

(1999) 02 PAT CK 0052
In the Patna High Court
Case No : C.W.J.C. No. 1536 of 1998R

Ranchi Bar Association, Ranchi and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226, 38, 39
Contempt of Courts Act, 1971 — Section 2

Citation : AIR 1999 Patna 169 : (1999) 47 BLJR 567 : (1999) 1 PLJR 922

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and P.K. Prasad, for the Appellant; Narain Sinha, General, M.S. Anwar, Govt. Pleader, Bimal Kumar, S.K. Verma, Shashi Anugrah, A. Alam, B.K. Kanth and M.S. Chhabra, for the Respondent

Judgement

R.A. Sharma, J.—Pursuant to the call given by the Jharkhand Mukti Morcha (hereinafter referred to as the Morcha), a Bundh was organized on 8th June, 1998, in Ranchi, leading to ransacking of the premises of the Bar Association of the district Court, destruction of its furniture and the vehicles parked there were damaged or burnt, giving rise to retaliation by the members of the Bar. The members of the Bar went on strike seeking appropriate action against the State Administration, police and the organizers of the Bundh. On a representation of the District Bar Association, Ranchi, containing allegations of assault, arson and loot in the campus of the District Court particularly the Bar Association, the Hon'ble Chief Justice of this Court passed an order dated 11-6-1998, directing it to be placed before the Division Bench for dealing with the same in the judicial side, pursuant to which a Division Bench was constituted on 12-6-98 on which date this Court permitted the Bar Association to place its representation in the form of a writ petition on record so as to enable the respondents to file their replies and the same has been numbered as a writ petition.

2. There are 27 respondents to the writ petition. The respondent No. 1 is the State of Bihar through the Chief Secretary, Government of Bihar. The

respondents Nos. 2, 3 and 4 are the Director General of Police, Bihar, the Commissioner, South Chotanagpur Division, Ranchi, and the Regional Inspector General of Police, South Chotanagpur Division, Ranchi, respectively. The Deputy Commissioner, Ranchi, is the respondent No. 5 and the Senior Superintendent of Police, Ranchi, is the respondent No. 6. The Sub-Divisional Officer, Sadar, Ranchi, and the Deputy Superintendent of Police (City), Ranchi, have been impleaded as respondents Nos. 7 and 8 respectively. Sri Suroj Mandal, Vice-President and Sri Ram Dayal Munda, Member, of the Morcha, who are said to have organised the Bundh, have been impleaded as respondents Nos. 9 and 10 respectively. The respondents Nos. 11 to 26 are also alleged to be some of the organizers of the Bundh. Mr. Mahendra Prasad Yadav, the then Sub-Divisional Officer, who was on duty on 8-6-98, has also been impleaded as respondent No. 27.

3. A counter-affidavit has been filed on behalf of the respondents Nos. 1 to 4 mentioning therein that no request was made to them for any special help for 8th June, 1998, by the local administration. Another counter-affidavit has been filed on behalf of respondent No. 5, the Deputy Commissioner, Ranchi. There are separate counter-affidavits filed by the respondents Nos. 7, 8 and 27 (the Sub-Divisional Officer, Sadar, Ranchi, the Deputy Superintendent of Police (City), Ranchi, and Sri Mahendra Prasad Yadav, the then Sub-Divisional Officer who was posted on 8th June, 1998, in Ranchi). The other respondents have also filed their counter-affidavits, denying their involvement in violence and some of them have also come out with the plea of alibi. There are supplementary affidavits and supplementary counter-affidavits exchanged between the parties.

4. The main grievance of the petitioners as raised by their learned counsel is against the failure of the Administration and the Police to provide protection to the person, and property of the people. It is also their case that instead of protecting the people, their property and business, the Administration and the Police were protecting the organisers of the Bundh so as to facilitate them to strike terror, assault the people and loot their properties.

5. In addition to the main grievance/question mentioned above, on 15-7-98, after hearing the learned counsel for the parties, the following four questions were formulated by us for decision:--

(i) Whether any person or group of persons, party or Organisation has any right under the Constitution or any other law to hold Bundh, Agitation, Demonstration and Rally in a manner causing/compelling the people by force or show of force or even otherwise to stop from carrying on their business, profession and other lawful activities?

(ii) Whether the Government and its officers are bound not to allow such Bundh, Agitation, Demonstration and Rally in order to protect the person and property, business and other lawful activities of the people?

(iii) Whether the Organisers of the Bundh and/or the State Government and its officers are bound to compensate for the loss of life and property suffered by the

people during such Bundh, Agitation, Demonstration and Rally and if so what should be the amount of compensation in the instant case.

(iv) Whether by compelling the closure of the Courts on 8th June, 1998, the organizers of the Bundh and those who have participated in it have committed contempt of Court and if so, what should be the punishment ?

6. We have heard the learned counsel for the parties.

7. Before dealing with the main grievance/ question relating to the failure of the State Administration to protect the person and property of the people, it is appropriate to deal with the additional questions referred to above.

QUESTION NO. 1

8. The Full Bench of the Kerala High Court in *Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others*, has, after explaining the meaning of the word "Bundh" and its effect, declared that the Bundh is unconstitutional and no political party or person has any right to call and organize such Bundh. In this connection, it was observed as follows :--

"7. Before proceeding to consider the constitutional issues sought to be projected before us, we think that it is necessary to understand what is a "bundh". "Bundh" is a Hindi word meaning "closed" or "locked". The expression therefore conveys an idea that everything is to be blocked closed. Therefore, when the organisers of a bundh call for a bundh, they clearly express their intention that they expect all activities to come to a stand still on the day of the bundh."

xxxxxxxxxxxxxxxxxxxxxxxxxxxx "....The leaders of the political parties who call for the bundh cannot escape by saying that they are not directly telling the citizens not to do these things under threat but if some of the participants in the bundh indulge in such activities, they cannot be held responsible. Obviously, they can with reasonable intelligence foresee the consequences of their action in calling for the bundh. Now can they pretend that the consequences that there out of the calling for a bundh, is too remote or does not have reasonable proximity to the call they have made. Learned counsel appearing for the political parties contended that this Court cannot take note of what actually happens when a bundh is called, but this Court can only go by the call for the bundh itself which does not involve the call for violence or forceful prevention of people from going about their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved when a bundh is called."

"8.....We are inclined to the view that the call for a bundh implies a threat to the citizen that any failure on his part to honour the call, would result in either injury to person or injury to property and involves preventing a citizen by instilling into him the psychological fear that if he defies the call for the bundh, he will be dealt with by those who are allegedly supporters of the bundh."

"10.When a "bundh" is called, no locomotion is possible, no vehicle can be put on the road, no student can go to school, no patient can go to his doctor and no one can reach the Airport to travel abroad. Public vehicles and private vehicles taken out are attacked and damaged. Anti-social elements also join in such destruction and sometimes indulge in looting. All public transports are brought to a stand still and no citizen can take out his vehicle for fear of attack and destruction. No shop can be kept open. Though while calling the bundh there may not be overt threat of violence and destruction, clearly a psychological threat of what will happen if you do not obey the call, is held out by the organisers of the bundh....."

It was held that the Bundh interferes with the fundamental rights of the people relating to their movement, carrying on a business, profession or avocation. The Court observed thus ;--

"8A.....Suffice it to say that when a citizen is coerced into not attending to his work or prevented from going out for his work or from practising his profession or carrying on his business, there is involved a violation of his fundamental right at the instance of another. From our understanding of the concept of bundh as set out above, we are of the view that there is such a violation of the rights of the citizen when a bundh is called and held."

"12.When properly understood, the calling of a bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the Legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the Court to step in to protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organisation....."

"14.....If this be the position and if the call for the bundh and the holding of it entails restriction on the fundamental freedoms of the citizen, it has to be held that no political party has the right to call for a bundh on the plea that it is part of its fundamental right of freedom of speech and expression. Moreover, nothing stands in the way of the political parties calling for a general strike or hartal unaccompanied by express or implied threat of violence to enforce it. It is not possible to accept that the calling of a bundh alone could demonstrate the protest of a political party to a given decision or in a given situation."

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

9. The aforementioned decision of the Kerala High Court has been affirmed by the Apex Court by a reasoned judgment in Communist Party of India (M) Vs.

Bharat Kumar and Others, the relevant part of which is reproduced below:--

"3- On a perusal of the impugned judgment of the High Court, referring to which learned counsel for the appellant pointed out certain portions, particularly in paras 13 and 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to the effect of a "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 of the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a "Bandh" on the one hand and a call for general strike or "Hartal" on the other. We are in agreement with the view taken by the High Court."

10. The legal position having thus been set-tied, the learned Advocate General has fairly conceded that no person or group of persons, party or an organisation has any right under the Constitution or under any other law to hold Bundh, Agitation, Demonstration and Rally in a manner causing/compelling the people by force or show of force to stop from carrying on their business, profession and other lawful activities. The stand of the learned counsel of other respondents is also the same. Initially, the argument of the learned counsel for the respondent Nos. 9 and 10 was that to organize and hold Bundh is the fundamental right falling under Article 1(a)(b) of the Constitution but later on, he also conceded in view of the law laid down by the Apex Court that such a right is not available to any political party or its members and officebearers.

11. The first question is answered in negative holding that no person/group of persons, party or organisation has any right under the Constitution or any other law to hold Bundh, Agitation, Demonstration and Rally in a manner causing/compelling people by force or show of force or even otherwise to stop from carrying on their business, profession and other lawful activities.

QUESTION NO. 2

12. One of the important duties of the Government is to maintain law and order and protect the life, liberty and the property of the people. This is the constitutional as well as the statutory obligation of the Government which must be discharged by it effectively and impartially. In Charan Lal Sahu Vs. Union of India, the Apex Court in this connection has laid down as follows :--

"35.Our Constitution make it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The preamble to the Constitution, read with the Directive Principles, Articles 38 39 and 39A enjoins the State to take up these responsibilities. It is the protective measure to which the social welfare State is committed....."

13. In National Human Rights Commission Vs. State of Arunachal Pradesh and Another, , while dealing with the Public Interest Petition, seeking protection of the life and liberty of the Chakma Tribes, the Apex Court has observed as follows :--

"20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human-being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those given such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life health and well being of Chakma residing in the State without being inhibited by local politics....."

14. Following the law laid down by the Apex Court, a Division Bench of Allahabad High Court in Waf Alaulad and another Vs. M/s. Sundardas Daulatram and sons and others, has also reiterated the same view holding as under :--

"9..... The position of the Government being that of parent it has to act, intervene and protect lives, liberty and property of the people when threatened or invaded. Its duty is much greater in the case of a person under disability. A person is under disability not only when he suffers from physical or legal infirmities, but also when he is unable to stand up and protect his right and property from invasion by or with the help of anti-social elements. Mafias and terrorists. In such case it is not only duty of the Government to protect a person in distress and restore the possession of his property to him, but it is also the duty of this Court, when approached, to pass appropriate orders and issue necessary directions to the Government to protect his life, liberty and property and when found necessary, to restore him the possession of his property."

15. The Government, being duty bound to protect the people, has to prevent unlawful activities like Bundh, Rally etc. which invade or threaten to invade their

life, liberty and property. It is neither open to any person, organization or political party to take the people to ransom, nor is it permissible for the Government to allow such unlawful activities. Such activities have to be prevented at the threshold otherwise it may not be possible to protect the people's rights. Prevention of unlawful activities ensures the protection of the rights of the people and their property. If the people who organize and support such unlawful Bundh, Rally etc. are armed, they have to be disarmed and prevented from proceeding further by the State administration and any failure on the part of the administration to do so is negligence liable to be punished.

16. The question No. 2 is answered in affirmative holding that the Government, its administration and the police are bound not to allow the unlawful Bundh, Rally etc. in order to protect the life, liberty and property of the people.

The position with regard to the "strike" or "Hartal" is, however, different. They are peaceful and do not interfere adversely with the rights and properties of the people. The directions contained in this judgment will therefore, not apply to the "strike" or "Hartal".

QUESTION NO. 3

17. Third question has two parts, viz. (A) Whether they are bound to compensate the loss of life and property suffered by the people during such Bundh, Agitation, Demonstration or Rally; and (B) if so, what should be the amount of compensation in the instant case. These two points will be dealt with separately.

Question No. 3(A)

18. This point stands concluded by the decisions of the Apex Court holding that this Court under Article 226 of the Constitution of India has the power to award compensation for the wrong done due to the breach of public duty by the State of not protecting the rights and lives of the people. In this connection, reference may be made to D.K. Basu Vs. State of West Bengal, , the relevant extracts of which are reproduced below:--

"40. Ubi jus, ibi remedium.-- There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done."

"41.....Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the

citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen."

19. The question No. 3(A) is answered in affirmative holding that the Government is bound to pay compensation to those who have suffered the loss of life, liberty and property on account of failure on its part to discharge its public duty to protect them. In appropriate cases even the organizers of the Bundh, Agitation, Demonstration and Rally can also be directed to pay compensation.

Question No. 3(B)

20. This question which relates to the amount of compensation to be paid in the instant case will be dealt with after deciding the main question/ grievance raised by the petitioners.

QUESTION NO. 4

21. Under our legal system, the Courts are entitled to work and decide cases in accordance with law without any fear, threat or coercion. If any person or organization obstructs or interference with the working of the Courts and/or prevents unlawfully the lawyers from attending the courts to plead for their clients, they commit contempt of Court liable to be punished. In the instant case, the supporters of the Bundh forced the closure of the Court, interfered with its working and prevented unlawfully the lawyers from attending their cases. They have thus committed Contempt of Courts. But we are not taking any action in this case, against them hoping that such activities will not be repeated in future. If our hope is belied in future, this Court will not hesitate to take action against the persons who interfere with the Courts' working.

MAIN QUESTION

22. Pursuant to the call given by the Morcha for Bundh on 8-6-98 in the entire

Jharkhand Area which includes Ranchi, Torch Light procession was taken out by the supporters of the Bundh on 7-6-98 in Ranchi. In paragraph No. 8 of the writ petition, it has been stated that Sri Suraj Mandal, the respondent No. 9, the Vice-President of the Jharkhand Area Autonomous Council, had earlier given a statement saying that he will indulge in arson, loot etc. during the Bundh. The statement is said to have been published in the newspapers, the relevant extracts of one such newspapers, the "Udit Vani" has been filed as Annexure-2 to the writ petition. According to the newspaper report the respondent No. 9 has stated that the shops which are found open and the vehicles which are found plying on the day of Bundh shall be damaged and burnt. The contents of the said paragraph No. 8 of the writ petition have not been denied by the Government and its officials (respondents Nos. 1 to 8 and 27). Those allegations have also not been denied by the respondents Nos. 12 to 26. However, they have been denied in paragraph No. 14 of the counter-affidavit filed on behalf of the respondents Nos. 9 to 11 which has been sworn by KumarVarun (respondent No. 11) as true "to his information derived from the record of the case". What is the record of the case on the basis of which he has denied those allegations contained in paragraph No. 8 of the writ petition has not been disclosed. That apart, there is no denial by Sri Suraj Mandal who is a party to the writ petition. It is thus apparent that there was a warning in advance about the threat of extreme nature during the Bundh.

23. On 8-6-98 the Bundh was organized in Ranchi. As to what happened on that day, it is appropriate to quote paragraphs Nos. 11 and 12 of the writ petition :--

"11. That suddenly at about 9.30 a.m. the respondents Nos. 9 to 11 along with their various supporters forcibly entered into the District Court premises and the Bar library premises variously armed with revolver , pistols, bombs, swords, Bhujali, rod, Danda etc. and started assaulting the advocates, clients, general public at large ruthlessly and mercilessly. The scooters of various advocates were set ablaze, bombs were exploded number of practising advocates were injured, the briefs carried by various advocates were snatched away. In fact, the entire district Court premises and the Bar library premises was held at ransom by the respondents Nos. 9 to 11 and their supporters. All these things were being done although the Deputy Commissioner's office, Commissioner's office and City control room are at stone's throw distance from the Bar library/district Court premises. The Sub-Divisional Officer, Sadar, Ranchi, and the City Deputy Superintendent of Police, Ranchi, were silent spectators to the entire incident. The advocates personally requested them to intervene and stop the arson being committed by the respondents Nos. 9 to 11 and its supporters but S.D.O., Sadar, City D.S.P., Ranchi, did not take any step to prevent the respondents Nos. 9 to 11 and their supporters from indulging in the unlawful activities, although they were having picket of police force with them."

"12. That the respondents Nos. 9 to 11 and its supporters had taken over the entire district Court and Bar library premises and the work in the Courts had

come to standstill, and the advocates were running for their lives and property in order to save themselves. The advocates went to the Judicial Commissioner, Ranchi and apprised him of the situation and requested him to take appropriate steps. The Judicial Commissioner, Ranchi, tried to contract Senior Superintendent of Police, Ranchi on phone, but even then no positive action was taken and the respondents Nos. 9 to 11 and their supporters continued to hold the entire premises on ransom unabated for more than one hour."

The allegations made in paragraphs Nos. 11 and 12 of the writ petition find support from the counter-affidavits filed by the Deputy Superintendent of Police (City), Ranchi, respondent No. 8, and the Deputy Commissioner, Ranchi and the then Sub-Divisional Officer, Sadar, Ranchi (respondents Nos. 5 and 27 respectively). In this connection, paragraphs Nos. 5 and 6 of the counter-affidavit filed by the respondent No. 8 are reproduced as under :--

"5. That on 8-6-1998, at about 10.00 a.m. the Sub-Divisional Officer, Sadar, Ranchi called me through wireless to reach C.C. Ltd. gate, where there was chance of disturbance/Clash, and on his call I went there and remained engaged in controlling the situation at C.C.L. Gate and succeeded in avoiding the confrontation otherwise it might have resulted into serious riot if not controlled."

"6. That at C.C. Ltd, Gate itself we came to know that loot and arson etc. has taken place in and around the Bar Association premises by the agitationist in which the fire tender was not allowed to extinguish the fire by the mob at the spot. So leaving behind the Inspector-cum-Officer-in-Charge Kotwali P.S. I along with Sub-Divisional Officer, Sadar immediately went to the spot and with the help of the police force dispersed the agitated mob and succeeded in starting the functioning of the fire brigade in my personal supervision due to which fire could be controlled and after my arrival at the spot no further untoward incidents took place."

The respondent No. 8 has also submitted his report as to what happened during the Bundh to the ST. Superintendent of Police, Ranchi, a copy of which is Annexure-8/B to his counter-affidavit which also indicates that the supporters of the Bundh had indulged in violence, arson and had created almost an anarchy during the Bundh.

24. The supporters of the Bundh not only ransacked the Bar Association, damaged the property and the vehicles parked there but also attacked and injured those who had opened their shops. A supplementary affidavit has been filed on behalf of the petitioners in which it has been stated that a large scale violence and arson were committed by the organizers/supporters of the Bundh on 8-6-98 in Ranchi resulting in death of a Salesman, Manoj Kumar Agarwal, who was an employee of Modi & Sons, a business premises at Randhir Prasad Street, near Lohia Dharamsala, Upper Bazar, situated at a distance of 1/2 k.m. from Kotwali P.S. In this connection, it has been stated that the supporters of the Jharkhand Bundh arrived by a trekker at Randhir Prasad Street armed with

weapons and started forcibly closing the shops which created commotion and panic and it is at that time that Manoj Kumar Agarwal was caught hold by the Bundh supporters and was brutally beaten by rod, Bamboo etc. causing grievous injuries on account of which he died on 11-6-98 in a hospital. It is further stated that in spite of the assault on the aforesaid employee by the supporters of the Bundh, the police did not visit the place where the said employee was assaulted and seriously injured. It is also apparent from the aforesaid supplementary affidavit that an F.I.R. was lodged by the brother of Manoj Kumar Agarwal on 9-6-98 on the basis of which a P.S. case was registered but the police made request in the Court of Chief Judicial Magistrate, Ranchi, only on 26-4-98 for addition of Section 302, I.P.C. There is hardly any denial of the aforesaid averments. It is, thus, apparent that on 8-6-98 during the Bundh Maffia and anti-social elements were ruling the city. The people of the city were at their mercy.

25. In the counter-affidavits filed on behalf of the respondents Nos. 8 and 27, who, it appears, were in-charge of the State and Police administration during the Bundh, it has been stated that the police pickets were posted/stationed at the sensitive points in accordance with the standing guidelines for deployment/posting of police party. When the respondent No. 9 has stated before 8-6-98 that the supporters of the Bundh will indulge in arson and violence during Bundh which was also published in the newspapers, what would happen during the Bundh was quite clear. It was, therefore, incumbent upon the State administration to employ special force to meet the situation. But that was not done. In the counter-affidavit filed on behalf of respondents Nos, 1 to 4 it has been stated that no request was made by the local administration to the State administration/police headquarters for special force. Placing the police pickets at some points of the city would not have met the extraordinary situation which was expected during the Bundh. The Government and its administration/police have neither taken any appropriate steps to prevent the organizers and supporters of the Bundh from enforcing the Bundh, nor have they taken any effective steps to prevent them from assaulting the people, damaging their property and closing the market by brutal force.

26. On 6-7-98 we passed an order in this writ petition directing the Dy. Superintendent of Police (City), Ranchi, to file an affidavit mentioning therein "as to whether any steps were taken by the police/District administration to disarm the agitationists and if so, what steps were taken in this connection. If no such step was taken, he shall also state as to why this type of steps were not taken. The affidavit shall also state as to why the agitationists were allowed to proceed further when they were indulging in violence near "Raj Bhawan" and C.C.L. Guest House." Pursuant to our above order, a supplementary counter-affidavit on behalf of the respondent No. 8 has been filed in which it has been stated that steps were taken to disperse and disarm the supporters of the Bundh at Nagababa Khatal, as a result of which the mob ran away helter shelter and in that process some persons were also arrested but no arms were recovered from them. In its report to the Senior Superintendent of Police, Ranchi, the said

respondent has stated that near the Governor's house 300-400 supporters of the Bundh assembled who were attacking and damaging the vehicles coming from Nagababa Khatal's side on account of which people were chased and dispersed with the help of force. If the supporters of the Bundh were disarmed and chased away how they could roam freely on the streets causing serious injuries to the persons who had opened the shops has not been properly explained. It appears that in front of Raj Bhavan and at the C.C.L. Guest House the administration/police intervened but thereafter they were merely watching the show.

27. In this connection, it may be mentioned that the learned counsel for the petitioners has submitted that the State Government was supporting the Bundh and in this connection he has relied upon paragraph No. 14 of the writ petition including the newspaper annexed thereto containing the statement of an important functionary of the Morcha about the support of the Government to the Bundh. Although the averments made in paragraph 14 of the writ petition have not been denied by the Government but in paragraph 18 of the counter-affidavit filed on behalf of the Deputy Commissioner, it has been stated that the local administration did not support the Bundh. On the basis of the materials on record it is not possible for us to record any finding in this regard, but from the pleadings of the parties and the documents annexed therewith, it appears to us that the administration and the police did not : provide adequate protection to the life, liberty and property of the people during the Bundh.

28. Here it may also be mentioned that an argument was made on behalf of the State that in the District Court/Bar Association campus the members of the Bar and not the supporters of the Bundh indulged in violence and arson. In support of the said argument, a video cassette was placed before us by the learned Government Pleader. The video cassette so produced on behalf of the Government was played in presence of the learned counsel for both the parties in our chamber. The said video cassette shows the retaliation by the members of the Bar and others chasing away the supporters of the Bundh and some vehicles were also shown being burnt. When the case was taken up again the learned counsel for the petitioners stated that the video cassette produced by the Government does not depict correctly as to what happened in the Bar Association campus during the Bundh. He further stated that he will produce another video cassette before the Court. He thereafter placed another video cassette before the Court. That cassette was also played in presence of the learned counsel for the parties in our chamber. We were surprised to find that the video cassette produced on behalf of the Government contains a part of the incident when the members of the Bar were retaliating after the Bar Association was ransacked and the vehicles were damaged. On 25-8-98 we passed the following orders:--

"11/25-8-98 The video cassette produced by the learned counsel for the State depicts the incident which took place in the premises of the District Bar Library at Ranchi on 8th June, 1998. No video cassette about the incidents which took place at other places on that day in Ranchi town has been produced by the State.

We feel it necessary to direct the respondents 5 to 8, namely, the Deputy Commissioner, Ranchi, Sr. Suptd. of Police, Ranchi, Sub-Divisional Officer (Sadar) Ranchi and the Deputy Suptd. of Police, Ranchi, to file an affidavit, sworn by an officer not below the rank of Sub-Divisional Officer or the Deputy Suptd. of Police, mentioning therein the source which had done the videography and prepared the video cassette and how it came in the custody of the State. The said respondents are also directed to produce the video cassette, if any, available with regard to other incidents which took place in Ranchi town on that day. If such cassettes are not available, the said respondents will explain in their affidavit as to why the District Bar Library campus was picked up for the videography. They are also directed to file along with the said affidavit the reports, if any, of the incidents which took place on 8-6-1998, submitted by the Sub-Divisional Magistrate Deputy Suptd of Police and other officials to the immediate superiors/State Govt. immediately after the incidents, as well as the report of the Intelligence Agency on the eve of the "Bundh" call given by the Jharkhand Mukti Morcha.

The above affidavit shall be filed by the said respondents by 4th September, 1998.

The petitioner is also directed to file an affidavit mentioning therein the source which had done the videography and prepared the video cassette, which has been presented before this Court. It will also be mentioned in the said affidavit as to whether cassettes of other places containing the details are available.

As mentioned above, list this case on 8th September, 1998, as the first case. Copy of this order shall be given to the learned counsel for the petitioner and learned Govt. Pleader No. I, within 24 hours."

29. Pursuant to the said order, a supplementary affidavit has been filed on behalf of the petitioner mentioning therein that the video cassette has been obtained by them from local Cable News Magazine in the name and style of "Drishti" produced by the Expression Vision Private Limited. In paragraph No. 6 of the said affidavit it has also been mentioned that the incident of 8-6-98 at the Bar Library and the District Court campus as well as the injury of Monoj Kumar Agarwal and his cremation after his death were also shown in the cable network in Ranchi on number of days. On behalf of the respondent Nos. 5 to 7 an affidavit has been filed mentioning therein that the cassette produced in the Court on behalf of the Government was received by the Deputy Commissioner, Ranchi, from the then Sub-Divisional Officer, Ranchi (respondent No. 27). It has further been stated that the said Sub-Divisional Officer has informed the Deputy Commissioner that he obtained clippings from "Dristi" Video News Magazines and there is no other video cassette regarding 8-6-98 available with the local administration and the answering respondents.

29A. The video recording of the incident at the Bar Association premises appears to have been done after it was ransacked and the members of the Bar and others

started retaliating and chasing the Bundh supporters. Replay of one of the video cassettes shows a Senior Police Officer making statement before the Press saying that the Bundh supporters entered the Advocates' chambers and caused damage. When the Bar Association was ransacked, its properties were damaged and vehicles parked there were burnt, the reaction and retaliation on the part of the members of the Bar and the litigants cannot be said to be unnatural. The Bar premises is the lawyers' castle and if their castle is invaded, retaliation is likely to follow. But on that ground neither the members of the Bar can be declared invaders, nor can the supporters of the Bundh be called as angels. What is surprising is that when the Bar Association was attacked, its properties were damaged and the vehicles parked there were burnt, there was none from the administration/ police to provide protection. Instead of condemning the illegal act of the supporters of the Bundh and the failure of the administration/ police to protect the people and their properties, the members of the Bar who resisted the unlawful activities, are being blamed.

30. It is thus clear that there was failure on the part of the administration and police on 8-6-98 to provide adequate protection to the life, liberty and property of the people who were left at the mercy of the anti-social elements. The Government thus failed to discharge its public duty to protect the people during the Bundh.

31. QUESTION NO. 3(B) COMPENSATION

As mentioned earlier, while dealing with the question No. 3(A), it has been settled by the Apex Court that the Government is bound to pay compensation to those who have suffered the loss of life, liberty and property on account of the failure of the Government to protect them. The Government is, thus, bound to compensate the loss suffered by the members of the Bar and their Association. It has also to pay the compensation for the loss of life of Monoj Kumar Agrawal who was seriously injured by the supporters of the Bundh, resulting in his death in a hospital.

32. In this connection, an intervention petition has been filed on behalf of Sri Ramesh Lal Agrawal, the father of the deceased Monoj Kumar Agrawal, seeking payment of compensation for the loss of life of his son. That apart, the petitioners have also filed a supplementary affidavit bringing on record the circumstances in which Monoj Kumar Agrawal died. As the death of Monoj Kumar Agrawal has created panic and commotion in the city, we have accepted the request made on behalf of the petitioners to entertain the claim of compensation on account of death of Monoj Kumar Agrawal. We have accordingly entertained the intervention petition filed by his father. The claim of the Bar Association about the compensation and the claim for compensation on account of death of the Monoj Kumar Agrawal will be dealt with separately as under.

33. BAR ASSOCIATION CLAIM

It has come on the record that during the Bundh there was damage to the Bar

Association's properties and a large number of vehicles (scooters) were also damaged. It appears that most of the owners of the damaged vehicles have taken them away and got them repaired. As some of those vehicles were lying unattended in or near the Bar Association, this Court directed them to be placed in the custody of the police. This Court also directed the Judicial Commissioner, Ranchi, vide order dated 6-7-98, to appoint a Committee consisting of three Judicial Officers to assess the loss caused to the property, movable and immovable, belonging to the members of the Bar and others during the Bimdh and the Committee so appointed was required to submit its report to the Judicial Commissioner for forwarding the same to this Court. The Judicial Commissioner accordingly appointed a Committee which assessed the compensation for the five damaged vehicles which were in the police custody at Rs. 25,056/- (Rs. twentyfive thousand and fifty six). The Committee also assessed the compensation at Rs. 5300/- (Rs. five thousand and three hundred) for the damage caused to the Bar Association's property. The Committee, however, did not assess the compensation for the sixth vehicle, which was also in the custody of the police, pursuant to this Court's order on the ground that the damage caused to the vehicle has already been repaired by the owner.

34. The Secretary of the Bar Association submitted a list of 23 more vehicles along with proof of amount spent on their repair by their owners seeking compensation for more than Rs. 1 lac. The Committee, however, did not assess the compensation for damage suffered by those vehicles on the ground that the same have already been repaired by their owners. The claim for compensation put forward by the Secretary has not yet been finally determined.

35. COMPENSATION FOR LOSS OF LIFE OF MONOJ KR. AGRAWAL

There is no dispute between the parties that Monoj Kumar Agrawal was aged about 23 years and was getting Rs. 2300/- per month as salary from Modi & Sons, where he was employed as a Salesman. In the intervention petition filed by Sri Ramesh Lal Agrawal, the father of the deceased Monoj Kumar Agrawal, it has been stated that apart from salary of Rs. 2300/- which he was getting from Modi & Sons, he was also doing part-time job and on an average he was earning Rs. 1500/- per month extra. According to his father, his monthly income was Rs. 3800/-. Although the learned Counsel for the parties have not disputed the amount of salary he was getting from the Modi & Sons but additional claim of Rs. 1500/- per month laid by the father of the deceased has not been accepted by them. There is no material on record to uphold the same. In view of the facts and circumstances of the case, we take it that Monoj Kumar Agrawal was earning Rs. 2300/- per month. He was unmarried. The intervention petition shows that his parents are alive and there has been loss of dependency to the family because of death of Monoj Kumar Agrawal. It is expected that out of the salary income he would have spent one-third on his personal expenses and spared two-third of it for the family. Thus, the loss of dependency of his parents comes to Rs. 1534/- (approximately) per month which is rounded off to Rs. 1530/- only as

monthly loss. In the absence of suggestion of any better method, we apply the multiplier of 16 in order to compute the total compensation for the loss of his life which comes to Rs. 2,93,760/- (Rs. two lacs ninetythree thousand seven hundred and sixty only). It is rounded off to Rs. 2,94,000/- (Rs. two lacs ninety-four thousand) only. We therefore, assess the compensation at Rs.2,94,000/- (Rs. two lacs ninety-four thousand) which shall be paid to the father of the deceased, Monoj Kumar Agrawal, within six weeks from the date of production of the certified copy of this judgment, whereafter he shall pay half of the compensation amount to the mother of the deceased within a week of the receipt of the sum.

36. This writ petition is accordingly allowed. The Bundh organized by the respondent No. 9 and others on 8th June, 1998, in Ranchi was illegal. The State administration and the police failed to provide adequate protection to the life, liberty and property of the people during the Bundh and the Government has, thus, failed to discharge its public duty of protecting the people. It is true that the Deputy Commissioner, Ranchi, and the Senior Superintendent of Police, Ranchi, being on leave on 8-6-98, were not available and therefore they cannot be blamed for what happened on that day, but the other officials cannot escape the blame. We would have directed for taking action against the officials who were present on 8-6-98 for failure on their part to protect the people during the Bundh but we are not taking this step hoping that in future such things will not be allowed to happen. The organizers of the Bundh are also equally responsible for what happened during the Bundh but we are not directing any action against them also with the same hope that they will not indulge in such unlawful activities in future. But if our hopes are belied this Court will not hesitate to take appropriate action against the culprits as well as the State administration.

37. The Government of Bihar through the Chief Secretary is directed to deposit Rs. 1,50,000/- (Rs. one lac and fifty thousand) with the Judicial Commissioner, Ranchi, within six weeks from the date of receipt of the certified copy of this judgment. Out of the amount so deposited, the Judicial Commissioner will pay the amount of compensation to the owners of the vehicles regarding which the compensation has already been assessed by the Committee appointed by him. The amount determined by the Committee for the loss of the property of the Bar Association shall also be paid out of the said amount to the District Bar Association. The Judicial Commissioner will constitute another Committee in consultation with the Deputy Commissioner, Ranchi, within a month from the date of production of a certified copy of this judgment before him for assessing the amount of compensation of the remaining vehicles, list of which has been submitted earlier by the Secretary of the Bar Association. It will be open to the Committee so constituted to take help from the experts' hands in this connection. The Committee shall conclude its proceeding and submit its report to the Judicial Commissioner within six weeks of its constitution. The amount of compensation determined by the said Committee shall be paid by the Judicial Commissioner out of the fund received by him to the owners of the concerned

vehicles. After making payment of compensation, if any amount is left unused, the same shall be refunded by the Judicial Commissioner to the State Government. But if more amount is required for payment of compensation, the Judicial Commissioner will send requisition for the same to the Chief Secretary who will deposit the amount so required with the Judicial Commissioner within a period of six weeks of the receipt of the requisition.

38. The Government of Bihar through its Chief Secretary is further directed to pay a sum of Rs. 2,94,000/- (Rs. two lacs and ninetyfour thousand) to Sri Ramesh Lal Agrawal, father of the deceased Monoj Kumar Agrawal, within a period of six weeks from the date of receipt of the certified copy of this judgment whereafter he shall pay half of the compensation amount to the mother of the deceased within a week of the receipt of the sum.

39. The State Government, its administration and the police are directed not to allow the illegal Bundh, Rally etc. in order to protect the life, liberty and property of the people. Such illegal activities have to be stopped at the threshold, otherwise it may become difficult to control them later on.

The position with regard to the "strike"/"Hartal" is, however, different. They are peaceful and do not interfere with the rights and properties of the people. The directions contained in this judgment will, therefore, not apply to them.

40. The Registry will supply a copy of this judgment to the Government Advocate at the earliest who will communicate the same immediately thereafter to the Chief Secretary of the Government for compliance. It will be open to the petitioner as well as father of the deceased, Monoj Kumar Agrawal, to serve a copy of the judgment on the Chief Secretary.

41. As we have awarded compensation, there will be no order as to costs.

42. Before parting with this case, it may be mentioned that at the end of the arguments learned Counsel for the petitioners and the respondent Nos. 9 to 11 have stated that during the pendency of the writ petition several Bundhs were organized in the State by various political parties including the party which is ruling the State. In this connection, an affidavit has also been filed on behalf of the petitioners. It is not necessary for us to make any comment about those Bundhs because they are not in issue in this case except that if such Bundhs were organized, it is most unfortunate.

A.K. Prasad, J.

43. I agree.