

(2011) 12 MAD CK 0192

In the Madras High Court

Case No : Writ Petition (MD) . No. 24596 of 2011 and M.P. (MD) No's. 1 and 2 of 2011, W.P. (MD) . No. 11717 of 2011 and M.P. (MD) No. 1 of 2011, W.P. (MD) . No. 21974 of 2011, W.P. (MD) . No. 14277 of 2011, W.P. (MD) . No. 12955 of 2011, W.P. (MD) . No. 13701 of 2

Thol. Thiruma Valavan and Others etc.

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 5(4), 5(9)
Constitution of India, 1950 — Article 14, 19, 19(1), 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 129, 144, 161, 161(3), 174
Penal Code, 1860 (IPC) — Section 147, 148, 149, 153(A), 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 — Rule 12(4)

Citation : (2011) 12 MAD CK 0192

Hon'ble Judges : M. Venugopal, J;K.N. Basha, J

Bench : Division Bench

Advocate : R. Sankarasubbu in W.P. MD. No. 24596/2011, Mr. N.G.R. Prasad for M/s. Shaji Chellan in W.P. MD. No. 11717/2011, Mr. M. Radhakrishnan in W.P. MD. No. 21974 of 2011, No appearance in W.P. MD. No. 14277 of 2011, Mr. P. Muthusamy in W.P. MD. No. 12955/2011, Mr. T. Lajapathi Roy for Mr. R. Rajesh Kumar in W.P. MD. No. 13701/2011, Mr. Prabhu Rajadurai in W.P. MD. No. 13735/2011, Mr. V.M. Selvaraj in W.P. MD. No. 14164/2011, Mr. K. Kannan in W.P. MD. No. 11164/2011, Mrs. A. Rajini in W.P. MD. No. 10493/2011 and Mr. P. Rathinam in W.P. MD. No. 10492/2011, for the Appellant; A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R3 and R4, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2, Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R5 and Mr. R. Singaravelan and Mr. G.R. Swaminathan for R6 and R7 in W.P. (MD). No. 24596/2011, Mr. E.T. Rajendran, Sr. Central Govt. Standing Counsel for R1, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran,

Spl. Govt. Pleader, Mr. V. Jayaprakash Narayana, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R2, R5 to R8, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R4 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R3 in W.P. (MD). No. 11717/2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayana, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1 and R2, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishnan, Govt. Advocate for R3, Mr. N.A. Ravindran for R4, Mr. R. Singaravelan for R5 to R8, R10 and R11, Mr. G. Sankaran for R9 Mr. Purushothaman for M/s. S.K. Patturaj for R12 and Mr. C.K. Chandrasekaran, for R3 to R19 in W.P. (MD). No. 21974 of 2011, Mr. S. Balasubramanian for CGSC for R1, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R2, R5 and R8, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna for R4 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for R3 in W.P. (MD). No. 14277 of 2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayana, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R3 to R8, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishnan for R2 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R9 in W.P. (MD). No. 12955/2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1 and R5, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R3 and R4 in W.P. (MD). No. 13701/2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R4 to R7, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R3 in W.P. (MD). No. 13735/2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R3 to R9, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2 and Mr. Rozario Sundarraj, Spl. Public Prosecutor for CBI for R10 in W.P. (MD). No. 14164/2011, Mr. S. Arunkumar, CGSC for R1, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R2 and R4, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishnan, Govt. Advocate for R3 and Mr. R. Singaravelan and Mr. G.R. Swami Nathan for R5 to R10 in W.P. (MD). No. 11164/2011, Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt.

Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R3 to R8, R10 and R11, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2 Mr. R. Singaravelan, G.R. Swami Nathan for R9 and Mr. Rozario Sundarraj for CBI for R12 in W.P. (MD). No. 10493/2011 and Mr. A. Navaneethakrishnan, Advocate General, assisted by Mr. K. Chellapandian, Additional Advocate General, Mr. S. Venkatesh, Govt. Pleader, Mr. K. Mahendran, Spl. Govt. Pleader, Mr. V. Jayaprakash Narayanan, Additional Govt. Pleader and Mr. R. Anandharaj, Govt. Advocate for R1, R3 to R9, Mr. I. Subramaniam, Public Prosecutor assisted by Mr. K.P. Ananthakrishna, Govt. Advocate for R2 and Mr. Rozario Sundarraj for CBI for R10 in W.P. (MD). No. 10492/2011 in W.P. (MD). No. 10492/2011, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Basha, J.—All the above writ petitions except W.P(MD). No. 21974/2011 arising out of an incident taken place on 11.09.2011 at Paramakudi Town resulting in the death of 6 persons and injuries to several persons including police officials and as such, all the writ petitions are taken up together for hearing and passing this common order. W.P(MD). No. 21974/2011 is arising out of an incident said to have taken place on 10.09.2011 resulting in the death of one Palanikumar at 00.45 hours at Mandalamanickam Police Station limits and the writ petitioner sought for the relief of Mandamus directing the respondents 1 to 3 to suspend the respondents 4 to 11, who are the District Collector and the police officials. The entire sequence of events resulting in the opening of fire by police officials causing the death of 6 persons and injuries to several persons including police officials took place on the day of paying homage to the memorial of Martyr Immanuel Sekaran, who has fought for the oppressed sections of the community and called as a social revolutionist. He was done to death on the fateful date i.e., on 11.09.1957 while he was returning after giving a speech in the patriotic poet Bharathi's festival. The Government of India also conferred him the title as "Socialist Revolutionary for Social Justice" and a postage stamp was also released by the Government of India for the memory of Immanuel Sekaran.

2. Poet Bharathiyar, popularly known as a revolutionary poet, who has actively participated in the freedom struggle of our country. Immanuel Sekaran was done to death only after giving a speech in the revolutionary poet Bharathiyar's festival. It is worthwhile to remember the simple song penned by the revolutionary poet Bharathi in order to discourage caste discrimination. He wrote a song to the loving children as hereunder,

To mean that there cannot be any discrimination in the name of caste or creed. So saying is a sin to the humanity. It is also apt to quote the father of our nation Mahatma Gandhiji who said,

Let us forget all thoughts of, I am a Hindu, you a Muslim or I am a Gujarati, you

a Madrasi, let us think, I and mine in a common Indian nationality, we shall be free only when a large number of our people are determined to swim or sink together.

The dreams and desires of such great people like Bharathi and Mahatma Gandhiji are yet to be fulfilled.

3. Factual Scenario: The sequence of events right from the month of August 2011 resulting in the unfortunate incident of firing at Paramakudi on 11.09.2011 emerged from the materials placed before this Court are to be narrated hereunder:

3.1. The Deputy Superintendent of Police, Paramakudi Sub-Division issued a notification dated 21.08.2011 as per the provision under Rule 30(2) of Police Act, 1861, stating that it was reliably learnt that political processions, demonstrations, strikes and other form of protests are being contemplated to express grievances. It was further stated that he was knowing that such gathering in the form of meetings, dharnas, road rokos, processions, demonstrations, strikes or any other form of protests used to express grievances will result in breach of public peace and order. It is stated that he is empowered to regulate any public meeting, dharna, road roko, procession, demonstration, strike or any other form of protest etc., in the limits of Paramakudi Sub Division. It is further stated in the notification that if there is any essentiality for conducting any protests the organizers should apply to him for license, at least 48 hours prior to the proposed procession, meeting etc., and it is stated that the said order will be in force with effect from 21.08.2011 to 19.09.2011.

3.2. On 09/10-09-2011 night at about 00.45 hours while a Dalit youth Palanikumar of Pachery village was returning to home after witnessing a drama of Veerapandiya Kattabomman nearby Muthuramalingam Puthur village, members of rival group consisting 10 unidentifiable people waylaid him and attacked him and caused his death on being provoked by offending remarks on the wall against Muthuramalinga Thevar. A case was registered in Crime No. 33/2011 on the basis of the complaint given by one Thangavel, father of the said Palanikumar for the offences under Sections 147, 148, 341, 302 IPC r/w. 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. One Arumugan, son of Nallamuthu, Mandalamanickam village and four others belonging to Thevar community were arrested. Following the murder of the above said Dalit youth Palanikumar, tension was prevailing in and around Kamudhi, a day before the 54th death anniversary of Immaneul Sekaran on 11.09.2011 and large number of people belonging to various Dalit organisations were expected to arrive at Paramakudi to pay homage in the Immanuel Sekaran Guru pooja.

3.3. One Mr. John Pandian, President of "Thamizhaga Makkal Munnetra Kazhagam" was planning to visit Pachery in Mandalamanickam Village and Paramakudi on 11.09.2011 to condole the death of the Dalit youth Palanikumar

and to pay homage at the memorial of Immanuel Sekaran. As there was a probable clash between two rival groups and likelihood of breach of peace and law and order in and around the district, the police bandobust was tightened. In order to prevent breach of peace and maintain public order, the District Collector, Ramanathapuram issued proceedings u/s 144 of the Code of Criminal Procedure ordering Mr. John Pandian not to enter Ramanathapuram District on 11.09.2011. Thereafter on the same day i.e., on 11.09.2011, the said John Pandian was arrested.

3.4. In anticipation of breach of peace and law and order problem, a team of police officials deployed for bandobust for the whole of Ramanathapuram District, including the Superintendent of Police, Ramanathapuram District and Dr. Senthil Velan, IPS, Deputy Commissioner of Police, Adyar, who was having experience of bandobust duties for the past 5 years continuously during Immanuel Sekaran memorial day at Paramakudi and Thevar Guru Pooja at Pasumpon was also posted in-charge of the 5 Point Junction Sector, Paramakudi, which is a vulnerable place on the point of Law and Order, as per the counter affidavit filed by the Superintendent of Police, Ramanathapuram District. The Executive Magistrate/Tahsildar, Paramakudi was also available at the time of bandobust.

3.5. On 11.09.2011 persons belonging to Dalit community started demonstrations by conducting road roko at 5 Point Junction Sector, Paramakudi. The petitioners claim that the demonstrators are unarmed and they were conducting peaceful demonstrations by conducting road roko. On the other hand, police officials claim that a mob of more than 1000 persons gathered at about 11.45 hours and the alleged unruly mob started attacking the police officials violently. The Deputy Superintendent of Police, Paramakudi, Tr. A. Ganesan was attacked and he sustained injuries. The Executive Magistrate, Paramakudi, who was present at the spot, declared the unruly mob as an unlawful assembly and also ordered the police to clear the mob using tear gas shells. It is also alleged by the police that the said mob attacked the police with stones, sticks, petrol bombs and caused damage to the vehicles. The Vajra vehicle which was put into use was set fire by the members of the unlawful assembly. The fire service vehicle was also set on fire while trying to approach the riot site. The petitioners allege that persons indulged in peaceful demonstrations have been unnecessarily attacked by police and on the other hand, police allege that the persons forming unlawful assembly caused threat to the life and property of the public and police officials and the alleged mob became more aggressive and indulged in widespread arson.

3.6. Thereafter, the Executive Magistrate & Tahsildar, Paramakudi issued written orders to the Inspector of Police, Paramakudi Town at 12.30 noon on 11.09.2011 to disperse the alleged unruly mob by opening fire. During the course of firing, 6 persons died, namely, Ganesan, Panneerselvam, Jayabal, Theerpukanny, Muthukumar and Vellaisamy. Out of 6 deceased persons, 4 persons died due to bullet injuries and 2 persons said to have been died due to other injuries. 33

persons were also injured in the alleged incident and all of them belonging to Dalit community. It is claimed by the police officials that totally 104 police personnel including Mr.Sandeep Mittal IPS, DIG, Ramnad and Dr.Senthil Velan IPS, Deputy Commissioner of Police, Adyar, Chennai sustained grievous injuries. Among them, one Women Sub-Inspector and Women Police Constable sustained grievous injuries. All the injured persons have been sent for treatment. All the above said events took place from 11.00 a.m to 04.30 p.m on 11.09.2011. A case was registered in Crime No. 300/2011 on the basis of the complaint preferred by Mr. Sivakumar, Inspector of Police, Paramakudi Town Police Station, for the offences under Sections 147, 148, 149, 427, 435, 324, 332, 307 IPC and Sections 3 and 4 of TNPPDL Act and u/s 174 Cr.P.C. The said F.I.R was registered at 05.00 p.m on 11.09.2011.

3.7. On 13.09.2011, the Government of Tamil Nadu issued a notification in G.O.Ms. No. 845, Public (Law and Order-F) appointing a Commission of Inquiry under the Hon"ble Mr. Justice K. Sampath, retired High Court Judge. The terms of reference of the Commission of Inquiry are as follows:

- (i) To inquire into the causes and circumstances leading to the opening of fire resulting in death and injuries to many people on 11th September 2011 at Paramakudi in Ramanathapuram District and the subsequent law and order disturbances including large scale damages to public and private properties;
- (ii) To ascertain whether appropriate force was used as warranted by the circumstances and whether all prescribed formalities were observed before opening of fire;
- (iii) To ascertain whether there was any excess on the part of Police Officials and if so, to suggest the action to be taken;
- (iv) To recommend suitable measures to prevent the recurrence of such incidents in future.

The Commission of Inquiry has to complete its inquiry and submit its report to the Government within a period of two months from the date of publication of the notification.

3.8. Thol. Thiruma Valavan, the petitioner in W.P(MD). No. 24596/2011 sent a letter to the Governor of Tamil Nadu on 14.09.2011 for recommending CBI enquiry and other reliefs in respect of the incident took place on 11.09.2011. It is stated by the Investigating Officer in Crime No. 300/2011 that 20 petitions/complaints were received by the Deputy Superintendent of Police and Inspector of Police, Paramakudi Town on various dates through post. The copies of the said complaints also produced before this Court. It is seen that one such complaint was preferred by the National Secretary, "Indhiya Kudiয়ারasu Katchi" dated 09.10.2011 containing general allegations against police officials and allegations against the Hon"ble Chief Minister alleging that only the Hon"ble Chief Minister has instigated and ordered police firing on 11.09.2011 and sought for the relief

of registering a case u/s 302 IPC against the Hon''ble Chief Minister of Tamil Nadu. The other complaints were given by the injured persons and the relatives of the 6 deceased persons. The following are the details of the complaint :

(1) Complaint dated 24.09.2011 given by Mr.Yogaraj, S/o. Sivanadiyan, given to the Inspector of Police (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries due to police firing on 11.09.2011.

(2) Complaint dated 04.10.2011 given by Mr.Rajkumar, S/o. Thavamani, given to the Inspector of Police (Law and Order), Paramakudi Town Police Station, alleging that he has sustained injuries at the hands of the police officials on 11.09.2011.

(3) Complaint dated 29.09.2011 given by Mr.Yeshu, S/o. Yoseph, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of 20 police officials on 11.09.2011.

(4) Complaint dated 26.09.2011 given by Mr.Gunasekaran, son of the deceased Ganesan, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that his father Ganesan has sustained bullet injuries due to police firing and died.

(5) Complaint dated 01.10.2011 given by Mr.Dharmaraj, S/o. Muthu, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained grievous injuries at the hands of 20 police officials on 11.09.2011.

(6) Complaint dated 26.09.2011 given by Mr.Arumughasamy, S/o.Ammachi, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained grievous injuries at the hands of police officials on 11.09.2011.

(7) Complaint dated 01.10.2011 given by Pandeewari, wife of the deceased Muthukumar, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that her husband Muthukumar sustained bullet injuries on 11.09.2011 and died in the incident.

(8) Complaint dated 29.09.2011 given by Mr.Senthilmurugan, S/o. Duraisamy, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of police officials on 11.09.2011.

(9) Complaint dated 29.09.2011 given by Mr. Pandi, father of the deceased Jayabal, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that his son Jayabal had sustained bullet injuries at the hands of police officials on 11.09.2011 and died.

(10) Complaint dated 01.10.2011 given by one Sironmani, wife of the deceased Paneer Selvam, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that her husband Paneer Selvam sustained bullet

injuries on 11.09.2011 and died due to firing by the police officials.

(11) Complaint dated 01.10.2011 given by Mr. Pandi, S/o. Veerabathran, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained injuries at the hands of police officials.

(12) Complaint dated 30.09.2011 given by Mr. Senthilkumar, S/o. Nagu, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained injuries at the hands of 6 police officials on 11.09.2011.

(13) Complaint dated 01.10.2011 given by Mr. Balakrishnan, S/o. Ramar, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of one police official, namely, Gajendran on 11.09.2011.

(14) Complaint dated 01.10.2011 given by Mr. Velu, father of the deceased Theerpukanny, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that his son Theerpukanny had sustained bullet injuries on 11.09.2011 and died.

(15) Complaint dated 26.09.2011 given by Mr. Thanikodi, S/o. Muthukarruppan, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained injuries at the hands of police officials on 11.09.2011.

(16) Complaint dated 29.09.2011 given by Mr. Sathuragiri, S/o. Mahalingam, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of police officials on 11.09.2011.

(17) Complaint dated 27.09.2011 given by the Arumugam, wife of the deceased Vellaisamy, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that her son Vellaisamy died to the lathi charge of the police officials on 11.09.2011.

(18) Complaint dated 26.09.2011 given by Mr. Pandi, S/o. Kaalimuthu, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of police officials on 11.09.2011.

(19) Complaint dated 30.09.2011 given by Mr. Marimuthu, S/o. Chandran, given to the Inspector of Police, (Law and Order), Paramakudi Town Police Station, alleging that he has sustained bullet injuries at the hands of police officials on 11.09.2011.

All the above complaints have been sent through registered post. The said complaints consists general allegations against police officials except in one complaint where the name of the Inspector was specifically mentioned as Gajendran. Even the contents of the above said complaints are verbatim similar

to each other. The fact remains that none of them approached the police in person. It is stated by the investigating officer in his affidavit that the said complaints have been received after registration of the case in Crime No. 300/2011 in respect of the very same occurrence and as such, they may not constitute an information to register a fresh F.I.R and they are taken to be the statements recorded u/s 161 of the Criminal Procedure Code.

3.9. The petitioners in the above writ petitions claim that the police firing is unwarranted as the persons assembled at the 5 Point Junction Sector only indulged in peaceful demonstration and they are unarmed and on the other hand, police officials claim that the unruly mob indulged in violent actions causing serious threat to the life and property of the public and police officials by causing injuries to 104 police persons including two women police and also setting fire to the police vehicles, ambulances, Vajra vehicle, fire service vehicle etc., which necessitated police firing and that too, as per the written order of the Executive Magistrate namely the Tahsildar, Paramakudi.

3.10. The arguments of both sides have been based on the above said allegations and counter allegations.

4. Contentions put forward by the learned counsel for the writ petitioners:

4.1. Mr. R. Sankarasubbu, learned counsel appearing for the petitioner in W.P(MD). No. 24596/2011 contended that police firing is unwarranted and the same resulted in the death of 6 innocent persons of Dalit community. The aggrieved family members of the deceased persons lodged complaints against police officials in respect of the unfortunate incident took place on 11.09.2011. The learned counsel also produced the photographs obtained from Sathyam TV to substantiate his contention to the effect that police officials unnecessarily and deliberately indulged in police firing. It is contended that 2 of the 6 persons died only due to police torture and attack. The learned counsel for the petitioner submitted that the petitioner is the Member of Parliament, a practicing advocate and the President of a political party, namely, "Viduthalai Siruthaigal Iyakkam". It is further contended that Dalit people are suppressed and oppressed and they have been subjected to untold hardship and humiliation.

4.2. The learned counsel for the petitioner contended that due to the arrest of Mr. John Pandian, peaceful demonstration was conducted on 5 Point Junction Sector at Paramakudi Town and all of them were unarmed and in spite of the same, police officials indulged in attacking them and firing them. It is further contended that Mr. John Pandian was also permitted to pay homage to Immanuel Sekaran at 3.00 p.m, but he was arrested without any reason at Valanaadu. It is also contended that the rights conferred to the citizens under Article 19(1)(a), 19(1)(b), 19(1)(c) of the Constitution of India are infringed by the act of the police officials. The directions given by the National Human Rights Commission to the Chief Ministers of all the States was also not followed and the same are violated in respect of the incident took place on 11.09.2011. It is contended that

the Government has not chosen to file any counter and only the DGP has filed the counter. It is further contended that even in the said counter not a whisper made against any illegal act on the part of the deceased persons and as such, the deceased have not committed any offence and they are innocent persons and they are unnecessarily attacked by police officials. It is contended that innocent persons have been arrested and at the time of arrest, the police officials have not followed the guidelines stipulated by the Hon''ble Apex Court in D.K. Basu Vs. State of West Bengal, The learned counsel for the petitioner, would also place reliance on the following decisions, in support of his contentions:

- (1) K.G. Kannabiran Vs. Chief Secretary, Govt. of A.P. and Others,
- (2) R.S. Sodhi v. State of Uttar Pradesh reported in 1994 SCC (Cri.) 248
- (3) Rubabbuddin Sheikh v. State of Gujarat and Others reported in (2010) 2 SCC (Cri.) 1006
- (4) The State of Maharashtra v. Farook Mohammed Kasim Mapkar and Ors. reported in 2010 (6) Supreme 95
- (5) Prithipal Singh etc. v. State of Punjab & Anr. reported in 2011 (7) Supreme 396
- (6) The State of Andhra Pradesh Vs. N. Venugopal and Others,
- (7) D.K. Basu Vs. State of West Bengal,

4.3. It is contended that though the Government has appointed a Commission of Inquiry under the Hon''ble Thiru Justice K. Sampath, the public has not reposed any confidence on such Commission. It is further contended that the case in respect of the incident took place on 11.09.2011 was registered for various offences only u/s 174 Cr.P.C in Crime No. 300/2011 and no case was registered for offence u/s 302 IPC. The learned counsel for the petitioner by placing reliance on the postmortem report of the two deceased persons, namely, Vellaisamy and Theerpukanny would contend that the said persons have been done to death only by police torture. Therefore, it is contended that a direction may be given to register a case u/s 302 IPC and direct the CBI to conduct investigation in accordance with law.

4.4. Mr. N.G.R. Prasad, learned counsel appearing for the petitioner in W.P(MD). No. 11717/2011 highlighted the popularity and sacrifice of late Immanuel Sekaran and the importance of paying homage every year on 11th September. It is contended that large number of police officials are placed, more than what is required. It is further contended that persons assembled only to conduct peaceful demonstration and inspite of the same, police indulged in opening fire without any prewarning resulting in the death of 6 innocent persons and 32 persons sustaining injuries. It is also contended that Dalits are having Fundamental Right of Freedom of Speech and Expression and to assemble peacefully without arms under Article 19(1) of the Constitution of India. It is

contended that the said peaceful demonstrators have been fired mercilessly without any provocation. It is further contended that though a retired High Court Judge has been appointed to give opinion in respect of the incident taken place on 11.09.2011, the investigation should be conducted in a fair and unbiased manner and as such, CBI enquiry is very much essential. The learned counsel for the petitioner, in support of his contentions, would place reliance on the following decisions:

(1) Nirmal Singh Kahlon Vs. State of Punjab and Others,

(2) State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others,

4.5. Mr. Prabhu Rajadurai, learned counsel appearing for the petitioners in W.P(MD). Nos. 13735 & 13701/2011 contended that the petitioner in W.P(MD). No. 13735/2011 is an advocate and he is the President of the Paramakudi Bar Association and he has come forward with this writ petition as a Public Interest Litigation. It is contended that though more than 200 persons protested and conducted demonstration in a peaceful manner, they have been targeted by the police officials. It is further contended that none of them were armed with weapons and they only raised slogans, but suddenly lathi charge was made and ultimately, police officials opened fire resulting in the death of 6 innocent persons and causing injuries to several persons. It is also contended that a fair investigation is to be conducted by CBI in view of the allegations made against local police. The learned counsel for the petitioner would place reliance on an unreported decision of the Bombay High Court dated 17.03.2009 in Gajanan P. Lasure v. Police Head Quarters, to contend that all the police officials are liable to be suspended, pending investigation in this case.

4.6. Mrs. Rajini, learned counsel appearing for the petitioner in W.P(MD). No. 10493/2011 contended that the injured persons should be compensated adequately. It is contended that due to fear of police officials, the witnesses are frightened to give evidence or statements and as such, protection to the said witnesses are very much essential. It is further contended that compensation amount should be increased in proportionate to the nature of injury sustained by the injured persons.

4.7. Mr. P. Rathinam, learned counsel appearing for the petitioner in W.P. No. 10492/2011 contended that even CBI enquiry is not sufficient to ensure fair investigation in this case. It is contended that a Special Investigation Team (SIT) should be formed under the supervision of eminent and honest persons who retired from the CBI. It is contended that the incident which took place on 11.09.2011 is an outcome of conspiracy. It is further contended that innocent persons have been attacked only due to castism. The learned counsel for the petitioner would place reliance on a decision of the Hon''ble Apex Court in Punjab and Haryana High Court Bar Association, Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others,

4.8. Mr. M. Radhakrishnan, learned counsel appearing for the petitioner in W.P(MD). No. 21974/2011 mainly contended that the police officials, namely, respondents 4 to 11 in the said writ petition are to be suspended on the basis of the decision rendered by the Hon"ble Supreme Court in Arumugam Servai Vs. State of Tamil Nadu, It is contended that the Government has not filed any counter and on the other hand, a counter was filed only by the DGP and the DGP has not denied the specific averments contained in the writ petition.

5. Contentions put forward by the learned Advocate General, learned Public Prosecutor and other learned counsels appearing for the police officials :

5.1. Mr. A. Navaneethakrishnan, learned Advocate General contended that it is very unfortunate that an unpleasant incident had taken place on 11.09.2011 at 5 Point Junction Sector at Paramakudi Town. It is submitted that in the said incident 6 persons died and 34 persons of the public injured and 104 police officials sustained injuries including grievous injuries. It is contended that public and Government vehicles, fire service vehicles, ambulances and Vajra vehicle were damaged by the unruly mob. It is submitted that the incident ought not to have taken place, but had taken place unfortunately. It is categorically submitted by the learned Advocate General that in view of two versions one from the petitioners and another from the police officials, the Government wants to be neutral in this matter and as such, the Government has not come forward with any separate counter affidavit. It is further submitted that the Government immediately appointed an Inquiry Commission under the head of Hon"ble Mr. Justice K. Sampath, former Judge of the Madras High Court on 13.09.2011 itself. It is contended that the said Commission would go into the cause of opening fire in the alleged incident taken place on 11.09.2011. It is submitted that the Government will take effective and prompt action on the basis of the outcome of the Inquiry Commission's report.

5.2. The learned Advocate General also pointed out that out of 11 writ petitions, none of the aggrieved persons have come forward with any petition and all the writ petitions are filed in the nature of Public Interest Litigation. It is contended that the petitioners have not made out prima facie case to transfer the investigation to CBI. It is further contended that affidavits have been filed in these writ petitions not on the basis of personal knowledge of the petitioners. The learned Advocate General pointed out that the compensation amount of Rs. 1 lakh was granted immediately and subsequently, Rs. 4 lakhs was granted to each of the victim's family and the Government also taken a decision to provide employment opportunities to one of the family member to each deceased family. It is further submitted that the Government also taken effective steps to give treatment to the injured persons in specialised hospitals. Therefore, it is submitted that the Government is taking all necessary action in order to protect the victims family members and as well as ensured fair investigation.

5.3. The learned Advocate General contended that the letter of the National Human Rights Commission is not applicable to the facts of the instant case as the

said letter only relates to cases of encounters. It is further contended that several police officials sustained grievous injuries. It is also contended that the decision of the Hon''ble Supreme Court in Arumugam Servai Vs. State of Tamil Nadu, is not applicable to the facts of the instant case. It is contended that in this case, after the incident said to have taken place on 09-10/09/2011, causing the death of one Palanikumar, immediate action was taken by the police and five persons have been arrested on the basis of the case registered in Crime No. 33/2011. It is further contended that investigation in the said case is going on and there is absolutely no lapse on the part of police officials. It is pointed out by the learned Advocate General that even in the decision relied by Mr. Prabhu Rajadurai, learned counsel who appeared for the writ petitioners in W.P. Nos. 13735 & 13701/2011, the Bombay High Court rendered its decision only on the basis of the report of the Inquiry Commission making specific allegations against police officials and as such, the said decision is not helpful to substantiate the contention of the petitioners. It is contended that the State police is competent and taking action in accordance with law by conducting fair investigation. The learned Advocate General strenuously objected that the statements of the Hon''ble Chief Minister cannot be made use of by the petitioners, as the said statement was made on the floor of the assembly only on the basis of the materials available at that time. Therefore, it is submitted that the bonafide of the Government cannot be doubted as the Government is also neutral and the Government is not discriminating any particular community.

5.4. Mr. I. Subramaniam, learned Public Prosecutor contended that the decision relied by the learned counsel for the petitioners would be applicable only to encounter cases, but as far as the case on hand is concerned, police officials resorted to use fire only with the object of dispersing a riot. It is submitted that it is to be decided on the basis of the materials available on record as to under what exigencies police was constrained to open fire. It is contended that inspite of all precautionary measures taken by the police, the unruly mob indulged in violent acts causing damage to Government vehicles including fire service vehicles, ambulances and Vajra and there was pelting of stones and throwing of petrol bombs and causing injuries to 104 police officials including women police, which necessitated the police officials to resort to firing and that too, after the orders passed by the Executive Magistrate. The learned Public Prosecutor also submitted the list of vehicles damaged by setting fire which is incorporated as hereunder:

S.No

Vehicle No.

Type of Vehicle

Department

Burnt/ Damaged

1

TN 66 G 0396

Fire Service Van

Fire Service

Burnt

2

TN 66 G 0554

Ambulance Van

GH,Paramakudi

Damaged

3

TN 45 G 0602

Eachier

Police

-do-

Five Point Junction

S.No

Vehicle No.

Type of Vehicle

Department

Burnt/ Damaged

1

TN 69 G 0337

Riot Control Vehicle

Police

Burnt

2

TN 72 G 0611

Mahindra Van

Police

Damaged

3

TN 72 G 0389

SwarajaMazda

Police

-do

4

TN 65 G 0486

Sumo

Police

-do

5

TN 46 G 0156

Bolero

Police

-do-

Madurai Road

S.No

Vehicle No.

Type of Vehicle

Department

Burnt/ Damaged

1

TMR 6907

Jeep

Health Department

Burnt

2

TN 01 G 1517

Trax

"

Burnt

3

TN 72 G 0532

Ambassador Car

"

Burnt

4

TN 01 G 1325

Ambassador van

"

Burnt

5

TN 65 G 01018

Ambulance Van

"

Burnt

6

TN 74 G 0214

Tempo

Police

Damaged

7

TN 65 G 0591

Motor Cycle

Police

Damaged

8

TN 27 L 5577

College Bus

Private

Damaged

9

TN 65 G 0433

Sumo

Police

Damaged

10

TN 65 G 0407

Sumo

Police

-do-

Mudukulathur Road

S.No

Vehicle No.

Type of Vehicle

Department

Burnt/ Damaged

1

TN 57 G 0349

RecoveryVan

Police

Burnt

2

TN 65 G 0349

Ambulance van

GH. Mudukulathur

Damaged

3

Chasis No. 06 MA GF06911

Hero Honda

Private

Burnt

4

Chasis No. 7801 F953704

Suzuki Motor Cycle

-do-

Burnt

5

TN 63 J 0217

Hero Honda Pleasure

Private (WSITmt.Amudha)

Damaged

5.5. The learned Public Prosecutor placed reliance on the provision under 703 of the Police Standing Order for dispersal of unlawful assembly. It is contended that even as per 703 of the Police Standing Order, police draws its authority to declare and disperse unlawful assemblies from the provision u/s 129 of the Code of Criminal Procedure. It is contended that police resorted to use force only due to the riot and the unruly mob not only set fire to the vehicles including brand new fire engine, but also caused injuries to the police officials, as many of them sustained grievous injuries. The learned Public Prosecutor submitted that police officials have nothing to do with any community and they have no previous motive against any individual person or against any particular community. It is further submitted that police resorted to firing only with a view to protect the lives of people and public property and they have no personal animosity between the members of any particular community. It is also submitted that the 7th respondent, namely, Superintendent of Police, Ramanathapuram, has filed an elaborate counter affidavit highlighting the background under which police resorted to firing.

5.6. The learned Public Prosecutor contended that instant case is not a case of encounter and the guidelines issued by the National Human Rights Commission as relied by the learned counsel for the petitioner is in relation to police encounters and not to the present case wherein police used force only to disperse unruly mob who have indulged in violence. It is submitted that the decision relied by the learned counsel for the petitioners are not applicable to the factual matrix of the present case. The learned Public Prosecutor placed reliance on a Division Bench decision of this Court in State of Tamil Nadu v. S. Sivagami

reported in 2006 (3) CTC 689 for highlighting the scope of Madras Police Standing Order 703. It is further contended that a Commission of Inquiry was appointed by the Government of Tamil Nadu under Hon"ble Mr. Justice K. Sampath and the Commission has fixed the date of hearing on 21st to 23rd of December 2011 and after its submission of report, suitable action would be taken by the Government. Lastly, the learned Public Prosecutor submitted that there is no need for transferring the investigation to CBI as there is no prima facie case made out by the petitioners and the State police is investigating into the matter in a fair manner.

5.7. Mrs. S. Srimathy, learned counsel appearing for the 4th respondent / District Collector, Ramanathapuram in W.P(MD). No. 21974/2011 contended that effective preventive measures were taken by issuing prohibitory order against Mr.John Pandian from entering into the Ramanathapuram district on 11.09.2011. It is contended that the 4th respondent convened a District Vigilance Committee Meeting on 21.07.2011. It is further submitted that on information about the unfortunate murder of the Dalit youth Palanikumar, the 4th respondent had taken immediate steps directing the police to register the F.I.R under relevant provisions of the Indian Penal Code and under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and five accused persons were arrested and remanded to judicial custody and a sum of Rs. 75,000/- was sanctioned by the 4th respondent as provided under 12(4) of the SC & ST (Prevention of Atrocities) Rules, 1995 and the amount was disbursed to the bereaved family on the very same day. It is further contended that the 4th respondent has no role to play in respect of the incident taken place on 11.09.2011. The learned counsel also submitted that in view of the Commission of Inquiry appointed by the Government of Tamil Nadu and pending such inquiry, question of suspending all the officials is not warranted.

5.8. Mr. R. Singaravelan and Mr. G.R. Swami Nathan, learned counsels appearing for the respondents 5 to 8, 10 & 11 in W.P(MD). No. 21974/2011 and for the respondents 6 and 7 in W.P(MD). No. 24596/2011 contended that there is no ground made out for suspending the officials. It is contended that whether police officials have acted bonafidely or not will be decided only by the Commission of Inquiry. The learned counsel further contended that the respondents 4 to 8 belong to All India Service and only the Central Administrative Tribunal has original jurisdiction to deal with the service conditions and as such, the writ petitions are not maintainable. It is also contended that only the aggrieved person is entitled to seek the relief of transfer of investigation. It is pointed out that the police officials, namely, Dr.Senthil Velan IPS, Deputy Commissioner of Police, Adyar, Chennai and others also sustained grievous injuries in the alleged incident taken place on 11.09.2011 and such being the position, it cannot be contended that they have used force by opening fire unnecessarily. It is contended that the petitioner, being a lawyer, before filing the Public Interest Litigation should have collected the facts and circumstances leading to the firing on 11.09.2011 and disclose all the facts in the affidavit. It is submitted that

unwarranted allegations were made against the respondents 4 to 11, projecting wrong picture as if the said respondents have ill-will and motive against the particular community people and such allegations are not only baseless, but also false and defamatory. The learned counsel contended that the averments in the affidavit are only projected against the sections of the common people by the rival community and therefore, the writ petitions cannot be characterised as public interest litigations, whereas it has to be characterised as litigation against public interest. The learned counsel lastly submitted that the photographs produced by both sides involve disputed question of facts and as such, the same cannot be gone into in a writ petition. It is submitted that in service matters, PIL is not maintainable. The learned counsel would also place reliance on the following decisions:

- (1) S.K. Dasgupta and Others Vs. Vijay Singh Sengar and Others,
- (2) Sakiri Vasu Vs. State of U.P. and Others,
- (3) State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others,
- (4) Kishan Singh Vs. Financial Commissioner, Haryana and Others,
- (5) Tamil Nadu Electricity Board Vs. Sumathi and Others,
- (6) Girjesh Shrivastava and Others Vs. State of M.P. and Others,

5.9 Mr. C.K. Chandrasekaran, learned counsel appearing for the impleaded respondents 13 to 19 in W.P(MD). No. 21974/2011 submitted that the said respondents are general public who do not belong to any community. It is contended that the Commission of Inquiry appointed by the Government can have additional powers as per the provision u/s 5(9) of the Commission of Inquiry Act, 1952. It is further contended that the judiciary has power to invoke Section 5(4) of the Commission of Inquiry Act, 1952 in appropriate cases.

6. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scrutinised the entire materials available on record and perused the affidavits filed in all the writ petitions and as well as the counter affidavits filed by the police officials.

7. Let us first consider the writ petition in W.P(MD). No. 21974/2011. As already pointed out, W.P(MD). No. 21974/2011, filed by one Advocate, is mainly in relation to the occurrence said to have taken place in the early hours on 10.09.2011 at 00.45 hours resulting in the murder of Dalit youth by name Palanikumar at Muthuramalingam Puthur within the limits of Mandalamanickam Police Station. In the said writ petition, the petitioner has sought for extraordinary relief of suspending the District Collector and other police officials, namely, respondents 4 to 11 and in view of the occurrence, it is alleged by the petitioner that no preventive measures taken by the officials to maintain peace and law and order situation at the locality and as a result, villagers of Pachery

have been insulted by the caste Hindus. It is further alleged that the failure of the respondents/State to act in accordance with the provisions of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, could be the sole reason for the murder of young Dalit belonging to Pachery Village. Yet another ground taken in the writ petition is that police officials opened fire without any provocation and their act is unwarranted. Though, Commission of Inquiry was appointed by the State Government, eye witnesses would be having fear to depose freely before the Commission of Inquiry unless the officials 4 to 11 are suspended by the Government.

8. The petitioners heavily placed reliance on the decision of the Hon''ble Apex Court in *Arumugam Servai Vs. State of Tamil Nadu*, The Hon''ble Apex Court in the said decision held as hereunder:

12. We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in any insitutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh Vs. State of U.P. and Another*, there is nothing honourable in honour killing or other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the District as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

(emphasis supplied by us)

A reading of the above said decision of the Hon''ble Apex Court makes it crystal clear that the Hon''ble Apex Court has directed the State Governments to take immediate action for suspending the officials namely District Magistrate/Collector and other officials only if they do not prevent the incident, if they had knowledge of it in advance or if it has occurred and they do not promptly apprehend the culprits. As far as the case on hand is concerned, it is pertinent to note that anticipating breach of peace and law and order problem, a notification was issued

by the Deputy Superintendent of Police, Paramakudi Sub-Division stating that processions, demonstrations, strikes, dharnas, Road Roko and other form of protests are contemplated, resulting in the breach of public peace and order within the limits of Paramakudi Sub-Division and as such, as per the provision under Rule 30(2) of Police Act, 1861, the Deputy Superintendent of Police, Paramakudi decided to regulate any such public meeting, dharna, road roko, demonstration etc., within the limits of Paramakudi Sub-Division only after getting permission and licence to conduct and the said order was made to be in force from 21.08.2011 to 19.09.2011.

9. It is stated by the Director General of Police, who is the 3rd respondent in this writ petition, in his counter affidavit to the effect that 11.09.2011 being observed as the memorial day of Late Immanuel Sekaran, elaborate bandobust arrangements were made to ensure that the event passes off peacefully. The Superintendent of Police, Ramanathapuram, the 7th respondent in the writ petition, stated in his counter affidavit that on 09.09.2011 certain unknown persons scribbled the Door No. 9 before and after the name of Muthuramalinga Thevar and also written the words "JP Vazhga" which provoked Thevar community people and in this connection, a case in Mandalamanickam Police Station was registered in Crime No. 32/2011 u/s 153(A) and 506(ii) IPC and u/s 3 of PPD Act and the Deputy Superintendent of Police rushed to the spot, posted pickets and held peace meeting in between two communities. Thereafter, the unfortunate incident took place on 00.45 hours at the night of 09/10.09.2011 resulting in the murder of Dalit youth namely Palanikumar of M. Pachery Village while he was returning home after witnessing a drama at nearby Muthuramalinapuram Puthur village. It is stated by the 7th respondent in his counter that prompt action was taken and a case was registered in Crime No. 33/2011 for the offence under Sections 147, 148, 341 and 302 IPC r/w.3(ii)(v) of SC/ST Act. It is further stated in the counter affidavit that on 10.09.2011 itself, one accused Arumugam and four others belonging to Thevar community were arrested. It is pertinent to note that the petitioner himself has categorically stated in his affidavit as hereunder:

In the early hours of 10 September 2011, a dalit boy was murdered by caste Hindus and four persons belonging to Mandalamanickam village were arrested by the police on 10 September 2011 itself." It is further stated in the another part of the affidavit to the effect that unusually armed police officials in large numbers were deployed in Paramakudi and Riot control van was also there on the eve of Immanuel Sekaran memorial day to be observed on 11.09.2011.

10. The above said admitted facts makes it crystal clear that police officials not only taken preventive and precautionary measures, but also taken swift action by registering a case in respect of the murder of the Dalit youth Palanikumar and also arrested the accused persons immediately. It is also pertinent to note that even in respect of the unfortunate incident of riot taken place on 11.09.2011 from 11.00 a.m to 05.00 p.m, resulting in the opening of fire by police officials

and causing the death of six persons and injuries to several persons including police officials, the police officials have taken preventive and precautionary measures as stated above, apart from deploying sufficient number of police force to maintain peace and public order.

11. In view of the aforesaid factors, we are of the considered view that the respondents 4 to 11 have taken all preventive and precautionary measures to prevent the incident and as well as taken swift and prompt action by apprehending the culprits and as such, they are not liable to be suspended as prayed for by the petitioner.

12. Accordingly, we have come to the irresistible conclusion to dismiss the above said writ petition namely W.P(MD). No. 21974/2011 as devoid of merits.

13. W.P(MD). Nos. 24596, 11717, 14277, 12955, 13701, 13735, 14164, 11164, 10492 and 10493 of 2011 are filed by Practicing Advocate, Member of Parliament, Political parties, Law Student, Member of an Editorial Board of a Magazine and Social Organisations, as Public Interest Litigations. The relief sought for in the above writ petitions is for registering a case against the police officials involved in the police firing and for transfer of investigation to CBI and for compensation to the victims' family and as well as to the injured persons.

14. The learned Advocate General, the learned Public Prosecutor and the learned counsel appearing for the respondent police officials raised the question of maintainability of the writ petitions as none of the writ petitions have been filed by the aggrieved persons and the petitioners have come forward with these petitions only to protect the rights of a particular section of the community. We are unable to countenance such contention for the simple reason that all the petitioners have come forward with the plea of raising voice to protect the interest of the weaker section of the community. It is their version that persons belonging to the weaker sections have been shot dead and injured during police firing and lathi charge and as such, it is needless to state that the petitioners can very well raise their voice to protect the interest and rights of the oppressed sections of the society as it is their fundamental right to fight for their cause. Therefore, we are of the considered view that the writ petitions are maintainable.

15. Yet another contention put forward by the learned Advocate General, learned Public Prosecutor and other learned counsel appearing for the respondent police officials is to the effect that the Government has already appointed One Man Inquiry Commission under a retired High Court Judge and as such, any decision to be taken only after the submission of Inquiry Commission Report. It is needless to state that such Commission is only a fact finding body and it can give its opinion and report in respect of the terms referred to the Commission regarding the causes and circumstances leading to the opening of fire resulting in the death of 6 persons and injury to many persons including police officials at Paramakudi Town. It is pertinent to state that irrespective of the Inquiry Commission's report, a fair and unbiased investigation is very much essential in

a sensitive case like the case on hand in respect of the tragic and terrific incident occurred on the fateful day i.e., 11.09.2011 causing the death of six persons and injuries to several persons including police officials, apart from causing damages to public vehicles and properties. Therefore, there is no justification for waiting for the Inquiry Commission Report for taking prompt and swift action by conducting fair investigation in the instant case, which is of a very serious in nature.

16. Two versions emerged from the factual scenario as narrated by us in the earlier portion of the judgment, namely, a group of persons conducted peaceful dharna and road roko and they were unarmed and without any provocation and compulsion, police officials opened the fire causing the death of 6 persons and injuries to several persons. Another version from the police officials is to the effect that a mob of persons formed unlawful assembly and the said alleged unruly mob indulged in violence by attacking the police officials and the public and by setting fire to the fire service vehicle, ambulances and Vajra vehicle and in order to control the riot and to protect the life and property of the public, police officials were ordered to open fire and that too as per the written order of the Tahsildar cum Executive Magistrate, Paramakudi dated 11.09.2011 at 12.30 noon. It is relevant to note that the Public Prosecutor also produced the list of vehicles damaged during the occurrence on 11.09.2011 and the said list is incorporated in the earlier portion of the judgement. It is also submitted before this Court through the counter affidavit of the 7th respondent, Superintendent of Police, Ramanathapuram that 104 police personnel including Women Sub-Inspector and Women Constable have sustained serious injuries. Therefore, it is submitted by the police officials that they have been compelled to open fire only due to the above said circumstances and due to the violent act of the unruly mob. It is pertinent to note that even the learned Advocate General fairly submitted before this Court that in view of two conflicting versions, the State Government wants to be neutral and waiting for the Inquiry Commission's Report for taking suitable action in the manner known to law.

17. The fact remains that a case was registered in respect of the incident took place on 11.09.2011 from 11.45 a.m to 04.00 p.m in Crime No. 300/2011 on the basis of the complaint preferred by one P. Sivakumar, Inspector of Police, Paramakudi Town Police Station. The Investigating Officer Mr. R. Natarjan, Deputy Superintendent of Police, District Crime Branch, Ramanathapuram, has filed an affidavit before this Court dated 16.12.2011 stating that so far 530 witnesses have been examined apart from collection of materials/documents etc. It is also stated by the Investigating Officer in the said affidavit that 20 petitions/complaints were received by the Deputy Superintendent of Police and Inspector of Police, Paramakudi Town on various dates through registered post. The copies of the said petitions/complaints were also produced before this Court by way of typed set. The perusal of those complaints shows that one complaint dated 09.10.2011 was given by a party called Indiya Kudiyarasu Katchi (A) and the remaining 19 complaints have been given by the injured persons and family

members of the 6 deceased persons. The said complaints have been sent through post on various dates and the perusal of the said complaints reveals that the wordings are verbatim similar and the said complaints contains general allegations against police officials except in one complaint given by one Mr. Balakrishnan, wherein it is specifically stated that he has sustained gun shot injury at the hands of one Inspector Gajendran. It is pertinent to note that in most of the above said complaints, it is specifically stated that the police officials resorted to lathi charge and firing to control the riot. For the reasons best known to the said persons, they have not chosen to prefer the said complaints in person and they have not exhibited any inclination to proceed further as per the affidavit filed by the Investigating Officer before this Court. It is curiously stated by the Investigating Officer in the said affidavit that the said complaints have been sent after registration of the case in Crime No. 300/2011 and they may not constitute as an information to register a fresh F.I.R and on the other hand, the said complaints have been treated as statements to be recorded u/s 161(3) of the Criminal Procedure Code.

18. It is relevant to state that as per Section 161(3) of the Criminal Procedure Code, police officer has to reduce into writing any statement made to him in the course of examination of a witness and a complaint sent by post to the police, by no stretch of imagination construed to be a statement recorded u/s 161 (3) of the Criminal Procedure Code. The above said factors, even as per the complaint preferred by the aggrieved persons, makes it crystal clear that there was a riot on the fateful day of occurrence i.e., 11.09.2011 and in order to control the riot, police opened the fire and lathi charge in which 6 persons died and 34 persons sustained injuries on the side of the people belonging to a particular community. On the side of the police officials, it is specifically stated before this Court through the affidavit filed by the police officials that 104 persons including women police sustained injuries. It is also stated before this Court that top police officials have also sustained grievous injuries and vehicles including fire service vehicle, ambulances, Vajra and Other vehicles as stated above also damaged due to setting of fire by the alleged unruly mob.

19. The fact remains that there are allegations and counter allegations made against each other namely, families of the victims and the injured on one side and police officials on the other side. It is to be reiterated that both sides sustained injuries and six persons died and all the six persons belong to a particular community. It is brought to the notice of this Court that 4 persons died due to bullet injuries and 2 persons died due to infliction of injuries alleged to have been caused by police officials. This Court also cannot brush aside the fact that police officials numbering 104 including women police have also sustained injuries and vehicles were set fire by the unruly mob and the police resorted to open fire only after passing of the written order by the Tahsildar/Executive Magistrate, Paramakudi on 11.09.2011 at 12.30 noon. Whether the police used excessive force more than what is required is a matter for investigation. This Court cannot prejudge the issue on the basis of the materials placed by both

sides.

20. At this juncture, it is relevant to refer a Constitution Bench decision of the Hon'ble Apex Court in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, The Hon'ble Apex Court in the said decision has held as hereunder:

The words "life" and "personal liberty" are used in Article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of a person's animal existence. All those aspects of life, which make a person live with human dignity are included within the meaning of the word "life". The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. Article 21 in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. In certain situations even a witness to the crime may seek for and shall be granted protection by the State. The right to life and personal liberty is paramount. Likewise, if Articles 14 and 19 are put out of operation, Article 32 will be drained of its life blood.....

Being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part II in general and under Article 21 of the Constitution in particular, zealously and vigilantly. Therefore, a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law.....

However, despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where such an order may be necessary for doing complete justice and enforcing the fundamental rights..... An order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose *prima facie* case calling for an investigation by CBI or any other similar agency.

The principle laid down by the Hon''ble Apex Court in the decision cited supra makes it abundantly clear that the High Court is having wide powers under Article 226 of the Constitution and such extraordinary power must be exercised sparingly, cautiously and in exceptional situations in order to provide credibility and to instil confidence in investigation. It is also held by the Hon''ble Apex Court that it is an obligation of the Court to protect Fundamental Rights guaranteed under Article 21 of the Constitution of India. It is further held by the Hon''ble Apex Court in the decision cited supra that directing an enquiry by CBI should be passed only when the High Court after considering the materials on record disclosing a prima facie case calling for investigation by CBI.

21. In the case of R.S. Sodhi Vs. State of U.P. and others, the Hon''ble Apex Court has held as hereunder:

2.... However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind we having thought it both advisable and desirable as well as in the interest of justice entrust the investigation to the Central Bureau of Investigation forthwith and we so hope that it would complete the investigation at an early date so that those involved in the occurrence one way or the other may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice.

22. In yet another decision in Rubabbuddin Sheikh v. State of Gujarat and Others reported in (2010) 2 SCC (Cri) 1006, the Hon''ble Apex Court has held that,

It was necessary to ensure that investigation should not only be fair but should also seem to be fair, in order to instil confidence in the mind of victims'' relatives and general public.

The Hon''ble Apex Court in the decisions cited supra makes it very clear that even the local police faithfully carrying out the investigation, the same will lack credibility since the allegations are made against the local police. It is also stressed by the Hon''ble Apex Court in the decision cited supra that the investigation should not only be fair, but should also seem to be fair in order to instil confidence in the mind of the victims'' relatives. As far as the case on hand is concerned, as already pointed out, there are allegations and counter allegations made against each other and allegations made against police officials and as such, if local police even faithfully conducting investigation as claimed by the Investigating Officer in this case, the same would certainly lack credibility in view of the allegations leveled against police officials of the State. We are also of the considered view that the facts and circumstances of the instant case raises exceptional situations resulting in the death of 6 persons belonging to a particular community and allegations have been thrown against police officials, making a strong prima facie ground for a fair and unbiased investigation in this case by an independent agency.

23. In view of the aforesaid reasons, we are constrained to direct the Investigating Officer in respect of the case registered in Crime No. 300/2011 to hand over the entire case records and the complaints received from the members of the deceased family and the injured persons to the Joint Director of Central Bureau of Investigation, Shastri Bhavan, Chennai within a period of 10 days from the date of receipt of a copy of this order. The Joint Director of CBI, Shastri Bhavan, Chennai, shall nominate a competent police official from CBI to investigate into the instant case on the basis of the entire records forwarded to CBI and on the basis of the complaints sent through registered post to the local police by the members of the deceased family and the injured persons in accordance with law. The investigation to be carried out by the said Investigating Officer is to be monitored by any one of the top officials of CBI. It is made clear that the State Government shall give all cooperation and coordination for the effective and fair investigation to be carried out by the CBI.

24. Regarding the other relief sought for by the petitioners, namely, compensation to the victims family and to the injured persons, on the basis of the suggestions given by this Court vide order dated 30.11.2011, the State Government granted an additional compensation of Rs. 4 lakhs apart from the payment of Rs. 1 lakh earlier. We have also recorded the submission of the learned Advocate General in the earlier order dated 30.11.2011 to the effect that as per the suggestions given by this Court, the Government has decided to enhance the compensation amount in respect of the deceased families by Rs. 4 lakhs, apart from the compensation amount of Rs. 1 lakh already paid and as such, a total sum of Rs. 5 lakhs would be given as compensation to each of the deceased families. We have also recorded the submission of the learned Advocate General in respect of the enhancement of compensation to the injured persons. In the same order, this Court further recorded the submission of the learned Advocate General that apart from enhancement of compensation to the deceased family and to the injured persons, the Government also decided to provide compassionate appointments to one of the family members of the deceased persons. This Court also recorded the production of a copy of the Government Order in G.O. Ms. No. 1134, Public (Law and Order), Department, dated 29.11.2011, as well as copy of the Government Letter No. 4113/L&O.E/2011-1, dated 29.11.2011, Public (Law and Order-E) Department, Chennai-9. This Court, in the same order dated 30.11.2011, directed the Government to provide post-operative treatment in respect of the injured people for whom surgeries were conducted in Apollo Hospital. Therefore, this Court is of the considered view that there is no need for ordering any further relief. In the result,

(a) W.P(MD). Nos. 24596, 11717, 14277, 12955, 13701, 13735, 14164, 11164, 10492 and 10493 of 2011 are disposed of in terms of the above directions; and

(b) W.P(MD). No. 21974/2011 is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.