laid down by the Constitution. But that was not what was sought to be done. The effort and the object quite plainly were to tamper with the laws of the land by executive fiat.

258. The learned Advocate General sought to minimise the offensiveness of the circulars by contending that these circulars were instructions which were advisory in nature. In other words, the officers concerned were at liberty to ignore the advice given by the circulars and proceed to act according to their conscience. Nothing could be more unreal than this contention.

In the circular dated March 27, 1967 it is stated that in case of "gherao" resulting in confinement "the matter should be immediately referred to the Labour Minister and his directions obtained before deciding upon police intervention", and in the circular dated June 12, 1967, it is stated that "the police must not intervene in legitimate labour movements and that in case of any complaint regarding unlawful activities in connection with such movements, the police must first investigate carefully etc." No direction from the State Government to District Officers could be more peremptory in tone and mandatory in content. The officers to whom these circulars were directed must have realised that every word of these circulars is meant to be obeyed and adhered to and if they chose to disregard these directives they would do so at their own peril.

259. Before adjudicating upon the question of the legality and the validity of the impugned circulars, it is necessary to deal with the petitioners' contention that fundamental rights guaranteed under Articles 14, 19(1)(d) and (g) and 21 had been violated.

260. In this case the petitioner No. 1 is the Jay Engineering Works Ltd., a company incorporated under the Indian Companies Act. Besides the company, there are six other petitioners who are in the managerial and supervisory staff of the company. So far as the fundamental rights guaranteed by Article 19 of the Constitution, the petitioner No. 1 which is a company cannot claim any relief on the ground that its fundamental rights under Article 19 of the Constitution had been violated (see *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*,). But the other petitioners in this case would have been entitled to relief on the ground that their fundamental rights to move freely guaranteed by Clause (d) of Article 19(1) and to carry on occupation, trade or business guaranteed by Clause (g) of Article 19(1) had been violated, but for the fact that by reason of the proclamation of emergency the fundamental rights guaranteed by this Article cannot be enforced.

261. It is necessary to examine the question if Articles 14 and 21 have been violated. With regard to Article 14, the contention was as I have noticed earlier, that arbitrary and uncanalised power was given to the police authorities by the impugned circulars to determine what was a legitimate labour movement. It is

plain that no standard or criteria or guidance had been provided in the circular with the result that it was open to the police to treat a particular movement as a legitimate labour movement in one case and treat a similar movement not to be legitimate labour movement in another case. In other words, it was open to the police to apply different tests in different cases in determining question of legitimacy of a labour movement. In so far as no tests, standards or criteria had been laid down for distinguishing a labour movement which is legitimate from one which is not, it must be held that Article 14 had been violated and the principles laid down by the Supreme Court in *Bheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, must be applied, the contention of the petitioners that a discrimination had been made by the impugned circulars between the petitioners who were victims of "gherao", in consequence whereof there had been deprivation of property and others who are entitled to the protection of the laws of the land when offences are committed against them, must be upheld. The discrimination arose from the operation of the circulars which directed the police not to obey the law or carry out their duties imposed by law until the conditions mentioned in the circulars were fulfilled. The effect of the circulars was that arbitrary powers were conferred upon the District Officers and the police whereby the petitioners had been deprived of the equality before the law and equal protection of law. As these are cases where substantial discrimination was made, which was not justified by any law, the question of reasonable classification does not prevent the operation or the protection given by Article 14 of the Constitution. The law laid down by the Supreme Court in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*, and the observations of Subba Rao, J. (as he then was) in *Lachman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others*, must apply with full force.

262. On the question of violation of Article 14 of the Constitution reliance was placed by the learned Advocate General who contended that Article 14 could not be invoked on the decision of the Supreme Court in *Pannalal Binjraj Vs. Union of India (UOI)*, . The passage relied on is at page 410 of the report where the Supreme Court after pointing out that there was a broad distinction between discretion which had to be exercised with regard to fundamental right guaranteed by the Constitution and some other right which were given by other statute, held that a discretion vested had to be looked at from two points of view, viz., (1) did it admit of the possibility of any real and substantial discrimination and (2) did it infringe on the fundamental right guaranteed by the Constitution." it was held that Article 14 could be invoked only when both these conditions were satisfied. This decision, to my mind, does not support the contention of the learned Advocate General that Article 14 has no application in the facts of this case. In the first place, it must be held that substantial discrimination has been caused by virtue of the directions or Instructions contained in the two impugned circulars. This is so because in all cases where a "gherao" has been resorted to, but not in other cases, officers of the State Government in charge of the maintenance of

law and order have been told that the provisions in the statute relating to prevention of criminal offences apprehension of offenders and their punishment should not be followed until certain conditions precedent have been fulfilled or satisfied.

263. Turning now to Article 21 of the Constitution, it should be noticed that that Article guarantees life and personal liberty of a person and also provides that life and personal liberty will not be interfered with except according to the procedure established by law. I have already noticed the contentions that the impugned circulars violated Article 21 of the Constitution in so far as they prevented and restrained the police from discharging the duties imposed upon them by law, The learned Advocate General, however, contended, firstly, that the protection of Article 21 was not available to a company or a partnership firm neither of whom had any life or personal liberty to be protected. He however, went further to contend that Article 21 did not in the facts of this case apply to the individual petitioners also, as there was no direct interference with the life or personal liberty of such individuals, though the effect of the circulars was that there was such interference. He submitted that Article 21 could not be invoked by the individual petitioners as the circulars did not disclose that there was any direction upon the police to interfere with the life or personal liberty of the individual petitioners. In support of this contention, the learned Advocate General firstly relied upon the decision of the Supreme Court in *A.K. Gopalan Vs. The State of Madras*, . Reliance was placed on this decision for the proposition that legislation violated Article 19 of the Constitution only if it directly attempted to control freedom of speech or expression or right to assemble peaceably and without arms, but if such legislation did not directly affect any of these freedoms, but the curtailment of these freedoms was the result of other legislation, for instance, for punitive or preventive detention the question of the application of Article 19 did not arise. Relying upon these observations it was argued that in order to attract Article 21 there must be some direct interference with the life or personal liberty of an Individual, Reliance was also placed by the learned Advocate General on the decision of the Supreme Court in *Kharak Singh Vs. The State of U.P. and Others*, . Reliance was placed upon the observations of Ayyangar, J. that in dealing with a fundamental right, such as the right to free movement or personal liberty that only could constitute an Infringement which was both direct as well as tangible

264. There is good deal of substance in this contention of the learned Advocate General. The impugned circulars did not directly interfere with the petitioners' rights conferred by Article 21 of the Constitution, though such interference was caused by the circulars which restrained the police and prevented them from discharging the duties imposed upon them by the laws of the land. In that view of the matter, I cannot accept the contention of the learned Counsel for the petitioners that Article 21 of the Constitution has been violated by the impugned circulars.

265. But although Article 21 of the Constitution, in my view, has not been violated by the impugned circulars, it must be held that these circulars violated Article 14 of the Constitution for the reasons, I have discussed earlier in this judgment. These circulars should never have been issued by the State of West Bengal and no effect should have been given to them by the District Officers and the Commissioner of Police to whom they were addressed. I unhesitatingly reject the Advocate General's contention that the impugned circulars were advisory in nature. These circulars were imperative directives issued by the State Government intended to be carried out, obeyed and adhered to in letter and in spirit

266. I shall now proceed to examine the question if the State Government had any authority and jurisdiction to issue the impugned circulars. The Council of the State of West Bengal has the power to issue administrative directions to all officers of the State Government. Under Article 154(1) of the Constitution the executive power of the State vests in the Governor who is to exercise such powers either directly or through officers subordinate to him in accordance with the Constitution. Under Article 163(1) the Council of Ministers with the Chief Minister at the head is to aid and advise the Governor in the exercise of his functions. It is the Council of Ministers constituting the State Cabinet which in this case was responsible for deciding upon the policy to issue the circulars and also for directing the issue thereof. The question is, has the Council of Ministers unlimited jurisdiction to issue administrative directives or instructions to officers of the State Government? The next question is, has the Council of Ministers constituting the State Cabinet, the jurisdiction and the authority to direct officers of the State Government not to carry out and enforce the law of the land? The answer to these questions must be in the negative. The authority and the jurisdiction of the State Government to issue administrative directives are limited, firstly, by the Constitution and, secondly, by the laws of the land. There is no law which authorises the State Government to issue directives to officers in charge of maintenance of law and order, not to enforce the law of the land, nor to direct them to enforce the law of the land upon certain conditions being fulfilled and complied with. The provisions in Article 256 of the Constitution which require that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, are mandatory in nature and must be complied with by the Council of Ministers in issuing directives to officers. If the command of the Constitution in Article 256 of the Constitution, is violated and disregarded by the Council of Ministers by issuing instructions contrary to the mandate of that Article, it must be held that the Council of Ministers had no authority to issue such directives or administrative instructions. In my view, the Council of Ministers of the State of West Bengal in issuing the directives in the impugned circulars had clearly violated Article 256 of the Constitution and it must, therefore, be held that they had no jurisdiction or authority to issue the two impugned circulars, which must therefore be struck down.

267. The observations of Scott, L.J. In 1948-1 All ER 85 (supra) quoted earlier in this judgment give apposite expression to the manner in which the impugned circulars should be treated. The learned Advocate General submitted that the circulars might be condemned and struck down if they were found to violate the Constitution and the laws of the land, but no motive should be imputed to the Council of Ministers in issuing the circulars, I am prepared to accept this submission of the learned Advocate General. But with all the good motives and the most benevolent of intention, the Council of Ministers as the author of the circulars cannot escape the responsibility for having acted in gross violation of the Constitution and the laws of the land. In the industrial sector of this State, law and order has been replaced by chaos and confusion, and calamity of unprecedented dimension has engulfed the fortune of both the employers and the employees

268. Turning now to the question of alternative remedy it has to be seen, firstly, if any such remedy was available to the petitioners and secondly, if the availability of such remedy bars the petitioners' right to relief under Article 226 of the Constitution. In my opinion, there is no remedy which could be said to be an adequate alternative remedy available to the petitioners in the writ jurisdiction of this Court. The petitioners' challenge in this application is, firstly, to the authority of the State Government to issue the impugned circulars, secondly, to the legality and validity of the circulars themselves and thirdly to the inaction of the police induced by the instructions in the impugned circulars. There is no remedy available to the petitioners in law in which relief could be obtained by the petitioners. An application u/s 100 of the Code of Criminal Procedure may secure the release of the petitioners from wrongful confinement, but an order made by a Magistrate can neither touch the circulars nor the authority of the State Government nor can such an order direct the police to carry out their duties accordingly to law it is these remedies which the petitioners are seeking in this application and it cannot be said that they can have the same remedies by adopting some other procedure. A declaratory suit or a suit for an Injunction or cancellation of the impugned circulars would, in the first place, not be maintainable and even if such a suit is held to be maintainable the procedure for a suit prescribed by the CPC would certainly defeat the purpose of the suit itself. Then again in so far as fundamental rights of the petitioners have been violated, the existence of an alternative remedy is no bar to the issue of appropriate writs and orders by this court. For these reasons, it must be held that there is no adequate alternative remedy available to the petitioners and even assuming that there is such a remedy, the existence of such a remedy will not bar the petitioners' right to appropriate writs and orders under Article 226 of the Constitution.

269. The learned Advocate General contended that a joint petition by a company or a firm along with others for a writ of mandamus would not be maintainable. It was argued that in those cases where the petitioners were a company or a firm and others who were employees of the company or the firm, an application for a

writ of mandamus to enforce separate claims was not maintainable. It was further argued that since the company or the firm in a case where it was a joint petitioner with its employees could not be entitled to a writ of mandamus on the ground of violation of fundamental rights under Article 19 or Article 21 of the Constitution, the whole application must fail as one of the petitioners was not entitled to the relief claimed. In support of this contention reliance was placed on a decision of this Court reported in, (1961. 65 Cal WN 908 This decision, to my mind, does not support the contention of the learned Advocate General. This was an application by the Thika tenants of several premises which were acquired under the Land Acquisition Act. There were 25 petitioners of whom 18 only had filed objections. Some of the petitioners had applied for a reference u/s 18 of the Land Acquisition Act and some others preferred objection to the acquisition. It was found as a fact that the petitioners were not jointly interested in any land or structure. It was on these facts that it was held by my Lord The Chief Justice (Sinha. J., as he then was that the petitioners had independent causes of action and they could not combine to make one single application for a writ of mandamus to enforce separate claims The common ground of complaint of the petitioners is the two impugned circulars and all the petitioners must be held to be entitled to a relief in respect of the same act of the State Government namely, the impugned circulars and it also must be held that common questions of law and fact relating to the issue of the circulars and their effect must necessarily arise. This is not a case where the petitioners have separate causes of action and are therefore, entitled to separate relief. All the petitioner! are jointly aggrieved by the issue of the impugned circulars and they have asked for relief with regard to the circulars and such relief is not confined only to the writ of mandamus.

270. The learned Advocate General contended that the CPC did not apply to proceedings under Article 226 of the Constitution. He argued that writs under Article 226 were issued by the Court in its extraordinary jurisdiction and therefore an application for a writ could not be held to be a proceeding in the civil jurisdiction of this Court u/s 141 of the Code of Civil Procedure. In support of this contention reliance was placed by him on the cases reported in Management of Rain Bow Dyeing Factory Salem and Others Vs. Industrial Tribunal, High Court Buildings, Madras and Another, , and M.S. Ganapathi Nadar and Sons Factory and Others Vs. The State of Madras and Others, . There is no substance in this contention of the learned Advocate General. The power to issue writs had been conferred on the High Court under Article 226 of the Constitution, but the jurisdiction in which the writs and orders under Article 226 are made must be held to be the civil jurisdiction of this Court and the CPC must be held to apply to such proceedings by virtue of Section 141 of the Code of Civil Procedure.

271. Mr. Subimal Roy drew our attention to the decision of the Supreme Court in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, , in which this very question was considered and it was held, that there was no ground for restricting the expression "civil proceeding" only to those proceedings which arose out of civil suits or proceedings and for excluding from the purview

of civil proceedings the writ petitions tried by the High Court in exercise of its jurisdiction under Article 226 of the Constitution Writ petitions must, therefore, be held to be a civil proceeding although it is heard by this Court in its extraordinary, original or civil revisional jurisdiction. It must also be held that the petitioners in this application are entitled to ipin together as petitioners in a writ petition, having regard to the provisions in Rule 1 of Order 1 of the Civil Procedure Code. It must also be held that petitioners in this petition are jointly interested in the impugned circulars The non-performance of statutory duties by the police and the wrongful and unlawful confinement of the employees must be treated as causes of action in which the petitioners are jointly interested as provided in Rule 3 of Order 2 of the Civil Procedure Code

272. I shall at this stage deal with another contention of the learned Advocate General, namely that the police were not bound to take notice of or act upon cryptic messages in telegrams or messages received over the telephone it was argued that for the purpose of recording information received by the police u/s 154 of the Criminal Procedure Code such information if given orally, shall be reduced to writing and shall be read over to the informant and also shall be signed by the person giving it. This procedure it was argued could not be followed in cases where information was furnished by telegrams or by telephone and therefore, the police were not bound to record or act upon information furnished by telegram or telephone. In support of this contention, reliance was placed by the learned Advocate General on several decisions reported in ILR (1951) 1 Cal 539, AIE 1934 Cal 413, Nema Adak and Others Vs. The State, , Superintendent and Remembrancer of Legal Affairs to the State of West Bengal Vs. Ram Ajodhya Singh and Another,

273. For the purpose of determining whether there was a failure on the part of the police to discharge their duties under the Code of Criminal Procedure, it is not necessary for me to go into that Question, as Section 157(1) of the Code expressly confers powers upon the police to act upon information received or otherwise. This Section clearly imposes upon the police a duty to act upon information received or otherwise and the failure or omission to Rive information to the police orally, and thereafter to put a signature when the same is reduced in writing is no defence or excuse on the part of the police for their inaction. Furthermore, Sections 54(1), 150 and 151, do not require that duties created thereunder can be discharged only after information has been received orally or in writing and such information has been reduced to writing and signed by the informant.

274. The next contention of the learned Advocate General was that the two impugned circulars were executive orders and were, therefore, not justiciable. In other words, it was argued, that even if there was no warrant in law for the issue of the circulars and for directing the police officers not to carry out the duties imposed upon them by law, the circulars could not be struck down. In support of this contention, reliance was placed on a decision of the Supreme Court in

Raman and Raman Ltd. Vs. The State of Madras and Others, . In that case, however, it was held that directions and orders Issued u/s 43A of the Motor Vehicles Act covered only the administrative field of the officers concerned and such directions and orders were not law regulating the rights of the parties and that such orders and directions could not add to the considerations prescribed u/s 47 of the Act and they did not have the effect of making a change in law pending the appeal. This decision, to my mind, does not support the contentions of the learned Advocate General. The next case relied upon was also a decision of the Supreme Court in R. Abdulla Rowther v. State Transport Appellate Tribunal. AIR 1959 SC 896. In that case it was held that if an executive order was ignored or misapplied the applicant for a permit could not claim a relief by way of writ of a certiorari and that the directions though binding on the subordinate authorities was not a statutory rule and had not the force of law and its misconstruction could not be said to be an error of law. This decision does not help the learned Advocate General as the question considered by the Supreme Court was if a writ of certiorari could be issued for a breach of an executive or administrative order. But certain observations in this case are entirely against the contentions of the learned Advocate General, namely, that the impugned circulars were advisory in nature and could, therefore be ignored. It was held in this case that executive orders should be followed by the authorities for whom they were meant and such authorities were expected to follow the directions and their breach might expose them to disciplinary or other appropriate action. On this question the next case relied upon by the learned Advocate General was a decision of the Andhra Pradesh High Court reported in Kosaraju Venkata Subbayya, Vivekananda and Others Vs. The Government of Andhra Pradesh and Another, . In that case certain orders made by the Director of Public Instruction cancelling certain text books selected for schools were the subject matter of attack and the grounds on which the attack was based were that the Government had no authority or power to cancel the text books, that the cancellation or the selection of the text books was based on extraneous considerations and that in cancelling an earlier order the State Government did not observe the principles of natural justice. It was held that where orders are administrative in nature they could not be called in question in writ proceedings, but this statement was qualified by certain observations which are entirely against the contentions of the learned Advocate General in this case. It was held that while a Government should be allowed a reasonable discretion in making orders for carrying on the administration, the administrative orders which disregarded or contravened a statute or statutory rules and which were in the excess of the authority of the Government or which constituted a fraud on the statute or on the powers of the Government would be amenable to the writ jurisdiction of the High Court This decision, to mind, is entirely against the contention of the learned Advocate General.

275. On the same question reliance was placed on a decision of this Court reported in Bidyadhari Spill Matsyajibi Samabaya Samity Vs. State and Others, Bidyadhari Spill Matayajibi Samabaya Samity v. State. In that case my lord the

Chief Justice (Sinha, J. as he then was) held that executive orders made by Government in respect of the administration of its own properties were not statutory rules and were not justiciable under the writ jurisdiction of this Court. But it was also held that if there was any statute which imposed a restriction or if there were any statutory rules which compelled a certain procedure to be followed, the Government must follow the restrictions imposed by the statutory rules. This decision again is entirely against the contentions of the learned Advocate General as the attack on the circulars is based on violation by the State Government of various statutory provisions.

276. Reliance was also placed by the learned Advocate General on several other decisions, namely, *Nirajan Singh Vs. The State of Uttar Pradesh*, *Dwarka Nath Tewari v. State of Bihar*, AIR 1959 SC 249. *Narayan Bhaskar Khare Vs. The Election Commission of India*, and *Virendra Vs. The State of Punjab and Another*. These decisions have no application to the facts of this case.

277. Mr. S. K. Acharyya, learned Counsel for the respondent No. 8 firstly, submitted that this application was not maintainable as against his client as no rule nisi had been issued as against the respondent No. 8. He referred to the allegations in paragraphs 12, 12(a), 12(b) and 12(c) of the petition, and submitted that no allegations were made as against the respondent No. 8 and no relief having been claimed as against this respondent, the rule should be discharged as against the respondent No. 8. There is no force in this contention of Mr. Acharyya as the rule nisi has been issued calling upon all the respondents to show cause.

278. Mr. Acharyya next referred to the prayers in the petition and contended that only relief asked for against the respondent No. 8 was in prayer (g) In which a prayer was made for an injunction against the respondents nos. 8 to 29 and also to prayer (h) In which a prayer was made for an order directing the respondents nos. 6 and 7 to restrain the respondents Nos. 8 to 29 from indulging in any unlawful activities and "gherao". In my opinion, as rule nisi has been issued by this Court against all the respondents and relief has been asked for as against these respondents, appropriate orders can and should be made against all the respondents including respondent No. 8.

279. Mr. Acharyya however, contended that allegations of commission of criminal offences had been made against the members of the respondent No. 8. He submitted that the question whether the members of the respondent No. 8 are guilty of the offences should not be gone into by this Court, but such questions should be left to be dealt with in the appropriate Court, if and when complaints were made. For the purpose of this application, it is not necessary to go into the question if the members of the respondent No. 8 are guilty of any offence under the Indian Penal Code and are punishable for that reason. The question with which we are concerned, is that charges of commission of criminal offences have been made by the petitioners and the authorities in charge of maintenance of law and order have been restrained and prevented from taking the necessary steps

prescribed by law in discharge of the duties which the law has imposed upon them. The Question if the employees of the petitioner No. 1 are guilty of the offences with which they are charged and are punishable for the same is a matter with which we are not concerned in this petition. The trial of the members of the respondent No. 8 on charges of commission of criminal offences, if and when such charges are framed after complaints being filed, must take place in other proceedings and in other forums.

280. There remains only to deal with one other contention of Mr. Acharyya, namely, the constitutional right against testimonial compulsion guaranteed by Article 20(3) of the Constitution, which provides that no person accused of any offence shall be compelled to be a witness against himself. Mr. Acharyya argued that the members of the respondent No. 8 have been charged by the petitioners with the commission of various offences under the Indian Penal Code and therefore the persons so charged could not be compelled to file an affidavit to controvert the allegations in the petition, as that would clearly violate the protection afforded by Article 20(3) of the Constitution. Therefore. Mr. Acharyya submitted, that this Court should not adjudicate upon the charges made by the petitioners relating to violation of the law relating to crimes and also of commission of offences, as the members of the respondent No. 8 had the right under Article 20(3) not to make any statements about the charges made by the petitioners.

281. There is hardly any force in this contention of Mr. Acharyya. In this writ petition the members of the respondent No. 8 are not accused persons who are standing their trial for commission of an offence. The only questions with which we are concerned in this petition are, firstly, if the petitioners filed complaints or furnished information regarding commission of offences by the workers to the police officers secondly if the police officers were bound to take steps in discharge of the duties imposed upon them by various statutes; thirdly, if the State Government by issuing the directives in the impugned circulars restrained and prevented the police officers from discharging the statutory duties and lastly if the State Government had the authority or jurisdiction to issue the impugned circulars. This writ petition cannot be treated as a trial of the members of the respondent No. 8 as accused persons in a criminal proceeding and as I have said earlier, such a trial must take place on a formal charge being made against the members of the respondent No. 8 upon a complaint being filed in other proceedings and in other forums. But this question, however, does not rest there as it was raised before the Supreme Court in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, and the Supreme Court held that in order to invoke the rights under Article 20(3) It must appear that a formal accusation had been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution. That being the law on this question as enunciated by the Supreme Court, this contention of Mr. Acharyya cannot be accepted.

282. To turn now to the question of reliefs to which the petitioners in this case are entitled. The rival contentions on behalf of the parties on the question of reliefs to which the petitioners are entitled have been dealt with by me earlier in this judgment. As to the powers of this Court to issue appropriate writs and orders whatever doubts there might have been, have been set at rest by the decision of the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, . This Court can issue any writs and orders for the purpose of granting relief to a petitioner under Article 226 of the Constitution and the powers of this Court are not circumscribed by the rules relating to the high prerogative writs in England.

283. On the basis of the questions raised on behalf of the parties several questions arise for our determination. The first of such questions is what is a "gherao"? it is not possible to anticipate all the different shapes and forms which a "gherao" might take in future and for that reason it is not desirable to attempt an exhaustive definition of a "gherao" But "gherao" as practised in this case is encirclement by the workmen of the employers and their managerial staff followed by various hostile manifestations. Such manifestations invariably take crude and obnoxious forms and involve physical and mental torture. "Gherao" also includes the blockade of a target from inside by the workers with the object of ousting and evicting the employers and their managerial and supervisory staff. The object of a "gherao" invariably is to compel the employers to accept the demands of the employees by threats and coercive methods. As practised in the case now before us the "gherao" has involved violation of the laws of the land and commission of cognizable offences under the Indian Penal Code and also other statutes.

284. The next question is, can such "gherao" be held to be lawful? in my opinion, regard being had to the charges of violation of the provisions of the Indian Penal Code, and the other statutes "gherao" as practised in this case must be held to be unlawful The question whether the respondents workmen are guilty of the charges and as such punishable must be determined in other proceedings and in other forums.

285. The next question is, can the impugned circulars dated March 27, 1967 and June 12 1967 be held to be lawful? in my opinion, the impugned circulars must be held to be unlawful.

286. The next question is, if the Commissioner of Police and the Officer-in-Charge, Hare Street Police Station, the respondents Nos. 6 and 7 herein, failed to perform their duties in obedience to the two impugned circulars. In my opinion, the respondents Nos. 6 and 7 failed to discharge the duties imposed upon them by law and this failure must be held to have been induced by the directions and instructions in the two impugned circulars.

287. For the reasons mentioned above, this rule must be made absolute. As to the reliefs to be granted to the petitioners, I agree to the order made by my lord

the Chief Justice. Each party to pay its own costs.