

(1991) 02 KAR CK 0037
In the Karnataka High Court
Case No : First Appeal No. 126 of 1982

State of Karnataka

APPELLANT

Vs

B. Padmanabha Beliya and others

RESPONDENT

Date of Decision : 28-02-1991

Acts Referred:

Constitution of India, 1950 — Article 162, 166, 21
Criminal Procedure Code, 1973 (CrPC) — Section 129, 130, 144
Karnataka Police Act, 1963 — Section 169, 170
Penal Code, 1860 (IPC) — Section 99

Citation : (1992) CriLJ 634 : (1991) ILR (Kar) 2739 : (1991) 2 KarLJ 11

Hon'ble Judges : N.D.V Bhat, J; D.P. Hiremath, J

Bench : Division Bench

Advocate : L. Umakanthan, Govt. Pleader, for the Appellant; A.S. Vishwanath, for the Respondent

Judgement

Hiremath, J.—In the second week of September 1973, there was criminal rioting at Maddur Town in Mandya District. There were disturbances like stone throwing and violent personal assaults on 13-9-1973. We are concerned in this appeal with the rioting on 14-9-1973 in which one B. P. Nagaraj died on account of gunshot wound that he sustained in the firing that was done by the District Armed Reserve Police (for short "the DAR") whose assistance was secured to quell the riots. The Sub-Inspector of Police who was in charge of maintaining law and order and also in the command of the police force that was deployed to contain rioting, was the second defendant in the original suit filed by the parents, brothers and sister of the said Nagaraj for compensation of Rs. 1,50,000/- on account of the death of the said Nagaraj due to the rash and negligent act of reckless firing by the police. The deceased was running a hotel in Bazaar Street and was able to spare Rs. 50/- for the family expenses consisting of himself and the plaintiffs. According to the plaintiffs, when firing was resorted to, there were no serious disturbances in the locality necessitating use of force by firing. There was not even proclamation of the order u/s 144 of the Code of Criminal

Procedure (for short "the Cr.P.C."). It was the second defendant that ordered firing and, therefore, he was personally liable to pay compensation in addition to the State of Karnataka, the first defendant, being vicariously liable.

2. In the written statement filed by the first defendant it was contended that the suit is hit by the principle of act of the State i.e., the act referable to the exercise of sovereign power of the State and, therefore, the plaintiffs are not entitled to claim any relief. The averments in the plaint that there were no disturbances at the material time and that there was no necessity of resorting to firing have been denied. According to the State, the deceased was one of the members of the unlawful assembly which indulged in various crimes and which did not heed to the calls of law and order and became unruly. While controlling the unruly mob and dispersing the unruly assembly and to protect the property of State and of private persons and also to prevent injury to innocent lives, the police had to open fire and it was in that firing that the deceased received gun-shot wound and later succumbed to the injury. Having investigated into the cause of his death, the police filed "B" summary report before the Magistrate's Court which has been accepted.

3. The second defendant, in his written statement, denied that there was an order of firing issued by him and that he was present at the spot. Only after getting information that a certain person by name B. P. Nagaraj had been injured in the firing, he rushed to the spot, shifted him to Maddur Hospital without any loss of time and on the advice of the doctor at Maddur, he was shifted to General Hospital, Mandya. He reaffirms that he was not at all responsible for the firing that was opened by the police force at the spot to control the unruly mob and to protect the property of the State and of private persons. Rest of the allegations with regard to the part played by deceased Nagaraj are the same as those in the written statement of the first defendant. He then proceeds to assert that he was patrolling in the town at Shivapura and Channegowdanadoddi which are surrounding the town to maintain law and order and, therefore, he has no personal knowledge of the incident that took place at the spot. Being a subordinate officer of the State Government, if anything is done in discharge of his official duties, he is immune from all liabilities claimed against him.

4. The defendants, in their additional written statement, also contended that no sanction was obtained to file a suit against the second defendant in compliance with Ss. 169 and 170 of the Karnataka Police Act. Therefore, the suit filed without the previous sanction of the Government or permission of the Government to file the suit against the police officer is not maintainable. On these pleadings, the trial Court addressed itself to the following issues :

(1) Do the plaintiffs prove that B. P. Nagaraj was shot on 14-9-1973 near the lamp post at the main road (Bazaar Street) at 11.40 a.m. when he was proceeding from the post office to main road of Maddur Town and died in the circumstances mentioned in para 3 of the plaint ?

- (2) Do the defendants prove that B. P. Nagaraj was a member of an unlawful assembly which indulged in various crimes and which did not heed to the calls of law and order and that on the act of controlling the unlawful assembly the police had to open fire and that B. P. Nagaraj received gun shot wounds ?
- (3) Do the defendants prove that the acts of the Officers were in the course of maintaining law and order and they are not liable to pay any compensation ?
- (4) Does the 2nd defendant prove that he was not responsible for the death of deceased B. P. Nagaraj and that he was patrolling in Shivapura and Channegowdanadoddi at the time of the gun shot injury caused to B. P. Nagaraj ?
- (5) Did B. P. Nagaraj die of gun shot wounds at the General Hospital, Mandya, on 14-9-1973 ?
- (6) Was the deceased B. P. Nagaraj running a hotel at Maddur town and was his daily income Rs. 50/- from his business and are the plaintiffs deprived of that income ?
- (7) Is the suit hit by the principle of act of State in exercise of sovereign powers and as such the plaintiffs are entitled to any relief ?
- (8) Is the suit hit by the provisions of Ss. 169 and 170 of the Karnataka Police Act of 1963 ?
- (9) Are the plaintiffs entitled to compensation of Rs. 1,50,000/- ?
- (10) Is the notice not in accordance with the provisions of S. 80 of C.P.C. ?
- (11) To what reliefs, if any ?

These issues were answered in favour of the plaintiffs and against the defendants. Consequently, it decreed the suit for Rs. 1,50,000/-. The contention of the defendants that the firing was in pursuance of an act referable to the sovereign powers of the State was negated by the trial Court. As far as the liability of the second defendant is concerned, the trial Court found that he was not responsible for the death of B. P. Nagaraj. The suit against the second defendant was dismissed and the suit against the first defendant alone came to be decreed.

5. It is the first defendant-State that has challenged this decree in this appeal. It is contended on behalf of the State by the learned High Court Government Pleader that the trial Court did not appreciate the evidence properly when it found that the firing was resorted to by the D.A.R. Police without any justification. There is sufficient evidence to show that the mob, among whom deceased Nagaraj was also one, had become uncontrollable and had resorted to violence and even the safety of the properties in the locality and the person of the police who were present there to contain rioting was in danger. Though, P.W. 1, the Taluka Executive Magistrate, was examined by the plaintiffs, the manner in which he issued certificate Exhibit P-2 as sought for by the plaintiffs casts serious

suspicion over his bona fides. There is reason to believe that at any rate much earlier to 11.00 a.m. that day, there was promulgation of order under S. 144, Cr.P.C. and, therefore, the evidence of this witness for the plaintiffs could not have been accepted. It is also contended that firing was in pursuance of the order issued by the Taluka Executive Magistrate. Even otherwise, if the Court were to have come to the conclusion that there was no such order issued by the Executive Magistrate or the second defendant, the police personnel had no alternative but to fire under the circumstances. Therefore, the act now complained against is referable to the delegation of the sovereign power of the State and hence the plaintiffs could not have filed the suit for compensation.

6. In this appeal, the points that arise for our consideration are :

- (1) Whether the firing in which deceased B. P. Nagaraj died was justified ?
- (2) Whether the act of firing is an act of the State or, in other words, is referable to the delegation of sovereign powers of the State ?
- (3) Whether the quantum of compensation awarded is reasonable or needs interference in this appeal ?

7. The fact that Nagaraj died on account of gun-shot wound sustained in the firing resorted to on the date and at the time in question is not in controversy. The evidence of P.W. 1, Taluka Executive Magistrate, in our view, deserves due weight for the reason that all the witnesses speak about his presence at the spot though the evidence is not uniform with regard to the steps taken by him to contain this rioting. He has deposed that Exhibit P-1 was the proclamation that he issued on 14-9-1973 at 12.30 p.m. and he has also issued a certificate to that effect as per Exhibit P-2 produced and relied upon by the plaintiffs. He received information that there was looting and also there was a death on account of shooting and it was for this reason that he issued Exhibit P-1. He was also aware that one day earlier to that day, i.e., on 13-9-1973 there were disturbances in Maddur town. He is also assertive that on that day up to 11.00 a.m. there was no disturbance and he heard about the shooting from the public who were talking about it. This is how Exhibit P-1 came to be issued by him. In the cross-examination, he made it clear that this Exhibit P-1 was issued in order to prevent further disturbance. In fact, the disturbance had started at 4.00 p.m. the previous day itself. On the 14th when it became inevitable for issue of such a Notification as Exhibit P-1, he issued it. Even in the cross-examination he reaffirmed that there were no disturbances till 11.00 a.m., but disturbance did occur between 11.00 a.m. and 12.15 p.m. Though he attempted to state that in Exhibit P-1 time is stated, on looking into it, he admitted that he did not put any time in it. He also denies that the police were reporting to him about the disturbances from time to time. The plaintiffs put him in the box only to prove that when police opened fire, there was no order in force under S. 144, Cr.P.C. In fact, it could have been the duty of the defendant-State to examine its officers to tell the Court and the measures it had taken before the firing was resorted to.

The defendants were in an advantageous position inasmuch as P.W. 1 was available for cross-examination and if at all there were lawful orders for opening fire, such a suggestion could have been made to P.W. 1 in the box. The defendants were content with only suggesting to this witness that prior to the issue of Exhibit P-1, every incident was being reported to him. What is more significant is that, nowhere it was at least suggested that he was personally present when the mob was getting allegedly out of control. Therefore, from his evidence it is established satisfactorily that he was not present when the D.A.R. Police opened fire.

8. The next material witness and who could be said to be a responsible officer of the State is none else than the second defendant who gave evidence as D.W. 31. At the material time, he was the Sub-Inspector at the Maddur Police Station. On 13-9-1973, in Mandya town, Hindu - Muslim communal riot was ignited and later it spread to Maddur town as well. On the 13th and 14th, there were riotous incidents in this town and there was looting of shops. On the morning of 14th, he had deployed his men in the town for patrol duty. In Rudrakshipura, on the suburb of Maddur, a checkpoint was set fire to by the mob. Even the clothes of the civil police and D.A.R. Police that were on duty at the checkpoint were stripped and set fire to. After they reported this to him on 13th, he deployed them also on the morning of 14-9-1973 on patrol duty. He was supervising their work. Even the services of Reserve Police were requisitioned from Mandya. Right from 8.00 a.m. that morning he and his men were taking rounds in the town in two jeep vehicles. A little after 9.30 a.m. on receiving information that there was disturbance in Shivapura locality, he rushed there. When he received further information at Shivapura that disturbance had started even in Channegowdanadoddi, he rushed to that doddi and then came near B.B. Circle at Maddur by about 11.30 a.m. He then received information that the riotous mob had beaten police and had even snatched their arms. When he rushed near Vijaya Bank in the market, about 2000 persons had assembled there. Having instructed his men to keep watch over their activities, he went to the first floor of the nearby Vijaya Bank building to take a phone call to the Superintendent of Police. He could not get connection immediately. Therefore, when he was trying to contact the Superintendent of Police, he heard gun shot sound. Immediately he came down and noticed that one among the mob had fallen on the ground with gun-shot wound. People had become restless and very much agitated and were attempting to manhandle the police. He was then shifted to the hospital. He admitted in the cross-examination that when he filed his written statement, he did not instruct his Counsel that shops were looted on the 13th and 14th. For this incident none were taken to custody. He also admitted that he instructed his Counsel that he was not present when firing was done. He also did not state that he was on the first floor of the Vijaya Bank building. When his attention was drawn to the evidence of some of the witnesses for the defendants that he had ordered firing, he denied it and even asserted that they were deposing falsely. He did not get connection and could not contact the Superintendent of Police on

phone. He further admitted that neither in his statement before the Circle Inspector, perhaps during investigation into this firing incident, nor in his written statement, he has stated about the lorries having been set fire to as now stated in Court. Similarly, some of the facts relating to the preparation on the part of the agitated mob to collect stones and other material to assault police was not stated by him anywhere. It is thus evident from his evidence that though he had deployed the police force to contain rioting, he was not at the spot to take necessary steps as and when the occasion arose and though he stated in his written statement that he was elsewhere and came to the spot only on hearing about the firing, he now wants to make an improvement in the story and tell the Court that he was very much at the spot but on the first floor of the Vijaya Bank building and came down only on hearing the firing sound. At any rate, suffice it to note that it was not he who ordered to open fire.

9. In the face of the evidence of these two material witnesses, the evidence of the other witnesses on the point of either the Taluka Executive Magistrate or the second defendant issuing orders to open fire cannot be believed and they only reflect on their minds to make out a case of resorting to firing under lawful orders. For instance, D.W. 4, a Police Constable of the Maddur Police Station, swears that it was the Tahasildar who ordered firing. According to D.W. 3 Assistant Sub-Inspector, it was the second defendant who ordered. Similarly, D.W. 2 and D.W. 7 swear about the Tahasildar issuing orders and D.W. 7 even states that the second defendant also issued orders. He goes to the extent of stating that the second defendant issued orders from the first floor of the Bank building. According to D.W. 8, it was the second defendant alone who issued orders for firing. According to D.W. 14, another police party came to the spot when the mob was out of control and some among this party opened fire.

10. The trial Court having given a careful consideration to the evidence of these witnesses rightly observed in paragraph 47 of its judgment as follows :

"47..... The above discussion of the evidence goes to show that the official witnesses, namely, the civil police constables and the reserve police constables who are eye-witnesses to the incident themselves have given several different versions of the incident which are inconsistent with one another. While D.Ws. 2 and 3 say that it is the 2nd defendant who gave the orders for firing, the other witnesses, D.Ws. 4, 6, 7 and others say that the firing was done in the absence of both the Tahasildar and the 2nd defendant. As submitted by the learned Counsel for the plaintiffs, there are as many different versions of the incident as the number of eye-witnesses in the case."

At a later stage, the learned Judge has further observed that while some say that the Tahasildar and Marilingegowda were present at the spot and the Tahasildar gave orders for firing, some say that were not at all present at the spot. It is very important to note that the independent eye-witnesses examined for the defendants viz., D.Ws. 17 and 20 have not spoken about most of the allegations made in Exhibit D-1. The evidence is hopelessly contradictory. He then concluded

that there was absolutely no satisfactory evidence to prove that the situation was such that if the police had not opened fire, there was apprehension of death or grievous injury to the police men. On reappraisal of the evidence adduced in the Court below, we do not find any reason to come to a different conclusion than the one arrived at by the trial Court. As already stated earlier, the evidence of P.W. 1 and the second defendant is sufficient to come to the conclusion that either of them issued orders to open fire. Therefore, it follows that the D.A.R. Police who were armed with fire arms opened fire on their own. The plea that it was in the exercise of the right of private defence falling under S. 99 of the Indian Penal Code cannot be accepted as there are no circumstances nor any evidence to justify that such a right extended to the causing of death. We, therefore, agree with the finding of the trial Court that firing was not done under orders of either the Taluka Executive Magistrate, P.W. 1, or the second defendant.

11. In such an event, the question is whether the defence taken by the appellant that the act was referable to the delegation of sovereign power of the State is available. The trial Court has dealt on this aspect at considerable length. Before advertng to the various decisions referred to by the learned Counsel on both sides and also referred to by the trial Court, it would be useful to refer to certain statutory provisions which govern maintenance of public order and tranquillity in such a situation. Chapter X of the Cr.P.C. has laid down the procedure that is required to be followed in the dispersal of unlawful assemblies either by the use of civil force or armed force. Section 129 reads thus :

"129(1). Any Executive Magistrate or officer in charge of police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer referred to in sub-section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law."

Sections 130 to 132 relate to the use of armed forces to disperse the unlawful assembly which are not material for our purpose as the services of the armed forces were not requisitioned. Section 132 deals with protection against prosecution for acts done under the aforesaid Sections. Under sub-section (1) of Section 132, no prosecution against any person for any act purporting to be done u/s 129, 130 or 131 shall be instituted in any Criminal Court excepting with the sanction of the Central Government where such person is an officer or member of the armed forces; or with the sanction of the State Government in any other

case. Similarly, no Executive Magistrate or Police Officer acting under any of the said Sections in good faith or no person doing any act in good faith in compliance with a requisition u/s 129 or Section 130 shall be deemed to have thereby committed an offence (Section 132(2)(a) and (b)). Sub-section (3) of Section 132 defines "armed forces" to mean the military, naval and air forces operating as land forces and includes any other armed forces of the Union so operating. Suffice it to note that Section 129 is attracted in the instant case and any Executive Magistrate or officer in charge of the Police Station or, in the absence of such officer in charge, any police officer not below the rank of a Sub-Inspector may command any unlawful assembly to disperse. If such a command given under sub-section (1) is not obeyed, then such force as may be necessary may be used to disperse the assembly. Section 129 uses the word "force" in a broad sense and in order to regulate the use of such force and the manner in which it should be used, the Government of Karnataka has by its order No. HD 250 PEC 66 dated 2-3-1967 has issued a Manual called the Mysore Police Manual and now the Karnataka Police Manual. The same is issued by order and in the name of the Governor of Karnataka and it was urged for the respondents that the executive order under which the Police Manual has been issued falls under Article 166 of the Constitution of India. Article 162 relates to the extent of executive power of the State and it extends to the matters with respect to which the Legislature of the State has power to make laws. Clause 1180 of the Karnataka Police Manual has set down in detail the steps that could be taken towards the dispersal of mobs and mob firing. In our view, this is not in any way conflicting with Section 129 of the Cr.P.C. Sub-clause (2) of clause 1180 is relevant as it lays down that an unlawful assembly may be ordered to disperse by a Magistrate or an officer-in-charge of a Police Station and when so ordered, it is the duty of the members of the unlawful assembly to disperse. If they do not, force may be used to disperse them. Any Police Officer may, without warrant, arrest the members of the unlawful assembly and thus disperse the assembly. It then proceeds to lay down certain guidelines which require to be carefully remembered by the police. The police must invariably make it a point to secure the presence of a Magistrate where breach of peace necessitating the use of force is anticipated. Where an actual situation arises and a Magistrate is present at the spot, he should be in complete charge of the situation and he had in law all the necessary legal powers to order any Police Officer to assist him in handling the situation. Thus, when the Magistrate is present, the Officer in command of the police will act as ordered, but when he is alone and acting on his own authority he shall understand distinctly that no firing of any kind shall be commenced until some overt act of violence is commenced by the rioters. After the Magistrate has decided on the kind of force to be used, the officer in charge of the police is solely responsible for deciding the exact amount of force to be used, the manner of using it and the settling of the details of the operations connected with the use of the force; the Police Officer should, of course, bear in mind the principle that no more force than is necessary should be used. The Magistrate shall communicate his orders as a general rule to the Police Officer in command. All commands to the police

are to be given by the Officer in command of the party. The police are not on any account to fire except by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of fire. As soon as it becomes necessary to resort to the use of fire-arms with reference to Clause (e), the Officer in command of the party will give the order to load with ball and will bring the men to the leaning position. This will prevent the party from being rushed on while the crowd is being warned. The Officers commanding police parties will, on every occasion when employed in the suppression of a riot or enforcement of the law, ensure that the fullest warning is, if feasible, given to the mob in a clear and distinct manner before any order is given to use tear gas or lathis or firearms, and use the most effectual means to explain beforehand to the people opposed to them that, if they do not disperse within the specified period, fire with live ammunition will be opened on them. Such warning when conveyed must be capable of being heard by the riotous mob. If, after being warned, the mob refused to disperse, the order to fire may be given. If the officer in command of the party is of the opinion that it will suffice if only one or two files fire, he will give orders accordingly, specifying the files that are to fire. Under no circumstance should a warning shot be fired in the air, nor should the fire be directed over the heads of the crowd. Aim should be kept low and directed against the most threatening part of the crowd. The Police Officer below the rank of a Station House Officer has no power to disperse an assembly himself, but he may arrest any person without warrant for being a member of the unlawful assembly. Riot flags should be taken when Armed Reserve are called out in apprehension of disturbances and, before firing or any other means of dispersal is resorted to, should be hoisted before the mob in a position in which the inscriptions on them are clearly visible.

12. These are some of the salutary instructions given to the police officers and men who are called upon to control riotous mobs and to disperse them. Section 129 of the Cr.P.C. makes it amply clear that only an Executive Magistrate or Officer in charge of a Police Station or in the absence of such Officer in charge, any police officer not below the rank of a Sub-Inspector has the power to command an unlawful assembly to disperse, it is clear from these various safeguards against reckless use of force that officers with some responsibility should command use of force including one of firing to disperse an unlawful assembly. Though the second defendant swears that he was present at the spot, he has clearly stated that he never gave orders for firing. To that extent he clearly abdicated his responsibility if at all there was necessity to open fire. It may also be that when he did not order firing, circumstances did not warrant opening of fire at all. Similarly, though a large number of witnesses for the appellant have deposed about the presence of the Executive Magistrate, the Executive Magistrate himself did not issue any orders for firing perhaps for the same reason that such an extreme course was not called for under the circumstances. Therefore, the conclusion that emerges from the omission on the part of these two responsible officers to issue orders for firing is either that they

did not think it necessary that firing should be resorted to or they were not present at all to issue necessary orders for the dispersal of the unlawful assembly. In either case, it is patently clear that opening of fire only by the D.A.R. police was not in obedience of any lawful orders given by the competent police officers or the Executive Magistrate.

13. This takes us to the most material point, viz., whether this act could be considered as an "act of State" meaning thereby an "act referable to the delegation of the sovereign power of the State." The trial Court has referred to the two decisions cited on behalf of the appellant in this behalf and distinguished the facts of those cases with the facts of the instant case. The case of State of Madhya Pradesh Vs. Saheb Dattamal and Others, has a direct bearing inasmuch as that was also a case of loss of life and property as a result of police firing ordered to quell riots. As rightly observed by the trial Court, the evidence clearly showed that the District Magistrate was personally present at the spot and took decision to order firing and accordingly, firing was done by the police. However, in so doing, it was found that the police exceeded the limit in firing in another direction and also in addition to the direction in which the firing was ordered, it was held that though the men who opened fire exceeded the limit, that was in exercise of the sovereign power of the State, because the firing was ordered by the District Magistrate who had the power to order firing. Similarly, in the case of State of Madhya Pradesh Vs. Chironji Lal, , Section 30 of the Madhya Pradesh Police Act, 1961, came up for consideration before the High Court and Section 30 authorised the policemen to regulate the procession and it was held that the loss caused to the loud speaker by lathi charge resorted to by the police could not be claimed from the State.

14. In the case of Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, in which an earlier decision in the case of The State of Rajasthan Vs. Mst. Vidhyawati and Another, was referred. The Supreme Court considered at length the acts of the police officers authorised under law to seize certain property including the gold and the Head Constable who was given charge of such seized gold absconding later. The Supreme Court held that there was no vicarious liability of the State inasmuch as the very seizure was in accordance with the powers conferred on the police officers and subsequent negligence in handling of the same by some of the police officials did not take away the act out of the acts of the State. It thus follows that if the acts complained of cannot be traced to any of the delegated powers of the State, immunity from tortious act cannot be pleaded. The learned counsel for the respondents invited our attention to a later decision of the Supreme Court in the case of Rudul Sah Vs. State of Bihar and Another, . The petitioner therein was detained illegally in prison for over 14 years after his acquittal in a full-dressed trial. He filed a Habeas Corpus petition in the Supreme Court for his release from illegal detention. His detention in the prison even after his acquittal was wholly unjustified. Therefore, he contended that he was entitled to be compensated for his illegal detention. Referring to Article 21 of the Constitution the Supreme Court observed that it guarantees the right to life and

liberty and it will be denuded of its significant content if the powers of the Supreme Court were limited in 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. 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. Referring to this decision, it was contended that even in the instant case, Article 21 is violated inasmuch the reserve constables who opened fire on the mob, in which the deceased was killed, did so without any lawful orders to quell the riots by resorting to firing. While resorting to such force which was likely to take away the life of a citizen, it was the duty of the men armed with fire-arms to desist from doing so unless they were ordered by competent officers or the Magistrate. We do find sufficient force in this argument of the learned Counsel.

15. The extent of immunity of the State in respect of torts committed by its servants during the course of their duty was succinctly discussed by a Division Bench of the Bombay High Court in the case of *Union of India Vs. Sugrabai and Others*, . The learned Judges observed that it is the same as the extent to which the East India Company was immuned from liability for similar torts committed by its employees. The defendant in that case, a servant of the Union of India, while transporting a Record Sound Ranging Machine and other equipments of military truck from the military workshop to the school of Artillery, by his negligent and rash driving killed a person who was on a cycle, by dashing the truck against the cycle. It was held that the Union of India would be liable for the tort of the defendant unless it was found that the defendant while driving the truck was doing a duty in discharge of a sovereign power delegated to him. By sovereign power is meant power which cannot be lawfully exercised except by a sovereign or private individual delegated by a sovereign to exercise them. Sovereign powers are vested in the State in order that it may discharge its sovereign functions. One of the sovereign powers vested in the State is to maintain an army. Training of army personnel can be regarded as a part of the exercise of that sovereign power. The State would clearly not be liable for a tort committed by an army officer in the exercise of that sovereign power. But, it can be said that every act which is necessary for the discharge of a sovereign function and which is undertaken by the State involves an exercise of sovereign power. Many of these acts do not require to be carried out by the State through its servants. In deciding whether a particular act was done by a Government servant in discharge of a sovereign power delegated to him, the proper test is whether it was necessary for the State for the proper discharge of its sovereign

function to have the act done through its own employee rather than through a private agency. The transport of the Records Sound Ranging Machine and other equipments from the workshop to the School of Artillery was necessary for the proper training of the army personnel, but it was not necessary to transport the said equipment through a military truck driven by an employee of the defence department. The equipment could have been carried through a private carrier without any material detriment to the discharge by the State of its sovereign function of maintaining the army and training army personnel. It was found that the defendant was not exercising any delegated sovereign power of the State when he transported the equipment in a military truck. Relying on this decision, even the learned High Court Government Pleader submitted that it was the sovereign power of the State to maintain police force to quell riots. While there could be no second view that it falls within the sovereign function of the State to maintain army or to maintain police force, it is necessary to see if the act complained of is referable to the delegation of the sovereign power of the State. If only either the Taluka Executive Magistrate or the competent police officer had ordered firing and the men who acted in pursuance of that order had exceeded the limit in that behalf, such a defence could have been available. In the instant case, we find that absolutely there was not any lawful order to resort to firing in the judgment of any competent officer or Magistrate that rioting could not have been quelled without resorting to firing. If that be so and if the act cannot be referred to the delegation of such power, then the State cannot plead immunity on this ground.

16. Lastly, in the case of Challa Ramkonda Reddy and Others Vs. State of Andhra Pradesh by District Collector, Kurnool, , it was held on facts that where a citizen has been deprived of his right or liberty otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation of his right was brought about while the officials of the State were acting in discharge of the sovereign functions of the State. The suit for compensation against the State, therefore, would be maintainable. Indeed, this is the only mode in which the right to life guaranteed by Article 21 can be enforced. It may be stated here that the negligence of the prison officials in according the safety of the deceased by failing to take reasonable care required of them to protect his person in spite of specific request was actionable negligence and the State cannot plead immunity as an act of the State. In the instant case, as already referred to above, the D.A.R. police though were armed with fire-arms did not wait for lawful orders to be issued by the competent police officer. The second defendant as required of him also did not approach P.W. 1 with a request to be at the spot and to issue necessary orders if occasion arose to disperse the unlawful assembly by use of force. Though the policemen were employed by the State to quell rioting, if necessary by use of force, the very exercise of their power independently of any lawful order from the competent police officer or the Magistrate, cannot be considered as an act that protects them under the sovereign powers of the State. The trial Court, therefore, was justified in finding

that the firing was reckless and without the sanction of any lawful orders. It is also amply clear that the provisions of Section 129 of the Cr.P.C. which are the guidelines laid under the Police Manual issued by the Government were not adhered to. We, therefore, find no grounds to come to a different conclusion than the one arrived at by the trial Court.

17. At this stage, we advert to another point raised on behalf of the appellant viz., that because there was no sanction accorded to file suit against the second defendant, the suit against the State which was the first defendant in the original suit was not maintainable. We do not find ourselves in agreement with this contention raised for the simple reason that the liability of the tortfeasor and the master are joint and several. It is also not necessary that the tortfeasor must be made a party in a suit for compensation enforcing vicarious liability on the master. Therefore, if at all the plaintiffs could have proceeded against the Sub-Inspector, the second defendant as well to enforce personal liability against him only after obtaining sanction from the Government, lack of such sanction does not in any way defeat the suit of the plaintiffs against the State as the master and to enforce its vicarious liability.

18. This takes us to the quantum claimed by the plaintiffs and awarded by the trial Court. It is needless to say that the burden is on the plaintiffs to prove the various counts on which they claim the compensation. The method of calculating the compensation may not be different from the one adopted in cases coming before the Motor Accidents Claims Tribunal. The principle of awarding compensation is the same in cases of this nature. It is not disputed that the deceased was 23 years of age and unmarried. His father gave evidence as P.W. 17 and deposed that he was running a hotel and was paying Rs. 50/- to the family every day to meet the expenses. By the time he gave evidence, his two other sons out of his four sons had also started earning. But he stated that together they were sending only Rs. 25/- per month. He has produced a certificate to show that the deceased was paying sales tax. He had also purchased a wet grinder and taken licence to run the hotel. P.W. 17 stated these things only to emphasise that the hotel which was in the bazaar was doing considerable business. He is not however in a position to state what exactly were his earnings though he states that the earnings of the deceased were of the order of Rs. 500.00 per month. It cannot be made out if the deceased had maintained accounts because none are produced. After his death, as the plaintiffs could not themselves run the hotel, some one else is running the same and the plaintiffs are getting Rs. 15/- per day. In this behalf, certain useful guidelines laid down in the case of H.T. Bhandary Vs. Muniyamma, are considered by us while taking the multiplier, multiplicand and the method of calculating the compensation. The deceased had almost come of marriageable age and could have got married without much delay. Even if Rs. 50/- could be taken as the contribution of the deceased to the family, after his marriage, perhaps the deceased could not have been in a position to contribute Rs. 50/- in view of his responsibility to maintain his own family which could have increased

thereafter. Therefore, it is not possible to contend that throughout his life he could have contribute the sum of Rs. 50/- per day for the maintenance of the other members in the family. We have also kept in view the fact that two other sons of P.W. 17, father of the deceased, have also come of age. When the suit was filed in the year 1974, they were minors. Therefore, naturally one would expect of the brothers of the deceased to contribute considerably for the maintenance of the parents and the sister and, as far as their own maintenance is concerned, likelihood of they being able to maintain themselves cannot be ruled out. It would, therefore, be reasonable to hold that Rs. 30/- per day would have been the contribution of the deceased and on account of the business having been taken over by some other person and Rs. 15/- being paid every day, Rs. 15/- is the amount towards loss of dependency which could have been contributed by the deceased. It comes to Rs. 450/- per month and we take Rs. 500/- as loss of dependency per month to the plaintiffs. Thus, the loss of dependency comes to Rs. 6,000/- per year. Multiplier of 15 would be the proper multiplier keeping in view the age of the deceased. Thus, the total loss of dependency comes to Rs. 90,000/-. Adding Rs. 5,000 towards the loss to the estate and another Rs. 5,000/- on other counts which are generally awarded in cases falling under the motor accidents claims like funeral expenses etc., we find it reasonable to award total compensation of Rs. 1,00,000/-. The trial Court accepted on the face value the evidence given by P.W. 17 that Rs. 50/- per day was the contribution by the deceased. In our view, such an approach was not reasonable. Accordingly, we find that Rs. 1,00,000/- with interest at 6% per annum would be the proper and reasonable compensation.

19. The cross-examination filed by the respondent are not pressed for the reason that the second defendant-eighth respondent was deleted at the instance of the appellant and as there is no second defendant as a party respondent, we reject the cross-examination as not pressed.

20. For the reasons aforesaid, we allow the appeal partly and confirm the finding of the Court-below that the plaintiffs-respondents-2 to 7 are entitled to compensation for the death of deceased Nagaraj. However, modifying the decree of the Court-below, we direct that respondents 2 to 7 are entitled to total compensation of Rs. 1,00,000/- with interest at 6% per annum from the date of the decree of the trial Court till the date of payment and Rs. 10,000/- already paid by the appellant in pursuance of the order of this Court and admitted as having been received by the respondents shall be adjusted towards the compensation now awarded. We direct that the remaining compensation shall be paid by the appellant within three months from the date of the decree of this Court. Respondents shall pay Court-fee on the decretal amount and they are also entitled to proportionate costs from the appellant.

21. Appeal partly allowed.