
(1991) 09 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 3393 of 1990

P.V. Kapoor and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1992) CriLJ 128 : (1991) 21 DRJ 285 : (1991) 3 RCR(Criminal) 663 : (1991) RLR 513

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

B.N. Kirpal, J.

(1) Two lawyers of this court have filed this writ petition, under Article 226 of the Constitution, in the nature of Public Interest Litigation, alleging that in the police firing on a crowd of un- armed students on 25th September, 1970 in or about IN a Market, New Delhi, one Devinder Kumar Sharma was mercilessly and cold-bloodily killed. The evidence for this occurrence is stated to be contained in a video film which was shot by M/s Living Media India Limited and distributed in the October, 1990 issue of video news magazine in the name and style of News TRACK.

(2) The petition is based on the aforesaid issue of News Track According to the averments in the petition, Devinder Kumar Sharma was shot at somewhere above the waist by the Delhi Police and thereafter he was dragged for a considerable distance by the very shattered arm which hung limp and twisted and he was thereafter lifted into a police jeep. It is further alleged that while he was being dragged in this manner, Devinder Kumar Sharma bled profusely, leaving a trail of his blood behind him and infact he was also asked to get up but when he was unable to do so, he was again dragged for a considerable distance till he was put in the police jeep. It is further stated that no police vehicle was immediately made available for his being carried to the hospital and nor was any first aid or medical aid provided.

(3) According to the petitioners, Devinder Kumar Sharma was participating in a protest against the Mandal Commission report, which the Government had decided to implement. It is contended that the police resorted to shooting above the waist following an injury received by one of the police men as a result of stone throwing. According to the petitioners, full riot gear techniques and disproportionate force was utilised than what was demanded by the situation. It is further submitted that gross brutality has gone unnoticed and there has been violation of basic human rights. The prayer in the writ petition, inter alia, is that order should be passed directing compensation of Rs. 5 lakhs to the family of Devinder Kumar Sharma. It is also prayed that direction be issued to the Union of India to initiate appropriate criminal action under the relevant and applicable provisions of the Indian Penal Code against such of the officers or constables of the Delhi Police who were responsible for causing death of Devinder Kumar Sharma and also for such other criminal and culpable action as seen in the said video film.

(4) Vide order dated 26th October, 1990, Living Media was directed to be impleaded as one of the respondents. Medical records were sent for from the hospital to which the injured of the firing of 25th September, 1990 at the IN a Market area had been taken. It also transpired that apart from News Track, there were other video films which were being shot. Orders were then passed directing M/s Living Media to file in court, with copies to the parties, the un-edited version of the story which had appeared in the News Track of October, 1990. Pursuant to the directions issued by this court, the Press Trust of India were also directed to file an un-edited version of what their video team had recorded at the IN a Market. Both the Living Media as well as the Press Trust of India filed their cassettes. In addition thereto, the police also filed a cassette without disclosing as to who has shot the said video film.

(5) During the course of the preliminary hearing of this petition it came to light that on 25th September, 1990, in an area adjoining the IN a Market viz, at Sarojini Nagar, the police had also resorted to firing and one 15 year old boy Aditya Narain had been shot. The said Aditya Narain was removed to the hospital but after a few days, he expired. Shri R.N.Sharma, the father of Aditya Narain, with leave of the court, filed an affidavit narrating the incidents which, according to him, had taken place on that fateful day at the Sarojini Nagar area.

(6) With the filing of the affidavit by Shri R.N. Sharma, the scope of the writ petition was enlarged so as to encompass the incidents at Sarojini Nagar and IN a Market because firing has been resorted to at both the places within a radius of I KM. The respondents have filed a detailed reply dealing with the incidents at IN a Market and also at Sarojini Nagar area.

(7) While the respondents have not denied that firing was resorted to as a result of which two persons died at IN a Market and one boy viz, Aditya Narain died after a firing at Sarojini Nagar, the case of the respondents, however, on merits, is that there were riotous mobs at both the areas. The said mobs were armed

and despite having used tear gas and lathis, the mob did not disperse and the respondents had no alternative but to resort to firing at IN a Market. With regard to the firing at Sarojini Nagar, it is alleged that there were only two police men who were present who had to face a very large crowd who were throwing stones at the police officials and had also tried to snatch the rifle of a police constable as well as the Sub Inspector fired one shot each but, according to the respondents, there was justification on the part of the police in resorting to firing at both the places. The respondents have also placed on record, entries of the case diaries and the log books in an effort to show that there was riotous mob which was present and the action of the police could, under no circumstances, be regarded as excessive. Apart from justifying the resort to firing, the respondents have also contended that this petition cannot be regarded or treated as a public interest litigation and that disputed questions of fact are involved.

(8) The three video films which have been filed, were seen by us as well as by counsel for the parties. For the purpose of ascertaining the facts, Therefore, we not only have before us the averments made in the pleadings, and the affidavits in support thereof, but we also have the advantage of viewing the video cassettes. At the outset we would like to observe that none of the parties has alleged that any of the three video cassettes which have been placed on the record are "doctored". Infact viewing of the three cassettes shows that they corroborate each other with regard to what has been recorded therein.

(9) As already observed, certain technical objections were raised by learned counsel for the respondents. It was submitted that the present writ petition was not maintainable as the petitioners had no personal interest in the outcome thereof and such petition could not come in the category of "Public Interest litigation" (hereinafter referred to as PIL). It was further contended that the court should not determine or adjudicate upon disputed questions of fact and law where matters are criminal in nature. According to learned counsel for the respondents, the court cannot, in exercise of its power under Article 226 of the Constitution, embark upon an inquiry for which remedy is provided under the provisions of the Criminal Procedure Code. The procedure laid down in Criminal Procedure Code with regard to registration, investigation of cases or the authority by which they have to be investigated, cannot be interfered with by way of a writ petition. It was also submitted that court of competent jurisdiction had also decided the matter by a speaking order, which had not been challenged in these proceedings and, Therefore, jurisdiction under Article 226 should not be exercised. Another contention raised was that this court cannot, in these proceedings, decide whether the firing was justified or not and nor can it lay down the methods in which a police officer should act in discharge of his official duties in such like situations. It is also the case of the respondents that the police officers are protected by the provisions of the Indian Penal Code, Criminal Procedure Code and the Delhi Police Act when they act in discharge of their official duties and, Therefore, this court should not pass any orders contrary to the said provisions. Lastly it is contended, by way of preliminary objection, that

the court ought not to award compensation to persons who have suffered injuries or to the dependents of the deceased, who have died at the hands of the police firing, who were members of the unlawful assembly indulging in acts of rioting, assault and were damaging public and private property and also committing other similar and cognate offences.

(10) Before dealing with the question as to whether this petition can be regarded as Pil, we may dispose of the contention of the learned counsel for the respondents relating to the alleged availability of alternative remedy. In this connection it was also submitted that one of the persons who had died in the firing at IN a Market was Pawan Sahni. His brother had filed a criminal complaint before the Magistrate but the said complaint had been rejected. The submission, Therefore, was that as the alternative remedy had already been availed of, where the allegation was with regard to the firing at IN a Market, this court should not interfere under Article 226 of the Constitution. It was also submitted that because the crowd was indulging in rioting, the police itself had lodged FIRs in respect thereto and, Therefore, because the court had issued summons, it should be left to the court to decide whether the firing was justified or not. It was contended that the investigation of the fact whether any unlawful activity was carried on by the rioters, will be gone into by the court of competent jurisdiction and, Therefore, the petition under Article 226 of the Constitution was not maintainable.

(11) We, however, find that the complaint of the brother of Pawan Sahni was not rejected or dismissed on merits. Copy of the order of the Magistrate had been placed before us which shows that the Magistrate was of the opinion that before seeking to prosecute the police officers, permission u/s 132 Criminal Procedure Code should have been obtained. As the complainant had not obtained the necessary sanction, the Magistrate rejected the complaint. In our opinion, the decision of the Magistrate to this effect cannot oust the jurisdiction of this court which is called upon to decide inter alia whether the resort to firing by the police was justified or not and whether Devinder Kumar Sharma was or was not properly handled after he had been shot. The filing of the FIRs u/s 173 of the Cr. P.C. against the rioters is also of no consequence. Whereas in those proceeding action is sought to be taken against the rioters, in the present writ petition, it is the acts of the police which are sought to be impugned. The pendency of the cases against the rioters can, Therefore, be no bar to the decision on the issues arising in the present petition.

(12) With regard to the contention whether to entertain this petition and treat it as a Public Interest Litigation, it was submitted by learned counsel for the respondents that Devinder Kumar Sharma was not a student and he was a part of an unlawful assembly. According to the police, this unlawful assembly was armed with stones, sticks, petrol bombs, country made arms etc., and was indulging in various riotous acts. It was submitted, that the Supreme Court had exercised jurisdiction in public interest litigation only when there had been

violation of fundamental rights. In the present case it was submitted, there has been no violation of fundamental rights and furthermore, the petitioners had no locus standi to file the present petition.

(13) In order to examine this contention, it will be appropriate to try and understand as to what exactly is the scope, extent and meaning of Public Interest Litigation.

(14) This is a new type of litigation which has come into existence as a result of, primarily, judicial activism. This type of litigation has been given impetus by the Supreme Court. The Court was conscious of the fact that cases of gross violation of fundamental rights were going unnoticed and no relief was being granted by the Executive or the Courts. This was true particularly in cases involving the weaker and poorer sections of the society. The plight of such persons was made known to the public by another institution, which also developed a certain amount of activism, and that institution was the Press. Social organisations and intellectuals started taking notice of articles appearing in the national dailies, whereby the general public was informed, as a result of investigative journalism, about the plight of certain sections of the suffering masses one of the first cases which the Supreme Court took up, as an instance of public interest litigation, was when a writ petition was filed by an Advocate of the Supreme Court based on series of articles in the national dailies pertaining to long pre-trial detention of the under-trial prisoners in Bihar. It had been pointed out in the newspaper that in some cases the pre-trial detention had been for a period longer than the period for which the persons would have been sentenced, if they had been convicted after charge. Soon there was flood of such type of litigation to the Supreme Court, which is evident from the fact that it appears that between 1980 and 1982, about 75 public interest litigation cases were filed in the Supreme Court by the activists, individual lawyers and lawyers groups.

(15) The scope and nature of the public interest litigation was elaborately explained, by the Supreme Court in the case of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, . Bhagwati, J(as he then was) was most deeply involved in the evolution of the public interest litigation. In his judgment at page 1476 in PUDR's case (supra), the nature and scope of public interest litigation was elaborated by him as follows:

"WE wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest

which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position, should not go unnoticed and unredressed."

Again at page 1477, it was observed that:

"PUBLIC Interest Litigation, as we conceive it is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority."

(16) Dealing with the contention with regard to the locus standi of filing a public interest litigation in the case of S.P. Gupta Vs. President of India and Others, (more commonly known as the Judges case), Bhagwati, J at page 188 observed as follows:

(17) It may Therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons." It was further observed that:

"TODAY a vast revolution is taking place in the judicial process: the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose

constitutional or legal right has been violated hesitation in coming to the conclusion that there was an excessive use of force by the police when it resorted to by the assembly. While there can be no possible justification for the assembly resorting to stone throwing, we have no Interest Litigation", Bhagwati, J in S.P.Gupta's case (supra) hastened to add as follows:

"BUT we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in court."

(18) In *Fertilizer Corporation Kamgar Union v. Union of India*, Air 1981 Sc 344, it was held by the Supreme Court at page 355 as follows:

"PUBLIC interest litigation is part of the pieces of participate justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial doorsteps."

(19) In the case of *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , the Supreme Court was concerned with a writ petition which had been filed by public spirited organisation, complaining about the violation of human rights of persons, who were serving as bonded labourers. An objection had been raised on behalf of the State Government that the petition under Article 32 of the Constitution was not maintainable because no fundamental right of the petitioner or of the workmen on whose behalf the writ petition was filed, could be said to have been infringed. The Supreme Court deprecated the action of the State Government in seeking to raise such preliminary objection by observing as follows:

"THIS contention is, in our opinion, futile and it is indeed surprising that the State Government should have raised it in answer to the writ petition. We can appreciate the anxiety of the mine lessees to resist the writ petition on any ground available to them, be it hyper-technical or even frivolous, but we find it incomprehensible that the State Government should urge such a preliminary objection with a view to stifling at the threshold as enquiry by the Court as to whether the workmen are living in bondage and under inhuman conditions. We should have thought that if any citizen brings before the court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the benefits or social welfare laws, the State Government: which is, under our constitutional scheme, charged with the mission of bringing about a new socio- economic order where there will be social and economic justice for everyone and equality of status and Opportunity for all, would welcome an

enquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act, 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation, such a situation can be set right by the State Government. Even if the State Government is on its own enquiry satisfied that the workmen are not bonded and are not compelled to provide forced labour and are living and working in decent conditions with all the basic necessities of life provided to them, the state Government should not baulk an enquiry by the Court when a complaint is brought by a citizen, but it should be anxious to satisfy the Court and through the Court, the people of the country, that it is discharging its constitutional obligation fairly and adequately and the workmen are being ensured social and economic justice."

(20) A recent decision of the Supreme Court to which reference need be made, in this connection, is the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, . Dealing with the contention regarding the locus standi of the inhabitants of a locality challenging, by way of Pil, the allotment to a private hospital of a space reserved for park, it was observed at page 188 as follows:

"IT is too late in the day, Therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservation yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authority cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

(21) An analysis of the aforesaid decisions shows that Pil is a new brand of litigation which is not meant to be adversarial in nature. It is intended to vindicate public interest where fundamental and other rights of people who are poor, ignorant or are in a socially or economically disadvantageous position, go un-redressed. Pil is meant to be a cooperative and collaborative effort of the parties and the court to secure justice for the poor and the weaker sections of the community. Causes of public nature can be espoused by public spirited

citizens, having faith in a rule of law. Writ petition in the nature of Pil can be filed where substantial issues of accountability of those entrusted with the responsibility of the administration are raised. Public Interest Litigation, in other words means nothing more than what the words themselves state viz., it is a litigation in the interest of the public. Pil is not that type of litigation which is meant to satisfy the curiosity of the people but it is a litigation which is instituted by public spirited organisation or people with a desire that the court could be able to give effective relief to the whole or a section of the society.

(22) It is also not correct to contend that Pil is concerned only with the cases where there has been infringement of fundamental rights. While Pil initially was invoked mostly in cases connected with relief to the poor and the weaker sections of the society, nevertheless petitions have been entertained in other cases involving larger interests of the society for example petition under Article 32 in the nature of Pii was entertained by the Supreme Court in the Judges case, that Court also upheld the action in Bangalore Medical Trust case(supra) where inhabitants of a locality filed a petition in the nature of Pil with a view to save the space which had been reserved for a public park.

(23) Where issues of public concern arise, such as where law is being violated or is not being enforced or where there is violation of fundamental rights or there is exercise of arbitrary action or power by an authority of the State but where no personal benefit to the petitioner is involved then, in such a case Pil can be entertained by a Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution.

(24) Applying the aforesaid principles to the present case, we find that what is involved are two issues of great public importance, they are firstly what is the extent and manner of force which should be used by the police in effecting control of a crowd and secondly, the manner in which the persons who are injured as a result of the police firing should be handled or treated. Excessive use of force can be arbitrary or may even result in violation of Article 21 of the Constitution. It is also alleged that statutory or administrative instructions issued to the Police have been violated. Similar is the position with regard to the alleged malhandling of the injured Devinder Kumar Sharma

(25) The two petitioners are practicing Advocates of this Court who have been agitated by the actions of the people on 25th September, 1990 and they are trying to secure compensation to the relatives of the deceased who expired during the police firing on that date. They can derive no personal or financial benefit from the outcome of this petition. It cannot be said that under the circumstances, they have no locus standi to file the present writ petition or that this Court should not entertain this petition.

(26) Whenever a petition in the nature of public interest litigation is filed, like the present, there is likelihood that the facts which are alleged may be disputed by the respondents. This is what has exactly happened in the present case. While

the contention of the petitioner is that the agitators were un-armed, the respondents, on the other hand, have denied this averment and have alleged that the agitators were indulging in various acts of rioting and arson and were armed with stones, sticks, country made weapons, acid bombs etc.

(27) Another allegation- which is disputed by the respondents is with regard to firing. Whereas it was contended before us, on behalf of the petition that the firing should not have been resorted to, the respondents, on the other hand, have averred and strongly contended that the riotous mob could not have been controlled without the police resorting to firing.

(28) If a public interest litigation has been instituted, then difficulty with regard to the ascertainment of facts has to be overcome. But because disputed questions of some facts may be involved should not be a ground for the High Court to decline to entertain Pil, in appropriate cases. After all the Supreme Court in S.P.Gupta's case (supra) did observe at page 189 that:

"WE hope and trust that the High Courts of the country will also adopt this proactive, goal-oriented approach."

(29) It is not possible to lay down a general rule or proposition as to the manner in which facts can be ascertained in such cases. However, it is not unknown that in petitions under Article 226, occasions do arise where facts have to be determined. It is not necessary that in every case, oral evidence has to be recorded in order to arrive at the correct finding of facts. In petitions under article 226 facts are determined on the basis of the affidavits and documents on the record. But in all cases merely resorting to the records before the Court may not be sufficient. The Court may have to innovate procedure in order to ascertain correct facts. In view of the fact that the proceeding in public interest litigation are not adversarial in nature perhaps more reliance can be placed on the affidavits which are filed before the court. The petitioner, be it an individual or an organisation, approaches the court not with a view to gain advantage for itself but comes with a spirit of public service. There could be ordinarily, little incentive for the petitioner not to set out the correct facts. But even then the averments made in the petition may be based on second hand information or knowledge which may not be wholly correct. Therefore, even though the petitioner may honestly state in the petition the facts as known to him but it may transpire that those facts are either not complete or are wholly or partly un-true. Unless the facts, as alleged in the petition, are admitted by the respondents in their affidavit, the court should, even in public interest litigation cases try and have other information or evidence. Such problem has arisen before the Supreme Court.

(30) The manner in which the Supreme Court has dealt with the problem of ascertaining true facts has been analysed and explained, at length, by Prof. Upendra Baxi in his article on Social Action Litigation in the Supreme Court of India.(Printed in "The Review" No.29, Dec.1982, International Commission of

Jurists). By using the expression "Social Action Litigation" Sal instead of Pil he has opined as follows:

"PROBLEMS of proof are most severe in cases of state repression, and there seems emergent a common pattern or argumentation by state counsel which make these problems more acute. First, state counsel deny on affidavit any or all allegations of torture or terror. Second, they contest if no longer the standing, the bonafides or the degree of reliable information of the social activists who come to the Court. Often wildest ulterior motives are attributed to them. Third, they decry the sources on which the Sal petitioners rely: mostly media and social science investigative reportage. Fourth, they raise all kinds of claims under the law -of evidence and procedure to prevent the disclosure of documents relevant to the determination of violation of fundamental rights. Fifth, even when disclosed there is always the possibility of impugning their evidentiary value. This is made possible by the device of multiple investigations: the state sets up many panels, one after another, and often consents in addition to an investigation by the Central Bureau of Investigation. When, despite all this, the state is likely to lose the proceedings in favor of the Sal petitioners, it proceeds to give concessions and undertakings, thereby avoiding a decision on the merits. And the Court, too, interested more in the inhibition of future illegalities is ready to develop a jurisprudence of the Sal exconcessionis. The Court, rightly refuses to view the Sal proceedings as adversarial in nature: it likes to foster such collaboration between the Sal litigant and the state as would result in sound institutional arrangements avoiding recurrent injustice: and thus avoiding in the long term SAL-type confrontation between the public-spirited citizen and the state. This technique offers a neat way out of the burdens of proof on questions of fact; therein probably lies its appeal to the judges. At the same time, the court is experimenting with several different strategies to overcome the problems of disputed facts, without having to take evidence itself. First Justice Bhagwati has initiated the idea of socio-legal commissions of enquiry. The Court asks social activists, teachers and researchers to visit particular locations for fact finding and to submit a quick, but complete, report which may also contain suggestions and proposals. So far the devise of commissions has been invoked at least thrice. The commissions are, under the Court's orders, to be financed by the state. Second, the Court has in a number of cases of torture or ill-treatment called upon medical specialists to submit comprehensive reports and suitable therapy at state cost. Third, the Court has used on one or two occasions the services of its own officials or those of the High Court. In some cases, it has asked the district judge not merely to ascertain facts but also to monitor the implementation of the various directions given by the Court. These modes of fact finding are somewhat novel and will raise, as the many Sal matters proceed to completion, rather difficult issues of evidence and procedure. But the Court is experimenting with new methods to go beyond the notoriously electric affidavit evidence."

(31) It is evident, Therefore, that in public interest litigation, the normal rules of recording evidence are not adhered to and an effective and speedy course is

adopted with a view to ascertain the correct facts. In the present case, we have not thought it necessary to appoint any commissioner or commission for ascertainment of facts. We have the advantage of three video cassettes. Two of these cassettes have been prepared by independent agencies viz., Living Media nad the Press Trust of India. The third cassette has infact been placed on record by the police department. All the three cassettes are more or less similar and in modem age and times when audio visual reproduction of events with the help of electronic media is available, we see no reason as to why we should disregard the audio visual evidence, which is available, in preference for a traditional recording of oral evidence in a court room, of witnesses trying to recreate the science by testifying in court. Such witnesses may not tell the whole truth, intentionally or un- intentionally, specially in view of the fact that the testimony would be recorded long after the events have taken place. With the passage of time, the memory of the witness may become blurred. On the other hand we have with us the contemporaneous record of the events which had taken place on the 25th September, 1990, at or about the IN a Market in the form of video cassettes. It is not suggested by any of the parties that these cassettes have been doctored or edited. They represent true recording of what was seen by the photographers. Each of the cassettes corroborates the other. Under these circumstances, we see no reason as to why facts should not be determined on the basis of what is recorded on the video cassettes. It is possible that each and every event which occurred at the IN a Market was not shot by the photographers, nevertheless, for the view that we are taking, on demonstratively evidenced facts which are recorded on the video cassettes, the correctness of which is not disputed, it is possible to decide this petiton.

(32) What do these video cassettes show. It is not necessary to graphically describe each and every event which is recorded on these cassettes. We propose, however, to refer to those portions of the cassettes which are relevant for out purpose.

(33) All the three cassettes show the presence of a crowd which has been described as students by the petitioners. Perhaps all the members of the a assembly were not students as is evident from the fact that Devinder Kumar Sharma was certainly not a student. The cassettes further show a large number of local residents also joining the assembly of persons. The heterogeneous assembly of course had one common object and that was to protest against the decision of the Government to implement the Mandal Commission report. The video cassettes record a lot of slogan shouting by the said assembly of persons. There is, however, no record of any violent act being performed by any part of the assembly, except the act of throwing stones at the police. The cassettes show that at a number of times, stones were thrown at the police by the gathered assembly. The police force was adequately clad and interestingly enough, cameras have recorded number of instances of the policemen picking up the stones and brick bats which had been thrown at them and their hurling them back at the students. At times it appears as if a new type of sport of throwing

stones at each other was going on between the crowd and the police. What is clear, however, is that the video cassettes do not show any lathis, acid bombs or any other weapon, lethal or otherwise, being used by the crowd against the police.

(34) It was contended on behalf of the petitioners that there was no justification for resort to firing. There seems to be some justification in this submission. Viewing of the video cassettes shows that the mob was not so large as to be uncontrollable by the police without resort to firing. We find that the mob, initially had gathered in the morning. The same was present throughout the day. In presence of the police, no act of arson appears to have been committed by the mob. The mob was being adequately controlled by use of tear gas shells and lathi charge. It is the case of the respondents itself that a large crowd had gathered at Safdarjung Hospital but no untoward incident had taken place there and even tear gas shells were not fired. Merely because a mob is present or does not disperse despite requests to that effect, cannot be a sufficient reason for resorting to firing. No property, moveable or Immovable can be more valuable or precious than the human life. It is no doubt true that, in law, the crowd could be regarded as an unlawful assembly but then there may be peaceful unlawful assemblies and violent unlawful assemblies. There cannot be a universal rule that under no circumstances should the police not resort to firing but we feel that where the crowd is peaceful or is incapable of resorting to large scale arson and violence, which will be a threat to the life and liberty of others, firing should not be resorted to. If the crowd can be contained or prevented from causing large scale damage to life and property by the use of tear gas shells and lathi charge, then there is no reason as to why firing should be ordered. The video cassettes show that the police was in a position to and did contain the crowd with the help of tear gas shells and lathi charge. Suddenly and without any apparent prior warning or notice, the police resorted to firing. There is no evidence of the situation having deteriorated with the presence of the crowd which could justify the use of such force. Had there been police force in large numbers, they would have no doubt been able to even disperse the crowd which was present there. In this connection it will be useful to note the following passage from Shri R. Deb's book "Police and Law Enforcement" Second Edition, page 247 concerning the use of minimum force:

"8. USE of Minimum Force: It must, however, be said in this context "that when the crowd has already turned into a violent mob after going through the process of psychological milling, only a determined show of force can check its depredations. Members of such a riotous mob lose their individual capacity of thinking and act only on the suggestions of their ring leaders or other associates. With the loss of discriminating faculty of the individual mind, an appeal to reason is obviously meaningless. In such a situation an effective show or use of permissible force arouses the instinct of fright in the mob and it often disperses as a pack of animals in the face of gripping fear. And even when the use of force becomes inevitable, the police must use only the minimum force that is essential

to preserve law and order. Whether they act in exercise of the right of private defense of body or property, or in exercise of their powers to disperse an unlawful assembly or an assembly of Five or more persons likely to cause a disturbance of the public peace, the law enjoins on them to use no more force than is absolutely necessary for the protection of life and property, or for the maintenance of peace. Thus taking of life can only be justified by the extreme necessity of dispersing a riotous crowd which is dangerous unless dispersed, So if dispersal can be effected simply by a warning, there is no justification to use any kind of force at all; and if a tear-gas charge or failing it, a lathi charge can cause the dispersal of crowd, there is no scope of having a course to firing unless the mob becomes so violent as to necessitate the opening of immediate fire for the protection of life and property. The Sixth Principle of the Code of Conduct for the British Police, Therefore, very wisely lays down:

"TO use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent to restore order: and to use minimum degree of physical force which is necessary on any particular occasion for achieving a police objective."

The fourth clause of the Police Code of Conduct for the Indian Police too runs to the same effect. In dealing with crowds and unlawful assemblies it should never be forgotten that the police go to disperse a riotous mob in order to correct a situation in the interest of the public peace and not to punish the wrong-doers."

(35) The Inspector Generals of Police Conference of 1961 constituted a Committee of Police Officers which formulated principles of police conduct, which were circulated to all the States in India in 1963. One of the principles mentioned therein is that "in securing the observance of law or in maintaining order, the police should use the method of persuasion, advice and warning. Should these fail, and application of force become inevitable, only the absolute minimum required in the circumstances should be used. Even in Punjab Police Rule 14.56 it is provided that:

"THE degree of force used shall be the minimum which the responsible officer, with the exercise of due care and attention decides to be necessary for the effective dispersal of the crowd and the making of such arrests as may be desired. The degree and duration of the use of force shall be limited in as much as possible and the least deadly weapon which the circumstances permit shall be used."

Further instructions under the said Rule also provide that:

"THE degree of force employed shall be regulated according to the circumstances of each case. The object of the use of force is to quell a disturbance of the peace or to disperse an assembly which threatens such disturbance and has either refused to disperse or shows a determination not to disperse: no ulterior objects such as punitive or repressive effect shall be taken into consideration."

(36) It was contended by learned counsel for the respondents that on the night of 24/25th September, 1990, the crowd of students which had occupied the road crossing intersection at the All India Institute of Medical Science had been cleared by the police force Without any resistance being encountered by the police. He further stated that in the early hours of 25th September, 1990, one S.S.Chauhan, who had, prior to that date, tried to immolate himself, had expired. In view of his death, the police expected trouble. S.S.Chauhan had died in the Safdarjung Hospital which is not even 1 Km away from the IN a Market. A lot of police force was, accordingly, deployed at the Safdarjung Hospital. From the documents on record, it is evident that a very large crowd had assembled at Safdarjung hospital and some of the members of the crowd has even forced their way inside the hospital premises. Nevertheless no untoward incident occurred at the Safdarjung Hospital. The reason for this is obvious viz., that sufficient number of police was deployed at Safdarjung Hospital.

(37) It has been admitted by the learned counsel for the respondents that at IN a Market area, there were only about 60 police constables and officers who were present. It cannot be denied that the police force at this place was not adequate in number. The size of the crowd at IN a Market is not exactly known. The estimates, as per the log book maintained by the police very from time to time. Whereas at one time it is recorded that a few hundred students were present, but at the peak, the number of students alleged to be there was 6000 to 8000. It is clear that when a fairly large crowd is present and the situation is volatile, then adequate police force should have been deployed. If a strong police force could prevent any untoward incident at Safdarjung Hospital, where not even a single tear gas shell was fired or lathi charge resorted to, we see no reason as to why sufficiently large police force was not deployed at the IN a Market. Had such a deployment taken place, perhaps even tear gas shells need not have been fired. It is an old saying that "there is safety in numbers". Perhaps resort to firing by the police was nothing more than a panic reaction on its part by seeing a large crowd of students and miscreants which was throwing stones at the police. But over-reaction or excessive use of force is certainly not expected from a well trained or disciplined force which is the custodian of law and order in the city. Perhaps the authorities would be well advised to see whether adequate and proper training is being imparted to the police personnel in relation to the crowd or mob control.

(38) At this juncture it will be pertinent to note that for some reason, which is not very clear, in the evening of 25th September, 1990 large number of policemen who were present at the IN a Market, went to Safdarjung Hospital and got themselves medically examined. The policemen were examined between the time 7.15 Pm and 11.30 PM. The Medico-Legal Reports which have been placed on the record, do not show any injury on any of the police personnel who were so examined which was more serious than a simple hurt by a blunt weapon, possibly a stone. There certainly is no injury on any of the police men which could have been caused by any lethel weapon or by a petrol or bottle bomb. We

are reverting to this in some details because, as already noted, the respondents have stated in their affidavit in reply that the crowd at the IN a Market was armed with stones, sticks, petrol bombs, country made arms etc. We do not find any evidence of any one of the crowd having used any sticks or petrol bombs or country made arms at the police.

(39) During the course of hearing and even Along with the affidavit in reply, relevant extracts of the log books maintained by the Police Stations concerned were produced before us. In none of the log books is there any entry with regard to the students using any acid bulbs, fire arms or any other lethal weapon, even though there are entries to the effect that the students had been throwing stones and were burning vehicles. A reply to the writ petition dated 11th December, 1990 was filed on behalf of the Commissioner of Police, Delhi. This reply is supported by an affidavit of Dy. Commissioner of Police which has been prepared on the basis of the police records and documents furnished by the officers at the spot and the information alleged to have been conveyed by them to the Commissioner of Police. Along with this reply, a report has also been placed on the record which purports to contain a record of the incidents which happened on various dates between 24th August, 1990 and 27th September, 1990. With regard to the incident of 25th September, 1990, it is mentioned in this report that one S.S.Chauhan, who had tried to self- immolate on 24th September, 1990, had died on 25th September, 1990. Thereafter about 1,000 to 1500 agitated students and residents of Sarojini Nagar, Vinay Nagar and Laxmi Bai Nagar are stated to have gone on a rampage. It is further alleged in this report that the agitators set on fire Dtc buses and a jeep and also indulged in heavy stoning, thereby causing damage to railway reservation counter at Sarojini Nagar. The report further states that to quell the rampaged mob and to disperse them, the police opened fire as a result of which a 16 year old boy Aditya Narain Sharma suffered head injuries and was rushed to the Safdarjung Hospital.

(40) With regard to the IN a Market area, this report mentions the presence of 9 mob of about 7,000/8,000 students and residents and it is further stated that this mob indulged in heavy brick- batting on the police deployed there as well as arson. In order to disperse the crowd, the police resorted to firing. This report nowhere states that the students or the mob had any point of time used any weapons more lethal than stones. Of course it is alleged that vehicles were burnt but it is nowhere stated in this report that the mob used country made weapons, acid bulbs. On 25th September, 1990, an Fir was also recorded at the instance of the police, the complainant being the Sho Police Station, Kotla Mubarakpur. In this, the incidents alleged to have taken place between 12 noon and 4.30 Pm are set out. In this report it is mentioned that the crowd of boys was pelting stones and throwing bottles. At one place, in relation to an incident, it is also mentioned in the Fir that the crowd "pelted stones and bottles on police force with saris, lathis in their hands".

(41) In an effort to prove that the rioters were armed with lethal weapons, the

respondents filed a number of photographs Along with this reply. One of the photographs (C.30) shows a crowd armed with lathis, spears, rods etc. There was no indication as to who had taken the photographs. The respondents were accordingly required to file affidavits of the photographers giving more details with regard to these 57 photographs which have been filed. Affidavits of S/Shri S.N. Sikka of Hindustan Times, N.D.Prabu of Pti, J.C.Jain of Sunday Main, Pcm Tripathi of Indian Express were filed, wherein they indentified the photographs which had been taken by their staff photographers. In addition thereto, affidavit of Si Anant Lakra was filed in which he stated that he had obtained six of the photographs from two of the Delhi newspapers. Shri Surender Singh, in charge, Saket Police Station also filed an affidavit to the effect that he had taken 17 photographs. What is important to note is that none of these deponents has stated that anyone of them took the photograph C-30. There is no Explanation on the record which would indicate as to from where did the police obtain the photograph showing a mob with lathis, spears etc. The perusal of the photograph itself does not show that it pertained to the area in question. There is no similarity, in the background of the photograph, to the other photographs which have been placed on the record. We are not satisfied that the said photograph was taken either at the IN a market area or at the Sarojini Nagar area. Infact there is nothing to indicate as to when and where, that photograph was taken. It appears to us that the said photograph has been filed with a view to support the reply affidavit in which it is alleged that the members of the crowd were carrying lathis, spears and even country made fire arms. A large number of police officers trooped into the Safdarjung Hospital in the evening of 25th September, 1990 and got themselves medically examined. None of the police personnel, so examined, had any injuries on his person which could have been caused by acid bulbs, petrol bombs, iron rods or fire arms. There is no mention of the use of these lethal weapons either in the Fir or in the log books. In none of the video cassettes can these weapons be seen in the hands of the crows. There is also no evidence of the crowd possessing any country made fire arms. We have no manner of doubt that the averment made in the reply filed on behalf of the police "that the police was attacked with Sada Water bottles, acid bulbs, petrol bombs, lathis, iron rods, even country made fire arms "katta" were fired upon at the police party", is vastly exaggerated and incorrect. It is unfortunate that a false averment in this regard has been made in the reply affidavit filed on behalf of the Commissioner of Police. This averment has been made possibly in an effort to try and justify the firing which was resorted to by the police. It must have appeared to the police authorities that it may be difficult to justify resort to firing on a crowd which was armed only with sticks.

(42) It is unfortunate that the allegation with regard to use of the fire arms against the police has also been made by Dr. Aditya Arya, Addl. Deputy Commissioner of Police(South) in his affidavit dated 13th March, 1992 filed before us. It has been averred in this affidavit that "police was fired upon with country made weapons capable of firing 12 bore cartridge". As we have already

observed, there is no injury caused to the police personnel with any weapon more lethal than a stick. In none of the log books is there any mention of any country made weapons being used against the police. It is further surprising that if any member of the mob was using such weapons, not a single weapon has been snatched by the police. The said averment of Dr. Arya is clearly an attempt to justify the resort to firing by the police. This averment is also an improvement on the report which was submitted by the said Dr. Arya on 7th January, 1991, to the Dy Commissioner of Police(HQs) in reply to a Rajya Sabha Question No. 2937. In reply to an office memorandum of 4th January, 1991, pertaining to the said Rajya Sabha question regarding anti-reservation agitation, the Addl. Dcp in his report, inter alia, mentioned that there were a large number of students who had gathered at Laxmi Bai Nagar(East), West Kidwai Nagar and IN a Market. They set two police booths, Dtc booth, an Ambassador car, a jeep, a motor cycle and a Post Office on fire in the area. To control the riotous mob, the police fired 168 tear gas shells and resorted to lathi charge several times. It was then stated that "when the unlawful assembly, did not disperse, the police had to resort to firing. In the firing, the above two persons sustained bullet injuries and subsequently died in the hospital." This report does give in detail the property which was damaged by the mob but it nowhere mentions that any member of the mob resorted to any firing on the police.

(43) After going through all the three cassettes, and the record of this case, it seems that, as already observed by us, there was an unlawful assembly present at the IN a Market. Some miscreants in the said assembly were indulging in stone throwing at the police while some of the others did burn two three vehicles in and around the area. Nevertheless the crowd was well under control of the police with the help of the police firing tear gas shells and, at times charging at the crowd. Unfortunately none of the video cameras has recorded any prior warning having being given to the members of the assemble that if they did not disperse, then firing will be resorted to. There is nothing to show that the situation had become so volatile so as to have necessitated the police in resorting to firing. In the afternoon when the stone throwing had been intensified then again, suddenly and without prior warning, firing was resorted to and Devinder Kumar Sharma was shot.

(44) There can be no denying of the fact that the policemen were faced with a law and order problem. The wrath of the assembly was against the police; it is the police personnel, who were the targets of the stones thrown by the assembly. While there can be no possible justification for the assembly resorting to stone throwing, we have no hesitation in coming to the conclusion that there was an excessive use of force by the police when it resorted to firing.

(45) If there was an excessive use of force, can any individual police officer be blamed for it. On the facts of this case, the answer to this question must be in the negative. We do not find any mala fides on the part of the police in resorting to firing. It is clear that tension was prevailing in the area since the morning of

25th September, 1990. Adequate number of police force had not been deployed for which the blame cannot be fastened with the policemen who were present at the IN a Market and the blame must lie elsewhere. The inadequate number of policemen which was present had been exchanging stones with the unlawful assembly and had also been firing tear gas shells and had resorted to lathi charge when ordered to do so. Firing was resorted to either because of misjudgment or by way of a panic reaction but certainly not due to any mala fide intention on the part of the police. With the promulgation of the Delhi Police Act, the powers of the Executive Magistrate have been conferred on the police officers of the rank of Sub Inspector and above. Under the provision of Section 130 Cr. P.C., firing is resorted to if it is ordered by the Executive Magistrate is not present and firing has to be resorted to, then u/s 131 Cr. P.C. he has to be informed about the same. With the promulgation of the Delhi Police Act, the decision making authority and the executing authority has now become one and the same viz., the police officer. We would not like in this regard, to comment on the advisability of such a situation but the fact remains that it is the officers who were being subjected to stone throwing and who had not been able to disperse the crowd, despite firing of the tear gas shells, who decided that firing should be resorted to. Perhaps the officers felt that the only way to disperse the crowd was to resort to firing. It is a moot question whether dispersal of the crowd was so important that human beings had to be killed in order to do so and also whether the decision to resort to firing should not be taken by an officer e.g. Magistrate, who may himself not be involved in the struggle and can view the situation more objectively.

(46) Coming to the question of the manner in which the injured must be treated, we find that an important instruction which has been issued under Punjab Police Rule 14.56 is that when fire arms are used against unlawful assembly, it should be the duty of the Magistrate present to make adequate arrangements for the care of the wounded persons and for their removal to the hospital. The Magistrate is also enjoined to draw up a full report in consultation with the senior police officers present, stating all the circumstances and noting the number of rounds of ammunition issued and expended.

(47) In the present case, there were several companies of police present at the IN a Market. Some of the police officers were armed with fire arms. The superior officers must have visualised the possible use of the fire arms on the crowd. Having deployed armed policemen at the IN a Market, it was the duty of the police authorities to see that adequate arrangements were made to aid and assist the wounded if firing was to be resorted to. No such arrangements were made. All the video cassettes show, and this is also admitted by the Commissioner of Police, that D.K.Sharma was bodily lifted by four policemen after he had been shot and wounded. He was picked up from near the shops at the IN a Market by four policemen. They lifted him holding his arms and legs. He was lifted for a considerable distance. When the policemen got tired, he was placed on the road. After a few minutes he was picked up again and again the

police officials walked while hold in him like a sack of wheat till he was put into a police van. No attempt was made to take either an ambulance or a police van to the place where he was laying injured. He was lifted in an in- human manner, carried over a long distance even though he was bleeding profuesel, and without regard to human life or dignity was, in a most contemptuous manner, placed in the police van. It is incomprehensible as to why no arrangements had been made for providing adequate medical attention if firing was resorted to. There is no Explanation forthcoming as to why the van or other vehicle did not drive up to the place where the wounded D.K..Sharma was lying. Till the time he was placed in the police van and till after he had reached the hospital he was alive. We are not sure to what extent the police indifference and callousness in the manner in which they handled him has been a contributory factor to his death.

(48) Even the Commissioner of Police is reported to have taken notice of the manner in which the injured D.K.Sharma was lifted. The Delhi Police issued a press note dated 31st October, 1990, after the present writ petition had been filed and notices issued. The relevant portion of the press released dealing with the handling of D.K.Sharma is as follows:

"THE Commissioner of Police has taken a very serious note of the irresponsible manner in which some police personnel lifted the injured body of Devender Kumar Sharma on September 25, 1990 after the police firing, as depicted in the News track of October, 1990. A Vigilance enquiry into the manner was ordered on October 21, 1990. The officers who lifted the injured person did so against all procedural requirements and canone of human conduct. Though their intentions were may be not suspect as they kept on asking for a vehicle to carry the injured for medical aid, yet the manner of doing so was a total negation of what has been taught to them during their training. In fact, there are clear existing orders that those dead and injured in public disturbances should be carried on stretchers. In March this year, fresh orders were issued to alt units concerned to carry stretchers and invariably use them in such situations. We very much regret that our efforts to take on a more human face have suffered a blow due to the incorrect handling of a handful of policemen who/ might have worked under strain but had no reason to display a conduct unbecoming of their profession and training. All efforts are being made to prevent the recurrence of such insensitiveness while dealing with the citizens. The training inputs are being revised and restructured and the lacunae in training are being explored. Efforts will be made to lay profound stress upon refinement of behavior, especially under conditions of stress and to ensure, by very intensive training, that whatever the provocation, the police does not over react and indulge in excesses. Restraint, use of minimum force and help to injured persons should be hall marks of the police action during riots. In fact, following the anti reservation agitation, the Delhi Police recently started earnestly exploring softer methods of mob control and has even acquired a water cannon and has been conducting field trials in plastic bullets."

The said press release is a clear admission of the following things: (a) There should be restraint in the police action during riots: (b) Minimum force should be used by the police (c) The police should help the injured persons: (d) Softer methods of mob control are available: (e) The Delhi Police is acquiring water cannons and conducting trails in plastic bullets for the purpose of mob control.

(49) Had the police acted by keeping the aforesaid principles in mind on 25th September, 1990, human lives would not have been lost on that date. It is, however heartening to note that the Commissioner of Police did become aware of the shortcomings in the manner in which the police acted on that date. What is, however, surprising is that the awareness came about only after the Commissioner had seen the News Track of October 1990.

(50) It has been vehemently contended on behalf of the petitioner that D.K. Sharma died because of excessive use of force by the police. The submission is that compensation should be awarded to his next of kin and, further more, proceedings should be ordered to be taken against the police officers who were responsible for such excessive use of force and/or the manner in which D.K. Sharma was bodily lifted and then carried to the police jeep while he was bleeding profusely.

(51) In the reply filed on behalf of the Commissioner of Police, it has been stated that the Commissioner leaves it to the discretion of this Court to pass appropriate orders with regard to the compensation to the injured persons. It is, however, submitted that this Court to pass appropriate orders with regard to the compensation to the injured persons. It is, however, submitted that this Court should take into consideration whether it is appropriate to grant compensation to rioters who committed large scale acts of violence including arson, attempt to assault police officers on duty, damage of public property and even endangering lives of the inhabitants by their acts after having armed themselves with deadly weapons or having joined groups carrying deadly weapons including including country made weapons. It was submitted that it would be paying premium to the rioters and the Government should find it difficult to act in such a situation. Furthermore, like minded people would get encouraged by the grant of compensation to the rioters.

(52) There is considerable force in the aforesaid contention. If any person is injured by police action and that person was a member of an unlawful assembly, which is indulging in acts of violence etc. and the said assembly is armed with deadly weapons then we have no doubt in our mind that in such case, compensation for injury suffered reason of the police action would rarely, if at all be awarded. We would, however not like to express any final opinion on this matter because of two reasons, firstly we are not satisfied that in the present case, the crowd or a section thereof, was carrying deadly weapons, including country made weapons. Secondly, we feel that compensation should be awarded because of the in-human manner in which the police personnel treated the injured body of D.K.Sharma. The action of the said police officers has been

condemned by the Commissioner of Police himself and we need not add anything more to what has been stated in the aforesaid press release.

(53) There is little doubt that at IN a Market, an unlawful assembly was present. The crowd was not dispersing and was, on occasions, resorting to stone throwing. At the time when D.K.Sharma was shot, the crowd was in the vicinity of the shops in the IN a Market. It is in that direction that the firing was resorted to and D.K.Sharma was injured. The very presence of D.K.Sharma amongst the crowd, on which firing was resorted to, would seem to indicate that he was a part of that assembly. He was neither a resident of that area nor did he work in IN a Market. He had obviously come there to join and participate with the other members of the crowd. The said assembly was unlawful though not very violent. The members of assembly must have violent. The members of the assembly must have been aware of the fact that the police had fire arms with them. They could have expected that the police may resort to firing. Even while being aware of this, when individuals continued to remain a part of the unlawful assembly, would the court be justified in directing compensation to be paid when a member of the unlawful assembly is injured or killed when the police resorts to firing in the discharge of its official duties, even though such use of force may be excessive or un-called for.

(54) Firing was not resorted to, in the present case, due to any personal animosity on the part of any police official. There was perhaps an error of judgment in resorting to firing but we have no reason to hold that the action of the police in resorting to firing was a deliberate and vindictive act on its part. D.K.Sharma took a risk in continuing to be a member of an unlawful assembly because there was always a possibility that the police, which was armed, could resort to firing. The crowd, of which D.K.Sharma must have been a part, was throwing stones and the police, in return, was firing tear gas shells and resorting to lathi charge. If at that time excessive force is used by the police and firing is resorted to, we do not feel that there would be any justification in awarding compensation to a member of an unlawful assembly who is hit by the bullets. One wrong doer cannot ordinarily, benefit from the other party's wrongful act, unless it can be shown that the use of excessive force was mala fide or vindictive.

(55) While compensation ought not to be awarded because of the police resorting to firing at IN a Market, which caused D.K.Sharma's death, in our opinion compensation should, however, be awarded to the next of kin of D.K.Sharma because of the manner in which the police personnel handled him after he was injured. It was the responsibility of the police to take care of the wounded. There was no justification in the manner in which D.K.Sharma was treated by the police personnel after he had been lifted in an injured state. The manner in which he was carried was most shocking and this has even been admitted by the Commissioner of Police.

(56) Before dealing with the quantum of compensation which can and should be awarded to the legal heir of D.K.Sharma, it would be appropriate to deal, at

this stage, with the death of one Aditya Narain. Aditya Narain was, admittedly, a student of Class-X in a school and was only 15 years of age. He was the only son of his parents but he had two younger sisters. The family was a resident of Sarojini Nagar. On 25th September, 1990, near about noon time, he was shot while he was standing behind a water tanker in the colony itself with a school friend of his. In the affidavit of Shri R.N.Sharma, the father of Aditya Narain, it is inter alia, stated that his son and a friend of his were standing behinds water tanker in the Sarojini Nagar are New Nav Yug School. This water tanker had been placed cross a part of the road. It is further averred that certain anti-social elements had set fire to a Government 3-wheeler scooter in the area and some policemen armed with rifles pistols and lathis, fired a few shots whereby residents who had assembled were dispersed. After the residents and re-assembled, the deponent heard a few shots being fired and some of the boys started throwing stones in the direction of the policemen and started shouting slogans. It is further stated in this affidavit that two policemen hid behind a tree and after sometime one of them came out from behind the shelter and he pulled out his revolver ad aimed directly in the direction of the boys who had assembled at a traffic crossing. It is as a result of those shots that Aditya Narain was shot in the temple. It is further alleged that the shooting took place from a distance of about 50 feet.

(57) In the reply to the said affidavit of Shri R.N.Shanna, the respondents have set out their version of what had happened in the Sarojini Nagar area on that fateful day. The respondents have set our sequence of events in their reply, which is as follows:

"INFORMATION was then received at 9.55 Am regarding the damage of vehicles and setting them on fire behind Babu Market, Sarojini Nagar. At 10.15 Am an information was received regarding further damage to the vehicles on the main road "I" Block. At 10.35 Am an information was received that the boys and girls of DG/G-Stock are pelting stones. At 10.37 Am an information was received that near Dear Park Harsukhman Picket an attempt is being made to set fire to the Police Booth. At 11.00 Am an information was received that a tanker of charcoal amid one water tank had been over-turned near Safdarjung Hospital. At 11.04 Am an information was received that the buses at "I" Avenue, Sarojini Nagar have been set on fire. At 11.10 Am an information was received that the boys were pelting stones at "B" Block, Safdarjung Enclave Main Road. Similar information was received with regard to the damage to the property by stones and by acts of arson continously. The information so received of widespread violence covering vast areas within the jurisdiction" of Police Station Vinay Nagar and around, showed that a grave situation had arise suddenly on account of the death of Mr, Chauhan."

(58) It is further the case of the respondents, in the said reply that one Inspector D.P.Singh was on emergency duty and he left the police station to attend an emergency call at 9.30 AM. Shri D.P.Singh is stated to have reached Sarojini

Nagar Depot at 9.40 AM. Where he noticed that a private bus had been damaged with stones and tyres deflated. When he was returning to the police station, he received another information that some students were causing damage to the property at Sarojini Nagar "I" Block. When he reached there, he noticed that students were shouting anti Mandal slogans and he also found that a police assistance booth had been set on fire. The crowd was stated to have moved towards a market there a jeep was alleged to have been set on fire and when the Sub Inspector tried to apprehend the culprits, the crowd resorted to pelting of stones. Thereupon the Sub-Inspector retreated and crowd from two directions joined at a place known as "I" Avenue 3rd Cross Road where the water tanker had been over-turned. It is further alleged that this crowd started throwing stones at the police party and when the Sub-Inspector tried to advise them not to indulge in stone throwing, they did not pay and heed. It is also averred that there was a crowd of about 1,000 people and the Si D.P.Singh directed the Constable to shoot in the air. The mob retreated and then regrouped and when the crowd is slated to have come closer to them, the Sub- Inspector took shelter behind a tree and fired shots. In the said reply it is alleged that the shots were fired only in the air.

(59) Reference is also made to an inquiry report of an Addl. Dcp which was submitted after a report had been lodged by Aditya Narain's father. This report gives interesting reasons. The Addl. Dcp recorded the evidence of a number of witnesses and came to the Conclusion that the bullet which entered the skull of Aditya Narain, was Fired by Si D.P.Singh. In the Fir dated 25th September, 1990 which had been lodged at Vinay Nagar Police Station at the behest of the Police, it had not been mentioned that the shot had been fired by the said Sub Inspector. The Addl. Dcp interrogated Si Dp Singh who admitted that he himself had opened firing from his service revolver and it was due to a disturbed state of mind that it had been wrongly written in the Fir that Si D.P.Singh had ordered the Constable to fire. It is further stated that Si D.P.Singh was on a emergency duty and he left the police station without any vehicle, fear gas or wireless. The material part of the report relating to the injury which was sustained by Aditya Narain is as follows:

"INFACT all the public witnesses have claimed that Si D.P.Singh made advances towards the crowd from behind the tree. Again it seems that Si D.P.Singh kept on imploring the crowd not to take law into their hands but seeing no other recourse to disperse the unlawful assembly, Si D.P.Singh to the best of his intentions did open fire from his service revolver presumable in the air (as stated by Mahender Singh...). However, it is a sheer tragedy and most unfortunate that this bullet which was fired presumable in the air and in which no mala fides happened to have taken place, the bullet took an awry trajectory and had hit Aditya Narain who was very much present at the inter-face of police and violent mob. Since the police party was heavily out-numbered by the angry crowd and there was no tear gas etc. with Si D.P.Singh, Therefore, opening fire by the service weapon was only alternative left with police. After the bullet in its dying moments had hit

Aditya, and crowd started dispersing. Due to the tanker which was occulting sight between Si D.P.Singh's position and the spot where Aditya Narain had fallen down on the ground, D.P.Singh could be believed that he did not see anybody getting injured from his bullet shot."

(60) It is also concluded by the Addl. Dcp that the Si had opened fire in the air but "as ill-luck would have been, the bullet in its dying moments happened to graze through skull of Aditya Narain who was a part of unlawful assembly near the overturned water tanker at Navyug School crossing."

(61) It is not necessary for us to try and find out the discrepancy between the affidavit of Aditya Narain's father on the one hand and the reply of the police and the report of the Addl. Dcp on the other. What is apparent is that the Police Station at Vinay Nagar was receiving information about acts of arson since 9.30 AM. It is also the case of the police that a large crowd had gathered. Only two police personnel viz., Si D.P.Singh and Constable Dharam Vir had been dispatched to try and control the situation. Neither of them had any tear gas or lathis. Si D.P.Singh was armed with service revolver and the Constable had a .303 revolver. Neither of the two received any injury. According to the police, they saved themselves because they were wearing protective clothing and the stones did not hurt them.

(62) What is clear from the averments made on behalf of the respondents is that apart from setting fire to one or two objects, the crowd is only alleged to have thrown stones. Aditya Narain was standing behind a water tanker Along with a friend of his. Adequate police personnel had not been deployed. No attempt was made to disperse the crowd by firing tear gas shells or by lathi charge. The only measure which was resorted to by the two police personnel, who were present, was to fire. In our opinion there is absolutely no justification for resorting to firing as being the only means or method of controlling the mob. We are also not satisfied that Aditya Narain was a member of an unlawful assembly. There is merely a surmise on the part of the Addl. Dcp, who has, in our opinion, tried to cover up the actions of the policemen. No comment has been made by the Addl. Dcp to the fact that an Fir was lodged by D.P.Singh at 1.30 Pm, after Aditya Narain had been shot and taken to the police. There is no mention in this Fir that Si D.P.Singh had fired the shot. There is also no mention that Aditya Narain had suffered an injury. By stating in the Fir that Constable Dharma Vir had fired under instructions of D.P.Singh, it is clear that D.P.Singh did not want to own the responsibility of firing the shot which had injured Aditya Narain. The finding of the Addl. Dcp about the bullet taking awry trajectory and in its dying moments crossing through the skull, is difficult to accept as a plausible Explanation. The bullet was fired from a remover and it got embedded in the skull of Aditya Narain .It was , Therefore, fired from not too distant a position. According to Aditya Narain's father, the bullet was fired from a distance of about 50 feet and looking at the nature of the injury this is more probable. It could not be that a bullet was fired in the air and it took an awry trajectory and in its dying moments

got embedded in Aditya Narain's skull. The bullet, if it was falling down on the ground, as the Addl. Dcp expects one to believe, could not have had sufficient force or momentum to pierce the skull of Aditya Narain and thereafter causing his death.

(63) None of the witnesses of the colony has stated or mentioned that Aditya Narain took part in any stone throwing. There is no reason to believe that he was a member of an unlawful assembly. Infact the learned counsel for the respondents very frankly conceded that it was unfortunate that Aditya Narain had died and he was, in all probabilities, only a spectator and not a participant. Unlike D.K.Sharma, Aditya Narain was a resident of that colony and, out of curiosity, had come out of his house only to meet an unfortunate end.

(64) The police was negligent in not sending sufficient force. It was the duty of the police to see that ony minimum force is required to control the crowd. Firing is to be resorted to only if there is no other option. In the neighborhood of Sarojini Nagar, since the morning, the police had been using tear gas shells. There is no Explanation forthcoming as to why this was not done at Sarojini Nagar. The action of resorting to firing on the crowd which resulted in the death of Aditya Narain was clearly unwarranted. In as much as Aditya Narain was not a member of the unlawful assembly as conceded to by the respondents counsel during the course of arguments, we feel that adequate compensation should be awarded to the next of kin of Aditya Narain.

(65) It was sought .to be contended by learned counsel for the respondents that the Court in exercise of its jurisdiction under Article 226 of the Constitution should not award any compensation. Even if any wrong has been committed, it was submitted,the proper remedy is to take resort to an action in torts.

(66) In out openion, there is no merit in the aforesaid contention. Where as a result of excesses having been committed by the State or its officers any physical harm or disability or death is caused, for which action there is absolutely no justification, the Courts have, in appropriate cases and depending upon the facts of each case, awarded suitable compensation. In Sebastian M. Hongray Vs. Union of India (UOI), , a writ of habeas corpus was issued requiring the Union of India to produce two missing persons who had been allegedly kept under Army custody. The respondents stated that this persons had been released from custody but this plea was not accepted by the Court. The Supreme Court came to the conclusion that a civil contempt had been committed. Thereafter it was observed that keeping in view the torture, the agony and the mental oppression through which the wives of the missing persons had to pass and they being the proper applicants, the Uoi was directed to pay Rs. 1 lakh to each of the aforesaid wives. The proceedings of habeas corpus had been initiated before the Supreme Court by filing of a petition under Article 32 of the Constitution and, it is no doubt true that, it was because of the contempt which had been committed that the court penalised the Union of India. Nevertheless a sum of Rs. 1 lakh to each of the two wives was awarded as an exemplary costs because of the mental torture

and agony which they had suffered.

(67) In *Rudul Sah Vs. State of Bihar and Another*, , the petitioner had been detained illegally in the prison for over 14 years after his acquittal in a full dress trial. When he was not released, he filed a writ of Habeas Corpus for, his release from illegal detention. A contention was raised as to whether for the wrong done to the petitioner the court should, in exercise of its jurisdiction under Article 32, direct compensation to be paid. On behalf of the State it had been contended that Article 32 could not be used as a substitute for the enforcement of rights and obligations which could be enforced efficaciously through the ordinary processes of courts, Civil and Criminal. While nothing that a money claim has ordinarily to be agitated in and adjudicated upon in a suit instituted in a court of lowest grade competent to try it, the Court nevertheless held that where it comes to the conclusion that the detention was illegal then to refuse to pass an order of compensation in favor of the petitioner:

"WILL be doing were lip-service to his fundamental right to liberty which the State Government has so grossly violated."

(68) Elaborating the powers of the court in granting relief in cases involving violation of Article 21 the Supreme Court further observed in *Rudul Sah's* case at page 1089 as follows:

"ARTICLE 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21-secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

(69) Another case which came up before the Supreme Court where compensation was awarded was that of *Peoples' Union for Democratic Rights Vs. State of Bihar and Others*, . In that case, about 600 to 700 poor peasants and landless people had collected to hold a peaceful meeting within the compound of a library. Without any previous warning by the police, the said people were surrounded and the police opened firing as a result of which several people were injured and at least 21 persons, including children died. The police interestingly enough, started a case implicating several innocent people including even some

other people, who had been killed in the firing. Pudr filed a writ petition under Article 32, inter alia, wanting that orders be issued directing the payment of full and proper compensation to the victims. One of the other directions which was sought was that the police should withdraw the case filed by it against the people. In the affidavit filed in opposition, the factual assertions raised in the petition were disputed. But it was brought to the notice of the Supreme Court that a writ petition had been filed in the Patna High Court, prior to the filing of the aforesaid petition under Article 32, and the same was pending. The Supreme Court did not transfer to itself the petition under Article 226 from the High court but came to the conclusion that:

"WE are of the view that it would be appropriate that the matter is examined by the High Court."

The Supreme Court nevertheless awarded compensation of Rs. 20,000.00 in case of every death and Rs. 5,000.00 to each of the injured.

(70) From the aforesaid it is clear that the Supreme Court, dealing with the public interest litigation, thought it proper that the allegations against the police, in that case, should be examined by the High Court exercising jurisdiction under Article 226 of the Constitution. Another similarity with the present case is that the police, had, relating to the said incident of firing, started cases against several persons, who took part in the said meeting. Notwithstanding the pendency of these cases, the Supreme Court directed that the matter be considered by the High Court under Article 226 of the Constitution. In the present case also merely because FIRs have been lodged against some of the members of the alleged unlawful assembly, cannot be a ground for the court not to exercise its jurisdiction under Article 226 of the Constitution.

(71) Peoples" Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another, was another case where, in exercise of its jurisdiction under Article 32 of the Constitution, compensation to victims of police atrocities was awarded. In that case the police had collected some people and taken them to the Police Station for doing work. When the workers demanded wages, they were beaten up by the police and one person succumbed to his injuries. Though the case was being examined for criminal prosecution of the police officers concerned, nevertheless the family of the deceased was directed to be paid Rs. 50,000.00 as compensation. The other labourers were also directed to be paid different sums of money.

(72) An important decision on the question with regard to award of compensation in such cases is that of Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, . The question of grant of compensation, in this case, arose because of the action of police officers who, at the behest of the landlord, beat a tenant Kamlesh Kumari and her son Naresh Kumar. Naresh subsequently succumbed to his injuries. Thereupon a news item about the incident appeared in

the Hindi newspaper and a petition under Article 32 of the Constitution was Filed wherein besides the landlord , two police officers were also imp leaded as respondents. The Supreme Court held that the son of the tenants had been:

"DONE to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the powers vested in such agency. The mother of the child Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration."

It was further observed that:

"II.An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solarium for the mental paon, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the Sho, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the Sho of Anand Parbat Police Station, Shri Lal Singh."

The Court ultimately awarded a sum of Rs. 75,000.00 by way of compensation and further observed that the Delhi Administration may take appropriated steps for the recovery of the amount paid as compensation from the officers who were found responsible. From Saheli's case(supra) it is clear that even when public interest litigation is commenced challenging the police action, like in the present case, and where there is loss of life and the action of the police is wholly unjustified and in excess of the power, then adequate and reasonable compensation can be awarded.

(73) From the aforesaid discussion we come to the conclusion that with regard to the in-human manner in which Devinder Kumar Sharma was handled after he had been wounded, compensation should be awarded. Compensation is also payable on account of the death of Aditya Narain because of the police firing. Unlike Devinder Kumar Sharma, Aditya Narain was not a member of the unlawful assembly. He was only 15 years old and was a school student having three younger sisters.

(74) Keeping in view the quantum of damages and compensation which has been awarded by the Supreme Court, in the aforesaid cases, we issue a writ of mandamus directing the Delhi Administration, which has the administrative control over the Delhi Police, to pay a sum of Rs. 50,000.00 to the next of kin of Devinder Kumar Sharma and a sum of Rs. 2,50,000.00 to the next of kin of Aditya Narain.

B.N.Kirpal, J. Sept 6,1991 "AK" D.K. Jain.J.