BANGALORE DEVELOPMENT AUTHORITY
v.
THE AIR CRAFT EMPLOYEES COOPERATIVE SOCIETY LTD. AND OTHERS
(Civil Appeal Nos. 7503-7537 of 2002)

JANUARY 24, 2012

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Town Planning - Bangalore Development Authority Act, 1976 - s.32(5A) - In terms of s.32(5A), the Bangalore Development Authority (BDA) has been vested with the power to call upon the applicants desirous of forming new extensions or layouts or private streets to pay a specified sum in addition to the sums referred to in s.32(5) to meet a portion of the expenditure incurred for the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities within the Bangalore Metropolitan area - Whether s.32(5A) is violative of Article 14 of the Constitution - Held: A statutory provision is presumed to be constitutionally valid unless proved otherwise and burden lies upon the person who alleges discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution - Though the respondents pleaded that s.32(5A) is discriminatory, no factual foundation was laid in support of this plea and in the absence of such foundation - While examining the issue of hostile discrimination in the context of s.32(5A), the Court cannot be oblivious of the fact that due to unprecedented increase in the population of the Bangalore City and the policy decision taken by the State Government to encourage house building societies to form private layouts, the BDA was obliged to take effective measures to improve civic amenities like water supply, electricity, roads, transportation, etc. within the Bangalore Metropolitan Area and for this it became

necessary to augment the resources by the BDA itself or through other State agencies/instrumentalities by making suitable contribution - However, the fact of the matter is that with a view to cater to the new areas, and for making the concept of planned development a reality qua the layouts of the private House Building Societies and those involved in execution of large housing projects, etc., the BDA and other agencies/ instrumentalities of the State incurred substantial expenditure for augmenting the water supply, electricity, etc. - There could be no justification to transfer the burden of this expenditure on the residents of the areas which were already part of the city of Bangalore - In other words, other residents could not be called upon to share the burden of cost of the amenities largely meant for newly developed areas - Therefore, it is not possible to approve the view taken by the High Court that by restricting the scope of loading the burden of expenses to the allottees of the sites in the layouts developed after 1987, the legislature violated Article 14 of the Constitution - Constitution of India, 1950 - Article 14.

Town Planning - Bangalore Development Authority Act, 1976 - s.32(5A) - Challenge to, on the ground of excessive delegation - Whether s.32(5A) suffers from the vice of excessive delegation of legislative power - Held: While examining challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities - The policy underlying the 1976 Act is clearly discernible from the Preamble of the 1961 Act and the 1976 Act and the objects sought to be achieved by the two legislations, namely, development of the City of Bangalore and areas adjacent

thereto - It cannot be said s.32(5A) confers unbridled and uncanalised power upon the BDA to demand an unspecified amount from those desirous of forming private layouts - The exercise of power by the BDA u/s.32(5A) is always subject to directions which can be given by the State Government u/s.65 of the 1976 Act - s.32(5A) does not suffer from the vice of excessive delegation and the legislative guidelines can be traced in the Preamble of the 1961 and 1976 Acts and the object and scheme of the two legislations - Mysore Town and Country Planning Act, 1961.

Town Planning - Bangalore Development Authority Act, 1976 - s.32(5A) - Conditions incorporated in orders passed by Bangalore Development Authority (BDA) sanctioning residential layout plans or work orders in terms of which house building societies and the allottees of sites of the layouts were required to pay/deposit various charges/sums for augmentation of water supply, electricity, transport within the Bangalore Metropolitan area - Demand of such charges - Whether amounted to tax and, therefore, ultra vires the provisions of Article 265 of the Constitution - Held: Under the 1976 Act, the BDA is obliged to provide different types of amenities to the population of the Bangalore Metropolitan Area including the allottees of the sites in the layouts prepared by house building societies - It is quite possible that they may not be the direct beneficiaries of one or the other amenities made available by the BDA, but this cannot detract from the fact that they will certainly be benefited by the construction of the Outer Ring Road and Intermediate Ring Road, Mass Rapid Transport System, etc. - They will also be the ultimate beneficiaries of the Cauvery Water Supply Scheme because availability of additional 270 MLD water to Bangalore will enable Bangalore Water Supply and Sewerage Board (BWSSB) to spare water for the private layouts - It is neither the pleaded case of the respondents nor it has been argued that the allottees of sites in the layouts to be developed by the private societies will not get benefit of amenities provided

by the BDA - Thus, charges demanded by the BDA u/s.32(5A) cannot be termed as tax and declared unconstitutional on the ground that the same are not sanctioned by the law enacted by competent legislature - Constitution of India, 1950 - Article 265.

Town Planning - Bangalore Development Authority Act, 1976 - s.32(5A) - Conditions incorporated in orders passed by Bangalore Development Authority (BDA) sanctioning residential layout plans or work orders in terms of which house building societies and the allottees of sites of the layouts were required to pay/deposit various charges/sums for augmentation of water supply, electricity, transport within the Bangalore Metropolitan area - Whether charges demanded by BDA were totally disproportionate to its contribution towards Cauvery Water Supply Scheme, construction of Ring Road, Mass Rapid Transport System, etc. - Held: This Court may have examined the issue in detail but in view of the affidavit filed by the then Commissioner, BDA to the effect that only Rs. 34.55 crores have been collected between February, 1988 to 4.6.2005 towards the Cauvery Scheme and a sum of Rs. 15.15 crores has been collected by way of Ring Road surcharge between 1992-93 and 2005-06 and that the State Government has directed that henceforth Ring Road surcharge, the Cauvery Water Cess and MRTS Cess should not be levied till appropriate decision is taken, it is not necessary to adjudicate the controversy, more so, because in the written arguments filed on behalf of the BDA it has been categorically stated that the Government has to take a decision about the pending demands and the Court may issue appropriate direction in the matter, which the BDA will comply - The ends of justice will be served by directing the State Government to take appropriate decision in the light of its communication dated 03.05.2005 (whereby BDA was directed to stop collection of Cauvery Water Cess and Ring RoadCess and MRTS Cess) - So far as levy of supervision charges, improvement charges, examination charges, slum clearance

development charges and MRTS cess is concerned, the High Court has not assigned any reason for declaring the levy of these charges to be illegal - Therefore, that part of the impugned order cannot be sustained - Nevertheless, the State Government should take appropriate decision in the matter of levy of these charges as well and determine whether the same were disproportionate to the expenses incurred by it, the BDA or any other agency/instrumentality of the State.

To meet the additional requirement of water and electricity and to tackle the problems of traffic, new schemes were prepared in the development plan of Bangalore city, which was approved in 1984. These included augmentation of water supply, formation of Ring Road etc. Bangalore Water Supply and Sewerage Board (BWSSB) submitted a proposal to the State Government for taking up of Cauvery Water Supply Scheme, Stage III (for short, 'the Cauvery Scheme') for supply of an additional 270 MLD water to Bangalore at a cost of Rs. 240 crores. The State Government granted approval to the Cauvery Scheme. In a meeting held under the chairmanship of the Chief Secretary of the State it was decided that with a view to avoid escalation in the cost, the funds may be collected from other sources including the Bangalore Development Authority (BDA) because substantial quantity of water was required for the layouts which were being developed by it or likely to be developed in future.

The State Government issued an order directing the BDA to make a grant of Rs. 30 crores to BWSSB to be paid in installments from 1987-88 to 1989-90 by loading an extra amount as water supply component at the rate of Rs. 10,000/- on an average per site for all the layouts to be formed thereafter. In compliance of the directions given by the State Government, the BDA started collecting Rs.10,000/- per site. Later on, the levy under

the Cauvery Scheme was increased to Rs.1 lac per acre. By 1992, however, it was realised that BDA had not been able to develop and distribute sites as expected. Therefore, a proposal was submitted by the Commissioner, BDA to the State Government that contribution towards the Cauvery Scheme may be distributed among those applying for change of land use and the private layouts to be developed by the house building societies and on major housing projects. The State Government accepted the suggestion of the BDA and passed order for levy of charges under the Cauvery Scheme at the rate of Rs.2 lacs per acre.

In 1992, BDA also decided to take up construction of 63.30 kilometers long Outer Ring Road and 3.5 kilometers long Intermediate Ring Road. 36.24 kilometers of the Outer Ring Road was to pass through the BDA layouts. In a meeting under the Chairmanship of the Chief Secretary of the State, it was agreed that like the Cauvery Scheme, Ring Road surcharge should be levied on the sites to be formed by the BDA and the private housing societies at the rate of Rs.1 lac per acre. Thereafter, the BDA passed Resolution dated 19-10-1992 for levy of charges at different rates on change of land use in different areas and Rs.1 lac per acre on the layouts of housing societies and private lands as also the sites formed by itself.

The Air Craft Employees Cooperative Society Limited (respondent in C.A. No.7503/2002) submitted an application for approval of layout in respect of 324 acres 30 guntas of land. The application of respondent was considered in the BDA's meeting and was approved subject to various conditions including payment of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge. Another condition incorporated in the Resolution of the BDA was that the civil portion of

work shall be carried out by the respondent under its supervision. The decision of BDA was communicated to the respondent vide letter dated 12-11-1992.

The respondent challenged the conditional sanction of its layout by filing a Writ Petition in 1993 and prayed for quashing the demand of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge. During the pendency of the Writ Petition, the State legislature amended the Bangalore Development Authority Act, 1976 and inserted sub-section (5A) in Section 32 authorising the BDA to demand sums in addition to those referred in sub-section (5) to meet the expenditure towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities within the Bangalore Metropolitan area. Thereupon, the respondent amended the writ petition and challenged the constitutional validity of the newly inserted sub-section by asserting that the provision is discriminatory and violative of Article 14 of the Constitution because it gives unbridled and uncanalized power to the BDA to demand additional sums for different schemes. It was also pleaded that sub-section (5A) has been inserted in Section 32 to legitimize the conditions incorporated in letter dated 12.11.1992 for payment of charges for the Cauvery Scheme and the Ring Road.

While the parties were litigating on the constitutionality of the amended provision and legality of the conditional sanction of the layout, the respondent applied for approval of the BDA for starting civil work. The same was sanctioned subject to payment of supervision charges, improvement charges, examination charges, slum clearance charges, MRTS tax etc. The respondent challenged the conditional approval of civil work in another Writ Petition on the ground that the

Bangalore Development Authority Act, 1976 does not authorize such levies and that the legislature has not laid down any guideline for creating such demand from the private House Building Societies. An additional plea taken by the respondent was that the BDA has applied the provisions of Section 32 of the 1976 Act under a mistaken impression that the layout was within its jurisdiction. According to the respondent, no notification had been issued by the State Government for including the villages of North and South Talukas within the Bangalore Metropolitan Area. Another plea taken by the respondent was that the State Government has already collected conversion fine and, as such, the BDA does not have the jurisdiction to levy betterment fee. Similar plea was raised in respect of Mass Rapid Transport System Cess and the Slum Clearance charges. The other House Building Cooperative Societies also filed writ petitions between 1994 and 1998 for striking down Section 32(5A) and the conditional sanction of their layouts in terms of which they were required to pay for the Cauvery Scheme and the Ring Road apart from other charges mentioned in the sanction of civil work as was done in the case of Air Craft Employees Cooperative Society Limited.

The writ petitions filed by the respondents were ultimately allowed by the High Court, Section 32(5A) of the Bangalore Development Authority Act, 1976 was declared as violative of Article 14 of the Constitution, void and inoperative and the conditions incorporated in the orders passed by BDA sanctioning residential layout plans or work orders in terms of which respondents were required to pay/deposit various charges/sums specified therein were quashed and a direction was issued for refund of the amount.

In the instant appeals, the following questions arose for consideration: (1) whether Section 32(5A) of the 1976

Act is violative of Article 14 of the Constitution; (2) whether Section 32(5A) of the 1976 Act suffers from the vice of excessive delegation of legislative power; (3) whether the demand of charges under the Cauvery Scheme etc. amounts to tax and is, therefore, ultra vires the provisions of Article 265 of the Constitution; and (4) whether the BDA has collected charges from the house building societies and the allottees of sites of the layouts prepared by it far in excess of its contribution towards the Cauvery Scheme, MRTS, etc.

Allowing the appeals, the Court

HELD:

Question (1)

1. The High Court committed serious error by recording a finding that Section 32(5A) is discriminatory and violative of Article 14 of the Constitution. While deciding the issue relating to constitutionality of the Section, the High Court overlooked the well-established principle that a statutory provision is presumed to be constitutionally valid unless proved otherwise and burden lies upon the person who alleges discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution. [Para 36] [944-B-C]

1.2. Though, in the writ petitions filed by them, the respondents pleaded that Section 32(5A) is discriminatory, no factual foundation was laid in support of this plea and in the absence of such foundation, the High Court was not at all justified in recording a conclusion that the impugned provision is violative of the equality clause contained in Article 14 of the Constitution. [Para 41] [946-F-G]

1.3.While examining the issue of hostile

discrimination in the context of Section 32(5A), the Court cannot be oblivious of the fact that due to unprecedented increase in the population of the Bangalore City and the policy decision taken by the State Government to encourage house building societies to form private layouts, the BDA was obliged to take effective measures to improve the civic amenities like water supply, electricity, roads, transportation, etc. within the Bangalore Metropolitan Area and for this it became necessary to augment the resources by the BDA itself or through other State agencies/instrumentalities by making suitable contribution. It would be a matter of sheer speculation whether in the absence of increase in the population of the Bangalore Metropolitan Area and problems relating to planned development, the legislature would have enacted the 1976 Act and the State and its agencies/instrumentalities would have spent substantial amount for augmenting water supply, electricity, transportation and other amenities. However, the fact of the matter is that with a view to cater to the new areas, and for making the concept of planned development a reality qua the layouts of the private House Building Societies and those involved in execution of large housing projects, etc., the BDA and other agencies/ instrumentalities of the State incurred substantial expenditure for augmenting the water supply, electricity, etc. There could be no justification to transfer the burden of this expenditure on the residents of the areas which were already part of the city of Bangalore. In other words, other residents could not be called upon to share the burden of cost of the amenities largely meant for newly developed areas. Therefore, it is not possible to approve the view taken by the High Court that by restricting the scope of loading the burden of expenses to the allottees of the sites in the layouts developed after 1987, the legislature violated Article 14 of the Constitution. [Para 42] [946-H; 947-A-G]

State of Kerala v. M/s. Travancore Chemicals and Manufacturing Company **(1998) 8 SCC 188: 1998 (2) Suppl. SCR 651;** *Commissioner, Bangalore Development Authority v. State of Karnataka* **ILR 2006 KAR 318;** *Bondu Ramaswamy v. Bangalore Development Authority* **(2010) 7 SCC 129: 2010 (6) SCR 29;** *Padma Sundara Rao v. State of T. N.* **(2003) 5 SCC 533 - referred to.**

Question (2)

2.1. While examining challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities. [Para 51] [954-G-H; 955-A]

2.2. The policy underlying the 1976 Act is clearly discernible from the Preamble of the Mysore Town and Country Planning Act, 1961 and the 1976 Act and the objects sought to be achieved by the two legislations, namely, development of the City of Bangalore and areas adjacent thereto. [Para 52] [955-B]

2.3. A survey of the relevant provisions of the 1961 Act and the 1976 Act makes it clear that the basic object of the two enactments is to ensure planned development of the areas which formed part of the Bangalore Metropolitan Area as on 15.12.1975 and other adjacent areas which may be notified by the Government from time to time. The BDA is under an obligation to provide "amenities" as defined in Section 2(b) and "civic amenities" as defined in Section 2(bb) of the 1976 Act for

the entire Bangalore Metropolitan Area. In exercise of the powers vested in it under Sections 15 and 16, the BDA can prepare detailed schemes for the development of the Bangalore Metropolitan Area and incur expenditure for implementing those schemes, which are termed as development schemes. The expenditure incurred by the BDA in the implementation of the development schemes can be loaded on the beneficiaries of the development schemes. By virtue of Notifications dated 1.11.1965 and 13.3.1984 issued under Section 4A(1) of the 1961 Act and notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act, hundreds of villages adjacent to the City of Bangalore were merged in the Bangalore Metropolitan Area. For these areas, the BDA was and is bound to provide amenities like water, electricity, streets, roads, sewerage, transport system, etc., which are available to the existing Metropolitan Area of the City of Bangalore. This task could not have been accomplished by the BDA alone from its meager fiscal resources. Therefore, the State Government, the BDA and other instrumentalities of the State like BWSSB had to pool their resources as also man and material to augment water supply, electricity and transport facilities and also make provision for construction of new roads, layouts, etc. The BDA had to contribute to the funds required for new water supply scheme, generation of additional electricity and development of a mass rapid transport system to decongest the Bangalore Metropolitan Area. This is the reason why the State Government passed orders dated 25.3.1987 and 12.1.1993, which could appropriately be treated as directions issued under Section 65 of the 1976 Act for carrying out the purposes of the Act and approved the proposal for loading the BDA's share of expenditure in the execution of the Cauvery Scheme on all the layouts to be formed thereafter. With the insertion of Section 32(5A) in the 1976 Act, these orders acquired the legislative mandate. In terms of that section, the BDA has

been vested with the power to call upon the applicants desirous of forming new extensions or layouts or private streets to pay a specified sum in addition to the sums referred to in Section 32(5) to meet a portion of the expenditure incurred for the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities. [Para 53] [958-B-H; 959-A-D]

2.4. Apart from the Preamble and the objects of the 1961 and 1976 Acts and the scheme of the two enactments, the expression "such portion of the expenditure as the Authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities" supplies sufficient guidance for the exercise of power by the BDA under Section 32(5A) and it is not possible to agree with the respondents that the section confers unbridled and uncanalised power upon the BDA to demand an unspecified amount from those desirous of forming private layouts. The exercise of power by the BDA under Section 32(5A) is always subject to directions which can be given by the State Government under Section 65. It could not have been possible for the legislature to make provision for effective implementation of the provisions contained in the 1961 and 1976 Acts for the development of the Bangalore Metropolitan Area and this task had to be delegated to some other agency/ instrumentality of the State. [Para 54] [959-E-H; 960-A]

2.5. Section 32(5A) does not suffer from the vice of excessive delegation and the legislative guidelines can be traced in the Preamble of the 1961 and 1976 Acts and the object and scheme of the two legislations. [Para 55] [960-B]

Charanjit Lal Chowdhuri v. Union of India **(1950) 1 SCR 869;** *M.H. Quareshi v. State of Bihar* **(1959) 1 SCR 629;** *Ram*

Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. **AIR 1958 SC 538: 1959 SCR 279;** *R.K. Garg v. Union of India* **(1981) 4 SCC 675: 1982 (1) SCR 947;** *Jyoti Pershad v. The Administrator for The Union Territory of Delhi* **AIR 1961 SC 1602: 1962 SCR 125;** *Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth* **(1984) 4 SCC 27;** *Ajoy Kumar Banerjee v. Union of India* **(1984) 3 SCC 127: 1984 (3) SCR 252;** *Kishan Prakash Sharma v. Union of India* **(2001) 5 SCC 212;** *Union of India v. Azadi Bachao Andolan* **(2004) 10 SCC 1: 2003 (4) Suppl. SCR 222 - relied on.**

Municipal Board, Hapur v. Raghuvendra Kripal and others **(1966) 1 SCR 950,** *Corporation of Calcutta and another v. Liberty Cinema* **(1965) 2 SCR 477;** *Bhavesh D. Parish and others v. Union of India and another* **(2000) 5 SCC 471: 2000 (1) Suppl. SCR 291;** *Devi Das Gopal Krishnan v. State of Punjab* **AIR 1967 SC 1895;** *The State of West Bengal v. Anwar Ali Sarkar* **(1952) SCR 284;** *A.N. Parasuraman and others v. State of Tamil Nadu* **(1989) 4 SCC 683: 1989 (1) Suppl. SCR 371 and** *Kunnathat Thathunni Moopil Nair v. State of Kerala* **(1961) 3 SCR 77 - referred to.**

Daymond v South West Water Authority (1976) 1 All England Law Reports 39 - referred to.

Question (3)

3.1. If the conditions imposed by the BDA requiring the respondents to pay for augmentation of water supply, electricity, transport, etc. are scrutinized in the light of the principles laid down in Sreenivasa General Traders, Kishan Lal Lakhmi Chand and I.T.C. Ltd., it cannot be said that the demand made by the BDA amounts to levy of tax and is ultra vires Article 265 of the Constitution. [Para 64] [968-B-D]

3.2. Under the 1976 Act, the BDA is obliged to provide different types of amenities to the population of the

Bangalore Metropolitan Area including the allottees of the sites in the layouts prepared by house building societies. It is quite possible that they may not be the direct beneficiaries of one or the other amenities made available by the BDA, but this cannot detract from the fact that they will certainly be benefited by the construction of the Outer Ring Road and Intermediate Ring Road, Mass Rapid Transport System, etc. They will also be the ultimate beneficiaries of the Cauvery Scheme because availability of additional 270 MLD water to Bangalore will enable BWSSB to spare water for the private layouts. It is neither the pleaded case of the respondents nor it has been argued that the allottees of sites in the layouts to be developed by the private societies will not get benefit of amenities provided by the BDA. Thus, charges demanded by the BDA under Section 32(5A) cannot be termed as tax and declared unconstitutional on the ground that the same are not sanctioned by the law enacted by competent legislature. [Para 65] [968-D-G]

Sreenivasa General Traders v. State of A.P. **(1983) 4 SCC 353: 1983 (3) SCR 843;** *Kishan Lal Lakhmi Chand v. State of Haryana* **1993 Supp (4) SCC 461: 1993 (1) Suppl. SCR 433 and** *I.T.C. Ltd. v. State of Karnataka* **1985 (Supp) SCC 476 - relied on.**

Kewal Krishan Puri v. State of Punjab **(1980) 1 SCC 416: 1979 (3) SCR 1217;** *Southern Pharmaceuticals and Chemicals, Trichur and others v. State of Kerala and others* **(1981) 4 SCC 391: 1982 (1) SCR 519;** *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd.* **(1995) 1 SCC 655: 1994 (5) Suppl. SCR 392;** *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt* **(1954) SCR 1005;** *Mahant Sri Jagannath Ramanuj Das v. State of Orissa* **(1954) SCR 1046;** *Ratilal Panachand Gandhi v. State of Bombay* **(1954) SCR 1055;** *H.H. Sadhundra Thirtha Swamiar v. Commissioner for Hindu*

Religious and Charitable Endowments **1963 Supp (2) SCR 302;** *Corporation of Calcutta and another v. Liberty Cinema* **(1965) 2 SCR 477 and** *Om Parkash Agarwal v. Giri Raj Kishori* **(1986) 1 SCC 722: 1986 (1) SCR 149 and- referred to.**

Question (4)

4.1. The only issue which survives for consideration is whether the charges demanded by the BDA are totally disproportionate to its contribution towards Cauvery Water Scheme, Ring Road, Mass Rapid Transport System, etc. This Court may have examined the issue in detail but in view of the affidavit dated 11.11.2009 filed by the then Commissioner, BDA to the effect that only Rs. 34.55 crores have been collected between February, 1988 to 4.6.2005 towards the Cauvery Scheme and a sum of Rs. 15.15 crores has been collected by way of Ring Road surcharge between 1992-93 and 2005-06 and that the State Government has directed that henceforth Ring Road surcharge, the Cauvery Water Cess and MRTS Cess should not be levied till appropriate decision is taken, it is not necessary to adjudicate the controversy, more so, because in the written arguments filed on behalf of the BDA it has been categorically stated that the Government has to take a decision about the pending demands and the Court may issue appropriate direction in the matter, which the BDA will comply. The ends of justice will be served by directing the State Government to take appropriate decision in the light of its communication dated 03.05.2005 (whereby BDA was directed to stop collection of the Cauvery Water Cess and Ring RoadCess and MRTS Cess) [Para 66] [969-A-E]

4.2. So far as levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess is concerned, the High Court has not assigned any reason

for declaring the levy of these charges to be illegal. Therefore, that part of the impugned order cannot be sustained. Nevertheless, the State Government should take appropriate decision in the matter of levy of these charges as well and determine whether the same were disproportionate to the expenses incurred by it, the BDA or any other agency/instrumentality of the State. [Para 67] [969-E-G]

5. In the result, the impugned order is set aside and the writ petitions filed by the respondents are dismissed subject to the direction that within three months from the date of receipt/production of the copy of this judgment, the State Government shall take appropriate decision in the context of communication dated 03.05.2005. Within this period, the State Government shall also decide whether the levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess at the rates specified in the communications of the BDA was excessive. The decision of the State Government should be communicated to the respondents within next four weeks. If any of the respondents feel aggrieved by the decision of the State Government then it shall be free to avail appropriate legal remedy. [Para 68] [969-H; 970-A-C]

Case Law Reference:

1959 SCR 279	**relied on**	**Para 27, 39**
1962 SCR 125	**relied on**	**Para 27,45, 46**
AIR 1967 SC 1895	**referred to**	**Para 27,43-45,**
1998 (2) Suppl. SCR 651	**referred to**	**Para 27**
ILR 2006 KAR 318	**referred to**	**Para 31**

2010 (6) SCR 29	**referred to**	**Para 31,32**
(2003) 5 SCC 533	**referred to**	**Para 31**
(1950) 1 SCR 869	**relied on**	**Para 37**
(1959) 1 SCR 629	**relied on**	**Para 38**
1982 (1) SCR 947	**relied on**	**Para 40**
(1966) 1 SCR 950	**referred to**	**Para 43**
(1965) 2 SCR 477	**referred to**	**Para 43**
2000 (1) Suppl. SCR 291	**referred to**	**Para 43**
(1976) 1 All ELR 39	**referred to**	**Para 44**
(1952) SCR 284	**referred to**	**Para 44**
1989 (1) Suppl. SCR 371	**referred to**	**Para 44,45**
(1961) 3 SCR 77	**referred to**	**Para 45**
1984 (3) SCR 252	**relied on**	**Para 45,48**
(1984) 4 SCC 27	**relied on**	**Para 45,47**
(2001) 5 SCC 212	**relied on**	**Para 49**
2003 (4) Suppl. SCR 222	**relied on**	**Para 45,50**
1979 (3) SCR 1217	**referred to**	**Para 58,60,62**
1982 (1) SCR 519	**referred to**	**Para 59**
(1954) SCR 1005	**referred to**	**Para 59,62,**
1983 (3) SCR 843	**relied on**	**Para 60,62,64**
1993 (1) Suppl. SCR 433	**relied on**	**Para 61,62,64**
1994 (5) Suppl. SCR 392	**referred to**	**Para 62**
(1954) SCR 1046	**referred to**	**Para 62**
(1954) SCR 1055	**referred to**	**Para 62**

1963 Supp (2) SCR 302	**referred to**	**Para 62**
1986 (1) SCR 149	**referred to**	**Para 62**
1985 (Supp) SCC 476	**relied on**	**Para 63,64**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7503-7537 of 2002.

From the Judgment & Order dated 20.04.2001 of the High Court of Karnataka at Bangalore in Writ Petition Nos. 11144 of 1993, c/w 13436-13439 of 1990, 30409, 30527, 33689 of 1994, 13907, 35884, 38988, 41725-41726 of 1995, 1760, 2194-2195 of 1996, W.P. 769, 8111, 21784, 22311 of 1996, 15664, 24186-24187, 27098-27104 of 1997, 6993,19134, 21973, 25833 of 1998 and 8526 of 1999.

Altaf Ahmed, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Vijay Kumar for the Appellant.

K.K. Venugopal, P. Vishwanatha Shetty, E.C. Vidya Sagar, Srinivas, Vijay Kumar L. Paradeshi, Brahmjeet Mishra, R.S. Hegde, Chandra Prakash, Amit Wadhwa Ashwani Garg, Rahul Tyagi (for P.P. Singh), Sanjay R. Hegde, Bina Gupta for the Respondents.

The Judgment of the Court was delivered by

G.S. SINGHVI, J. 1. These appeals are directed against the order of the Division Bench of the Karnataka High Court whereby the writ petitions filed by the respondents were allowed, Section 32(5A) of the Bangalore Development Authority Act, 1976 (for short, 'the 1976 Act') was declared as violative of Article 14 of the Constitution, void and inoperative and the conditions incorporated in the orders passed by the Bangalore Development Authority (BDA) sanctioning residential layout plans or work orders in terms of which respondents were required to pay/deposit various charges/ sums specified therein were quashed and a direction was

issued for refund of the amount.

2. With the formation of the new State of Mysore, it was considered necessary to have a uniform law for planned growth of land use and development and for the making and execution of town planning schemes. Therefore, the State Legislature enacted the Mysore Town and Country Planning Act, 1961 (for short, 'the Town Planning Act'). The objectives of that Act were:

(i) to create conditions favourable for planning and replanning of the urban and rural areas in the State of Mysore, with a view to providing full civic and social amenities for the people in the State; (ii) to stop uncontrolled development of land due to land speculation and profiteering in land; (iii) to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land; and (iv) to direct the future growth of populated areas in the State, with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting general standards of living in the State.

3. The State of Mysore was renamed Karnataka in 1973. Thereupon, necessary consequential changes were made in the nomenclature of various enactments including the Town Planning Act.

4. Section 4 of the Town Planning Act envisages constitution of a State Town Planning Board by the State Government. By Act No.14 of 1964, the Town Planning Act was amended and Chapter I-A comprising of Sections 4-A to 4-H was inserted. These provisions enabled the State Government to issue notification and declare any area in the State to be a local planning area for the purposes of the Act and constitute the "Planning Authority" having jurisdiction over that area. Section 9(1) (unamended) imposed a duty on every Planning Authority to carry out a survey of the area within its jurisdiction,

prepare and publish an outline development plan for such area and submit the same to the State Government for provisional approval. In terms of Section 12(1) (unamended), an outline development plan was required to indicate the manner in which the development and improvement of the entire planning area was to be carried out and regulated. Section 19(1), as it then stood, contemplated preparation of a comprehensive development plan and submission of the same for the approval of the State Government. Section 21 (unamended) gave an indication of the factors which were to be included in the comprehensive development plan. Section 26 (unamended) imposed a duty on every Planning Authority to prepare town planning schemes incorporating therein the contents specified in sub-section (1) of that Section. For the sake of reference, these provisions are extracted below :

"4-A. Declaration of Local Planning Areas, their amalgamation, sub-division, inclusion of any area in a Local Planning Area. -

(1) The State Government may, by notification, declare any area in the State to be a Local Planning Area for the purposes of this Act, this Act shall apply to such area:

Provided that no military cantonment or part of a military cantonment shall be included in any such area.

4-C. Constitution of Planning Authority. - (1) As soon as may be, after declaration of a local planning area, the State Government in consultation with the Board, may, by notification in the Official Gazette, constitute for the purposes of the performance of the functions assigned to it, an authority to be called the "Planning Authority"?of that area, having jurisdiction over that area.

9. Preparation of Outline Development Plan.-(1) Every Planning Authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later

than two years from the date of commencement of this Act, prepare and publish in the prescribed manner an outline development plan for such area and submit it to the State Government, through the Director, for provisional approval:

Provided that on application made by a Planning Authority, the State Government may from time to time by order, extend the aforesaid period by such periods as it thinks fit.

12. Contents of Outline Development Plan.-(1) An outline development plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include,-

(a) a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;

(b) proposals for roads and highways;

(c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India;

(d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed;

(e) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

19. Preparation of the Comprehensive Development Plan.-(1) As soon as may be after the publication of the

Outline Development Plan and the Regulations under sub-section (4) of section 13, but not later than three years from such date, every Planning Authority shall prepare in the prescribed manner a comprehensive Development Plan and submit it through the Director together with a report containing the information prescribed, to the State Government for approval:

Provided that on application made by a Planning Authority, the State Government may, from time to time, by order in writing, extend the aforesaid period by such periods as it thinks fit.

21. Contents of the Comprehensive Development Plan.-(1) The comprehensive Development Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. Such plan shall include proposals for the following namely:-

(a) comprehensive zoning of land-use for the planning area, together with zoning regulations;

(b) complete street pattern, indicating major and minor roads, national and state high ways, and traffic circulation pattern, for meeting immediate and future requirements;

(c) areas reserved for agriculture, parks, play-grounds and other recreational uses, public open spaces, public buildings and institutions and areas reserved for such other purposes as may be expedient for new civic development;

(d) major road improvements;

(e) areas for new housing;

(f) new areas earmarked for future development and expansion; and

(g) the stages by which the plan is to be carried out.

(2) The report shall further contain a summary of the findings in the surveys carried out under sub-section (2) of section 19, and give relevant information and data supporting proposals in the plan and deal in detail with.-

(a) acquisition of land for the purpose of implementing the plan,

(b) financial responsibility connected with the proposed improvements, and

(c) the manner in which these responsibilities are proposed to be met.

26. Making of town planning scheme and its contents.—(1) Subject to the provisions of this Act, a Planning Authority, for the purpose of implementing the proposals in the Comprehensive Development Plan published under sub-section (4) of section 22, may make one or more town planning schemes for the area within its jurisdiction or any part thereof.

(2) Such town planning scheme may make provisions for any of the following matters namely,—

(a) the laying out or re-laying out of land, either vacant or already built upon;

(b) the filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land;

(c) lay-out of new streets or roads; construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications;

(d) the construction, alteration and removal of buildings, bridges and other structures;

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts and dairies, transport facilities and public purposes of all kinds;

(f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(g) lighting;

(h) water supply;

(i) the preservation of objects of historical or national interest or natural beauty and of buildings actually used for religious purposes;

(j) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, size, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs;

(k) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order, made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend;

(l) such other matter not inconsistent with the objects of this Act as may be prescribed."

5. The 1976 Act was enacted by the State legislature in the backdrop of the decision taken at the conference of the Ministers for Housing and Urban Development held at Delhi in

November 1971 that a common authority should be set up for the development of Metropolitan Cities. Before the constitution of the BDA, different authorities like the City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board, the Housing Board and the Bangalore City Planning Authority were exercising jurisdiction over the Bangalore Metropolitan Area. Some of the functions of these authorities like development, planning etc. were overlapping and creating avoidable confusion. Not only this, the intervention of multiple authorities was impeding coordinated development of the Metropolitan Area. It was, therefore, considered appropriate that a single authority like the Delhi Development Authority should be set up for the city of Bangalore and areas adjacent thereto which, in due course, would become part of the city. It was also realised that haphazard and irregular growth would continue unless checked by the development authority and it may not be possible to rectify/correct mistakes in the future. For achieving these objectives, the State legislature enacted the 1976 Act. Simultaneously, Section 81-B was inserted in the Town Planning Act for deemed dissolution of the City Planning Authority in relation to the area falling within the jurisdiction of the BDA. The preamble of the 1976 Act and the definitions of "Authority", "Amenity", "Civic amenity", "Bangalore Metropolitan Area", "Development", "Engineering operations", "Local Authority", "Means of access" contained in Section 2 thereof are reproduced below:

> "An Act to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith
>
> **2. Definitions.**- In this Act, unless the context otherwise requires,-
>
> (a) **"Authority"** means the Bangalore Development Authority constituted under section 3;

(b) **"Amenity"** includes road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purposes of this Act;

(bb) **"Civic amenity"** means,-

(i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;

(ii) a recreation centre run by the Government or the Corporation;

(iii) a centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government ;

(iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes ;

(v) a police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board ; and

(vi) such other amenity as the Government may, by notification, specify;

(c) **"Bangalore Metropolitan Area"** means the area comprising the City of Bangalore as defined in the City of

Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore Act 5 of 1945) was immediately before the commencement of this Act in force and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify;

(j) **"Development"** with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment;

(k) **"Engineering operations"** means formation or laying out of means of access to road;

(n) **"Local Authority"** means a municipal corporation or a municipal council constituted or continued under any law for the time being in force;

(o) **"Means of access"** includes any means of access whether private or public, for vehicles or for foot passengers, and includes a road;"

6. Sections 14, 15, 16, 28-A, 28-B, 28-C, 32(1) to (5A), 65, 65-B 67(1)(a) and (b) of the 1976 Act are also extracted below:

"14. Objects of the Authority.- The objects of the Authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purposes of such development and for purposes incidental thereto.

15. Power of Authority to undertake works and incur expenditure for development, etc.- (1) The Authority may,-

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the Bangalore Metropolitan Area ; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development schemes.

(2) The Authority may also from time to time make and take up any new or additional development schemes,-

(i) on its own initiative, if satisfied of the sufficiency of its resources, or

(ii) on the recommendation of the local authority if the local authority places at the disposal of the Authority the necessary funds for framing and carrying out any scheme; or

(iii) otherwise.

(3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems necessary require the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government.

16. Particulars to be provided for in a development scheme.- Every development scheme under section 15,- (1) shall, within the limits of the area comprised in the scheme, provide for ,-

(a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme ;

(b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets ;

(c) drainage, water supply and electricity ;

(d) the reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civic amenities.

(2) may, within the limits aforesaid, provide for,-

(a) raising any land which the Authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required ;

(3) may, within and without the limits aforesaid provide for the construction of houses.

28-A. Duty to maintain streets etc.- It shall be incumbent on the Authority to make reasonable and adequate provision by any means or measures which it is lawfully competent to use or take, for the following matters, namely,-

(a) the maintenance, keeping in repair, lighting and cleansing of the streets formed by the Authority till such streets are vested in the Corporation; and

(b) the drainage, sanitary arrangement and water supply in respect of the streets formed by the Authority.

28-B. Levy of tax on lands and buildings.- (1) Notwithstanding anything contained in this Act, the Authority may levy a tax on lands or buildings or on both, situated within its jurisdiction (hereinafter referred to as the property tax) at the same rates at which such tax is levied by the Corporation within its jurisdiction.

(2) The Provisions of the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) shall mutatis mutandis apply to the assessment and collection of property tax.

Explanation.- For the purpose of this section "property tax" means a tax simpliciter requiring no service at all and not in the nature of fee inquiring service.

28-C. Authority is deemed to be a Local Authority for levy of cesses under certain Acts.- Notwithstanding anything contained in any law for the time being force the Authority shall be deemed to be a local authority for the purpose of levy and collection of,-

(i) education cess under sections 16.17 and 17A of the Karnataka Compulsory Primary Education Act, 1961 (Karnataka Act 9 of 1961);

(ii) health cess under sections 3,4 and 4A of the Karnataka Health Cess Act, 1962 (Karnataka Act 28 of 1962);

(iii) library cess under section 30 of the Karnataka Public Libraries Act, 1965 (Karnataka Act 10 of 1965); and

(iv) beggary cess under section 31 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975).

32. Forming of new extensions or layouts or making new private streets.- (1) Notwithstanding anything to the contrary in any law for the time being in force, no person

shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the Authority and except in accordance with such conditions as the Authority may specify:

Provided that where any such extension or layout lies within the local limits of the Corporation, the Authority shall not sanction the formation of such extension or layout without the concurrence of the Corporation:

Provided further that where the Corporation and the Authority do not agree on the formation of or the conditions relating to the extension or layout, the matter shall be referred to the Government, whose decision thereon shall be final.

(2) Any person intending to form an extension or layout or to make a new private street, shall send to the Commissioner a written application with plans and sections showing the following particulars,-

(a) the laying out of the sites of the area upon streets, lands or open spaces;

(b) the intended level, direction and width of the street;

(c) the street alignment and the building line and the proposed sites abutting the streets;

(d) the arrangement to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting the streets and for adequate drinking water supply

(3) The provisions of this Act and any rules or bye-laws made under it as to the level and width of streets and the height of buildings abutting thereon shall apply also in the case of streets referred to in sub-section (2) and all the

particulars referred to in that sub-section shall be subject to the approval of the Authority.

(4) Within six months after the receipt of any application under subsection (2), the Authority shall either sanction the forming of the extension or layout or making of street on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(5) The Authority may require the applicant to deposit, before sanctioning the application, the sums necessary for meeting the expenditure for making roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as such applicant may be called upon by the Authority, provided the applicant also agrees to transfer the ownership of the roads, drains, water supply mains and open spaces laid out by him to the Authority permanently without claiming any compensation therefor.

(5A) Notwithstanding anything contained in this Act, the Authority may require the applicant to deposit before sanctioning the application such further sums in addition to the sums referred to in the sub-section (5) to meet such portion of the expenditure as the Authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities within the Bangalore Metropolitan Area.

65. Government's power to give directions to the Authority.- The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions.

65-B. Submission of copies of resolution and Government's power to cancel the resolution or

order.- (1) The Commissioner shall submit to the Government copies of all resolutions of the Authority.

(2) If the Government is of opinion that the execution of any resolution or order issued by or on behalf of the Authority or the doing of any act which is about to be done or is being done by or on behalf of the Authority is in contravention of or in excess of the powers conferred by this Act or any other law for the time being in force or is likely to lead to a breach of peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interests of the authority, it may, by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act after issuing a notice to the Authority to show cause, within the specified period which shall not be less than fifteen days, why,-

(a) the resolution or order may not be cancelled in whole or in part; or

(b) any regulation or bye-law concerned may not be repealed in whole or in part.

(3) Upon consideration of the reply, if any, received from the authority and after such inquiry as it thinks fit, Government may pass orders cancelling the resolution or order or repealing the regulation or bye-law and communicate the same to the authority.

(4) Government may at any time, on further representation by the authority or otherwise, revise, modify or revoke an order passed under subsection (3).

67. Amendment of the Karnataka Town and Country Planning Act, 1961.- (1) In the Karnataka Town and Country Planning Act , 1961 (Karnataka Act 11 of 1963),-

(a) in section 2, for item (i) of sub-clause (a) of clause (7), the following item shall be substituted namely,-

"(i) the local planning area comprising the City of Bangalore, the Bangalore Development Authority, and";

(b) after section 81-A, the following section shall be inserted, namely,-

"81-B. Consequences to ensue upon the constitution of the Bangalore Development Authority.- Notwithstanding anything contained in this Act, with effect from the date on which the Bangalore Development Authority is constituted under the Bangalore Development Authority Act, 1976 the following consequences shall ensue,-

(i) the Bangalore Development Authority shall be the local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted;

(ii) the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a Local Planning Authority constituted for the Bangalore City;

(iii) the City Planning Authority shall stand dissolved and upon such dissolution,-"

****"

7. In exercise of the power vested in it under Section 4-A(1) of the Town Planning Act, the State Government issued Notifications dated 1.11.1965 and 13.3.1984 declaring the areas specified therein to be the "Local Planning Areas". By the first notification, the State Government declared the area comprising the city of Bangalore and 218 villages enumerated

in Schedule I thereto to be the "Local Planning Area" for the purposes of the Town Planning Act and described it as the Bangalore City Planning Area. The limits of the planning area were described in Schedule II appended to the notification. By the second notification, the area comprising 325 villages around Bangalore (as mentioned in Schedule I) was declared to be the Local Planning Area for the environs of Bangalore. The limits of the city planning area were indicated in Schedule II. At the end of Schedule II of the second notification, the following note was added:

"This excludes the Bangalore City Local Planning Area declared (by) Government Notification No. PLN/42/MNP/65/SO/3446 dated 1-11-1965."

8. A third notification was issued on 6.4.1984 under Section 4-A(3) of the Town Planning Act amalgamating the Local Planning Areas of Bangalore declared under the earlier two notifications as "Bangalore City Planning Area" w.e.f. 1.4.1984.

9. On 1.3.1988, the State Government issued notification under Section 2(c) of the 1976 Act specifying the villages indicated in the first Schedule and within the boundaries indicated in the second Schedule to Notification dated 13.3.1984 to be the areas for the purposes of that clause. We shall refer to this notification a little later in the context of the High Court's negation of the respondents' challenge to that notification on the ground that the names of the villages or specified areas had not been published in the Official Gazette and, as such, the layout plans of the area comprised in those villages are not governed by the 1976 Act.

10. As a result of unprecedented increase in the population of the city of Bangalore between 1970 and 1980, the available civic amenities like roads, water supply system and supply of electricity were stretched to their limit. To meet the additional requirement of water and electricity and to tackle the problems

of traffic, new schemes were prepared in the development plan of Bangalore city, which was approved in 1984. These included augmentation of water supply, formation of Ring Road etc. Bangalore Water Supply and Sewerage Board (BWSSB) submitted a proposal to the State Government for taking up of Cauvery Water Supply Scheme, Stage III (for short, 'the Cauvery Scheme') for supply of an additional 270 MLD water to Bangalore at a cost of Rs. 240 crores. The proposed financing pattern of the project was as follows:

(i)	State Government	-	Rs.80/- crores,
(ii)	Life Insurance Corporation of India	-	Rs. 50/- crores,
(iii)	Bangalore City Corporation	-	Rs. 30/- crores, and
(iv)	World Bank	-	Rs. 80/- crores.

11. By an order dated 28.06.1984, the State Government, after taking cognizance of the difficulties being experienced by BWSSB in supplying water to the Bangalore Metropolitan Area and the possibility of acute shortage of water in next 10 years if the supply was not augmented, granted approval to the Cauvery Scheme.

12. Since the World Bank assistance was expected only in the year 1988 and the Cauvery Scheme was to be implemented by 1990 to meet the drinking water needs of the residents of Bangalore, the issue was discussed in the meeting held on 01.01.1987 under the chairmanship of the Chief Secretary of the State and it was decided that with a view to avoid escalation in the cost, the funds may be collected from other sources including the BDA because substantial quantity of water was required for the layouts which were being developed by it or likely to be developed in future. In furtherance of that decision, the State Government issued order dated 25.03.1987 and directed the BDA to make a grant of Rs. 30 crores to BWSSB to be paid in installments from 1987-88 to

1989-90 by loading an extra amount as water supply component at the rate of Rs. 10,000/- on an average per site for all the layouts to be formed thereafter.

13. In compliance of the directions given by the State Government, the BDA started collecting Rs.10,000/- per site. Later on, the levy under the Cauvery Scheme was increased to Rs.1 lac per acre. By 1992, it was realised that the BDA had not been able to develop and distribute sites as expected. Therefore, a proposal was submitted by the Commissioner, BDA to the State Government that contribution towards the Cauvery Scheme may be distributed among those applying for change of land use and the private layouts to be developed by the house building societies and on major housing projects. The State Government accepted the suggestion of the BDA and passed order dated 12.1.1993 for the levy of charges under the Cauvery Scheme at the rate of Rs.2 lacs per acre.

14. In 1992, the BDA also decided to take up the construction of 63.30 kilometers long Outer Ring Road and 3.5 kilometers long Intermediate Ring Road at an estimated cost of Rs.115 crores with a possible escalation up to Rs.130 crores. 36.24 kilometers of the Outer Ring Road was to pass through the BDA layouts and the balance was to pass through the land outside the BDA layouts. The cost of construction of Outer Ring Road passing through the BDA layout was to be met by charging the allottees of sites in the BDA layouts. For the balance 27.06 kilometers of Outer Ring Road and 3.5 kilometers of Intermediate Ring Road a proposal was prepared to obtain financial assistance from the World Bank. In the meeting held on 5.6.1992 under the chairmanship of the Chief Secretary of the State, the possibility of taking loan from HUDCO was explored. Simultaneously, it was considered whether partial burden of the cost could be passed on to the beneficiaries of the private layouts and it was agreed that like the Cauvery Scheme, Ring Road surcharge should be levied on the sites to be formed by the BDA and the private housing

societies at the rate of Rs.1 lac per acre. Thereafter, the BDA passed Resolution dated 19.10.1992 for levy of charges at different rates on change of land use in different areas and Rs.1 lac per acre on the layouts of housing societies and private lands as also the sites formed by itself.

15. The Air Craft Employees Cooperative Society Ltd. (respondent in C.A. No.7503/2002) submitted an application for approval of layout in respect of 324 acres 30 guntas land situated in Singasandra and Kudlu villages, Surjapur Hobli and Begur Hobli respectively. The application of the respondent was considered in the BDA's meeting held on 31.10.1991 and was approved subject to various conditions including payment of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge. Another condition incorporated in the Resolution of the BDA was that the civil portion of work shall be carried out by the respondent under its supervision. The decision of the BDA was communicated to the respondent vide letter dated 12.11.1992.

16. The respondent challenged the conditional sanction of its layout in Writ Petition No.11144/1993 and prayed for quashing the demand of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge by making the following assertions:

(i) The order passed by the State Government was applicable only to the sites to be formed by the BDA and not the layout of private House Building Societies because as per the Chairman of BWSSB, it will not be possible to take up the responsibility of providing water supply and underground drainage to such layouts and the societies had to make their own arrangements.

(ii) The Cauvery Scheme will be able to meet the requirements of only the citizens residing within the municipal area and some newly formed layouts adjacent to the city.

(iii) There is no provision in the Bangalore Water Supply and Sewerage Act, 1964 (for short, 'the 1964 Act') under which the burden of capital required for the execution of schemes could be passed on to the private House Building Societies and, in any case, the BWSSB can recover the cost by resorting to Section 16 of the 1964 Act.

(iv) Under the 1976 Act, the Government is not empowered to authorise the BDA to transfer the cost of the Cauvery Scheme to the private layouts.

(v) 20,000 acres of land has been acquired by the BDA for forming layouts in the vicinity of Bangalore and 10,000 acres had been acquired by the Government for House Building Cooperative Societies and if Rs.1 or 2 lacs per acre are charged, the Government will collect about Rs.600 crores from the BDA itself, though the latter's contribution was initially fixed at Rs.30 crores only.

(vi) The demand of Rs.1 or 2 lacs per acre towards the Cauvery Scheme is ultra vires the provisions of Article 265 of the Constitution.

(vii) The levy of Rs.1 lac per acre as Ring Road surcharge is not sanctioned by law and the State and the BDA cannot burden the private layouts without determining whether the Ring Road would be of any use to the members of the House Building Societies.

17. During the pendency of Writ Petition No.11144/1993, the State legislature amended the 1976 Act by Act. No.17/1994 and inserted sub-section (5A) in Section 32 w.e.f. 20.6.1987 authorising the BDA to demand sums in addition to those referred in sub-section (5) to meet the expenditure towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities within the Bangalore Metropolitan area.

18. The respondent promptly amended the writ petition and challenged the constitutional validity of the newly inserted sub-section by asserting that the provision is discriminatory and violative of Article 14 of the Constitution because it gives unbridled and uncanalized power to the BDA to demand additional sums for different schemes. It was also pleaded that sub-section (5A) has been inserted in Section 32 to legitimize the conditions incorporated in letter dated 12.11.1992 for payment of charges for the Cauvery Scheme and the Ring Road.

19. While the parties were litigating on the constitutionality of the amended provision and legality of the conditional sanction of the layout, the respondent applied for approval of the BDA for starting civil work. The same was sanctioned subject to payment of the following charges:

(i) Supervision Charges Rs. 92,26,687.00
(at the rate of 9% on Civil Work)

(ii) Improvement charges Rs. 1,65,95,008.00
(at the rate of Rs. 20 per sq. mtrs.)

(iii) Examination charges Rs. 4,14,876.00
(0-50 per sq. mtrs.)

(iv) Slum Clearance Development Rs. 20,74, 365.00
Charges (Rs. 25,000 per hectare)

(v) M.R.T.S. Tax Rs. 1,02,51, 875.00
(Rs. 50,000 per acre)

(vi) Miscellaneous Rs. 7,189.00

20. The respondent challenged the conditional approval of civil work in Writ Petition No. 25833/1998 on the ground that the 1976 Act does not authorize such levies and that the legislature has not laid down any guideline for creating such

demand from the private House Building Societies. An additional plea taken by the respondent was that the BDA has applied the provisions of Section 32 of the 1976 Act under a mistaken impression that the layout was within its jurisdiction. According to the respondent, no notification had been issued by the State Government for including the villages of North and South Talukas within the Bangalore Metropolitan Area. Another plea taken by the respondent was that the State Government has already collected conversion fine and, as such, the BDA does not have the jurisdiction to levy betterment fee. Similar plea was raised in respect of Mass Rapid Transport System Cess and the Slum Clearance charges.

21. The other House Building Cooperative Societies also filed writ petitions between 1994 and 1998 for striking down Section 32(5A) and the conditional sanction of their layouts in terms of which they were required to pay for the Cauvery Scheme and the Ring Road apart from other charges mentioned in the sanction of civil work as was done in the case of Air Craft Employees Cooperative Society Limited. They generally pleaded that:

i. the BDA has no jurisdiction to make demands requiring payment of sums under various heads in the matter of sanction of the residential layout plan as areas of their layouts do not form part of the Bangalore Metropolitan Area;

ii. the notification issued under Sec. 2(c) of the 1976 Act is not valid as there is no specification of the adjacent areas;

iii. Notification dated 1.3.1988 is not in consonance with the requirements of law as it does not specify the villages and the areas which were sought to be declared and specified as part of the Bangalore Metropolitan Area and the specifications and schedules referred to in the notification have not

been published;

iv. the villages which include the lands that form a part of the residential layouts also do not figure in the schedule to Notification dt. 13.3.1984.

22. The writ petitions were contested by the appellant by making the following assertions:

i. the lands of the respondents' residential layout fall within the local planning area of the authority and, therefore, they are liable to pay layout charges in respect of the Cauvery Scheme, Ring Road surcharge, slum clearance charge, betterment levy, scrutiny fee, supervision charges, etc.

ii. the charges have been levied in terms of the directions given by the State Government and the decision taken by the BDA.

iii. the societies are required to carry out civil work under the supervision of the BDA and, therefore, they are liable to pay supervision charges.

iv. Section 32(5A) of the 1976 Act does not suffer from any constitutional infirmity and guidance for levy of such charges can be traced in the scheme of the Act.

23. The Division Bench of the High Court first considered the question whether Notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act was invalid because the names of the villages or the specified area had not been notified or published in the Official Gazette and whether in the absence of such notification, the villages in which the societies had formed layouts cannot be treated as part of the Bangalore Metropolitan Area. The Division Bench referred to the definition of the expression "Bangalore Metropolitan Area" contained in Section 2(c) of the 1976 Act, the contents of Notification dated

1.3.1988 and held that the description of the area given in the notification was in consonance with the definition of the Bangalore Metropolitan Area because reference had been made to the villages in Schedule I to Notification dated 13.3.1984 and the boundaries of the planning environs area as per Schedule II of the said notification. The Division Bench opined that if Notifications dated 13.3.1984 and 1.3.1988 are read together, it cannot be said that the particular villages do not form part of the Bangalore Metropolitan Area.

24. The Division Bench did not decide the plea of the respondents that some of the villages were not included in the Schedules by observing that determination of this question involves investigation into a question of fact and this can be considered at the time of approval of the layout plan of the particular society.

25. The argument that while dealing with the issue raised in Writ Petition No.13907/1995, the BDA had lost the territorial jurisdiction because the areas in question had become part of City Municipal Council, Byatarayanapura and City Municipal Council, Krishnaraja Puram respectively vide Notification dated 22.1.1996 was left to be decided by the BDA with liberty to the concerned respondent to raise the same at an appropriate stage.

26. The Division Bench then adverted to Articles 265 and 300A of the Constitution and held that the BDA cannot levy or recover the sums specified in the demand notice on the basis of the government order or circular. The Division Bench further held that the approval of layout plan or work order cannot be made subject to the condition of deposit of the sum demanded by it. The Division Bench then analysed the provisions of Section 32 of the 1976 Act and observed:

"No principle appears to have been laid down or indicated for the authority to be kept in view and followed when determining in such portion of the expenditure, which

expenditure have to relate to be made or to be incurred in the execution of any schemes or works as referred. No doubt, the schemes or works for augmenting the water supply, electricity and other amenities only provide that it should be worked within the Bangalore Metropolitan Area or work is to be for the benefit of the Bangalore Metropolitan Area to provide amenities within the Bangalore Metropolitan Area. But, the question is that out of that expenditure which the Bangalore Metropolitan Area has to bear or incur what portion thereof the applicant seeking approval of layout plan etc., will be required to deposit and know the proportion or a portion of that is to be determined by the authority. There is nothing in this section to indicate or to provide any guideline. There are no rules framed under the Act with reference to subsection (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 to provide guidelines or to indicate as to how that is to be determined. The section does not by itself provide any procedure of either hearing or of giving the notice to the persons affected, or there being opportunity of being heard being given to the concerned persons or person before determination of the portion of the expenditure which the Bangalore Development Authority has to incur with reference to those schemes or works to be levied thereunder."

27. The Division Bench relied upon the ratio in *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors.* AIR 1958 SC 538, Jyoti Pershad v. The Administrator for The Union Territory of Delhi, AIR 1961 SC 1602; *Devi Das Gopal Krishnan v. State of Punjab,* AIR 1967 SC 1895, *State of Kerala v. M/s. Travancore Chemicals and Manufacturing Company* (1998) 8 SCC 188 and observed:

"In the present case, sub-section (5-A) of Section 32 of the Act, does not appear to provide any guidelines so as to determine as to what exact portion of the expenditure should the applicant be required to deposit. No doubt, the entire expenditure cannot be fastened on the applicant. It does not provide any guidelines in this regard. It does not provide the portion of the amount the applicant maybe required to deposit shall bear any percentage on the basis of enjoyment of the benefit by the applicant or the applicant likely to enjoy the benefit qua enjoyment by total area or its population. It also does not provide that the applicant before being required to pay will have opportunity of disputing that claim and challenging the correctness of the portion proposed by the authority to be fastened on him. Really the section appears to confer unbridle powers without providing any guide lines or guidance in that regard. The section also does not provide any remedy against the order of authority under Section 32(5) of the Act.

The learned counsel for the respondents contended that there is remedy against the order of the authority under Section 63 of the Act by way of revision to the Government which may consider the legality or propriety of the order or proceedings. In our opinion, this contention of the learned Counsel is without substance. In view of the Non obstante clause contained in sub-section (5-A) of Section 32 of the Act which provides that exercise of that power and it may result in or it may cause irrational discrimination between the same set of persons and the persons maybe deprived of their properties in the form of money by the exercise of sweet will and the unbridled discretion of the authority concerned. In our view this provision as it confers unbridle and uncontrolled power on the authority as such it may enable unequal and discriminatory treatment to be accorded to the persons and it may enable the authority to discriminate among the persons similarly situated. Tested by the yardstick of the principle laid down in Sri Rama Krishna Dalmia's case reported in A.I.R.1958 Supreme Court 538 and Shri Jyothi Pershad's case

reported in A.I.R. 1961 Supreme Court 1602. We find that the provision of sub-section (5-A) of Section 32 of the Bangalore Development Act, 1976 suffers from vice of discrimination and has tendency to enable the authority to discriminate and as such hit by Article 14 of the Constitution."

28. The Division Bench finally concluded that the demand made by the BDA with the support of Section 32(5A) is illegal and without jurisdiction and accordingly allowed the writ petitions.

29. At this stage, it will be appropriate to mention that during the course of hearing on 2.9.2009, Shri Dushyant Dave, learned senior counsel appearing for one of the respondents stated that a sum of Rs.300 crores (approximately) has been collected by the BDA from the House Building Societies in lieu of sanction of their layouts and substantial amount from the allottees of the sites of the layouts developed by it between 1984-1992 and this, by itself, was sufficient to prove that the exercise of power by the BDA under Section 32 (5A) of the 1976 Act is arbitrary. After considering the statement made by Shri Dave, the Court directed the Commissioner and/or Secretary of the BDA to file a detailed and specific affidavit giving the particulars of contribution made by the BDA towards the Cauvery Scheme and the amount demanded and/or collected from those who applied for sanction of the private layouts as also the allottees of the sites in the BDA layouts. In compliance of the Court's direction, Shri Siddaiah, the then Commissioner, BDA, filed affidavit dated 11.11.2009, paragraphs 2 to 5 of which are extracted below:

"2. The Government of Karnataka formed the Cauvery Water IIIrd Stage Scheme in 1984. However, the Government directed the Bangalore Development Authority to contribute Rs. Thirty crores towards the Cauvery Water IIIrd Stage Scheme by its order No. HUD 97 MNI 81, Bangalore dated 25th March, 1987. The Bangalore

Development Authority started collecting Cauvery Water Cess from 1988. However, the Government by its order No. UDD 151 Bem.Aa.Se 2005, dated 03.05.2005 directed the Bangalore Development Authority to stop collection of the Cauvery Water Cess and Ring Road Cess and MRTS Cess. A copy of the order of the Government Order dated 03.05.2005 directing not collect any cess referred above is produced herewith as Annexure-'A'. The BDA has charged and collected the Cauvery water cess between 1988 and 2005. The Cauvery Water cess collected by the BDA is periodically transferred to the Bangalore Water Supply and Sewerage Board (BWSSB). The chart showing year wise payments made to BWSSB towards the Cauvery Water Cess from 1988 till 2005 is produced herewith as Annexure-'B'. The payment chart shows the amount collected towards the Cauvery Water Cess and paid to BWSSB. The chart shows that a total sum of Rs. 34.55 crores are collected from 1988 to April 2005. The sum of Rs.34.55 crores collected is in respect of both private layouts as well as Bangalore Development Authority sites. The entire money collected towards the Cauvery Water Cess has been paid to the Bangalore Water Supply Sewerage Board, Bangalore as stated above.

3. Similarly, the collection towards the Ring Road Cess from the year 1992-93 and the collections were made up to 2005-06. The total sum collected is Rs.15.15 crores. The year-wise chart showing the collection of Ring Road Cess is produced herewith as Annexure-'C'. The Ring Road Cess is collected only from the private layouts.

4. With regard to certain averments made in W.P. No. 11144/1993 with regard to estimated collection of Cauvery Water Cess, it is submitted that the estimates are far from accurate. It is just a guess work. The averments made therein that the Government has acquired around 10,000

acres towards the private societies will not be within the knowledge of the Bangalore Development Authority, because the Government does not seek the opinion or consent of BDA before acquiring land for a private layout. The private layouts within the limits of BDA have to apply to BDA for approval of a private under Section 32 of BDA Act. From 1984 till 2005, 194 applications for approval of private layouts were received and were approved by the Bangalore Development Authority involving about an extent of 5668 acres and 15 3/4th gunthas (five thousand six hundred and sixty-eight acres and fifteen and three fourth gunthas). However, Cauvery Water Cess and Ring Road Cess are levied and collected as stated above from 1988 and 2005 respectively. The submissions made in the Writ Petition to the contrary are speculative.

5. Similarly, the averments in the W.P. that the Bangalore Development Authority would collect about 300 crores are speculative. It is submitted with respect after the directions of the Government in 2005, all the above collections have been stopped. Hence, this affidavit.

BANGALORE DEVELOPMENT AUTHORITY BANGALORE

THE COLLECTION OF CAUVERY WATER CESS & PAID TO BWSSB AS MENTIONED BELOW

(INR in Lakh)

SL NO	CHEQUE NO.	DATE	AMOUNT
1	FROM FEB 1988 TO APRIL 1992		2,130.00
2	705908	02.11.1996	150.00
3	718093	21.01.1997	100.00
4	737303	15.03.1997	100.00
5	753086	06.07.1997	100.00
6	756449	30.12.1997	150.00
7	650002	18.03.1998	50.00
8	759664	20.07.1998	50.00
9	502441	22.01.1999	50.00
10	769862	15.09.1999	75.00
11	653066	04.06.2005	500.00
TOTAL			3,455.00

(Rupees Thirty Four Crores and Fifty Five Lakh)

Sd/-
Accounts Officer BDA,
Bangalore

ANNEXURE-II
YEAR WISE RING ROAD CESS

(INR in Lakh)

YEAR	COLLECTIONS	CHARGED TO RING ROAD EXPEND.	BALANCE
1992-93	63.39	63.39	-
(Feb 93 on wards)			
1993 -94	183.89	183.89	-
1994-95	217.87	217.87	-
1995-96	331.14	331.14	-
1996-97	162.08	162.08	-
1997-98	180.79	180.79	-
1988-99	84.23	84.23	-
1999-00	50.49	50.49	-
2000-01	19.48	19.48	-
2001-02	0.30	0.30	-
2002-03	7.34	7.34	-
2003-04	-	-	-
2004-05	-	-	-
2005-06	214.27	214.27	-
TOTAL	**1,515.27**	**1,515.27**	"

Letter dated 03.05.2005 of the State Government, which is enclosed with the affidavit of Shri Siddaiah, is also reproduced below:

"GOVERNMENT OF KARNATAKA

UDD.151.BAN.2005 Karnataka Secretariat
Multistoried Building
Bangalore

Dated: 03.05.2005

Sub: Ring Road Cess, Augmentation Cess (Cauvery Water Cess) & MRTS Cess.

Ref: Government Circular No. 249 of 2001 dated 20.09.2003.

In the above circular referred above, the Government has withdrawn all earlier orders and decided that henceforth Ring Road Cess, Augmentation Cess (Cauvery Water Cess) & MRTS Cess should not be levied. Even so some Corporations, Municipalities and Authorities are charging the above cess.

Therefore, until a decision is taken at the level of the Government about the above stated subject and until further directions, Ring Road Cess, Augmentation Cess (Cauvery Water Cess) & MRTS Cess should not be charged. Hence this order.

Sd/-03.05.2005
(V.R. Ilakal)
Addl. Secretary, Govt. of Karnataka
Urban Development"

30. Thereafter, Shri Anand R.H., President of the Bank Officers and Officials House Building Cooperative Society Limited filed detailed affidavit dated 08.03.2010, paragraphs 2 to 7 whereof are reproduced below:

"2. I submit that this Hon'ble Court by order dated 02.09.2009 had directed the Commissioner and/or Secretary of Appellant Bangalore Development Authority (BDA for short) to file a detailed and specific affidavit stating therein the total contribution made by the BDA towards Cauvery Water Supply Scheme Stage III and the amount demanded and/or collected from those who applied for sanction of private layouts as also the allottees of the sites in the layouts prepared by the BDA itself.

3. I say that the BDA has deliberately not at all disclosed the material facts:

(i) the total number of the Housing Societies and others who applied for sanction of layouts including private layouts;

(ii) the amount BDA has demanded from the Housing Societies and others who have applied for sanction of layouts and private layouts;

(iii) the total number of sites formed in the layouts formed by the BDA and allotted to the public;

(iv) the total amount demanded and collected from the allottees of the sites in the layouts formed by BDA itself;

(v) as per Government order dated 25.03.1987 the BDA was empowered to levy and collect amount towards the Cauvery Water Supply Scheme also from the Applicants who apply for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts. The BDA has not disclosed the details of such Applicants or the amount recovered from them in terms of the Government order dated 25.03.1987.

4. I say that in the affidavit under reply the BDA has stated that it has approved layouts involving about an extent of

5668 acres and 15 ¾ guntas from 1984 till 2005. The extent of area involved in respect of each of the Societies is more than 10 acres in each layout. In terms of the Government Order the BDA has demanded towards the Cauvery Water Supply Scheme at the rate of Rs. 3,00,000/- (Rupees Three Lakhs Only) per acre. Therefore, at a conservative estimate the BDA has raised demand of more than Rs. 170/- crores (5668 x Rs. 3 lakhs). This amount pertains to only Housing Societies. As stated above the BDA has not disclosed the total number of layouts formed by it and the total number of site allotted in the said layouts to its allottees. I say that the BDA has in its officials site http://www.bdabangalore.org/layout.htm has furnished the layout information till 2007 which information has been downloaded from the internet by the deponent. As per the information published by the BDA itself it has formed 62 layouts and has made allotments of about 2 lakh sites to general public. It is also stated therein that in the last one decade more than 10 new layouts have been added to the growing city of Bangalore by BDA as under:

A. BANASHANKARI 6TH STAGE

• 743 acres land acquired for phase-3 Banashankari 6th Stage and Anjanapura Further Extension in Uttarahalli Hobli, Bangalore South Taluk, 5000 sites allotted in September 2002.

B. BANASHANKARI 6TH STAGE FURTHER EXTENSION

• 750 acres land acquired in Uttarahalli Hobli, Bangalore South Taluk, 5800 allotted during January 2004.

C. SIR. M. VISWESHWARAYA LAYOUT

• 1337 acres and 22 guntas of land acquired for SMV Layout allotted 10,000 sites during March 2003.

D. SIR. M. VISWESHWARAYA LAYOUT FURTHER EXTENSION

• 510 acres land acquired, 4200 allotted during January, 2004. It is near Kengeri Hobli.

E. HSR Layout is on the South-Eastern part of the city closer to Electronic City and Outer Ring Road. It is one among the prestigious layouts of BDA.

A total of 9900 sites have been allotted in HSR Layout during 1986 to 88, 92, 95 and 99.

F. Sir. M. Visweswaraya Nagar Layout is in the Western part of the city. In SMV Layout we have allotted 17, 624 sites

6 x 9 – 4445

9 x 12 – 7368

12 x 18 – 4167

15 x 24 – 1644

G. In SMV Further Extension we have allotted 3615 sites.

In Anjanpura Further Extension we have allotted 7340 sites

6 x 9 – 1835

9 x 12 – 3305

12 x 18 – 1335

15 x 24 – 365

H. In Arkavathi Layout, in the 1st Phase 1710 sites and in the 2nd phase 8314 sites of different dimensions. A total of 3664 (30x40) dimension sites have been allotted totally at the rate of Rs. 2100 sq. mtrs.

S.No	Name of the layout	Location	No. of sites formed			
			Intermediate	Corner	Total	No. of sites allotted
1	BSK 6th Stage	South part of the city with approach road from Kengeri Road	15520	2379	17899	15520
2			5175	816	5991	5175
3	Anjanapura Township 1 to 8th Block	South part of the city with approach road from Kanakapura Road. Biggest Layout formed in recent years	5424	829	6253	5424
4			4340	683	5023	4340
5	SMV Layout	West part of the city with approach road from Nagarabhavi Road	9696	1764	11460	9696
6	SMV further extension		3615	650	4265	3615
7	Arkavath		20000	8600	28600	8813

A True copy of the layout information published by BDA in its official website: http://www.bdabangalore.org/layout.htm as at 2007 is filed as ANNEXURE A-1 to this affidavit. The true typed copy of Annexure A-1 is filed as ANNEXURE A-2.

B 5. I say that if the total number of sites allotted by the BDA in the layout formed by it if taken as 2 lakhs sites as stated in the BDA publication the amount levied and collected by BDA from such allottees will come to Rs. 200 crores (2,00,00,000 x Rs. 10,000/-).

C As stated in the BDA publication in the last decade itself more than 73503 sites have been allotted by the BDA in the layouts formed by itself. The amount levied and collected by the BDA from these allottees in the last one D decade at the rate of Rs. 10,000/- per site in terms of the Government Order dated 25.03.1987 towards the Cauvery Water Supply Scheme itself will come to Rs. 73,50,30,000/- (Rs.10,000 per site x 73503 sites).

E 6. I say that apart from the amount levied and collected by BDA from the above mentioned Applicants, the BDA must have collected the amount towards the Cauvery Water Supply Scheme from the Applicants who applied for change in land use and for formation of Group Housing/ other major developments and for formation of Private F Layouts at the rate as prescribed in the Government Order dated 25.03.1987.

7. I say that the facts and figures disclosed above is based on the averments made in the affidavit filed by BDA and G the information official from the official website of BDA http://www.bdabangalore.org/layout.htm and I believe the same to be correct. Therefore, it is apparent that the BDA has demanded more than Rs.370 crores from the societies whose layouts have been approved by BDA (Rs. H 170 crores) and from its allottees (Rs. 200 crores)

excluding the Applicants who applied for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts.

I say that apart from the fact that the BDA is not empowered to levy and collect the amount towards Cauvery Water Supply Scheme and without prejudice to the submission that the provisions of Section 32(5-A) of the BDA Act is ultra vires the Constitution and without prejudice to rights and contentions raised in the Civil Appeal even assuming that the BDA could levy and collect the amount towards Cauvery Water Supply Scheme, the BDA could collect only Rs. 30 crores. The BDA has however demanded the payment towards Cauvery Water Supply Scheme in excess of over Rs. 370 crores from the Housing Societies and its own allottees apart from the demand made from the Applicants who applied for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts which facts have not been disclosed by the BDA. The entire information pertaining to the demand and collection of the funds towards Cauvery Water Supply Scheme is available with BDA but has been deliberately withheld. In any event even according to the affidavit filed by the BDA it has collected Rs.34.55 crores as against the limit of Rs. 30 crores which it could collect under the Government Order. Therefore, the amount collected is far in excess of its limit. On this ground also the demand raised against the Respondent Societies is illegal and without authority of law."

31. We shall first deal with the question whether the area in which the respondents have formed layouts fall within the Bangalore Metropolitan Area. In the impugned order, the Division Bench has recorded brief reasons for negating the respondents' challenge to Notification dated 1.3.1988. The conclusion recorded by the Division Bench and similar view

expressed by another Division Bench of the High Court in the *Commissioner, Bangalore Development Authority v. State of Karnataka* ILR 2006 KAR 318 will be deemed to have been approved by the three Judge Bench of this Court in *Bondu Ramaswamy v. Bangalore Development Authority* (2010) 7 SCC 129, which referred to Notifications dated 1.11.1965 and 13.3.1984 issued under Section 4A(1) of the Town Planning Act and Notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act and observed:

"A careful reading of the Notification dated 1-3-1988 would show that the clear intention of the State Government was to declare the entire area declared under the Notification dated 1-11-1965 and the Notification dated 13-3-1984, together as the Bangalore Metropolitan Area. The Notification dated 1-3-1988 clearly states that the entire area situated within the boundaries indicated in Schedule II to the Notification dated 13-3-1984 was the area for the purpose of Section 2(c) of the BDA Act. There is no dispute that the boundaries indicated in Schedule II to the Notification dated 13-3-1984 would include not only the villages enumerated in First Schedule to the Notification dated 13-3-1984 but also the area that was declared as planning area under the Notification dated 1-11-1965. This is because the areas declared under Notification dated 1-11-1965 are the core area (Bangalore City) and the area surrounding the core area that is 218 villages forming the first concentric circle; and the area declared under the Notification dated 13-3-1984 (325 villages) surrounding the area declared under the Notification dated 1-11-1965 forms the second concentric circle. Therefore, the boundaries of the lands declared under the Notification dated 13-3-1984, would also include the lands which were declared under the Notification dated 1-11-1965 and therefore, the 16 villages which are the subject-matter of the impugned acquisition, are part of the Bangalore Metropolitan Area.

The learned counsel for the appellants contended that the note at the end of Second Schedule to the Notification dated 13-3-1984 excluded the Bangalore City Planning Area declared under the Notification dated 1-11-1965. As the planning area that was being declared under the Notification dated 13-3-1984 was in addition to the area that was declared under the Notification dated 1-11-1965, it was made clear in the note at the end of the Notification dated 13-3-1984 that the area declared under the Notification dated 1-11-1965 is to be excluded. The purpose of the note was not to exclude the area declared under the Notification dated 1-11-1965 from the local planning area. The intention was to specify what was being added to the local planning area declared under the Notification dated 1-11-1965. But in the Notification dated 1-3-1988, what is declared as the Bangalore Metropolitan Area is the area, that is, within the boundaries indicated in Schedule II to the Notification dated 13-3-1984, which as noticed above is the area notified on 1-11-1965 as also the area notified on 13-3-1984. The note in the Notification dated 13-3-1984 was only a note for the purposes of the Notification dated 13-3-1984 and did not form part of the Notification dated 1-3-1988. There is therefore no doubt that the intention of the State Government was to include the entire area within the boundaries described in Schedule II, that is, the area declared under the two Notifications dated 1-11-1965 and 13-3-1984, as the Bangalore Metropolitan Area.

In fact ever since 1988 everyone had proceeded on the basis that the Bangalore Metropolitan Area included the entire area within the boundaries mentioned in Schedule II to the Notification dated 13-3-1984. Between 1988 and 2003, BDA had made several development schemes for the areas in the first concentric circle around Bangalore City (that is, in the 218 villages described in First Schedule to the Notification dated 1-11-1965) and the State

Government had sanctioned them. None of those were challenged on the ground that the area was not part of Bangalore Metropolitan Area."

The Bench then considered the argument that the language of notification dated 1.3.1988 cannot lead to a conclusion that the areas specified in the Schedule were made part of the Bangalore Metropolitan Area, referred to the doctrine of casus omissus, the judgment of the Constitution Bench in *Padma Sundara Rao v. State of T. N.* (2003) 5 SCC 533 and proceeded to observe:

> "Let us now refer to the wording and the ambiguity in the notification. Section 2(c) of the BDA Act makes it clear that the city of Bangalore as defined in the Municipal Corporation Act is part of Bangalore Metropolitan Area. It also makes it clear that the areas where the City of Bangalore Improvement Act, 1945 was in force, is also part of Bangalore Metropolitan Area. It contemplates other areas adjacent to the aforesaid areas being specified as part of Bangalore Metropolitan Area by a notification. Therefore, clearly, the area that is contemplated for being specified in a notification under Section 2(c) is "other areas adjacent" to the areas specifically referred to in Section 2(c). But it is seen from the Notification dated 1-3-1988 that it does not purport to specify the "such other areas adjacent" to the areas specifically referred to in Section 2(c), but purports to specify the Bangalore Metropolitan Area itself as it states that it is specifying the "areas for the purpose of the said clause". If the notification specifies the entire Bangalore Metropolitan Area, the interpretation put forth by the appellants that only the villages included in Schedule I to the Notification dated 13-3-1984 would be the Bangalore Metropolitan Area, would result in an absurd situation. Obviously the city of Bangalore and the adjoining areas which were notified under the City of Bangalore Improvement Act, 1945 are

already included in the Bangalore Metropolitan Area and the interpretation put forth by the appellants would have the effect of excluding those areas from the Bangalore Metropolitan Area.

As stated above, the core area or the inner circle area, that is, Bangalore City, is a part of Bangalore Metropolitan Area in view of the definition under Section 2(c). The 218 villages specified in the Notification dated 1-11-1965 are the villages immediately surrounding and adjoining Bangalore City and it forms the first concentric circle area around the core area of Bangalore City. The 325 villages listed in First Schedule to the Notification dated 13-3-1984 are situated beyond the 218 villages and form a wider second concentric circle around the central core area and the first concentric circle area of 218 villages. That is why the Notification dated 1-3-1988 made it clear that the Bangalore Metropolitan Area would be the area within the boundaries indicated in Second Schedule to the Notification dated 13-3-1984. It would mean that the three areas, namely, the central core area, the adjoining 218 villages constituting the first concentric circle area and the next adjoining 325 villages forming the second concentric circle are all included within the Bangalore Metropolitan Area.

What is already specifically included by Section 2(c) of the BDA Act cannot obviously be excluded by Notification dated 1-3-1988 while purporting to specify the additional areas adjoining to the areas which were already enumerated. Therefore, the proper way of reading the Notification dated 1-3-1988 is to read it as specifying 325 villages which are described in the First Schedule to the Notification dated 13-3-1984 to be added to the existing metropolitan area and clarifying that the entire areas within the boundaries of Second Schedule to the Notification dated 13-3-1984 would constitute the Bangalore

Metropolitan Area. There is no dispute that the boundaries indicated in the Notification dated 13-3-1984 would clearly include the 16 villages which are the subject-matter of the acquisition."

32. In view of the judgment in *Bondu Ramaswamy v. Bangalore Development Authority* (supra), we hold that the villages specified in the schedules appended to Notifications dated 1.11.1965 and 13.3.1984 form part of the Bangalore Metropolitan Area. The question whether the BDA has lost territorial jurisdiction over the area in which the House Building Societies have formed layouts need not be decided because the learned counsel for the respondents did not challenge the observations made by the Division Bench of the High Court.

33. We shall now consider the following core questions:

(1) whether Section 32(5A) of the 1976 Act is violative of Article 14 of the Constitution;

(2) whether Section 32(5A) of the 1976 Act suffers from the vice of excessive delegation of legislative power;

(3) whether the demand of charges under the Cauvery Scheme etc. amounts to tax and is, therefore, ultra vires the provisions of Article 265 of the Constitution; and

(4) whether the BDA has collected charges from the house building societies and the allottees of sites of the layouts prepared by it far in excess of its contribution towards the Cauvery Scheme, MRTS, etc.

Question (1)

34. Shri Altaf Ahmed, learned senior counsel appearing for the BDA and Shri Sanjay R. Hegde, learned counsel for the

State of Karnataka argued that Section 32(5A) is not violative of Article 14 of the Constitution inasmuch as it does not operate unequally qua the allottees of the sites of the layouts prepared by the house building societies on the one hand and the BDA layouts on the other hand. Learned counsel emphasised that the allottees of sites in the BDA layouts which were carved out after 20.06.1987 have been burdened with the liability to pay charges for the Cauvery Scheme as well as Ring Road and no discrimination has been practiced between the two sets of allottees. Learned senior counsel Shri Altaf Ahmed submitted that even otherwise there is no comparison between the BDA layouts which were formed by spending substantial public funds and the private layouts prepared by the house building societies. Learned counsel referred to the additional affidavit of Shri Siddaiah to show that Rs. 34.55 crores were collected by the BDA between 1988 and 2005 both from the private layouts as well as the BDA sites and the entire amount has been paid to BWSSB in lieu of the BDA's share in the Cauvery Scheme.

35. Shri K.K. Venugopal and Shri P. Vishwanatha Shetty, learned senior advocates and Shri R.S. Hegde and other learned counsel appearing for the respondents supported the conclusion recorded by the High Court that Section 32(5A) is violative of Article 14 of the Constitution by emphasizing that the impugned provision has resulted in hostile discrimination between the allottees of sites in the layouts of the house building societies and other people living in the Bangalore Metropolitan Area. Learned counsel submitted that while the benefit of the Cauvery Scheme, Ring Road, etc. will be availed by all the residents of the Bangalore Metropolitan Area, the cost of amenities have been loaded exclusively on the allottees of the sites of the private layouts and to some extent the BDA layouts and in this manner similarly situated persons have been discriminated. Shri Venugopal referred to the averments contained in paragraphs 4 to 6 of the amendment application filed in Writ Petition No. 11144/1993 to drive home the point

that the BDA has loaded its share towards the Cauvery Scheme and Ring Road exclusively on the allottees of the private layouts leaving out the remaining population of the Bangalore Metropolitan Area.

36. In our view, the High Court committed serious error by recording a finding that Section 32(5A) is discriminatory and violative of Article 14 of the Constitution. While deciding the issue relating to constitutionality of the Section, the High Court overlooked the well-established principle that a statutory provision is presumed to be constitutionally valid unless proved otherwise and burden lies upon the person who alleges discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution.

37. In *Charanjit Lal Chowdhuri v. Union of India* (1950) 1 SCR 869, this Court enunciated the rule of presumption in favour of constitutionality of the statute in the following words:

> "Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind :- (1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in *Middleton v. Texas Power and Light Company* 248 U.S. 152, 157, in which the relevant passage runs as follows:
>
> "It must be presumed that a legislature understands and

correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.""

(emphasis supplied)

38. In *M.H. Quareshi v. State of Bihar* (1959) 1 SCR 629, this Court observed:

"The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times, and may assume every state of facts which can be conceived existing at the time of legislation."

39. In *Ram Krishna Dalmia v. Justice S.R. Tendolkar* (supra), to which reference has been made in the impugned order, this Court laid down various propositions including the following:

"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report,

the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;"

40. In *R.K. Garg v. Union of India* (1981) 4 SCC 675 the Constitution Bench reiterated the well-settled principles in the following words:

"While considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

41. Though, in the writ petitions filed by them, the respondents pleaded that Section 32(5A) is discriminatory, no factual foundation was laid in support of this plea and in the absence of such foundation, the High Court was not at all justified in recording a conclusion that the impugned provision is violative of the equality clause contained in Article 14 of the Constitution.

42. While examining the issue of hostile discrimination in

the context of Section 32(5A), the Court cannot be oblivious of the fact that due to unprecedented increase in the population of the Bangalore City and the policy decision taken by the State Government to encourage house building societies to form private layouts, the BDA was obliged to take effective measures to improve the civic amenities like water supply, electricity, roads, transportation, etc. within the Bangalore Metropolitan Area and for this it became necessary to augment the resources by the BDA itself or through other State agencies/ instrumentalities by making suitable contribution. It would be a matter of sheer speculation whether in the absence of increase in the population of the Bangalore Metropolitan Area and problems relating to planned development, the legislature would have enacted the 1976 Act and the State and its agencies/ instrumentalities would have spent substantial amount for augmenting water supply, electricity, transportation and other amenities. However, the fact of the matter is that with a view to cater to the new areas, and for making the concept of planned development a reality qua the layouts of the private House Building Societies and those involved in execution of large housing projects, etc., the BDA and other agencies/ instrumentalities of the State incurred substantial expenditure for augmenting the water supply, electricity, etc. There could be no justification to transfer the burden of this expenditure on the residents of the areas which were already part of the city of Bangalore. In other words, other residents could not be called upon to share the burden of cost of the amenities largely meant for newly developed areas. Therefore, it is not possible to approve the view taken by the High Court that by restricting the scope of loading the burden of expenses to the allottees of the sites in the layouts developed after 1987, the legislature violated Article 14 of the Constitution.

Question (2)

43. Learned senior counsel for the BDA and the counsel appearing for the State assailed the finding recorded by the

High Court that Section 32(5A) is a piece of excessive delegation by pointing out that while the sums specified in Section 32(5) are required to be deposited by those intending to form an extension or layout to meet the expenditure for making roads, side-drains, underground drainage and water supply, lighting etc., the amount required to be deposited under Section 32(5A) is meant for developing the infrastructure necessary for augmenting the supply of water, electricity, construction of roads, etc., which are an integral part of the concept of planned development. Learned counsel emphasised that the policy of the legislation is clearly discernable from the Preamble of the 1976 Act and its provisions in terms of which the BDA is required to ensure planned development of the Bangalore Metropolitan Area. Both, Shri Ahmed and Shri Sanjay R. Hegde submitted that Section 32(5A) does not confer unbridled and unguided power upon the BDA and by using the expression "such portion of the expenditure as the Authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads" and the legislature has provided sufficient guidance for exercise of power by the BDA. In support of this argument, learned counsel relied upon the judgments in *Municipal Board, Hapur v. Raghuvendra Kripal and others* (1966) 1 SCR 950, *Corporation of Calcutta and another v. Liberty Cinema* (1965) 2 SCR 477 and *Bhavesh D. Parish and others v. Union of India and another* (2000) 5 SCC 471.

44. Shri K. K. Venugopal, Shri P. Vishwanatha Shetty, learned senior counsel and other learned counsel appearing for the respondents reiterated the argument made before the High Court that Section 32(5A) suffers from the vice of excessive delegation because the legislature has not laid down any policy for recovery of cost of infrastructure required for augmentation of supply of water, electricity, roads, transportation, etc. Learned senior counsel referred to the averments contained in the amended writ petitions to show that the cost of additional infrastructure is recovered only from those

who apply for sanction of private layouts and there is no provision for distribution of liability by creating demand on others including those to whom sites are allotted in the BDA layouts. Shri Venugopal referred to Sections 15 and 16 of the Act to show that the BDA is required to prepare development scheme and execute the same and argued that the cost of the scheme cannot be loaded only on the private layouts. Learned counsel relied upon the judgments in *Daymond v South West Water* Authority (1976) 1 All England Law Reports 39, *The State of West Bengal v. Anwar Ali Sarkar* (1952) SCR 284, *Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors.* (supra) and *A.N. Parasuraman and others v. State of Tamil Nadu* (1989) 4 SCC 683 to support the conclusion recorded by the High Court that Section 32 (5A) is a piece of excessive delegation.

45. The issue relating to excessive delegation of legislative powers has engaged the attention of this Court for the last more than half century. In *Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors.* (supra), *Kunnathat Thathunni Moopil Nair v. State of Kerala* (1961) 3 SCR 77 and *A.N. Parasuraman and others v. State of Tamil Nadu* (supra), the Court did not favour a liberal application of the concept of delegation of legislative powers but in a large number of other judgments including *Jyoti Pershad v. the Administrator for the Union Territory of Delhi* (supra), *Ajoy Kumar Banerjee v. Union of India* (1984) 3 SCC 127, *Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth* (1984) 4 SCC 27, *Kishan Prakash Sharma v. Union of India* (2001) 5 SCC 212 and *Union of India v. Azadi Bachao Andolan* (2004) 10 SCC 1, the Court recognized that it is not possible for the legislature to enact laws with minute details to deal with increasing complexities of governance in a political democracy, and held that the legislature can lay down broad policy principles and guidelines and leave the details to be worked out by the executive and the agencies/instrumentalities of the State and that the delegation of the powers upon such authorities to

implement the legislative policy cannot be castigated as excessive delegation of the legislative power.

46. In *Jyoti Pershad v. the Administrator for the Union Territory of Delhi* (supra), the Court dealt with the question whether Section 19(1) of the Slum Areas (Improvement and Clearance) Act, 1956 which adversely affected the decree of eviction obtained by the landlord against the tenant was a piece of excessive delegation. It was argued that the power vested in the competent authority to withhold eviction in pursuance of orders or decrees of the Court was ultra vires the provisions of the Constitution. While repelling this argument, the Court referred to the provisions of the 1956 Act and observed:

> "In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. *So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate.* The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating

the law."

(emphasis supplied)

47. In *Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth,* (supra), the Court while dealing with the issue of excessive delegation of power to the Board of Secondary Education observed:

> "So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute."

48. In *Ajoy Kumar Banerjee v. Union of India* (supra), the three Judge Bench, while interpreting the provisions of the General Insurance Business (Nationalisation) Act, 1972, observed:

> *"The growth of legislative power of the executive is a significant development of the twentieth century. The theory of laissez-faire has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. Most of the modern socio-economic*

> *legislations passed by the Legislature lay down the guiding principles of the legislative policy. The Legislatures, because of limitation imposed upon them and the time factor, hardly can go into the matters in detail. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modem welfare State.*
>
> Regarding delegated legislation, the principle which has been well established is that Legislature must lay down the guidelines, the principles of policy for the authority to whom power to make subordinate legislation is entrusted. The legitimacy of delegated legislation depends upon its being used as ancillary which the Legislature considers to be necessary for the purpose of exercising its legislative power effectively and completely. The Legislature must retain in its own hand the essential legislative function which consists in declaring the legislative policy and lay down the standard which is to be enacted into a rule of law, and what can be delegated in the task of subordinate legislation which by very nature is ancillary to the statute which delegates the power to make it effective provided the legislative policy is enunciated with sufficient clearness or a standard laid down. The courts cannot and do not interfere on the discretion that undoubtedly rests with the Legislature itself in determining the extent of the delegated power in a particular case."

(emphasis supplied)

49. In *Kishan Prakash Sharma v. Union of India* (2001) 5 SCC 212, the Constitution Bench speaking through Rajendra Babu, J. (as he then was), summed up the principle of delegated legislation in the following words:

> "The legislatures in India have been held to possess wide power of legislation subject, however, to certain limitations

such as the legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The legislature cannot delegate uncanalised and uncontrolled power. The legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the legislature. *The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority. An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative policy and guidelines for its execution are brought out, the statute, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the court to the extent of always trying to discover a dormant or latent*

legislative policy to sustain an arbitrary power conferred on the executive."

(emphasis supplied)

50. In *Union of India v. Azadi Bachao Andolan* (supra), the Court was called upon to consider the constitutionality of the Indo-Mauritius Double Taxation Avoidance Convention, 1983. While rejecting the argument that Section 90 of the Income Tax Act, under which the Treaty is said to have been entered, amounted to delegation of the essential legislative functions, the Court observed:

> "The question whether a particular delegated legislation is in excess of the power of the supporting legislation conferred on the delegate, has to be determined with regard not only to specific provisions contained in the relevant statute conferring the power to make rules or regulations, but also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion as to what principle or policy would best serve the objects and purposes of the Act; nor is it open to the court to sit in judgment over the wisdom, the effectiveness or otherwise of the policy, so as to declare a regulation ultra vires merely on the ground that, in the view of the court, the impugned provision will not help to carry through the object and purposes of the Act."

(emphasis supplied)

51. The principle which can be deduced from the above noted precedents is that while examining challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof

and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities.

52. The policy underlying the 1976 Act is clearly discernable from the Preamble of the Town Planning Act and the 1976 Act and the objects sought to be achieved by the two legislations, namely, development of the City of Bangalore and areas adjacent thereto. The Town Planning Act was enacted for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the entire State including the City of Bangalore. By virtue of Section 67 of the 1976 Act and with the insertion of Section 81-B in the Town Planning Act by Act No.12 of 1976, the BDA became the Local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over an area which the City Planning Authority for the City of Bangalore had immediately before the constitution of the BDA and the latter has been empowered to exercise the powers, perform the functions and discharge the duties under the Town Planning Act as if it were a Local Planning Authority constituted for the Bangalore City. In other words, w.e.f. 20.12.1975, i.e., the date on which the 1976 Act was enforced, the BDA acquired the status of a Local Planning Authority as defined in Section 2(7) read with Section 4(C) of the Town Planning Act in respect of the City of Bangalore and thereby acquired the powers which were earlier vested in the Local Planning Authority constituted for the Bangalore City. The objects sought to be achieved by the legislature by enacting the Town Planning Act were to create conditions favourable for planning and replanning of the urban and rural areas in the State so that full civic and social amenities could be available for the people of the State; to stop uncontrolled development of land due to land speculation and profiteering in land; to preserve and improve existing recreational facilities and other amenities contributing towards the balance use of land and future growth of populated

areas in the State ensuring desirable standards of environment, health, hygiene and creation of facilities of orderly growth of industry and commerce. The Town Planning Act also envisaged preparation of the town planning schemes and execution thereof by the Planning Authorities constituted for the specified areas. Section 9 (unamended) envisaged preparation of outline development plan incorporating therein the various matters enumerated in Section 12(1), preparation of comprehensive development plan by including the proposal for comprehensive zoning of land use for the planning area; building complete street pattern indicating major and minor roads, National and State highways and traffic circulation pattern for meeting immediate and future requirements; areas for new housing and new areas earmarked for future development and expansion. The definition of "development" contained in Section 2(j) of the 1976 Act is somewhat similar to the one contained in Section 1(c) of the Town Planning Act. Section 14 of the 1976 Act lays down that the objects of the BDA shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose, the BDA shall have the power to acquire, hold manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction. "Bangalore Metropolitan Area" has been defined under Section 2(c) of the 1976 Act. It consists of the following areas: (a) area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 which is now replaced by the Karnataka Municipal Corporations Act, 1976, (b) the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of the 1976 Act in force, and (c) such other areas adjacent to the aforesaid as the Government may from time to time by notification specify. Section 15 empowers the BDA to draw up detailed schemes and undertake works for the development of the Bangalore Metropolitan Area and incur expenditure for that purpose. It can also take up any new or additional development scheme on its own, subject to the availability of sufficient resources. If a local authority provides necessary funds for

framing and carrying out any scheme, then too, the BDA can take up such scheme. Under Section 15(3), which contains a non obstante clause, the Government can issue direction to the BDA to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by it. Section 16 enumerates the matters which are required to be included in the scheme, i.e., the acquisition of land necessary for or affected by the execution of the scheme, laying or relaying of land including construction and reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, reservation of land for public parks or playgrounds and at least 10% of the total area for civil amenities. The development scheme may also provide for raising of any land to facilitate better drainage, forming of open spaces for better ventilation of the area comprised in the scheme or any adjoining area and the sanitary arrangement. Sections 17 to 19 contain the mechanism for finalisation of the scheme and its approval by the State Government as also the acquisition of land for the purposes of the scheme. Sections 20 to 26 provide for levy and collection of betterment tax. Section 27 specifies the time limit of five years from the date of publication of the scheme in the Official Gazette for execution of the scheme as also consequence of non execution. Section 28-A casts a duty on the BDA to ensure proper maintenance, lighting and cleansing of the streets and the drainage, sanitary arrangement and water supply in respect of the streets formed by it. Section 32 provides for formation of new extensions or layouts or making of new private streets, which can be done only after obtaining express sanction from the BDA and subject to the conditions which may be specified by the BDA. Section 32(5) lays down that the BDA can call upon the applicant to deposit the sums necessary for meeting the expenditure for making roads, drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as may be indicated by the BDA, as a condition precedent to the grant of application. Section 32(5A), which also contains a non obstante clause, empowers the BDA to require the applicant

to deposit additional amount to meet a portion of the expenditure, which the BDA may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities within the Bangalore Metropolitan Area.

53. The above survey of the relevant provisions of the 1961 and the 1976 Acts makes it clear that the basic object of the two enactments is to ensure planned development of the areas which formed part of the Bangalore Metropolitan Area as on 15.12.1975 and other adjacent areas which may be notified by the Government from time to time. The BDA is under an obligation to provide "amenities" as defined in Section 2(b) and "civic amenities" as defined in Section 2(bb) of the 1976 Act for the entire Bangalore Metropolitan Area. In exercise of the powers vested in it under Sections 15 and 16, the BDA can prepare detailed schemes for the development of the Bangalore Metropolitan Area and incur expenditure for implementing those schemes, which are termed as development schemes. The expenditure incurred by the BDA in the implementation of the development schemes can be loaded on the beneficiaries of the development schemes. By virtue of Notifications dated 1.11.1965 and 13.3.1984 issued under Section 4A(1) of the Town Planning Act and notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act, hundreds of villages adjacent to the City of Bangalore were merged in the Bangalore Metropolitan Area. For these areas, the BDA was and is bound to provide amenities like water, electricity, streets, roads, sewerage, transport system, etc., which are available to the existing Metropolitan Area of the City of Bangalore. This task could not have been accomplished by the BDA alone from its meager fiscal resources. Therefore, the State Government, the BDA and other instrumentalities of the State like BWSSB had to pool their resources as also man and material to augment water supply, electricity and transport facilities and also make provision for construction of new roads, layouts, etc. The BDA had to contribute to the funds required

for new water supply scheme, generation of additional electricity and development of a mass rapid transport system to decongest the Bangalore Metropolitan Area. This is the reason why the State Government passed orders dated 25.3.1987 and 12.1.1993, which could appropriately be treated as directions issued under Section 65 of the 1976 Act for carrying out the purposes of the Act and approved the proposal for loading the BDA's share of expenditure in the execution of the Cauvery Scheme on all the layouts to be formed thereafter. With the insertion of Section 32(5A) in the 1976 Act, these orders acquired the legislative mandate. In terms of that section, the BDA has been vested with the power to call upon the applicants desirous of forming new extensions or layouts or private streets to pay a specified sum in addition to the sums referred to in Section 32(5) to meet a portion of the expenditure incurred for the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities.

54. At the cost of repetition, it will be apposite to observe that apart from the Preamble and the objects of the 1961 and 1976 Acts and the scheme of the two enactments, the expression "such portion of the expenditure as the Authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities" supplies sufficient guidance for the exercise of power by the BDA under Section 32(5A) and it is not possible to agree with the learned counsel for the respondents that the section confers unbridled and uncanalised power upon the BDA to demand an unspecified amount from those desirous of forming private layouts. It is needless to say that the exercise of power by the BDA under Section 32(5A) is always subject to directions which can be given by the State Government under Section 65. We may add that it could not have been possible for the legislature to make provision for effective implementation of the provisions contained in the 1961 and 1976 Acts for the development of the Bangalore

Metropolitan Area and this task had to be delegated to some other agency/instrumentality of the State.

55. The above discussion leads to the conclusion that Section 32(5A) does not suffer from the vice of excessive delegation and the legislative guidelines can be traced in the Preamble of the 1961 and 1976 Acts and the object and scheme of the two legislations.

Question (3)

56. The next question which calls for determination is whether the demand of charges under the Cauvery Scheme, etc. amounts to imposition of tax and is, therefore, ultra vires the provision of Article 265 of the Constitution.

57. The debate whether a particular levy can be treated as 'fee' or 'tax' and whether in the absence of direct evidence of quid pro quo, the levy would always be treated as tax has engaged the attention of this Court and almost all the High Courts for the last more than four decades.

58. In *Kewal Krishan Puri v. State of Punjab* (1980) 1 SCC 416, the Constitution Bench considered the question whether the resolutions passed by the Agriculture Market Committees in Punjab and Haryana to increase the market fee on the agricultural produce bought and sold by the licensees in the notified market areas from Rs. 2/- to Rs. 3/- for every Rs. 100/- were legally sustainable. After noticing the distinction between tax and fee and a large number of precedents, the Constitution Bench culled out the following principles:

"(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the

agricultural produce.

(3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

59. The ratio of the aforesaid judgment was substantially diluted in *Southern Pharmaceuticals and Chemicals, Trichur and others v. State of Kerala and others* (1981) 4 SCC 391. In the latter decision, the Court considered the constitutional validity of Sections 12-A, 12-B, 14(e) and (f) and 68-A of the Kerala Abkari Act 1077. One of the questions considered by the 3-Judge Bench was whether the levy of supervisory charges under Section 14 (e) of the Act and Rule 16(4) of the Kerala Rectified Spirit Rules, 1972 could be regarded as fee even though there was no quid pro quo between the levy and the services rendered by the State. The Bench referred to the distinction between tax and fee highlighted in the *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt* (1954) SCR 1005 and proceeded to observe:

> ""Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. *It is also increasingly realised that the*

element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax. We may, in this connection, refer with profit to the observations of Seervai in his Constitutional Law, to the effect:

> "It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, the character of the imposition would not change because under Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of quid pro quo is not necessarily absent in every tax.""

(emphasis supplied)

The three Judge Bench also referred to the Constitution Bench judgment in *Kewal Krishna Puri v. State of Punjab* (supra) and observed:

> "To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs 2 per every hundred rupees to Rs 3. There was no material placed to justify the increase

> in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation."

60. The test laid down in *Kewal Krishna Puri v. State of Punjab* (supra) was again considered in *Sreenivasa General Traders v. State of A.P.* (1983) 4 SCC 353. In that case, the petitioners had challenged the constitutional validity of the increase in the rate of market fee levied under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 from 50 paise to Rs. 1/- on every Rs. 100/- of the aggregate amount for which the notified agricultural produce, etc. were purchased or sold in the notified market area. The petitioners relied upon the proposition laid down in *Kewal Krishna Puri's* case (supra) in support of their argument that in the absence of any evidence or correlation between the levy and special services rendered by the Market Committees to the beneficiaries, the levy should be regarded as tax. The three Judge Bench referred to the proposition laid down in *Kewal Krishna Puri's* case (supra) and observed:

> "It would appear that there are certain observations to be found in the judgment in Kewal Krishan Puri case which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely: (SCC p. 435, para 23): "At least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter.

> The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."

61. In *Kishan Lal Lakhmi Chand v. State of Haryana* 1993 Supp (4) SCC 461, while dealing with the constitutionality of the levy of cess under the Haryana Rural Development Act, 1986, the three Judge Bench referred to the scheme of the Act and held that from the scheme of the Act it would be clear that there is a broad, reasonable and general corelationship between the levy and the resultant benefit to the producer of the agricultural produce, dealer and purchasers as a class though no single payer of the fee receives direct or personal benefit from those services. Though the general public may be benefited from some of the services like laying roads, the primary service was to the producer, dealer and purchaser of

the agricultural produce.

62. In *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd.* (1995) 1 SCC 655 the two Judge Bench reviewed and analysed various precedents including the judgments in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (supra), *Mahant Sri Jagannath Ramanuj Das v. State of Orissa* (1954) SCR 1046, *Ratilal Panachand Gandhi v. State of Bombay* (1954) SCR 1055, *H.H. Sadhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments* 1963 Supp (2) SCR 302, *Corporation of Calcutta v. Liberty Cinema* (supra), *Kewal Krishna Puri v. State of Punjab* (supra), *Sreenivasa General Traders v. State of A.P.* (supra), *Om Parkash Agarwal v. Giri Raj Kishori* (1986) 1 SCC 722, *Kishan Lal Lakhmi Chand v. State of Haryana* (supra) and culled out 9 propositions, of which proposition No. 7 is extracted below:

> "(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable corelation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of

a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general corelationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees."

63. In *I.T.C. Ltd. v. State of Karnataka* 1985 (Supp) SCC 476, another three Judge Bench considered the validity of levy and collection of market fee from sellers of specified agricultural produce. Sabyasachi Mukharji, J. (as he then was), with whom Fazal Ali, J. (as he then was) agreed, laid down the following principles:

"(1) there should be relationship between service and fee,

(2) that the relationship is reasonable cannot be established with mathematical exactitude in the sense that both sides must be equally balanced,

(3) in the course of rendering such services to the payers of the fee if some other benefits accrue or arise to others, quid pro quo is not destroyed. The concept of quid pro quo should be judged in the context of the present days — a concept of markets which are expected to render various services and provide various amenities, and these benefits cannot be divorced from the benefits accruing incidentally to others,

(4) a reasonable projection for the future years of practical scheme is permissible, and

(5) services rendered must be to the users of those markets or to the subsequent users of those markets as a class. Though fee is not levied as a part of common burden yet service and payment cannot exactly be balanced.

(6) The primary object and the essential purpose of the imposition must be looked into."

64. If the conditions imposed by the BDA requiring the respondents to pay for augmentation of water supply, electricity, transport, etc. are scrutinized in the light of the principles laid down in *Sreenivasa General Traders v. State of A.P.* (supra), *Kishan Lal Lakhmi Chand v. State of Haryana* (supra) and *I.T.C. Ltd. v. State of Karnataka* (supra), it cannot be said that the demand made by the BDA amounts to levy of tax and is ultra vires Article 265 of the Constitution.

65. Under the 1976 Act, the BDA is obliged to provide different types of amenities to the population of the Bangalore Metropolitan Area including the allottees of the sites in the layouts prepared by house building societies. It is quite possible that they may not be the direct beneficiaries of one or the other amenities made available by the BDA, but this cannot detract from the fact that they will certainly be benefited by the construction of the Outer Ring Road and Intermediate Ring Road, Mass Rapid Transport System, etc. They will also be the ultimate beneficiaries of the Cauvery Scheme because availability of additional 270 MLD water to Bangalore will enable BWSSB to spare water for the private layouts. It is neither the pleaded case of the respondents nor it has been argued that the allottees of sites in the layouts to be developed by the private societies will not get benefit of amenities provided by the BDA. Thus, charges demanded by the BDA under Section 32(5A) cannot be termed as tax and declared unconstitutional on the ground that the same are not sanctioned by the law enacted by competent legislature.

Question (4)

66. The only issue which survives for consideration is whether the charges demanded by the BDA are totally disproportionate to its contribution towards Cauvery Water Scheme, Ring Road, Mass Rapid Transport System, etc. We may have examined the issue in detail but in view of the affidavit dated 11.11.2009 filed by Shri Siddaiah, the then Commissioner, BDA to the effect that only Rs. 34.55 crores have been collected between February, 1988 to 4.6.2005 towards the Cauvery Scheme and a sum of Rs. 15.15 crores has been collected by way of Ring Road surcharge between 1992-93 and 2005-06 and that the State Government has directed that henceforth Ring Road surcharge, the Cauvery Water Cess and MRTS Cess should not be levied till appropriate decision is taken, we do not consider it necessary to adjudicate the controversy, more so, because in the written arguments filed on behalf of the BDA it has been categorically stated that the Government has to take a decision about the pending demands and the Court may issue appropriate direction in the matter, which the BDA will comply. In our view, ends of justice will be served by directing the State Government to take appropriate decision in the light of communication dated 03.05.2005.

67. So far as the levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess is concerned, it is appropriate to mention that the High Court has not assigned any reason for declaring the levy of these charges to be illegal. Therefore, that part of the impugned order cannot be sustained. Nevertheless, we feel that the State Government should take appropriate decision in the matter of levy of these charges as well and determine whether the same were disproportionate to the expenses incurred by it, the BDA or any other agency/ instrumentality of the State.

68. In the result, the appeals are allowed, the impugned order is set aside and the writ petitions filed by the respondents are dismissed subject to the direction that within three months from the date of receipt/production of the copy of this judgment, the State Government shall take appropriate decision in the context of communication dated 03.05.2005. Within this period, the State Government shall also decide whether the levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess at the rates specified in the communications of the BDA was excessive. The decision of the State Government should be communicated to the respondents within next four weeks. If any of the respondents feel aggrieved by the decision of the State Government then it shall be free to avail appropriate legal remedy. The parties shall bear their respective costs.

B.B.B. Appeals allowed.

IN RE: RAMLILA MAIDAN INCIDENT DT.4/5.06.2011
v.
HOME SECRETARY, UNION OF INDIA & ORS.
(Suo Motu Writ Petition (Crl.) No. 122 of 2011)

FEBRUARY 23, 2012

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Code of Criminal Procedure, 1973 – s.144 r/w s.134 and the Delhi Police Standing Order 309 – Public agitation – Police crackdown at midnight on members of sleeping congregation – Action against erring police officials – Compensation to victims – Respondent no.4-Trust had obtained permission of the Deputy Commissioner of Police for holding a yoga training camp between 1st June, 2011 to 20th June, 2011 at Ramlila Maidan, an enclosed public ground in Delhi – On 4th June, 2011, Yoga Guru Baba Ramdev, who had been leading an Anti-corruption campaign, commenced hunger strike/fast at the said camp to protest against black money and corruption – Permission granted to hold the said camp subsequently revoked and on the night of 4th/5th June, 2011 while Baba Ramdev and his followers were sleeping in the Maidan, they were forcibly woken up in purported exercise of the police powers conferred u/s.144 CrPC on the strength of a prohibitory order dated 4th June, 2011 passed by the Assistant Commissioner of Police – Police resorted to use of teargas and lathi charge in order to disperse the assembly as a result of which a number of men and women were injured, some seriously and also finally resulted into the death of one Smt. Rajbala – There was also damage to property – Suo motu proceedings by Supreme Court – Held: In the facts of the case, the State and the Police could have avoided this tragic incident by exercising greater restraint, patience and resilience– The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed –

The decision to forcibly evict the innocent public sleeping on the Ramlila Maidan in the midnight of 4th/5th June, 2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs was amiss and suffered from element of arbitrariness and abuse of power to some extent – The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts – The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in the Indian Constitution – The police failed to establish that a situation had arisen where there was imminent need to intervene – Disciplinary action directed to be taken against erring police officers/personnel who indulged in brick-batting, resorted to lathi charge and excessive use of tear gas shells upon the crowd or did not help in transportation of sick and injured people to the hospitals – Direction for registration of criminal cases against police personnel as also members of the gathering at the Ramlila Maidan (followers of Baba Ramdev or otherwise) who indulged in damage to property – Ad-hoc compensation of Rs.5 lacs to legal heirs of Smt. Rajbala; Rs.50,000/- each to persons who suffered grievous injuries and were admitted to hospital and Rs.25,000/- each to persons who suffered simple injuries and were taken to hospital but discharged after a short while – However, consequences of financial liability to pass, though to a limited extent, upon respondent no.4-Trust as well – Respondent no.4 was guilty of contributory negligence – The Trust and its representatives ought to have discharged their legal and moral duty and should have fully cooperated in the effective implementation of the order passed u/s.144 CrPC – Due to the stature that Baba Ramdev enjoyed with his followers, it was expected of him to request the gathering to disperse peacefully and leave the Ramlila Maidan – Accordingly, in cases of death and grievous hurt, 25% of the awarded compensation to be paid by the Trust – Constitution of India, 1950 – Articles 19(1)(a),19(1)(b), 19(2) and 19(3).

Human Rights – Right to sleep – Public agitation – Police crackdown at midnight on members of sleeping congregation – Suo motu proceedings by Supreme Court – Held (per Dr. B.S. Chauhan, J.): Sleep is a fundamental and basic requirement without which the existence of life itself would be in peril – To disturb sleep would amount to torture which is now accepted as a violation of human right – A sleeping crowd cannot be included within the bracket of an unlawful category unless there is sufficient material to brand it as such.

Respondent no.4-Bharat Swabhiman Trust, Delhi Area had obtained permission of the Deputy Commissioner of Police for holding a yoga training camp between 1st June, 2011 to 20th June, 2011 at Ramlila Maidan, an enclosed public ground in Delhi. On 4th June, 2011, Yoga Guru Baba Ramdev, who had been leading an Anti-corruption campaign, commenced hunger strike/ fast at the said camp to protest against black money and corruption. The permission granted to hold the said camp was subsequently revoked and on the night of 4th/ 5th June, 2011 while Baba Ramdev and his followers were sleeping in the Maidan under tents and canopies, they were forcibly woken up in purported exercise of the police powers conferred under Section 144 CrPC on the strength of a prohibitory order dated 4th June, 2011 passed by the Assistant Commissioner of Police. The Police thereafter resorted to use of teargas and *lathi* charge in order to disperse the assembly which had, by that time, been declared unlawful. As a result of this action by the Police, a number of men and women were injured, some seriously. This also finally resulted into the death of one Smt. Rajbala. There was also damage to property. The said police action was termed as brutal and uncalled for by the Press.

Taking suo motu cognizance of the said Ramlila Maidan incident dated 4th/ 5th June, 2011, the Supreme Court examined issues pertaining to liberty and freedom,

guaranteed to Indian citizens as fundamental rights under the Constitution and the possible lawful restrictions than can be imposed for curtailing such rights; as also the dimensions of legal provisions in relation to the exercise of jurisdiction by the empowered officer in passing an order under Section 144 CrPC.

Disposing of the suo motu writ petition, the Court

HELD:

Per Swatanter Kumar, J.

1.1. Rights, restrictions and duties co-exist. As, on the one hand, it is necessary to maintain and preserve the freedom of speech and expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term 'social order' has a very wide ambit. It includes 'law and order', 'public order' as well as 'the security of the State'. [Para 30] [1014-A, B]

1.2. 'Security of the State' is paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of 'public order' and 'law and order'. However stringent may these restrictions be, they must stand the test of 'reasonability'. The State would have to satisfy the Court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution. It is keeping this distinction in mind, the Legislature, under Section 144 Cr.P.C., has empowered the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf, to direct any person to abstain from doing a certain act or to take action as directed, where sufficient ground for proceeding under this

Section exists and immediate prevention and/or speedy remedy is desirable. [Paras 35, 36] [1017-D-G]

Babulal Parate v. State of Maharashtra **(1961) 3 SCR 423;** *State of West Bengal v. Subodh Gopal Bose* **AIR 1954 SC 92: 1954 SCR 587;**

Maneka Gandhi v. UOI **AIR 1978 SC 597: 1978 (2) SCR 621;** *Madhav Hayawadanrao Hoskot v. State of Maharashtra* **(1978) 3 SCC 544: 1979 (1) SCR 192;** *S. Rangarajan v. Jagjivan Ram* **(1989) 2 SCC 574: 1989 (2) SCR 204;** *State of Madras v. V.G. Row* **AIR 1952 SC 196: 1952 SCR 597;** *Chintamanrao & Anr. v. State of Madhya Pradesh* **AIR 1951 SC 118: 1950 SCR 759;** *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* **(2005) 8 SCC 534:2005 (4) Suppl. SCR 582;** *Romesh Thappar v. State of Madras* **(1950) SCR 594;** *Dr. Ram Manohar Lohia v. State of Bihar* **AIR 1966 SC 740: 1966 SCR 709;** *Dr. D.C. Saxena v. Hon'ble the Chief Justice of India* **(1996) 5 SCC 216: 1996 (3) Suppl. SCR 677;** *Union of India v. Naveen Jindal and Anr.* **(2004) 2 SCC 510: 2004 (1) SCR 1038;** *Madhu Limaye v. Sub Divisional Magistrate and Ors.* **AIR 1971 SC 2481: 1971 SCR 742;** *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.* **(1973) 1 SCC 227: 1973 (2) SCR 266;** *State of Karnataka* v. *Dr. Praveen Bhai Thogadia* **(2004) 4 SCC 684: 2004 (3) SCR 652;** *S. Pratap Singh v. The State of Punjab* **(1964) 4 SCR 733 and** *Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh* and Ors. **(2009) 5 SCC 212: 2009 (6) SCR 439 – referred to.**

Schenck v. *United States* **[63] L ed 1173 and** *Feiner v. New York* **(1951) 340 U.S. 315 – referred to.**

Freedom of Speech: The Supreme Court and Judicial Review, **by Martin Shapiro, 1966; *Constitution of India*, (2nd Edn.), Volume 1 by Dr. L.M. Singhvi and '*Constitutional Law of India*' by H.M. Seervai (Fourth Edn.), Vol.1 and *Preamble,*** *The Spirit and Backbone of the Constitution of India, by Justice R.C. Lahoti; Black's Law Dictionary* **– Twentieth Edn.;** *Concise Oxford English Dictionary – Eleventh Edn. and Clerk & Lindsell on Torts,* **Twentieth Edition – referred to.**

The scope of an order made under Section 144 Cr.P.C., its implications and infirmities with reference to the facts of the case in hand

2.1. An order passed in anticipation by the Magistrate empowered under Section 144 Cr.P.C. is not an encroachment of the freedom granted under Articles 19(1)(a) and 19(1)(b) of the Constitution and it is not regarded as an unreasonable restriction. It is an executive order, open to judicial review. In exercise of its executive power the executive authority, by a written order and upon giving material facts, may pass an order issuing a direction requiring a person to abstain from doing certain acts or take certain actions/orders with respect to certain properties in his possession, if the officer considers that such an order is likely to prevent or tends to prevent obstruction, annoyance or injury to any other person. On the bare reading of the language of Section 144 Cr.P.C., it is clear that the entire basis of an action under this Section is the 'urgency of the situation' and the power therein is intended to be availed for preventing 'disorder, obstruction and annoyance', with a view to secure the public weal by maintaining public peace and tranquility. [Para 156] [1088-D-G]

2.2. In the instant case, the threat of going on a hunger strike extended by Baba Ramdev to personify his stand on the issues raised, cannot be termed as unconstitutional or barred under any law. It is a form of protest which has been accepted, both historically and legally in our constitutional jurisprudence. The order passed under Section 144 Cr.P.C. does not give any material facts or such compelling circumstances that

would justify the passing of such an order at 11.30 p.m. on 4th June, 2011. There should have existed some exceptional circumstances which reflected a clear and prominent threat to public order and public tranquility for the authorities to pass orders of withdrawal of permission at 9.30 p.m. on 4th June, 2011. What weighed so heavily with the authorities so as to compel them to exercise such drastic powers in the late hours of the night and disperse the sleeping persons with the use of force, remains a matter of guess. The Order under Section 144 Cr.PC does not contain material facts and it is also evident from the bare reading of the Order that it did not direct Baba Ramdev or respondent No. 4 to take certain actions or not take certain actions which is not only the purpose but is also the object of passing an Order under Section 144, Cr.P.C. [Paras 171, 174] [1097-B-D; 1098-E]

2.3. From the record before this Court, it is not clear as to why the State did not expect obedience and cooperation from Baba Ramdev in regard to execution of its lawful orders, particularly when after withdrawal of the permission for holding *dharna* at Jantar Mantar, Baba Ramdev had accepted the request of the Police not to go to Jantar Mantar with his followers. The attendant circumstances appearing on record as on 3rd June, 2011 i.e. the preceding day did not show any intention on their part to flout the orders of the authorities or to cause any social disorder or show threat to public tranquility by their action. Material facts, imminent threat and requirement for immediate preventive steps should exist simultaneously for passing any order under Section 144 Cr.P.C. The mere change in the purpose or in the number of persons to be gathered at the Ramlila Maidan simplicitor could hardly be the cause of such a grave concern for the authorities to pass the orders late in the night. In the circumstances of the case, it appears that it was not necessary for the executive authorities and the Police to pass orders under Section 144 Cr.P.C. and withdraw the permissions. The

matter could be resolved by mutual deliberation and intervention by the appropriate authorities. [Para 179] [1100-E-F-H; 1101-A-D]

2.4. The events, right from January 2011, showed that all the camps and protests organized by the Trust, under the leadership of Baba Ramdev had been completed peacefully, without any damage to person or property and without any disturbance to anyone. The action of the Police in revoking the permissions as well as that of the executive authorities in passing the order under Section 144 Cr.P.C. was a colourable exercise of power and was not called for in the facts and circumstances of the case. [Para 182] [1103-A-B]

2.5. It is also not understandable that if the general 'threat perception' and likelihood of communal disharmony were the grounds for revoking the permission and passing the order under Section 144 Cr.P.C., then why the order passed under Section 144 Cr.P.C. permitted all other rallies, processions which had obtained the Police permission to go on in the area of the same Police Division.The decision, therefore, appears to be contradictory in terms. [Para 183] [1103-C-D]

2.6. Existence of sufficient ground is the *sine qua non* for invoking the power vested in the executive under Section 144 Cr.P.C. It is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of threat should be real and not imaginary or a mere likely possibility. The test laid down in this Section is not that of 'merely likelihood or tendency'. The legislature, in its wisdom, has empowered an officer of the executive to discharge this duty with great caution, as the power extends to placing a restriction and in certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. Thus, in case of a mere apprehension, without any material facts to indicate that the

apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen. All the grounds stated were considered at various levels of the Government and the Police and they had considered it appropriate not to withdraw the permissions or impose the restriction of Section 144 Cr.P.C. even till 3rd June, 2011. Thus, it was expected of the authorities to show before the Court that some very material information, fact or event had occurred between 3rd and 4th June, 2011, which could be described as the determinative factor for the authorities to change their mind and pass these orders. [Para 184] [1103-E-H; 1104-A-B]

2.7. The administration, upon taking into consideration the intelligence inputs, threat perception, likelihood of disturbance to public order and other relevant considerations, had not only prepared its planned course of action but also declared the same. In furtherance thereto, the Police also issued directions for compliance to the organizers. The authorities, thus, had full opportunity to exercise their power to make a choice permitting continuation and/or cancellation of the programme and thereby prohibit the activity on the Ramlila Maidan. However, in their wisdom, they opted to permit the continuation of the agitation and holding of the *yoga shivir*, thereby impliedly permitting the same, even in the changed circumstances, as alleged. *Quinon prohibit qua prohibere protest asentire videthir* (He who does not prohibit when he is able to prohibit assents to it). [Para 185] [1104-D-F]

2.8. The authorities are expected to seriously cogitate over the matter in its entirety keeping the common welfare in mind. The Police have not placed on record any document or even affidavits to show such sudden change of circumstances, compelling the authorities to take the action that they took. Denial of a right to hold

such meeting has to be under exceptional circumstances and strictly with the object of preventing public tranquility and public order from being disturbed. [Para 186] [1104-G-H; 1105-A]

Gulam Abbas v. *State of Uttar Pradesh* **AIR 1981 SC 2198: 1982 (1) SCR 1077 – referred to.**

Reasonable notice is a requirement of Section 144 Cr.P.C.

3.1. The language of Section 144 Cr.P.C. does not contemplate grant of any time for implementation of the directions relating to the prevention or prohibition of certain acts for which the order is passed against the person(s). It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be done within a reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case. There may also be cases where the order passed by an Executive Magistrate under Section 144 Cr.P.C. requires to be executed forthwith, as delay in its execution may frustrate the very purpose of such an order and may cause disastrous results like rioting, disturbance of public order and public tranquility, while there may be other cases where it is possible, on the principles of common prudence, that some time could be granted for enforcement and complete implementation of the order passed by the Executive Authority under Section 144 Cr.P.C. [Para 187] [1105-B-E]

3.2. In the instant case, all the persons who had gathered in the tent at the Ramlila Maidan were sleeping when the Police went there to serve the order passed under Section 144 Cr.P.C. upon the representatives of the Trust; the order itself having been passed at 11.30 p.m. on 4th June, 2011. Nothing prevented the authorities

from making proper announcements peacefully requiring the persons gathered at the Ramlila Maidan to leave for their respective homes early in the morning and before the *yoga* camp could resume. Simultaneously, they could also have prohibited entry into the Ramlila Maidan, as the same was being controlled by the Police itself. No facts or circumstances have been stated which could explain as to why it was absolutely necessary for the Police to wake up the people from their sleep and force their eviction, in a manner in which it has been done at the late hours of night. In absence of any explanation and special circumstances placed on record, in the facts of the present case, it was quite possible and even desirable for the authorities concerned to grant a reasonable time for eviction from the ground and enforcement of the orders passed under Section 144 Cr.P.C. Except in cases of emergency or the situation unexceptionally demanding so, reasonable notice/time for execution of the order or compliance of the directions issued in the order itself or in furtherance thereto is the pre-requisite. [Para 189] [1106-C-D, F-H; 1107-A-B]

3.3. Non-grant of reasonable time and undue haste on the part of the Police authorities to enforce the orders under Section 144 Cr.P.C. instantaneously had resulted in the unfortunate incident of human irony which could have been avoided with little more patience and control. It was expected of the Police authorities to bastion the rights of the citizens of the country. However, undue haste on the part of the Police created angst and disarray amongst the gathering at the Ramlila Maidan, which finally resulted in this sad cataclysm. [Para 190] [1107-C-D]

Requirement of Police permission and its effect on the right conferred in terms of Articles 19(1)(a) and 19(1)(b) respectively with reference to the facts of the present case

4.1. Associating Police as a pre-requirement to hold meetings, *dharnas* and protests, on large scale, would not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution as this would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of the others, as contemplated under Article 21 of the Constitution of India. That would be the correct approach of law. [Para 220] [1120-E-F]

4.2. In the instant case, however, the action of the Police was arbitrary. The Police action led to a terror in the minds of members of the assembly and finally the untoward incident. Here the onus was on the Police Authorities to show existence of such circumstances at the spot when, admittedly, all persons were sleeping peacefully. The courts have to realize that the rights of the organizers and other members of the Society had to be protected if a law and order situation was created as a result of a given situation. [Paras 204, 205] [1114-A, D, E, F]

Babulal Parate v. State of Maharashtra **(1961) 3 SCR 423;** *Madhu Limaye v. Sub Divisional Magistrate and Ors.* **AIR 1971 SC 2481: 1971 SCR 742;** *Amitabh Bachchan Corpn. Ltd. v. Mahila Jagran Manch & Ors.* **(1997) 7 SCC 91;** *R.K. Garg v. Superintendent, District Jail, Saharanpur & Ors.* **(1970) 3 SCC 227;** *State of Karnataka* v. *Dr. Praveen Bhai Thogadia* **(2004) 4 SCC 684: 2004 (3) SCR 652;** *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.* **(1973) 1 SCC 227: 1973 (2) SCR 266;** *Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh* and Ors. **(2009) 5 SCC 212: 2009 (6) SCR 439 and** *Union of India* v. *Association of Democratic Reforms* **(2002) 3 SCC 696 – referred to.**

Responsibility of the Trust, Members of the Assembly, their status and duty

5.1. Once an order under Section 144 Cr.P.C. is passed by the competent authority and such order directs certain acts to be done or abstains from doing certain acts and such order is in force, any assembly, which initially might have been a lawful assembly, would become an unlawful assembly and the people so assembled would be required to disperse in furtherance to such order. A person can not only be held responsible for his own act, but, in light of Section 149 IPC, if the offence is committed by any member of the unlawful assembly in prosecution of a common object of that assembly, every member of such assembly would become member of the unlawful assembly. [Para 223] [1121-C-E]

5.2. In the instant case, the Police was concerned with the problem of law and order while respondent No. 4 and Baba Ramdev certainly should have been concerned about the welfare of their followers and the large gathering present at the Ramlila Maidan. Thus, to that extent, the Police and respondent No. 4 ought to have acted in tandem and ensured that no damage to the person or property should take place, which unfortunately did not happen. Keeping in view the stature and respect that Baba Ramdev enjoyed with his followers, he ought to have exercised the moral authority of his office in the welfare of the people present. There exists a clear constitutional duty, legal liability and moral responsibility to ensure due implementation of lawful orders and to maintain the basic rule of law. It would have served the greater public purpose and even the purpose of the protests for which the rally was being held, if Baba Ramdev had requested his followers to instantaneously leave Ramlila Maidan peacefully or had assured the

Authorities that the morning *yoga* programme or protest programme would be cancelled and the people would be requested to leave for their respective places. Absence of performance of this duty and the gesture of Baba Ramdev led to an avoidable lacerating episode. Even if there was undue haste, adamancy and negligence on the part of the Police authorities, then also to this negligence, there was a contribution by respondent No. 4 as well. The role of Baba Ramdev at that crucial juncture could have turned the tide and probably brought a peaceful end rather than the heart rending end of injuries and unfortunate deaths. Even if it is assumed that the action of the Police was wrong in law, it gave no right to others to commit any offence *Injuria non excusat injuriam*. [Para 233] [1126-C-H; 1127-A]

5.3. Every law abiding citizen should respect the law and must stand in conformity with the rule, be as high an individual may be. Violation of orders has been made punitive under the provisions of Section 188 IPC, but still in other allied proceedings, it would result in fastening the liability on all contributory partners, may be vicariously, but the liability certainly would extend to all the defaulting parties. In the circumstances of the instant case, Baba Ramdev and the office bearers of respondent No.4 contributed to the negligence leading to the occurrence in question and are vicariously liable for such action. [Para 234] [1127-B-C]

Municipal Corporation of Greater Bombay v. *Shri Laxman Iyer & Anr.* **AIR 2003 SC 4182: 2003 (4) Suppl. SCR 984 and** *Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy and others* **[C.A. Nos.7114-7115 of 2003 with C.A. No.7116 of 2003 and C.A. No. 6748 of 2004, pronounced on 13th October, 2011] – referred to.**

Nance v. British Columbia Electric Ry. **(1951) A.C. 601 – referred to.**

Clerk & Lindsell on Torts, Twentieth Edition, ***page 246*** **and** *Charlesworth & Percy on Negligence, Eleventh Edition,* ***pages 195, 206*** **– referred to.**

Findings and Directions:

6. (i) In discharge of its judicial functions, the courts do not strike down the law or quash the State action with the aim of obstructing democracy in the name of preserving democratic process, but as a contribution to the governmental system, to make it fair, judicious and transparent. The courts take care of interests which are not sufficiently defended elsewhere and/or of the victims of State action, in exercise of its power of judicial review.

In the facts of the present case, the State and the Police could have avoided this tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping on the Ramlila grounds in the midnight of 4th/5th June, 2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the liberties and exercise of fundamental freedoms. The members of the assembly had legal protections available to them even under the provisions of the Cr.P.C. Thus, the restriction was unreasonable and unwarrantedly executed. The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in our

Constitution. Except in cases of emergency or the situation unexceptionably demanding so, reasonable notice/time for execution of the order or compliance with the directions issued in the order itself or in furtherance thereto is the pre-requisite. It was primarily an error of performance of duty both by the police and respondent No.4 but the ultimate sufferer was the public at large.

(ii) It is evident that it was not a case of emergency. The police have failed to establish that a situation had arisen where there was imminent need to intervene, having regard to the sensitivity and perniciously perilous consequences that could have resulted, if such harsh measures had not been taken forthwith.

(iii) The State has a duty to ensure fulfillment of the freedom enshrined in our Constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. While placing the two, the rule of justice and fair play requires that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder.

(iv) It is neither correct nor judicially permissible to say that taking of police permission for holding of *dharnas*, processions and rallies of the present kind is irrelevant or not required in law. Thus, the requirement of associating police, which is an important organ of the State for ensuring implementation of the rule of law, while holding such large scale meetings, *dharnas* and protests, would

not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution. This would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to maintain the social order and public tranquility, should have a say in the organizational matters relating to holding of *dharnas*, processions, agitations and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle the constitutional right. Refusal and/or withdrawal of permission should be for valid and exceptional reasons. The executive power, to cause a restriction on a constitutional right within the scope of Section 144 Cr.P.C., has to be used sparingly and very cautiously. The authority of the police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an exercise of power by the Police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

(v) Respondent no.4 is guilty of contributory negligence. The Trust and its representatives ought to have discharged their legal and moral duty and should have fully cooperated in the effective implementation of a lawful order passed by the competent authority under Section 144 Cr.P.C. Due to the stature that Baba Ramdev enjoyed with his

followers, it was expected of him to request the gathering to disperse peacefully and leave the Ramlila Maidan. He ought not have insisted on continuing with his activity at the place of occurrence. Respondent no.4 and all its representatives were bound by the constitutional and fundamental duty to safeguard public property and to abjure violence. Thus, there was legal and moral duty cast upon the members of the Trust to request and persuade people to leave the Ramlila Maidan which could have obviously avoided the confrontation between the police and the members of the gathering at the Ramlila Maidan.

(vi) As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine existence of a right not coupled with a duty. The duty may be a direct or an indirect consequence of a fair assertion of the right. Part III of the Constitution, although confers rights, duties, regulations and restrictions are inherent thereunder. It can be stated with certainty that the freedom of speech is the bulwark of democratic Government. This freedom is essential for the appropriate functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty in the hierarchy of liberties granted under our constitutional mandate.

(vii) The provisions of Section 144 Cr.P.C. are attracted in emergent situations. Emergent power has to be exercised for the purposes of maintaining public order. The material facts, therefore, should demonstrate that the action is being taken for maintenance of public order, public tranquility and harmony.

(viii) Even if an order under Section 144 Cr.P.C. had to be given effect to, still Respondent no.4 had a right to stay at the Ramlila Maidan with permissible number of people as the land owning authority-MCD had not revoked its permission and the same was valid till 20th June, 2011. The chain of events reveals that it was a case of police excesses and, to a limited extent, even abuse of power.

(ix) From the material placed before the Court, it cannot be held that the order passed by the competent authority and execution thereof are *mala fide* in law or in fact or is an abdication of power and functions by the Police. The action, of course, partially suffers from the vice of arbitrariness but every arbitrary action necessarily need not be *mala fide*. Similarly every incorrect decision in law or on facts of a given case may also not be *mala fide* but every *mala fide* decision would be an incorrect and impermissible decision and would be vitiated in law. Upon taking into consideration the cumulative effect of the affidavits filed on record and other documentary evidence, one is unable to dispel the argument that the decision of the Ministry of Home Affairs, Union of India reflected its shadow on the decision-making process and decision of the police authorities.

(x) Also there would be no illegality if the police authorities had acted in consultation with the Union Ministry as it is the collective responsibility of various departments of the State to ensure maintenance of law and order and public safety in the State.

(xi) Every person/body to whom such permission is granted, shall give an undertaking to the authorities concerned that he/it will cooperate in carrying out their duty and any lawful orders passed by any

competent court/authority/forum at any stage of the commencement of an agitation/*dharnal* procession and/or period during which the permission granted is enforced. This, of course, shall be subject to such orders as may be passed by the court of competent jurisdiction.

(xii) Even on the touchstone of the principle of '*in terrorem*', the police have not acted with restraint or adhered to the principle of 'least invasion' with the constitutional and legal rights available to respondent no.4 and the members of the gathering at the Ramlila Maidan.

(xiii) The present case is a glaring example of trust deficit between the people governing and the people to be governed. Greater confidence needs to be built between the authorities in power and the public at large. Thus, while considering the 'threat perception' as a ground for revoking such permissions or passing an order under Section 144 Cr.P.C., 'care perception' has to be treated as an integral part thereof. 'Care perception' is an obligation of the State while performing its constitutional duty and maintaining social order.

(xiv) The police authorities should take such actions properly and strictly in accordance with the Guidelines, Standing Orders and the Rules applicable thereto. It is not only desirable but also a mandatory requirement of the present day that the State and the police authorities should have a complete and effective dispersement plan in place, before evicting the gathering by use of force from a particular place, in furtherance to an order passed by an executive authority under Section 144 of the Cr.P.C.

(xv) This is not a case where the Court can come to the conclusion that the entire police force has acted in violation to the Rules, Standing orders and have fallen stray in their uncontrolled zeal of forcibly evicting innocent public from the Ramlila Maidan. There has to be a clear distinction between the cases of responsibility of the force collectively and the responsibility of individual members of the forces. It is found from the evidence on record that some of the police officers/personnel were very cooperative with the members of the assembly and helped them to vacate the Ramlila Maidan while others were violent, inflicted cane injuries, threw bricks and even used tear-gas shells, causing fire on the stage and total commotion and confusion amongst the large gathering at the Ramlila Maidan. Therefore, these two classes of Police Force have to be treated differently.

(xvi) Thus, while directing the State Government and the Commissioner of Police to register and investigate cases of criminal acts and offences, destruction of private and public property against the police officers/personnel along with those members of the assembly, who threw bricks at the police force causing injuries to the members of the force as well as damage to the property, the following directions are issued: a) Take disciplinary action against all the erring police officers/personnel who have indulged in brick-batting, have resorted to *lathi* charge and excessive use of tear gas shells upon the crowd, have exceeded their authority or have acted in a manner not permissible under the prescribed procedures, rules or the standing orders and their actions have an element of criminality. This action shall be taken against the officer/personnel irrespective of what ranks they hold in the hierarchy of police; b) The police personnel who were present

in the *pandal* and still did not help the evacuation of the large gathering and in transportation of sick and injured people to the hospitals have also rendered themselves liable for appropriate disciplinary action and c) The police shall also register criminal cases against the police personnel and members of the gathering at the Ramlila ground (whether they were followers of Baba Ramdev or otherwise) who indulged in damage to the property, brick-batting etc. All these cases have already been reported to the Police Station Kamla Market. The police shall complete the investigation and file a report under section 173 of the Cr.P.C. within three months.

(xvii) Also, the persons who died or were injured in this unfortunate incident should be awarded ad hoc compensation. Smt. Rajbala, who got spinal injury in the incident and subsequently died, would be entitled to the ad-hoc compensation of Rs.5 lacs while persons who suffered grievous injuries and were admitted to the hospital would be entitled to compensation of Rs.50,000/- each and persons who suffered simple injuries and were taken to the hospital but discharged after a short while would be entitled to a compensation of Rs.25,000/- each.

For breach of the legal and moral duty and for its contributory negligence, the consequences of financial liability would also pass, though to a limited extent, upon the respondent no.4-Trust as well. Thus, it is directed that in cases of death and grievous hurt, 25% of the awarded compensation shall be paid by the Trust. The said amount shall be paid to the Commissioner of Police, who in turn, shall issue a cheque for the entire amount in favour of the injured or the person claiming for the deceased. [Para 234] [1127-D-H; 1128-A-D, F-H; 1129-A-H; 1130-A-H; 1131-A-H; 1132-A-H; 1133-A-H; 1134-A-H; 1135-A-F]

6.2. The compensation awarded by this Court shall be treated as ad-hoc compensation and in the event, the deceased or the injured persons or the persons claiming through them institute any legal proceedings for that purpose, the compensation awarded in this judgment shall be adjusted in those proceedings. [Para 235] [1135-G-H; 1136-A]

Per Dr. B.S. Chauhan, J. [Supplementing]

HELD:1.1. The right to peacefully and lawfully assemble together and to freely express oneself coupled with the right to know about such expression is guaranteed under Article 19 of the Constitution of India. Such a right is inherent and is also coupled with the right to freedom and liberty which have been conferred under Article 21 of the Constitution of India. [Para 7] [1138-C]

1.2. In the instant case, the fact remains that implementation of promulgated prohibitory orders was taken when the crowd was asleep. The said assembly per-se, at that moment, did not *prima facie* reflect any apprehension of eminent threat or danger to public peace and tranquillity nor any active demonstration was being performed at that dead hour of night. [Para 8] [1138-E-F]

1.3. It is believed that a person who is sleeping, is half dead. His mental faculties are in an inactive state. A person cannot be presumed to be engaged in a criminal activity or an activity to disturb peace of mind when asleep. To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person. [Paras 11, 12] [1139-G; 1141-B-C]

1.4. There may be a reason available to impose prohibitory orders calling upon an assembly to disperse, but, there does not appear to be any plausible reason for

the police to resort to blows on a sleeping crowd and to throw them out of their encampments abruptly. The affidavits and explanation given do not disclose as to why the police could not wait till morning and provide a reasonable time to this crowd to disperse peacefully. The undue haste caused a huge disarray and resulted in a catastrophe that was witnessed on Media and Television throughout the country. The incident in this litigation is an example of a weird expression of the desire of a tyrannical mind to threaten peaceful life suddenly for no justification. The precipitate action was nothing but a clear violation of human rights and a definite violation of procedure for achieving the end of dispersing a crowd. [Para 13] [1141-C-E, F-H]

1.5. The State authorities are under a legal obligation to act in a manner that is fair and just. It has to act honestly and in good faith. Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. [Paras 16, 17] [1142-E-G; 1143-A]

1.6. Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under the Indian Constitution. However, right of privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right.

[Para 21] [1144-C-D]

GVK Industries Ltd. &. Anr. v. Income Tax Officer &. Anr. **(2011) 4 SCC 36: 2011 (3) SCR 366;** *Nandini Sundar & Ors. v. State of Chhatisgarh* **AIR 2011 SC 2839: 2011 (7) SCC 547;** *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. v. Union of India* **AIR 1971 SC 530: 1971 (3) SCR 9;** *M/s Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. &. Ors.* **AIR 1979 SC 621: 1979 (2) SCR 641;** *D.K. Basu v. State of West Bengal* **AIR 1997 SC 610: 1996 (10) Suppl. SCR 284;** *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi &. Ors.* **AIR 1981 SC 746: 1981 (2) SCR 516;** *Kharak Singh v. State of U.P. & Ors.* **AIR 1963 SC 1295: 1964 SCR 332** *Govind v. State of Madhya Pradesh & Anr.* **AIR 1975 SC 1378: 1975 (3) SCR 946;** *People's Union for Civil Liberties v. Union of India &. Anr.* **AIR 1997 SC 568: 1996 (10) Suppl. SCR 321;** *Wolf v. Colorado* **(1948) 338 US 25;** *Malak Singh etc. v. State of Punjab & Haryana & Ors.* **AIR 1981 SC 760: 1981 (2) SCR 311;** *State of Maharashtra & Anr. v. Madhukar Narayan Mardikar* **AIR 1991 SC 207: 1991 (1) SCC 57;** R. *Rajagopal @ R.R. Gopal & Anr. v. State of Tamil Nadu & Ors.* **AIR 1995 SC 264: 1994 (4) Suppl. SCR 353;** *PUCL v. Union of India & Anr.* **AIR 1997 SC 568: 1996 (10) Suppl. SCR 321;** *Mr. 'X' v. Hospital 'Z',* **(1998) 8 SCC 296;** *Sharda v. Dharmpal* **(2003) 4 SCC 493: 2003 (3) SCR 106;** *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr.* **AIR 2003 SC 2363: 2003 (2) SCR 1136;** *District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Ors.* **(2005) 1 SCC 496: 2004 (5) Suppl. SCR 833;** *Bhavesh Jayanti Lakhani v. State of Maharashtra & Ors.* **(2009) 9 SCC 551: 2009 (12) SCR 861;** *Smt. Selvi & Ors. v. State of Karnataka* **AIR 2010 SC 1974: 2010 (5) SCR 381;** *Ram Jethmalani & Ors. v. Union of India & Ors.* **(2011) 8 SCC 1;** *Rabin Mukherjee &. Ors. v. State of West Bengal &. Ors.* **AIR 1985 Cal. 222;** *Burrabazar Fireworks Dealers Association v. Commissioner of Police, Calcutta* **AIR 1998 Cal 121;** *Church*

of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn. &. Ors. **AIR 2000 SC 2773: 2000(3) Suppl. SCR 15;** *Forum, Prevention of Environment and Sound Pollution v. Union of India &. Ors.* **AIR 2006 SC 348: 2005 (4) Suppl. SCR 966 and** *Prithipal Singh & Ors. v. State of Punjab & Anr.* **(2012) 1 SCC 10 – referred to.**

2. Section 144 Cr.P.C. deals with immediate prevention and speedy remedy. Therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. The *sine qua non* for an order under Section 144 Cr.P.C. is urgency requiring an immediate and speedy intervention by passing of an order. The ?order must set out the material facts of the situation. Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave. [Para 30] [1147-B-D]

3.1. In the instant case, it is evident from the order passed under Section 144 Cr.P.C. itself that the people at large, sleeping in tents, had not been informed about such promulgation and were not asked to leave the place. There had been a dispute regarding the service of the orders on the organizers only. Therefore, there was utter confusion and the gathering could not even understand what the ?real dispute was and had reason to believe that police was trying to evict Baba Ramdev forcibly. At no point of time, the assembly was declared to be unlawful. In such a fact-situation, the police administration is to be blamed for not implementing the order, by strict adherence to the procedural requirements. People at large have a legitimate expectation that Executive Authority would ensure strict compliance to the procedural requirements and would certainly not act

in derogation of applicable regulations. Thus, the present is a clear cut case of Human Rights violation. [Para 35] [1150-D-G]

3.2. There was no gossip or discussion of something untrue that was going on. To the contrary, it was admittedly an assembly of followers, under a peaceful banner of Yogic training, fast asleep. The assembly was at least, purportedly, a conglomeration of individuals gathered together, expressive of a determination to improve the material condition of the human race. The aim of the assembly was *prima facie* unobjectionable and was not to inflame passions. It was to ward off something harmful. What was suspicious or conspiratory about the assembly, may require an investigation by the appropriate forum, but the implementation appears to have been done in an unlawful and derogatory manner that did violate the basic human rights of the crowd to have a sound sleep which is also a constitutional freedom, acknowledged under Article 21 of the Constitution of India. [Para 36] [1150-H; 1151-A-C]

3.3. Such an assembly is necessarily illegal cannot be presumed, and even if it was, the individuals were all asleep who were taken by surprise altogether for a simultaneous implementation and action under Section 144 Cr.P.C. without being preceded by an announcement or even otherwise, giving no time in a reasonable way to the assembly to disperse from the Ramlila Ground. To the contrary, the sleep of this huge crowd was immodestly and brutally outraged and it was dispersed by force making them flee hither and thither,which by such precipitate action, caused a mayhem that was reflected in the media. [Para 37] [1151-D-E]

3.4. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health

necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. A sleeping crowd cannot be included within the bracket of an unlawful category unless there is sufficient material to brand it as such. The facts as uncovered and the procedural mandate having been blatantly violated, is malice in law and also the part played by the police and administration shows the outrageous behaviour which cannot be justified by law in any civilized society. Forewarning is given to the respondents to prevent any repetition of such hasty and unwarranted act affecting the safe living conditions of the citizens/persons in this country. [Paras 38, 39] [1151-F; 1152-B-D]

Case Law Reference

In the judgment of Swatanter Kumar, J.

63 L ed 1173	**referred to**	**Para 5, 7**
(1961) 3 SCR 423	**referred to**	**Paras 8,47,204**
1954 SCR 587	**referred to**	**Para 12**
1978 (2) SCR 621	**referred to**	**Para 14**
1979 (1) SCR 192	**referred to**	**Para 14**
1989 (2) SCR 204	**referred to**	**Para 22**
1952 SCR 597	**referred to**	**Para 26**
1950 SCR 759	**referred to**	**Para 27**
2005 (4) Suppl. SCR 582	**referred to**	**Para 28**
(1950) SCR 594	**referred to**	**Para 30**
1966 SCR 709	**referred to**	**Para 30**

1996 (3) Suppl. SCR 677	**referred to**	**Para 32**
2004 (1) SCR 1038	**referred to**	**Para 41**
1971 SCR 742	**referred to**	**Paras 38, 203**
1973 (2) SCR 266	**referred to**	**Paras 39, 212**
2004 (3) SCR 652	**referred to**	**Paras 41, 203**
(1951) 340 U.S. 315	**referred to**	**Para 43**
(1964) 4 SCR 733	**referred to**	**Para 69**
2009 (6) SCR 439	**referred to**	**Paras 83, 216**
1982 (1) SCR 1077	**referred to**	**Para 156**
(1997) 7 SCC 91	**referred to**	**Para 203**
(1970) 3 SCC 227	**referred to**	**Para 203**
(2002) 3 SCC 696	**referred to**	**Para 217**
(1951) A.C. 601	**referred to**	**Para 227**
2003 (4) Suppl. SCR 984	**referred to**	**Para 229**

In the judgment of Dr. B.S. Chauhan, J.:

2011 (3) SCR 366	**referred to**	**Para 14**
2011 (7) SCC 547	**referred to**	**Para 14**
1971 (3) SCR 9	**referred to**	**Para 15**
1979 (2) SCR 641	**referred to**	**Para 15**
1996 (10) Suppl. SCR 284	**referred to**	**Para 16**
1981 (2) SCR 516	**referred to**	**Para 17**
1964 SCR 332	**referred to**	**Para 19**
1975 (3) SCR 946	**referred to**	**Para 19**

1996 (10) Suppl. SCR 321	**referred to**	**Para 19**
(1948) 338 US 25	**referred to**	**Para 20**
1981 (2) SCR 311	**referred to**	**Para 21**
1991 (1) SCC 57	**referred to**	**Para 21**
1994 (4) Suppl. SCR 353	**referred to**	**Para 21**
1996 (10) Suppl. SCR 321	**referred to**	**Para 21**
(1998) 8 SCC 296	**referred to**	**Para 21**
2003 (3) SCR 106	**referred to**	**Para 21**
2003 (2) SCR 1136	**referred to**	**Para 21**
2004 (5) Suppl. SCR 833	**referred to**	**Para 21**
2009 (12) SCR 861	**referred to**	**Para 21**
2010 (5) SCR 381	**referred to**	**Para 21**
(2011) 8 SCC 1	**referred to**	**Para 22**
AIR 1985 Cal. 222	**referred to**	**Para 23**
AIR 1998 Cal 121	**referred to**	**Para 23**
2000 (3) Suppl. SCR 15	**referred to**	**Para 23**
2005 (4) Suppl. SCR 966	**referred to**	**Para 23**
(2012) 1 SCC 10	**referred to**	**Para 28**

CRIMINAL ORIGINAL JURISDICTION : SUO MOTU WRIT PETITION (CRL.) NO. 122 OF 2011.

Under Article 32 of the Constitution of India.

P.P. Malhotra, ASG, Dr, Rajeev Dhavan (Amicus Curiae), Ram Jethmalani, P.H. Parekh, Udita Singh, L.R. Singh, Shubhranshu Pedhi, Anil Katiyar, Lata Krishnamurti, Balaji Subramanian, Manu Sharma, Karan Kalia, Pranav Diesh,

Sanjay Jain, Vikas Garg, B.K. Prasad, Siddhartha Dave, Shailender Sharma, S.N. Terdal, D.P. Mohanty, Subhasree Chatterjee, Anand Shankar Jha, Ekansh Misra, (for Parekh & Co.) Kamini Jaiswal, Shomila Bakshi, Abhimanyu Shrestha, Kumud L. Das for the appearing parties.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. At the very outset, I would prefer to examine the principles of law that can render assistance in weighing the merit or otherwise of the contentious disputations asserted before the Court by the parties in the present *suo moto* petition. Besides restating the law governing Articles 19(1)(a) and 19(1)(b) of the Constitution of India and the parallel restrictions contemplated under Articles 19(2) and 19(3) respectively, I would also gauge the dimensions of legal provisions in relation to the exercise of jurisdiction by the empowered officer in passing an order under Section 144 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

2. It appears justified here to mention the First Amendment to the United States (US) Constitution, a bellwether in the pursuit of expanding the horizon of civil liberties. This Amendment provides for the freedom of speech of press in the American Bill of Rights. This Amendment added new dimensions to this right to freedom and purportedly, without any limitations. The expressions used in wording the Amendment have a wide magnitude and are capable of liberal construction. It reads as under :

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

3. The effect of use of these expressions, in particular, was that the freedom of speech of press was considered absolute

and free from any restrictions whatsoever. Shortly thereafter, as a result of widening of the power of judicial review, the US Supreme Court preferred to test each case on the touchstone of the rule of 'clear-and-present-danger'. However, application of this rule was unable to withstand the pace of development of law and, therefore, through its judicial pronouncements, the US Supreme Court applied the doctrine of 'balancing of interests'. The cases relating to speech did not simply involve the rights of the offending speaker but typically they presented a clash of several rights or a conflict between individual rights and necessary functions of the Government. Justice Frankfurter often applied the above-mentioned Balancing Formula and concluded that "while the court has emphasized the importance of 'free speech', it has recognized that free speech is not in itself a touchstone. The Constitution is not unmindful of other important interests, such as public order, if free expression of ideas is not found to be the overbalancing considerations."

4. The 'balancing of interests' approach is basically derived from Roscoe Pound's theories of social engineering. Pound had insisted that his structure of public, social and individual interests are all, in fact, individual interests looked at from different points of view for the purpose of clarity. Therefore, in order to make the system work properly, it is essential that when interests are balanced, all claims must be translated into the same level and carefully labelled. Thus, a social interest may not be balanced against individual interest, but only against another social interest. The author points out that throughout the heyday of the clear-and-present-danger and preferred position doctrines, the language of balancing, weighing or accommodating interests was employed as an integral part of the libertarian position. [*Freedom of Speech: The Supreme Court and Judicial Review*, by Martin Shapiro, 1966]

5. Even in the United States there is a recurring debate in modern First Amendment Jurisprudence as to whether First Amendment rights are 'absolute' in the sense that the

Government may not abridge them at all or whether the First Amendment requires the 'balancing of competing interests' in the sense that free speech values and the Government's competing justification must be isolated and weighted in each case. Although the First Amendment to the American Constitution provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of the constitutional Government to survive. If it is to survive, it must have power to protect itself against unlawful conduct and under some circumstances against incitements to commit unlawful acts. Freedom of speech, thus, does not comprehend the right to speak on any subject at any time. In the case of *Schenck v. United States* [63 L ed 1173], the Court held :

> "The character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that have all the effect of force….the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

[*Constitution of India*, (2nd Edn.), Volume 1 by Dr. L.M. Singhvi]

6. In contradistinction to the above approach of the US Supreme Court, the Indian Constitution spells out the right to freedom of speech and expression under Article 19(1)(a). It also provides the right to assemble peacefully and without arms to every citizen of the country under Article 19(1)(b). However, these rights are not free from any restrictions and are not absolute in their terms and application. Articles 19(2) and 19(3), respectively, control the freedoms available to a citizen. Article 19(2) empowers the State to impose reasonable restrictions

on exercise of the right to freedom of speech and expression in the interest of the factors stated in the said clause. Similarly, Article 19(3) enables the State to make any law imposing reasonable restrictions on the exercise of the right conferred, again in the interest of the factors stated therein.

7. In face of this constitutional mandate, the American doctrine adumbrated in *Schenck's* case (supra) cannot be imported and applied. Under our Constitution, this right is not an absolute right but is subject to the above-noticed restrictions. Thus, the position under our Constitution is different.

8. In '*Constitutional Law of India*' by H.M. Seervai (Fourth Edn.), Vol.1, the author has noticed that the provisions of the two Constitutions as to freedom of speech and expression are essentially different. The difference being accentuated by the provisions of the Indian Constitution for preventive detention which have no counterpart in the US Constitution. Reasonable restriction contemplated under the Indian Constitution brings the matter in the domain of the court as the question of reasonableness is a question primarily for the Court to decide. {*Babulal Parate v. State of Maharashtra* [(1961) 3 SCR 423]}.

9. The fundamental right enshrined in the Constitution itself being made subject to reasonable restrictions, the laws so enacted to specify certain restrictions on the right to freedom of speech and expression have to be construed meaningfully and with the constitutional object in mind. For instance, the right to freedom of speech and expression is not violated by a law which requires that name of the printer and publisher and the place of printing and publication should be printed legibly on every book or paper.

10. Thus, there is a marked distinction in the language of law, its possible interpretation and application under the Indian and the US laws. It is significant to note that the freedom of speech is the bulwark of democratic Government. This freedom is essential for proper functioning of the democratic process.

The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press.

11. In order to effectively consider the rival contentions raised and in the backdrop of the factual matrix, it will be of some concern for this Court to examine the constitutional scheme and the historical background of the relevant Articles relating to the right to freedom of speech and expression in India. The framers of our Constitution, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without these rights. Liberty of thought enables liberty of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline while belief would have to be placed at the upper angle. Attainment of the preambled liberties is eternally connected to the liberty of expression. (Ref. *Preamble, The Spirit and Backbone of the Constitution of India, by Justice R.C. Lahoti*). These valuable fundamental rights are subject to restrictions contemplated under Articles 19(2) and 19(3), respectively. Article 19(1) was subjected to just one amendment, by the Constitution (44th Amendment) Act, 1979, vide which Article 19(1)(f) was repealed. Since the Parliament felt the need of amending Article 19(2) of the Constitution, it

was substituted by the Constitution (First Amendment) Act, 1951 with retrospective effect. Article 19(2) was subjected to another amendment and vide the Constitution (Sixteenth Amendment) Act, 1963, the expression "sovereignty and integrity of India" was added. The pre-amendment Article had empowered the State to make laws imposing reasonable restrictions in exercise of the rights conferred under Article 19(1)(a) in the interest of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. To introduce a more definite dimension with regard to the sovereignty and integrity of India, this Amendment was made. It provided the right spectrum in relation to which the State could enact a law to place reasonable restrictions upon the freedom of speech and expression.

12. This shows that the State has a duty to protect itself against certain unlawful actions and, therefore, may enact laws which would ensure such protection. The right that springs from Article 19(1)(a) is not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder. {Ref.: *State of West Bengal Vs. Subodh Gopal Bose* [AIR 1954 SC 92]}.

13. I consider it appropriate to examine the term 'liberty', which is subject to reasonable restrictions, with reference to the other constitutional rights. Article 21 is the foundation of the constitutional scheme. It grants to every person the right to life and personal liberty. This Article prescribes a negative mandate that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The procedure established by law for deprivation of rights conferred by this Article must be fair, just and reasonable. The rules of justice and fair play require that State action should neither be unjust nor unfair, lest it attracts the vice of

unreasonableness, thereby vitiating the law which prescribed that procedure and, consequently, the action taken thereunder.

14. Any action taken by a public authority which is entrusted with the statutory power has, therefore, to be tested by the application of two standards - first, the action must be within the scope of the authority conferred by law and, second, it must be reasonable. If any action, within the scope of the authority conferred by law is found to be unreasonable, it means that the procedure established under which that action is taken is itself unreasonable. The concept of 'procedure established by law' changed its character after the judgment of this Court in the case of *Maneka Gandhi* v. *UOI* [AIR 1978 SC 597], where this Court took the view as under :

> "The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be right and just and fair and not arbitrary fanciful or oppressive otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied."

This was also noted in the case of *Madhav Hayawadanrao Hoskot v. State of Maharashtra (1978) 3 SCC 544* where this Court took the following view:

> "Procedure established by law are words of deep meaning for all lovers of liberty and judicial sentinels."

15. What emerges from the above principles, which has also been followed in a catena of judgments of this Court, is that the law itself has to be reasonable and furthermore, the action under that law has to be in accordance with the law so established. Non-observance of either of this can vitiate the action, but if the former is invalid, the latter cannot withstand.

16. Article 13 is a protective provision and an index of the importance and preference that the framers of the Constitution gave to Part III. In terms of Article 13(1), the laws in force before the commencement of the Constitution, in so far as they were inconsistent with the provisions of that Part were, to the extent of such inconsistency, void. It also fettered the right of the State in making laws. The State is not to make any law which takes away or abridges the rights conferred by this Part and if such law is made then to the extent of conflict, it would be void. In other words, except for the limitations stated in the Articles contained in Part III itself and Article 13(4) of the Constitution, this Article is the reservoir of the fundamental protections available to any person/citizen.

17. While these are the guaranteed fundamental rights, Article 38, under the Directive Principles of State Policy contained in Part IV of the Constitution, places a constitutional obligation upon the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice - social, economic and political - shall inform all the institutions of the national life. Article 37 makes the Directive Principles of State Policy fundamental in governance of the country and provides that it shall be the duty of the State to apply these principles in making laws.

18. With the development of law, even certain matters covered under this Part relating to Directive Principles have been uplifted to the status of fundamental rights, for instance, the right to education. Though this right forms part of the Directive Principles of State Policy, compulsory and primary education has been treated as a part of Article 21 of the Constitution of India by the courts, which consequently led to the enactment of the Right of Children to Free and Compulsory Education Act, 2010.

19. Article 51A deals with the fundamental duties of the citizens. It, *inter alia*, postulates that it shall be the duty of every citizen of India to abide by the Constitution, to promote harmony

and the spirit of common brotherhood, to safeguard public property and to abjure violence.

20. Thus, a common thread runs through Parts III, IV and IVA of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these parts. It is necessary to be clear about the meaning of the word "fundamental" as used in the expression "fundamental in the governance of the State" to describe the directive principles which have not legally been made enforceable. Thus, the word "fundamental" has been used in two different senses under our Constitution. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law *pretendo* void. The word "fundamental" in Article 37 also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve. As already noticed, the significance of the fundamental principles stated in the directive principles has attained greater significance through judicial pronouncements.

21. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Part III of the Constitution of India although confers rights, still duties and restrictions are inherent thereunder. These rights are basic in nature and are recognized and guaranteed as natural rights, inherent in the status of a citizen of a free country, but are not absolute in nature and uncontrolled in operation. Each one of these rights is to be controlled, curtailed and regulated, to a certain extent, by laws

made by the Parliament or the State Legislature. In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge alleging violation of the right to freedom guaranteed by clause (1) of Article 19 of the Constitution, on a *prima facie* case of such violation being made out, the onus shifts upon the State to show that the legislation comes within the permissible restrictions set out in clauses (2) to (6) of Article 19 and that the particular restriction is reasonable. It is for the State to place on record appropriate material justifying the restriction and its reasonability. Reasonability of restriction is a matter which squarely falls within the power of judicial review of the Courts. Such limitations, therefore, indicate two purposes; one that the freedom is not absolute and is subject to regulatory measures and the second that there is also a limitation on the power of the legislature to restrict these freedoms. The legislature has to exercise these powers within the ambit of Article 19(2) of the Constitution.

22. Further, there is a direct and not merely implied responsibility upon the Government to function openly and in public interest. The Right to Information itself emerges from the right to freedom of speech and expression. Unlike an individual, the State owns a multi-dimensional responsibility. It has to maintain and ensure security of the State as well as the social and public order. It has to give utmost regard to the right to freedom of speech and expression which a citizen or a group of citizens may assert. The State also has a duty to provide security and protection to the persons who wish to attend such assembly at the invitation of the person who is exercising his right to freedom of speech or otherwise. In the case of *S. Rangarajan v. Jagjivan Ram* [(1989) 2 SCC 574], this Court noticed as under :

> "**45.** The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly

be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg"."

23. Where the Court applies the test of 'proximate and direct nexus with the expression', the Court also has to keep in mind that the restriction should be founded on the principle of least invasiveness i.e. the restriction should be imposed in a manner and to the extent which is unavoidable in a given situation. The Court would also take into consideration whether the anticipated event would or would not be intrinsically dangerous to public interest.

24. Now, I would examine the various tests that have been applied over the period of time to examine the validity and/or reasonability of the restrictions imposed upon the rights.

Upon the Rights Enshrined in the Constitution

25. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:-

(a) The restriction can be imposed only by or under

the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.

(b) Each restriction must be reasonable.

(c) A restriction must be related to the purpose mentioned in Article 19(2).

26. The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above. The legislative determination of what restriction to impose on a freedom is final and conclusive, as it is not open to judicial review. The judgments of this Court have been consistent in taking the view that it is difficult to define or explain the word "reasonable" with any precision. It will always be dependent on the facts of a given case with reference to the law which has been enacted to create a restriction on the right. It is neither possible nor advisable to state any abstract standard or general pattern of reasonableness as applicable uniformly to all cases. This Court in the case of *State of Madras v. V.G. Row* [AIR 1952 SC 196] held :-

"It is important in this context to bear in mind that the test of reasonableness, whereever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness, can be laid down as applicable to all cases."

27. For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorized, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the

time, amongst others, enter into the judicial verdict. [See: *Chintamanrao & Anr. v. State of Madhya Pradesh* (AIR 1951 SC 118)].

28. The courts must bear a clear distinction in mind with regard to 'restriction' and 'prohibition'. They are expressions which cannot be used inter-changeably as they have different connotations and consequences in law. Wherever a 'prohibition' is imposed, besides satisfying all the tests of a reasonable 'restriction', it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case. This Court in the case of *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others* [(2005) 8 SCC 534] held as under:-

> "75. Three propositions are well settled: (i) 'restriction' includes cases of 'prohibition'; (ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and (iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right….."

29. The obvious result of the above discussion is that a restriction imposed in any form has to be reasonable and to that extent, it must stand the scrutiny of judicial review. It cannot be arbitrary or excessive. It must possess a direct and proximate nexus with the object sought to be achieved. Whenever and wherever any restriction is imposed upon the right to freedom of speech and expression, it must be within the framework of the prescribed law, as subscribed by Article 19(2) of the Constitution.

30. As already noticed, rights, restrictions and duties co-exist. As, on the one hand, it is necessary to maintain and preserve the freedom of speech and expression in a democracy, there, on the other, it is also necessary to place reins on this freedom for the maintenance of social order. The term 'social order' has a very wide ambit. It includes 'law and order', 'public order' as well as 'the security of the State'. The security of the State is the core subject and public order as well as law and order follow the same. In the case of *Romesh Thappar v. State of Madras* [1950 SCR 594], this Court took the view that local breaches of public order were no grounds for restricting the freedom of speech guaranteed by the Constitution. This led to the Constitutional (First Amendment) Act, 1951 and consequently, this Court in the case of *Dr. Ram Manohar Lohia v. State of Bihar* [AIR 1966 SC 740] stated that an activity which affects 'law and order' may not necessarily affect 'public order' and an activity which might be prejudicial to 'public order' may not necessarily affect 'security of the State'. Absence of 'public order' is an aggravated form of disturbance of public peace which affects the general current of public life. Any act which merely affects the security of others may not constitute a breach of 'public order'.

31. The expression 'in the interest of' has given a wide amplitude to the permissible law which can be enacted to impose reasonable restrictions on the rights guaranteed by Article 19(1) of the Constitution.

32. There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51A are of relevant consideration. Article 51A requires an individual to abide by the law, to safeguard public property and to abjure

violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. Part IV of the Constitution relates to the Directive Principles of the State Policy. Article 38 was introduced in the Constitution as an obligation upon the State to maintain social order for promotion of welfare of the people. By the Constitution (Forty-Second Amendment) Act, 1976, Article 51A was added to comprehensively state the fundamental duties of the citizens to compliment the obligations of the State. Thus, all these duties are of constitutional significance. It is obvious that the Parliament realized the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties. Thus, it will be difficult for any Court to exclude from its consideration any of the above-mentioned Articles of the Constitution while examining the validity or otherwise of any restriction relating to the right to freedom of speech and expression available to a citizen under Article 19(1)(a) of the Constitution. The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with liberty of others. Therefore, a restriction on the right to assemble and raise protest has also to be examined on similar parameters and values. In other words, when you assert your right, you must respect the freedom of others. Besides imposition of a restriction by the State, the non-interference with liberties of others is an essential condition for assertion of the right to freedom of speech and expression. In the case of *Dr. D.C. Saxena v. Hon'ble the Chief Justice of India* [(1996) 5 SCC 216], this Court held:

> "31. If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation. Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libellous, so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market-place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right."

33. Every right has a corresponding duty. Part III of the Constitution of India although confers rights and duties, restrictions are inherent thereunder. Reasonable regulations have been found to be contained in the provisions of Part III of the Constitution of India, apart from clauses (2) to (4) and (6) of Article 19 of the Constitution {See *Union of India v. Naveen Jindal and Anr.* [(2004) 2 SCC 510]}.

34. As I have already discussed, the restriction must be provided by law in a manner somewhat distinct to the term 'due process of law' as contained in Article 21 of the Constitution. If the orders passed by the Executive are backed by a valid and effective law, the restriction imposed thereby is likely to withstand the test of reasonableness, which requires it to be free of arbitrariness, to have a direct nexus to the object and to be proportionate to the right restricted as well as the

requirement of the society, for example, an order passed under Section 144 Cr.P.C. This order is passed on the strength of a valid law enacted by the Parliament. The order is passed by an executive authority declaring that at a given place or area, more than five persons cannot assemble and hold a public meeting. There is a complete channel provided for examining the correctness or otherwise of such an order passed under Section 144 Cr.P.C. and, therefore, it has been held by this Court in a catena of decisions that such order falls within the framework of reasonable restriction.

35. The distinction between 'public order' and 'law and order' is a fine one, but nevertheless clear. A restriction imposed with 'law and order' in mind would be least intruding into the guaranteed freedom while 'public order' may qualify for a greater degree of restriction since public order is a matter of even greater social concern. Out of all expressions used in this regard, as discussed in the earlier part of this judgment, 'security of the state' is the paramount and the State can impose restrictions upon the freedom, which may comparatively be more stringent than those imposed in relation to maintenance of 'public order' and 'law and order'. However stringent may these restrictions be, they must stand the test of 'reasonability'. The State would have to satisfy the Court that the imposition of such restrictions is not only in the interest of the security of the State but is also within the framework of Articles 19(2) and 19(3) of the Constitution.

36. It is keeping this distinction in mind, the Legislature, under Section 144 Cr.P.C., has empowered the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this behalf, to direct any person to abstain from doing a certain act or to take action as directed, where sufficient ground for proceeding under this Section exists and immediate prevention and/or speedy remedy is desirable. By virtue of Section 144A Cr.P.C., which itself was introduced by Act 25 of 2005, the District Magistrate has been

empowered to pass an order prohibiting, in any area within the local limits of his jurisdiction, the carrying of arms in any procession or the organizing or holding of any mass drill or mass training with arms in any public place, where it is necessary for him to do so for the preservation of public peace, public safety or maintenance of the public order. Section 144 Cr.P.C, therefore, empowers an executive authority, backed by these provisions, to impose reasonable restrictions *vis-à-vis* the fundamental rights. The provisions of Section 144 Cr.P.C. provide for a complete mechanism to be followed by the Magistrate concerned and also specify the limitation of time till when such an order may remain in force. It also prescribes the circumstances that are required to be taken into consideration by the said authority while passing an order under Section 144 Cr.P.C.

37. In *Babu Lal Parate* (supra) where this Court was concerned with the contention raised on behalf of the union of workers that the order passed in anticipation by the Magistrate under Section 144 Cr.P.C. was an encroachment on their rights under Articles 19(1)(a) and 19(1)(b), it was held that the provisions of the Section, which commit the power in this regard to a Magistrate belonging to any of the classes referred to therein cannot be regarded as unreasonable. While examining the law in force in the United States, the Court further held that an anticipatory action of the kind permissible under Section 144 Cr.P.C. is not impermissible within the ambit of clauses (2) and (3) of Article 19. Public order has to be maintained at all times, particularly prior to any event and, therefore, it is competent for the legislature to pass a law permitting the appropriate authority to take anticipatory action or to place anticipatory restrictions upon particular kind of acts in an emergency for the purpose of maintaining public order.

38. In the case of *Madhu Limaye v. Sub Divisional Magistrate and Ors.* [AIR 1971 SC 2481], a Constitution Bench of this Court took the following view:

"24. The procedure to be followed is next stated. Under Sub-section (2) if time does not permit or the order cannot be served, it can be made ex parte. Under Sub-section (3) the order may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. Under sub-section (4) the Magistrate may either *suo motu* or on an application by an aggrieved person, rescind or alter the order whether his own or by a Magistrate subordinate to him or made by his predecessor in Office. Under Sub-section (5) where the magistrate is moved by a person aggrieved he must hear him so that he may show cause against the order and if the Magistrate rejects wholly or in part the application, he must record his reasons in writing. This sub-section is mandatory. An order by the Magistrate does not remain in force after two months from the making thereof but the State Government may, however, extend the period by a notification in the Gazette but, only in cases of danger to human life, health or safety or where there is a likelihood of a riot or an affray. But the second portion of the sub-section was declared violative of Article 19 in *State of Bihar v. K.K. Misra* [1969] S.C.R. 337. It may be pointed out here that disobedience of an order lawfully promulgated is made an offence by Section 188 of the Indian Penal Code, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. It is punishable with simple imprisonment for one month or fine of Rs. 200 or both.

25. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and

which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence : see *Mst. Jagrupa Kumari v. Chotay Narain Singh* (1936) 37 Cri.L.J. 95 (Pat) which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquility, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualises as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.

26. The criticism, however, is that the section suffers from over broadness and the words of the section are wide enough to give an absolute power which may be exercised in an unjustifiable case and then there would be no remedy except to ask the Magistrate to cancel the order which he may not do. Revision against his determination to the High Court may prove illusory because before the High Court can intervene the mischief will be done. Therefore, it is submitted that an inquiry should precede the making of the order. In other words, the burden should not be placed

upon the person affected to clear his position. Further the order may be so general as to affect not only a particular party but persons who are innocent, as for example when there is an order banning meetings, processions, playing of music etc.

27. The effect of the order being in the interest of public order and the interests of the general public, occasions may arise when it is not possible to distinguish between those whose conduct must be controlled and those whose conduct is clear. As was pointed out in *Babulal Parate case* where two rival trade unions clashed and it was difficult to say whether a person belonged to one of the unions or to the general public, an order restricting the activities of the general public in the particular area was justified.

28. …A general order may be necessary when the number of persons is so large that distinction between them and the general public cannot be made without the risks mentioned in the section. A general order is thus justified but if the action is too general the order may be questioned by appropriate remedies for which there is ample provision in the law."

39. In the case of *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.* [(1973) 1 SCC 227], again a Constitution Bench of this Court, while dealing with a situation where a person seeking permission to hold a public meeting was denied the same on the ground that under another similar permission, certain elements had indulged in rioting and caused mischief to private and public properties, held Rule 7 framed under the Bombay Police Act, 1951 as being arbitrary and observed as under :

"……It is not surprising that the Constitution makers conferred a fundamental right on all citizens 'to assemble peaceably and without arms'. While prior to the coming into

force of the Constitution the right to assemble could have been abridged or taken away by law, now that cannot be done except by imposing reasonable restrictions within Article 19(3). But it is urged that the right to assemble does not mean that that right can be exercised at any and every place. This Court held in *Railway Board v. Narinjan Singh* (1969) 3 SCR 548; 554 : (1969)1 SCC 502 that there is no fundamental right for any one to hold meetings in government premises. It was observed:

'The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please'."

40. Section 144 Cr.P.C. is intended to serve public purpose and protect public order. This power vested in the executive is to be invoked after the satisfaction of the authority that there is need for immediate prevention or that speedy remedy is desirable and directions as contemplated are necessary to protect the interest of others or to prevent danger to human life, health or safety or disturbance of public tranquility or a riot or an affray. These features must co-exist at a given point of time in order to enable the authority concerned to pass appropriate orders. The expression 'law and order' is a comprehensive expression which may include not merely 'public order' but also matters such as 'public peace', 'public tranquility' and 'orderliness' in a locality or a local area and perhaps some other matters of public concern too. 'Public order' is something distinct from order or orderliness in a local area. Public order, if disturbed, must lead to public disorder whereas every breach of peace may not always lead to public disorder. This concept came to be illustratively explained in the judgment of this Court in the case of *Dr. Ram Manohar Lohia* (supra) wherein it was held that when two drunkards quarrel and fight, there is 'disorder' but not 'public disorder'. They can be dealt with under

the powers to maintain 'law and order' but cannot be detained on the ground that they were disturbing 'public order'. However, where the two persons fighting were of rival communities and one of them tried to raise communal passions, the problem is still one of 'law and order' but it raises the apprehension of public disorder. The main distinction is that where it affects the community or public at large, it will be an issue relatable to 'public order'. Section 144 Cr.P.C. empowers passing of such order in the interest of public order equitable to public safety and tranquility. The provisions of Section 144 Cr.P.C. empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquility is not *ultra vires* the Constitution.

41. In the case of *State of Karnataka v. Dr. Praveen Bhai Thogadia*, [(2004) 4 SCC 684], this Court, while observing that each person, whatever be his religion, must get the assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and the freedom of conscience, held more emphatically that the courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and handle the situation depending upon the peculiar needs and necessities within their special knowledge.

42. The scope of Section 144 Cr.P.C. enumerates the principles and declares the situations where exercise of rights recognized by law, by one or few, may conflict with other rights of the public or tend to endanger the public peace, tranquility and/or harmony. The orders passed under Section 144 Cr.P.C. are attempted to serve larger public interest and purpose. As already noticed, under the provisions of the Cr.P.C. complete procedural mechanism is provided for examining the need and merits of an order passed under Section 144 Cr.P.C. If one reads the provisions of Section 144 Cr.P.C. along with other constitutional provisions and the judicial pronouncements of this

Court, it can undisputedly be stated that Section 144 Cr.P.C. is a power to be exercised by the specified authority to prevent disturbance of public order, tranquility and harmony by taking immediate steps and when desirable, to take such preventive measures. Further, when there exists freedom of rights which are subject to reasonable restrictions, there are contemporaneous duties cast upon the citizens too. The duty to maintain law and order lies on the concerned authority and, thus, there is nothing unreasonable in making it the initial judge of the emergency. All this is coupled with a fundamental duty upon the citizens to obey such lawful orders as well as to extend their full cooperation in maintaining public order and tranquility.

43. The concept of orderly conduct leads to a balance for assertion of a right to freedom. In the case of *Feiner v. New York (1951) 340 U.S. 315*, the Supreme Court of the United States of America dealt with the matter where a person had been convicted for an offence of disorderly conduct for making derogatory remarks concerning various persons including the President, political dignitaries and other local political officials during his speech, despite warning by the Police officers to stop the said speech. The Court, noticing the condition of the crowd as well as the refusal by the petitioner to obey the Police requests, found that the conduct of the convict was in violation of public peace and order and the authority did not exceed the bounds of proper state Police action, held as under:

> "It is one thing to say that the Police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of arguments or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the Police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing

situation and the imminence of greater disorder couples with petitioner's deliberate defiance of the Police officers convince us that we should not reverse this conviction in the name of free speech."

44. Another important precept of exercise of power in terms of Section 144 Cr.P.C. is that the right to hold meetings in public places is subject to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. This view has been followed consistently by this Court. To put it with greater clarity, it can be stated that the content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. If the authority anticipates an imminent threat to public order or public tranquility, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of an individual. However, it must be borne in mind that the provisions of Section 144 Cr.P.C. are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order. It was stated by this Court in *Romesh Thapar* (supra) that the Constitution requires a line to be drawn in the field of public order and tranquility, marking off, may be roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of peace of a purely local significance, treating for this purpose differences in degree as if they were different in kind. The significance of factors such as security of State and maintenance of public order is demonstrated by the mere fact that the framers of the Constitution provided these as distinct topics of legislation in Entry III of the Concurrent List of Seventh Schedule to the Constitution.

45. Moreover, an order under Section 144 Cr.P.C. being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of the Cr.P.C., such an order is revisable and is subject to judicial review. Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction. In the case of *Dr. Praveen Bhai Thogadia* (supra), this Court took the view that the Court, while dealing with such orders, does not act like an appellate authority over the decision of the official concerned. It would interfere only where the order is patently illegal and without jurisdiction or with ulterior motive and on extraneous consideration of political victimization by those in power. Normally, interference should be the exception and not the rule.

46. A bare reading of Section 144 Cr.P.C. shows that :

(1) It is an executive power vested in the officer so empowered;

(2) There must exist sufficient ground for proceeding;

(3) Immediate prevention or speedy remedy is desirable; and

(4) An order, in writing, should be passed stating the material facts and be served the same upon the concerned person.

47. These are the basic requirements for passing an order under Section 144 Cr.P.C. Such an order can be passed against an individual or persons residing in a particular place or area or even against the public in general. Such an order

can remain in force, not in excess of two months. The Government has the power to revoke such an order and wherever any person moves the Government for revoking such an order, the State Government is empowered to pass an appropriate order, after hearing the person in accordance with Sub-section (3) of Section 144 Cr.P.C. Out of the aforestated requirements, the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. In this context, the perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and further must be minimal. Such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquility should be real and not quandary, imaginary or a mere likely possibility. This Court in the case of *Babulal Parate* (supra) had clearly stated the following view :

"the language of Section 144 is somewhat different. The test laid down in the Section is not merely 'likelihood' or 'tendency'. The section says that the magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger."

48. The above-stated view of the Constitution Bench is the unaltered state of law in our country. However, it needs to be specifically mentioned that the 'apprehension of danger' is again what can inevitably be gathered only from the circumstances of a given case.

49. Once an order under Section 144 Cr.P.C. is passed, it is expected of all concerned to implement the said order

unless it has been rescinded or modified by a forum of competent jurisdiction. Its enforcement has legal consequences. One of such consequences would be the dispersement of an unlawful assembly and, if necessitated, by using permissible force. An assembly which might have lawfully assembled would be termed as an 'unlawful assembly' upon the passing and implementation of such a preventive order. The empowered officer is also vested with adequate powers to direct the dispersement of such assembly. In this direction, he may even take the assistance of concerned officers and armed forces for the purposes of dispersing such an assembly. Furthermore, the said officer has even been vested with the powers of arresting and confining the persons and, if necessary, punishing them in accordance with law in terms of Section 129 Cr.P.C. An order under Section 144 Cr.P.C. would have an application to an 'actual' unlawful assembly as well as a 'potential' unlawful assembly. This is precisely the scope of application and enforcement of an order passed under Section 144 Cr.P.C.

50. Having noticed the legal precepts applicable to the present case, it will be appropriate to notice, at this stage, the factual matrix advanced by each of the parties to the case before this Court.

Version put forward by learned *Amicus Curiae*

51. In 2008, Baba Ramdev was the first person to raise the issue of black money publically. The black money outside the country was estimated at total of Rs.400 lakh crore or nearly nine trillion US Dollar. On 27th February, 2011, an Anti-Corruption Rally was held at Ramlila Maidan, New Delhi where more than one lakh persons are said to have participated. The persons present at the rally included Baba Ramdev, Acharya Balakrishna, Ram Jethmalani, Anna Hazare and many others. On 20th April, 2011, the President of Bharat Swabhiman Trust, Delhi Pardesh submitted an application to the MCD proposing to take Ramlila Maidan on rent, subject to the general terms

and conditions, for holding a yoga training camp for 4 to 5 thousand people between 1st June, 2011 to 20th June, 2011. He had also submitted an application to the Deputy Commissioner of Police (Central District) seeking permission for holding the Yoga Training Camp which permission was granted by the DCP (Central District) vide his letter dated 25th April, 2011. This permission was subject to the terms and conditions stated therein. Permission letter dated 25th April, 2011 reads as under:-

> "With reference to your letter No. Nil, dated 20.04.2011, on the subject cited above, I am directed to inform you that your request for permission to organize Yoga Training Session at Ramlila Ground from 01.06.2011 to 20.06.2011 by Bharat Swabhiman Trust Delhi Pradesh has been considered and permission is granted for the same subject to the conditions that there should not be any obstruction to the normal flow of traffic and permission from land owing agency is obtained. Besides this, you will deploy sufficient numbers of volunteers at the venue of the function. Further, you are requested to comply with all the instructions given by Police authorities time to time failing which this permission can be revoked at any time."

52. Continuing with his agitation for the return of black money to the country, Baba Ramdev wrote a letter to the Prime Minister on 4th May, 2011 stating his intention to go on a fast to protest against the Government's inaction in that regard. The Government made attempts to negotiate with Baba Ramdev and to tackle the problem on the terms, as may be commonly arrived at between the Government and Baba Ramdev. This process started with effect from 19th May, 2011 when the Prime Minister wrote a letter to Baba Ramdev asking him to renounce his fast. The Finance Minister also wrote a letter to Baba Ramdev informing him about the progress in the matter.

53. On 23rd May, 2011, Baba Ramdev submitted an application for holding a *dharna* at Jantar Mantar, which

permission was also granted to him vide letter dated 24th May, 2011, which reads as follows:-

> "With reference to your letter dated 23.05.2011, on the subject mentioned above. I have been directed to inform you that you are permitted dharna/satyagrah at Jantar Mantar on 04.06.2011 from 0800 hrs. to 1800 hrs. with a very limited gathering."

54. In furtherance to the aforesaid permission, it was clarified vide letter dated 26th May, 2011 informing the organisers that the number of persons accompanying Baba Ramdev should not exceed two hundred.

55. On 27th May, 2011, the DCP (Central District), on receiving the media reports about Baba Ramdev's intention to organize a fast unto death at the Yoga Training Camp, made further enquiries from Acharya Virendra Vikram requiring him to clarify the actual purpose for such huge gathering. His response to this, vide letter dated 28th May, 2011, was that there would be no other programme at all, except residential yoga camp. However, the Special Branch, Delhi Police also issued a special report indicating that Baba Ramdev intended to hold indefinite hunger strike along with 30,000-35,000 supporters and that the organizers were further claiming that the gathering would exceed one lakh.

56. According to Dr. Dhavan, the learned *amicus curiae,* there is still another angle to this whole episode. When Baba Ramdev arrived at Delhi Airport on 1st June, 2011, four senior ministers of the UPA Government met him at the Airport and tried to persuade him not to pursue the said fast unto death since the Government had already taken initiative on the issue of corruption.

57. In the meanwhile, large number of followers of Baba Ramdev had gathered at Ramlila Maidan by the afternoon of 4th June, 2011. In the evening of that very day, one of the

Ministers who had met Baba Ramdev at the Airport, Mr. Kapil Sibal, made public a letter from Baba Ramdev's camp calling off their agitation. This was not appreciated by Baba Ramdev, as, according to him, the Government had not stood by its commitments and, therefore, he hardened his position by declaring not to take back his *satyagraha* until a proper Government Ordinance was announced in place of forming a Committee. The ministers talked to Baba Ramdev in great detail but of no avail. It is stated that even the Prime Minister had gone the extra mile to urge Baba Ramdev not to go ahead with the hunger strike, promising him to find a "pragmatic and practical" solution to tackle the issue of corruption. Various attempts were made at different levels of the Government to resolve this issue amicably. Even a meeting of the ministers with Baba Ramdev was held at Hotel Claridges. It was reported by the Press/Media that many others supported the stand of Baba Ramdev. It was widely reported that Mr. Sibal had said: "we hope he honours his commitment and honours his fast. This Government has always reached out but can also rein in." The Press reported the statement of the Chief Minister, Delhi as stated by the officials including Police officers in the words: "action would be taken if Baba Ramdev's Yoga Shivir turns into an agitation field and three-tier security arrangements have been made for the *Shivir* which is supported to turn into a massive *satyagraha*". Even Anna's campaign endorsed Baba Ramdev's step. In this background, on 4th June, 2011, Baba Ramdev's hunger strike began with the motto of '*bhrashtachar mitao satyagraha,* the key demands being the same as were stated on 27th February, 2011.

58. As already noticed, Baba Ramdev had been granted permission to hold *satyagraha* at Jantar Mantar, of course, with a very limited number of persons. Despite the assurance given by Acharya Virendra Vikram, as noted above, the event was converted into an *Anshan* and the crowd at the Ramlila Maidan swelled to more than fifty thousand. No yoga training was held for the entire day. At about 1.00 p.m., Baba Ramdev decided to march to Jantar Mantar for holding a *dharna* along with the entire gathering. Keeping in view the fact that Jantar Mantar could not accommodate such a large crowd, the permission dated 24/26th May, 2011 granted for holding the *dharna* was withdrawn by the authorities. Certain negotiations took place between Baba Ramdev and some of the ministers on telephone, but, Baba Ramdev revived his earlier condition of time-bound action, an ordinance to bring black money back and the items missing on his initial list of demands. At about 11.15 p.m., it is stated that Centre's emissary reached Baba Ramdev at Ramlila Maidan with the letter assuring a law to declare black money hoarded abroad as a national asset. The messenger kept his mobile on so the Government negotiators could listen to Baba Ramdev and his aides. The conversation with Baba Ramdev convinced the Government that Baba Ramdev will not wind up his protest. At about 11.30 p.m., a team of Police, led by the Joint Commissioner of Police, met Baba Ramdev and informed him that the permission to hold the camp had been withdrawn and that he would be detained. At about 12.30 a.m., a large number of CRPF, Delhi Police force and Rapid Action Force personnel, totaling approximately to 5000 (as stated in the notes of the *Amicus*. However, from the record it appears to be 1200), reached the Ramlila Maidan. At this time, the protestors were peacefully sleeping. Thereafter, at about 1.10 a.m., the Police reached the dais/platform to take Baba Ramdev out, which action was resisted by his supporters. At 1.25 a.m., Baba Ramdev jumped into the crowd from the stage and disappeared amongst his supporters. He, thereafter, climbed on the shoulders of one of his supporters, exhorting women to form a barricade around him. A scuffle between the security forces and the supporters of Baba Ramdev took place and eight rounds of teargas shells were fired. By 2.10 a.m., almost all the supporters had been driven out of the Ramlila Maidan. The Police sent them towards the New Delhi Railway Station. Baba Ramdev, who had disappeared from the dais earlier, was apprehended by the Police near Ranjit Singh

Flyover at about 3.40 a.m. At that time, he was dressed in *salwar-kameez* with a *dupatta* over his beard. He was taken to the Airport guest-house. It was planned by the Government to fly Baba Ramdev in a chopper from Safdarjung Airport. However, at about 9.50 a.m. the Government shelved this plan and put him in an Indian Air Force helicopter and flew him out of the Indira Gandhi International Airport.

59. Learned a*micus curiae* has made two-fold submissions. One on 'facts and pleadings' and the other on 'law'. I may now refer to some of the submissions made on facts and pleadings.

60. The Ramlila Maidan provided an accurate barometer of the country's political mood in 1960s and 1970s which can be gauged from an article dated 18th August, 2011 in the Times of India, which stated as under:

> "It was in Ramlila Ground that Jai Prakash Narain along with prominent Opposition leaders, addressed a mammoth rally on June 25, 1975, where he urged the armed forces to revolt against Indira Gandhi's government. Quoting Ramdhari Singh Dinkar, JP thundered, "Singhasan khali karo, ki janta aati hai (Vacate the throne, for the people are here to claim it)". That very midnight, Emergency was declared in the country.
>
> Less than two years later, the ground was the venue for another Opposition rally that many political commentators describe as epoch-changing. In February 1977, more than a month before Emergency was lifted, Opposition leaders led by Jagjivan Ram – his first public appearance after quitting the Congress – Morarji Desai, Atal Bihari Vajpayee, Charan Singh and Chandrashekar, held a joint rally.
>
> That the Ramlila Ground provided an accurate barometer of the country's political mood in the 1960s and 70s can

> be gauged from the fact that in 1972, just around three years before the JP rally, Indira Gandhi addressed a huge rally here following India's victory over Pakistan in the Bangladesh war. In 1965, again at a time when the country was at war with Pakistan, it was from here that then Prime Minister Lal Bahadur Shastri gave the slogan 'Jai Jawan Jai Kisan'.
>
> According to Delhi historian, Ronald Vivian Smith, the Maidan was originally a pond which was filled up in the early 1930s so that the annual Ramlila could be shifted here from the flood plains behind Red Fort. It quickly became a popular site for political meetings, with Gandhiji, Nehru, Sardar Patel and other top nationalist leaders addressing rallies here.
>
> According to one account, as Jinnah was holding a Muslim League rally here in 1945, he heard someone in the crowd address him as 'Maulana'. He reacted angrily saying he was a political leader and that honorific should never be used for him.
>
> In the 1980s and 90s, the Boat Club became the preferred site for shows of strength. But after the Narasimha Rao government banned all meetings there during the tumultuous Ayodhya movement, the political spotlight returned to the site where it originally belonged – the Ramlila Ground."

61. Amongst other things, it is a place of protests. In the Standing Order 309 issued by the Police, it has been stated that "any gathering of over 50,000 should not be permitted at Ramlila Maidan but should be offered the Burari grounds as an alternative. If, however, the organizers select a park or an open area elsewhere in Delhi, the same can be examined on merits."

62. Pointing out certain ambiguities and contradictions in

various affidavits filed on behalf of various officers of the Government and the Police, learned *amicus curiae* pointed out certain factors by way of conclusions:

"It may be concluded that

(i) the ground became a major protest area after the government abolished rallies at the Boat Club.

(ii) The police's capacity for Ramlila is 50,000 but it limited Baba Ramdev's meet to 5000.

(iii) The ground appears to be accommodative but with only one major exit and entrance.

(iv) There are aspects of the material that show considerable mobilization. But the figure of 5000 inside the tent is exaggerated.

(v) The numbers of people in the tent has varied but seems, according to the Police 20,000 or so at the time of the incident.

But the Home Secretary suggests 60,000 which is an exaggeration.

(vi) The logs etc supplied seem a little haphazard, but some logs reflect contemporary evidence which shows things to the courts notice especially.

63. However, it may be noticed by this Court that as per the version of the police, point no. (ii) ought to be read as under:

"The capacity for Ramlila Maidan is 50,000 but it limited Baba Ramdev's meet to 5000."

64. After noticing certain detailed facts in relation to the 'threat perception of Police' and the 'Trust's perception', learned *Amicus curiae* has framed certain questions and has given record-based information as follows:

"(i) **<u>Crowd Peaceful and sleeping</u>**

6.1 The crowd entered the Ramlila Ground from one entrance without any hassle and co-operatively [see CD marked CD003163" of 23 minutes @ 17 minutes] Police was screening each and every individual entering the premises. On 04th June 2011 many TV new (*sic*) channel live coverage shows about two kilometer long queue to enter the Maidan not even a single was armed, lathi or baseball bats etc. (*pg.8 Vol.2*)

6.2 The crowd is already slept by 10.00-10.30 pm shown in newspaper photogrtaphs of 05.06.2011 (see pg.9 Vol.1 and Annexure R-9 Pg. 37-38, Vol.2) People requesting the Police with folded handed (Annexure R-9 Pg. 39 Vol.2) also recorded in CCTV camera's and in CD 004026 (marked is *Item 19 pg. 39 Vol.10)*

(ii) Did the Police enter abruptly to rescind order and remove Baba Ramdev.

6.3 The CD marked CD 003163" of 23 minutes on Police entry and Baba Ramdev's reaction @ 10 minutes Baba requests that he should be arrested in the morning with a warrant;

(iii) Did Baba Ramdev make an incitory speech ?

6.4 In general Baba Ramdev's speech carry aggressive issues but on 04.06.2011,

. no provocation was made by Baba Ramdev in any manner

. says he is read (*sic* – ready) to get arrested but his followers should not be harmed;

. asks his women supporters to form a security ring around him.

. also request participants not to fight with Police and be calm.

. also requests Police not to manhandle his supports. [CDs handed by Trust in Court, the CD marked "CD003163" of 23 minutes @ 10 minute.]

(iv) *Was the lathi charged (sic- charged) ordered? Were lathis used?*

6.5 The Police itself admits use of water cannon and tear gas but denies lathicharge "No lathi charge even ordered on public, no organized lathi charge by Policeman @ Vol.3 Pg.8 pr. 30 and 33 at pg.8-9; but evidence shows that lathi being used see Police beating people with Lathi's (vol.2 photographs at pg.44-45) also in CD004026 marked item 19 pg. 39 Vol. 10 @ 47 minute shows lathicharge

(v) *Bricks*

6.6 The CD marked R4-TIMEWISE-'B' - @1hr.11 min Police entering from the back area and throwing bricks on the crowd inside the pandal;

(vi) *Water cannon and Teargas*

6.7 Initially Water cannon used after it proved ineffective tear gas fired towards right side of the stage resulting a small fire *Pr.33 pg. 9 Vol.III*

(vii) *Injuries*

6.8. On injuries the figures are not clear as per Commissioner of Police, Delhi Affidavit only **two persons** required hospitalization for surgery. (Annexure S colly pg. 49-142 Vol.III)

Injured	Numbers	Released on first day	Released on second day	Treatment
Public persons	48	41	05	Diagnosis/ First aid
Policemen	38			

. Injury-sheets pre-dominantly indicate injuries received during the minor stampede in one part of the enclosure

6.9 Newspaper the TOI gives the figure of 62 person injured and 29 of the injured were discharged during the day in LNJP hospital. What about those who were in other hospitals. Even there are many who failed to get recorded in the list of injured or to approach hospital for the medical aid. Only 62 injured that too without lathi charge.

6.9 It will also be (*sic*) demonstrate that

(i) The crowd does not appear to be armed in anway – not even with 'baseball' bats.

(ii) The Police (*sic* - personnel) were throwing bricks.

(iii) Baba Ramdev was abruptly woken up.

(iv) The crowd was asleep.

(v) The Police used lathis.

(vi) The crowd also threw bricks.

(vii) The Police used tear gas around that time.

It is not clear what occurred first.

(viii) Water cannon was also used by the Police.

VII. Speech.

7.1 From the Videos of Zee News and ANI, it appears that Baba Ramdev

(i) exhorted people not to fight with Police.

(ii) arrest me in the morning with a warrant.

(iii) requesting first the women then young boys and then the old to make a protective Kavach around him."

65. On these facts, it is the submission of learned *amicus curiae* that neither the withdrawal of permissions for Ramlila Maidan and Jantar Mantar nor the imposition of restriction by passing an order under Section 144 Cr.P.C. was for valid and good cause/reason. On the contrary, it was for political and *mala fide* reasons. The purpose was to somehow not permit the continuation of the peaceful agitation at any of these places and for that reason, there was undue force used by the Government. The entire exercise was violative of the rights of an individual. A mere change in the number of persons present and an apprehension of the Police could not be a reasonable ground for using teargas and *lathi* charge and thereby unduly disturbing the people who were sleeping peacefully upto 1.00 a.m. on the night of 4/5th June, 2011 at Ramlila Maidan. Referring to the affidavits of the Home Secretary, the Chief Secretary, the Police officers and the documents on record, the contention is that in these affidavits, the deponents do not speak what is true. The imposition of restriction, passing of the order under Section 144 and the force and brutality with which the persons present at the Ramlila Maidan were dispersed is nothing but a show of power of the State as opposed to a citizen's right. Even the test of '*in terrorum'* requires to act in a manner and use such force which is least invasive and is in due regard to the right to assemble and hold peaceful demonstration. The threat perception of the authorities is more of a created circumstance to achieve the ultimate goal of

rendering the agitation and the *anshan* unsuccessful by colourable exercise of State power.

66. It is also the contention of learned *amicus* that there are contradictions in the affidavits filed by the Home Secretary, respondent no.1 and the Commissioner of Police, respondent No. 3. The affidavit of the Chief Secretary, respondent no.2, cannot be relied upon as he pleads ignorance in relation to the entire episode at the Ramlila Maidan. According to the Home Secretary, the Ministry of Home Affairs was routinely monitoring the situation and it is not the practice of the Ministry to confirm the grant of such permission. He also states that 60,000 persons came to the ground as against the estimated entry of 4000 to 5000 people. While according to the affidavit of the Police Commissioner, as a matter of practice, Delhi Police keeps the Ministry of Home Affairs duly informed in such matters as the said Ministry, for obvious reasons, is concerned about the preservation of law and order in the capital and carefully monitors all situations dealing with public order and tranquility. From the affidavit of the Commissioner of Police, it is also clear that he was continuously in touch with the senior functionaries of the Ministry of Home Affairs and he kept them informed of the decisions taken by the ACP and DCP to revoke the permission and promulgate the prohibitory orders under Section 144 Cr.P.C.

67. Besides these contradictions, another very material fact is that the Home Minister, Shri P. Chidambaram had made a press statement on 8th June, 2011, relevant part of which reads :-

> "A decision was taken that Shri Baba Ramdev would not be allowed to organise any protest or undertake any fast–unto-death at Ramlila ground and that if he persisted in his efforts to do so he would be directed to remove himself from Delhi."

68. Reference is also made to the statement of Minister

of HRD Shri Kapil Sibal, who had stated that the Government can rein in if persuasion fails.

69. Further, the contention is that these averments/reports have not been denied specifically in any of the affidavits filed on behalf of the Government and Delhi Police. The above statements and contradictions in the affidavits filed by these highly placed Government officers should lead to a reasonable conclusion that the Police had only carried out the decision, which was already taken by the Government. In these circumstances, even if there was no direct evidence, the Court can deduce, as a reasonable and inescapable inference from the facts proved, that exercise of power was in bad faith. Reliance is placed upon the case of *S. Pratap Singh v. The State of Punjab* [(1964) 4 SCR 733].

70. The affidavits filed on behalf of the Police and the Ministry of Home Affairs are at some variance. The variance is not of the nature that could persuade this Court to hold that these affidavits are false or entirely incorrect. This Court cannot lose sight of a very material fact that maintenance of law and order in a city like Delhi is not an easy task. Some important and significant decisions which may invite certain criticism, have to be taken by the competent authorities for valid reasons and within the framework of law. The satisfaction of the authority in such decisions may be subjective, but even this subjective satisfaction has to be arrived at objectively and by taking into consideration the relevant factors as are contemplated under the provisions of Section 144 Cr.P.C. Some freedom or leverage has to be provided to the authority making such decisions. The courts are normally reluctant to interfere in exercise of such power unless the decision making process is *ex facie* arbitrary or is not in conformity with the parameters stated under Section 144 Cr.P.C. itself.

71. From the record, it can reasonably be inferred that the Ministry of Home Affairs and Delhi Police were working in co-ordination and the Police was keeping the Ministry informed

of every development. There is some element of nexus between the Government's stand on the demands of Baba Ramdev, its decision in that regard and the passing of an order under Section 144, Cr.P.C. but, this by itself would not render the decision as that taken in bad faith. The decision of the Ministry or the Police authorities may not be correct, but that *ipso facto* would not be a ground for the Court to believe that it was a colourable and/or *mala fide* exercise of power.

Version of Respondent No.4 :

72. Now, I may refer to the case put forward by respondent No.4, the President of Bharat Swabhiman Trust, Delhi Area who has filed affidavits on behalf of that party. At the outset, it is stated in the affidavits filed that Baba Ramdev, the Trust and his followers are law abiding citizens of the country and never had any intention to disturb the law and order, in any manner whatsoever. Various camps and meetings have been held by the Trust in various parts of the country and all such meetings have been peaceful and successful as well. Baba Ramdev had been travelling the length and breadth of the country explaining the magnitude of the problem of corruption and black money and failure of the Government to take effective steps. The anti-corruption movement had been at the forefront of the meetings held by Baba Ramdev at different places. Baba Ramdev is stated to have participated in a meeting against corruption at Jantar Mantar on 14th November, 2010 where more than 10,000 people had participated. Similar meetings were organized at Ramlila Maidan on 30th January, 2011 and 27th February, 2011, which also included a march to Jantar Mantar. None of these events were perceived by the Government as any threat to law and order and, in fact, they were peaceful and conveyed their theme of anti-corruption. On 4th May, 2011, Baba Ramdev had written a letter to the Prime Minister stating his intention to go on fast to protest against the Government's inaction against bringing back the black money. This was responded to by the Prime Minister on 19th May, 2011

assuring him that the Government was determined to fight with the problem of corruption and black money in the economy and illegal deposits in the foreign countries and asking him to drop the idea of going on a hunger strike till death. On 20th May, 2011, the Trust had written a letter to the Police seeking permission to hold a fast unto death at Jantar Mantar protesting against the Government's inaction against corruption. The Finance Minister had also written a letter to Baba Ramdev on 20th May, 2011 regarding the same issue. The dates of applying for permission to hold Yoga camp and to hold *dharna* at Jantar Mantar and dates of granting of such permissions are not in dispute. The above-noticed dates of applying for permission and to hold *dharna* at Jantar Mantar and their consequential approval are not disputed by this respondent. According to this respondent, the Police had attempted to make a huge issue that the permission granted to the Trust was to hold a yoga camp of approximately 5,000 persons and not a fast with thousands of persons attending. It is submitted by this respondent that Police was concerned with the maintenance of law and order, free flow of traffic, etc. The use of land was the concern of the owner of the land, in the present case, the Municipal Corporation of Delhi (MCD). The Trust had applied to the MCD requesting it for giving on rent/lease the Ramlila Maidan for the period commencing from 1st June, 2011 to 20th June, 2011. Before grant of its permission, the MCD had written to the Trust that they should obtain NOC from the Commissioner of Police, Delhi which was duly applied for and, as already noticed, obtained by the Trust. Of course, it was a conditional NOC and the conditions stated therein had been adhered to, whereafter, the MCD had given the Ramlila maidan on lease to the Trust. The permission was revoked by the Police and not by the MCD and the MCD never asked the Trust to vacate the premises, i.e., Ramlila Maidan.

73. Before the fateful night i.e. 4th/5th June, 2011, it has been stated that Baba Ramdev had reached New Delhi and

was received at the Airport by the Ministers. There, at the Airport itself, an attempt was made to persuade Baba Ramdev to call off his fast. Thereafter, a meeting was held at Hotel Claridges on 3rd June, 2011 wherein Baba Ramdev was assured that the Government would take concrete steps to bring back the black money from abroad and they would also issue an Ordinance, whereupon he should call off his fast.

74. On 4th June, 2011, from 5.00 a.m., the yoga camp was started at the Ramlila Maidan. This was also telecasted live on Astha TV and other channels. During the yoga camp, Baba Ramdev stated that he will request the Government to follow the path of *Satya* and *Ahinsa aparigriha* and he would make efforts to eradicate corruption from the country. He also informed that the black money should be brought back and he would perform *Tapas* for the nation in that *Shivir*. Thousands of people had gathered at the venue. The Police was present there all this time and the number of persons was already much in excess of 5,000. It is emphasized, in the affidavit of this respondent, that as per the directions of the Police, only one entry and one exit gate were being kept open and this gate was manned by the Police personnel themselves, who were screening each and every person who entered the premises. There was no disturbance or altercation, whatsoever, and the followers of Baba Ramdev were peacefully waiting in queues that stretched for over two kilo meters. If the Police wanted to limit the number to 5,000, it could have easily stopped the people at the gate itself. However, no such attempt was made.

75. This conduct of the Police goes to indicate that the Police action resulted from instructions from the Government and their current stand regarding the number of persons present is nothing but an afterthought. This respondent further asserts that there was no impediment to the free flow of traffic at any time on the day of the incident.

76. In the afternoon of 4th June, 2011, when the

preparations for starting the fast at Jantar Mantar began, senior officers of Delhi Police requested the officials of the Trust not to proceed to Jantar Mantar. In obedience of this order, the fast was begun at Ramlila Maidan itself. During the course of negotiations with the Government, Baba Ramdev was assured that their demands in relation to black money and corruption would be met. This led to a festive atmosphere at Ramlila Maidan at around 7.00 p.m. However, later on, the Government representatives took the stand that no such assurances were given by them. Consequently, Baba Ramdev issued a statement that he will discuss the matter only with the Finance Minister or any other responsible person. At around 10.00 p.m., *Shanti Paath* was performed and everybody went to sleep as *Ashtang* Yoga training was scheduled for 5.00 a.m. next morning. At around 11.00 p.m., the Personal Assistant of Shri Sibal delivered a letter to Acharya Balkrishna as Baba Ramdev was asleep at that time, stating as follows :

> "This is to clarify that the government is committed to build a legal structure through which wealth generated illegally is declared as a national asset and that such assets nare (*sic)* subject to confiscation. Laws also provide for exemplary punishment for those who perpetrate ill-gotten wealth. This clearly declares the intention of the Government.
>
> You have already publicly stated that upon receiving this letter, you will end your tapa. We hope that you will honour this public commitment forthwith."

77. This letter, it is stated, was found to be vague and non-committal as it was not mentioned in this letter as to what concrete steps the Government would take to tackle this national economic and moral crises. At nearly midnight, by way of an unprecedented action, an order under Section 144 Cr.P.C. along with an order cancelling the permission granted earlier by the Police, was issued, illegally, without any justification and

without adequate warning. It is specifically denied that this order was served on any officer of the Trust. Around 12.30 a.m., more than 5000 Policemen (as stated in the notes of the *Amicus*. However, from the record it appears to be 1200 police personnel) had surrounded the tent while everyone inside it was sleeping. When asked by Baba Ramdev to furnish the arrest warrant, the Police refused to do so. Baba Ramdev requested all the *sadhakas* to maintain peace and *ahinsa*.

78. This respondent also alleges that the Police disabled the public address system. Consequently, Baba Ramdev got off the stage and exhorted his followers to maintain peace and calm. There was an apprehension that the Police intended to kill Baba Ramdev and therefore, protective cordons were formed around Baba Ramdev. In order to gain access to Baba Ramdev, Police launched brutal attack on the crowd, including women. Use of teargas shells was also resorted to, causing a part of the stage to catch fire which could potentially have caused serious casualties. Policemen were also engaged in stone pelting and looting. This event lasted till 4.00 a.m. As a result several people including women received injuries. Spinal cord of a woman named Rajbala was broken that left her paralyzed. Respondent No.4 contends that the media footage publically available substantiates these contentions.

79. While leaving the Ramlila Maidan, the Police allegedly sealed access to the Help Camp at Bangla Saheb Gurudwara. The press release and interview given by the Minister of Home Affairs on 8th June, 2011 stresses that the order of externment of Baba Ramdev from Delhi after cancellation of permission for the fast/protest was determined in advance and was to be enforced in the event he "persisted" in his efforts to protest. The requirements for an order of externment under Section 47 of Delhi Police Act, 1978 (for short, 'the DP Act') had, therefore, not been satisfied at the time of such decision and such order was not served on Baba Ramdev at any point. They also failed to make Baba Ramdev aware of any alleged threat to his life.

80. It is stated that the Police have failed to register FIRs on the basis of complaints of 50 to 60 people including that given by one Sri Jagmal Singh dated 10th June, 2011.

81. On these facts, it is the submission of respondent No.4 that it is ironic that persons fasting against failure of the Central Government to tackle the issue of corruption and black money have been portrayed as threats to law and order. Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action. The law prescribes no requirements for taking of permission to go on a fast. The respondent No.4 suggests that in order to establish the truth of the incident, an independent Commission should be constituted, based on whose report, legal action to be taken in such situations should be determined.

82. With reference to the above factual averments made by respondent no.4, the argument advanced by Mr. Ram Jethmalani, Senior Advocate, is that, in the earlier meetings, both at the Ramlila Maidan and Jantar Mantar, no untoward incident had occurred, which could, by any standard, cause an apprehension in the mind of the Police that there could occur an incident, communal or otherwise, leading to public disorder, in any way. The revocation of permissions as well as the brutality with which the gathering at the Ramlila Maidan was dispersed is impermissible and, in any case, contrary to law. The Ground belongs to the Municipal Corporation of Delhi and the permission had duly been granted by the said Corporation for the entire relevant period. This permission had never been revoked by the Corporation and as such the Police had no power to evict the public from the premises of Ramlila Maidan. The Police had also granted a 'No Objection Certificate' (NOC) for holding the meeting and the withdrawal of the NOC is without any basis and justification. The purpose for granting of permission by the Police was primarily for the reason that:

a. The Corporation had required such permission to be obtained;

b. There should be no obstruction to the traffic flow; and

c. There should be proper deployment of volunteers in adequate number.

83. None of the stated conditions, admittedly, had been violated and as such there was no cause for the Police authorities to withdraw the said permission. In fact, it is the contention on behalf of this respondent that there was no requirement or need for taking the permission of the Police for holding such a function. Reliance in this regard is placed upon the judgment of this Court in the case of *Destruction of Public and Private Properties, In Re v. State of Andhra Pradesh* and Ors. [(2009) 5 SCC 212].

84. Even if for the sake of arguments, it is assumed that there was a requirement for seeking permission from the Police and the Police had the authority to refuse such a permission and such authority was exercised in accordance with law, then also this respondent and the public at large were entitled to a clear and sufficient notice before the Police could use force to disperse the persons present at the site.

85. Imposition of an order under Section 144 Cr.P.C. was neither called for nor could have been passed in the facts and circumstances of the present case. It is contended that Police itself was an unlawful assembly. It had attacked the sleeping persons, after midnight, by trespassing into the property, which had been leased to the respondent-Trust. The use of teargas, *lathi* charge, brick-batting and chasing the people out of the Ramlila Maidan were unjustifiable and brutal acts on the part of the Police. It was completely disproportionate not only to the exercise of the rights to freedom of speech and expression and peaceful gathering, but also to the requirement for the execution

of a lawful order. The restriction imposed, being unreasonable, its disproportionate execution renders the action of the Police unlawful. This brutality of the State resulted in injuries to a large number of persons and even in death of one of the victims. There has also been loss and damage to the property.

86. Another aspect that has been emphasized on behalf of this respondent is that there was only one gate for 'Entry' and one for 'Exit', besides the VIP Entry near the stage. This was done as per the directive of the Police. The entry gate was completely manned by the Police and each entrant was frisked by the Police to ensure security. Thus, the Police could have easily controlled the number and manner of entry to the Ramlila Maidan as they desired. At no point of time there were more than 50,000 people present at the premises. On the contrary, in the midnight, when the Police used force to evict the gathering, there were not even 20,000 people sleeping in the tent. Lastly, it is also contended that the people at Ramlila Maidan were sleeping at the time of the occurrence. They were woken up by the Police, beaten and physically thrown out of the tents. In that process, some of the persons lost their belongings and even suffered damage to their person as well as property. Neither was there any threat to public tranquility nor any other material fact existed which could provide adequate basis or material to the authorities on the basis of which they could take such immediate preventive steps, including imposition of the prohibitory order under Section 144 Cr.P.C. In fact, the order was passed in a pre-planned manner and with the only object of not letting Baba Ramdev to continue his fast at the relevant date and time. All this happened despite the full cooperation by Baba Ramdev. He had voluntarily accepted the request of the Police not to visit Jantar Mantar along with his followers on 4th June, 2011 itself. Everything in the Ramlila Maidan was going on peacefully and without giving rise to any reasonable apprehension of disturbance of public order/public tranquility. These orders passed and executed by the executive and the

Police did not satisfy any of the essential conditions as postulated under Section 144 Cr.P.C.

Police Version

87. The Commissioner of Police, Delhi has filed various affidavits to explain the stand of the Police in the present case. I may notice that there is not much variation in the dates on which and the purpose for which the permissions were granted by the competent authority as well as the fact that Ramlila Maidan was given by the MCD to respondent No. 4.

88. According to the Police also, the Trust, respondent No. 4, had sought permission to hold *yoga* camp for 4,000 to 5,000 people from 1st June, 2011 to 20th June, 2011 and the same was granted subject to the conditions stated above. Baba Ramdev had made a statement in the media indicating his intention to hold *Anshan.* Upon seeking clarification by the DCP, Central District vide letter dated 27th May, 2011, the Acharya by their letter dated 28th May, 2011 had re-affirmed their stand that a yoga camp was to be held. It is the case of the respondent No.3 that on 30th May, 2011, Special Branch, Delhi Police had issued a special report that Baba Ramdev would proceed on an indefinite hunger strike with 30,000-35,000 persons and, in fact, the organizers of respondent No. 4 were claiming that the gathering may exceed even one lakh in number.

89. The permission to hold the *yoga* camp was granted to the respondent No. 4. Citing certain inputs, the DCP issued a warning to respondent No.4 expressing their concern about the variance of the purpose as well as that there should be a limited gathering, otherwise the authorities would be compelled to review the permission. The DCP issued law and order arrangements detailing the requirement of Force for dealing with such a large gathering.

90. Further, inputs given on 3rd June, 2011 had indicated

that Baba Ramdev was being targeted by certain elements so as to disrupt communal harmony between Hindus and Muslims. Advice was made for review and strengthening of security arrangements. As a result thereto, security of Baba Ramdev was upgraded to Z+ category vide order dated 3rd June, 2011 and a contingency plan was also drawn. On 4th June, 2011, despite assurances, the yoga training was converted into *Anshan* at about 1300 hrs. and Baba Ramdev decided to march to Jantar Mantar for '*Dharna*' with the entire gathering, the permission for which was limited to only 200 people. Therefore, in view of the huge mass of people likely to come to Jantar Mantar, the said permission was withdrawn on 4th June, 2011.

91. Baba Ramdev refused to accept the order and, in fact, exhorted his followers to stay back in Delhi and called for more people to assemble at Ramlila Maidan, which was already full. The verbal inputs received by the Joint Commissioner of Police indicated the possibility of further mobilisation of large number of people by the next morning. Ramlila Maidan is surrounded by communally hyper-sensitive localities. Late at night, crowd had thinned down to a little over 20,000. Since a large number of people were expected to gather on the morning of 5th June, 2011, the permission granted to the Trust was also withdrawn and prohibitory orders under Section 144 Cr.P.C. were issued.

92. In view of the above, the DCP considered it appropriate to immediately serve the order on Baba Ramdev requiring him and the people present to vacate the Ramlila Maidan.

93. According to these affidavits, Force was deployed to assist the public in vacating the Ramlila Maidan. Buses were deployed at gates and ambulances, fire tenders, PCR vans were also called for. Baba Ramdev refused to comply with the orders. On the contrary, he jumped into the crowd, asked women and elderly persons to form a cordon around him in order to prevent the Police from reaching him. No hearing was

claimed by Baba Ramdev or any of his associates. This sudden reaction of Baba Ramdev created commotion and resulted in melee. Baba Ramdev exhorted his followers not to leave the Ramlila Maidan. Baba Ramdev, later on along with his followers, went on to climb the stage which is stated to have collapsed. The supporters of respondent No. 4 had stocked the bricks behind the stage and were armed with sticks and baseball bats. The crowd started brick-batting and throwing security gadgets, flower pots etc. at the Police from the stage resulting in injuries to Policemen and a minor stampede in public in a part of the enclosure. Baba Ramdev vanished from the stage with his female followers. Few members of public jumped from the stage and got injured. Police exercised maximum restraint and used minimum force. To disperse the crowd, they initially used water canons, which when proved ineffective, teargas shells, only on right side of the stage, were used in a controlled manner.

94. It is stated that this situation continued for around two hours and the Police did not have any intention to forcibly evacuate the public from Ramlila Maidan. As Baba Ramdev decided to evade the Police, the situation at Ramlila Maidan became volatile. The print media have given reports on the basis of incorrect facts or hearsay.

95. It is also stated in this affidavit that total 38 Policemen and 48 public persons were injured and according to the medical reports, public persons sustained injuries during the minor stampede which occurred in one part of the enclosure. Most of these persons were discharged on the same date. The press clipping/reports do not present a complete picture of the incident and contained articles based on incorrect facts. The incident was unfortunate but was avoidable, had the organizers acted as law abiding citizens and accepted the lawful directions of the Police.

96. Having stated that the teargas shelling and the other

force was used as a response to the brick-batting and misbehavior by the gathering, it is also averred that the affidavit filed on behalf of respondent no.4 could not be relied upon as the person swearing it was admittedly not present at the venue after 10.30 p.m. on 4th June, 2011. All these actions are stated to have been taken by the Force in consultation with the senior officers and no instructions are stated to have been received from the Ministry of Home Affairs, although the said Ministry was kept informed and apprised of the development from time to time. All this was done in the interest of public order, larger security concern and preservation of law and order.

97. Permission of Delhi Police is required by anyone planning to hold public functions at public places. Delhi Police, having granted such permission, was fully competent to revoke it as well as to pass orders under Section 144 Cr.P.C.
The organizers of Respondent no.4 had misled the Police and the Special Branch report had clarified the situation on 30th May, 2011 that the intention was to hold indefinite hunger strike. It is stated that by the evening of 3rd June, 2011, only 5000 persons had arrived. It is the case of the Police that they had persuaded Baba Ramdev not to go to Jantar Mantar with his followers and, therefore, the *dharna* at Jantar Mantar was cancelled. It was the apprehension of the Police that the gathering would increase several folds by the next morning and that could raise a major law and order problem and there was a possible imminent threat to public safety. Thus, the permission was withdrawn and order under Section 144 Cr.P.C. was passed. Delhi Police confirms that it had been communicating information at the level of the Secretary to the Ministry of Home affairs and any discussion or communication beyond that level is a matter in the domain of that Ministry itself. It was only in consequence of the violent retaliation by the crowd that use of teargas, water cannons and finally *lathi* charge was taken recourse to by the Police. The video footage shows that a group of supporters of respondent no.4 standing on one side of the stage started throwing bricks and flower pots, etc. The

Police also found the bricks stacked behind the stage. It was the brick-batting and the atmosphere created by the crowd that resulted in a minor stampede. Further, it is stated that the *pandal* was open on all sides, ceiling was high and there were enough escape routes and the use of teargas in such a situation is not prohibited. Eight teargas shells were used to prevent the Police from being targeted or letting the situation turn violent and all precautions were taken before such use. No Police Officer was found to be hitting any person. Respondent no.4 had been asked to install sufficient CCTV cameras and M/s. Sai Wireless removed the cameras and DVRs installed by them immediately after the incident on 5th June, 2011. The proprietor had even lodged a complaint at Police Station, Kamla Market and a case of theft under FIR No. 49 of 2011 was registered. The said concern, upon being called for the same by a notice under Section 91 Cr.P.C., produced 10 DVRs containing more than 190 hours of video. The investigation of that case revealed that out of 48 cameras ordered by the organizers, only 44 were installed, 42 were made operational out of which two remained non-functional and recording of one could not be retrieved due to technical problems. Recording of eight cameras and two DVRs were not available as these equipments were reportedly stolen, as noted above. Thus, the recordings from only 41 cameras/DVRs were available.

98. The primary aim of MCD is to earn revenue from commercial use of land and it is for the Police to take care of the law and order situation and to regulate demonstrations, protests, marches etc. No eviction order was passed except that the permissions were cancelled and order under Section 144 Cr.P.C. was made.

99. On 25th July, 2011, another affidavit was filed by the Commissioner of Police stating that nearly 155 complaints in writing and/or through e-mail were received by the Police Station Kamla Market alleging beating by the Police, theft and

loss of property i.e. belongings of the complainants, 13 out of them were duplicate, 11 anonymous and 35 e-mails were in the nature of comments. On investigation, only four persons responded to the notice under Section 91 Cr.P.C, but stated facts different from what had been noticed in the complaints. Some complaints were also being investigated in case FIR No. 45 of 2011 registered at the same Police station.

100. It is further the case, as projected during hearing, that probably one Smt. Rajbala, who was on the stage with Baba Ramdev, had fallen from the stage and became unconscious. This complaint was also received at the Police Station Kamla Market and was entered at para No. 26A dated 6th June, 2011.

101. Still, in another affidavit dated 20th September, 2011 filed on behalf of respondent No. 3, it was specifically denied that any footages had been tampered with. The Police had climbed to the stage, firstly, to serve the order and, thereafter, only when the entire incident was over and it was denied that Rajbala was beaten by the Police.

102. It is stated that the respondents, including respondent No. 4, have isolated a segment of footage wherein few Policemen are throwing bricks on tents near the stage. It is stated to be an isolated incident and was a reaction of few Policemen to a spate of bricks by Baba Ramdev's supporters. With regard to the injuries and cause of death of Smt. Rajbala who died subsequent to the issuance of notice by this Court, it is averred that she was given medical aid and was admitted to the ICU. There was no external injury on her body. It is also stated that she was offered medical help of Rupees two lakh which was not accepted. She was a case of "gross osteoporosis", that too, to the extent that she was being managed by "endrocrinologist" during her treatment. As stated, according to the medical literature, osteoporosis of this degree could make her bones brittle and prone to fracture even by low intensity impact.

103. While relying upon the above averments made in different affidavits, the submission on behalf of respondent No. 3 is that there being no challenge to the Standing Order 309, provisions of the DP Act and the Punjab Police Rules and even the order passed under Section 144 Cr.P.C., the action of Delhi Police has to be treated as a reasonable and proper exercise of power. The organizers of respondent No.4 had misrepresented the Government and the Police authorities with regard to holding of the yoga camp. The Trust is guilty of seeking permission on incorrect pretext. The effort on behalf of the Police was that of carefully watching the development rather than taking any rash decisions and cancelling the permission earlier than when it was actually cancelled.

104. The right to freedom in a democracy has to be exercised in terms of Article 19(1)(a) subject to public order. Public order and public tranquility is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the Police was in conformity with law. As a large number of persons were to assemble on the morning of 5th June, 2011 and considering the other attendant circumstances seen in light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at Ramlila Maidan were dispersed.

105. Even if for the sake of argument, it is taken that there were some stray incidents of Police excessiveness, the act best can be attributable to individual actions and cannot be treated or termed as an organizational brutality or default.

106. Individual responsibility is different from responsibility of the Force. Abuse by one may not necessarily be an abuse of exercise of power by the Force as a whole. The Police had waited for a considerable time inasmuch as the order withdrawing the permission was passed at about 9.30 p.m. and

was brought to the notice of the representatives of Respondent No.4 at about 10.30 p.m. and no action was taken by the Police till approximately 1 a.m. This was for the fact that the persons were sleeping and Police wanted them to disperse in a peaceful manner, but it was the stone pelting, the panic created by the organisers and the consequent stampede that resulted in injuries to some persons. The contention is also that the organizers are responsible for creating the unpleasant incident on midnight of 4th/5th June, 2011 and they cannot absolve themselves of the responsibilities and liabilities arising therefrom. The Police had acted in good faith and *bona fide.* Therefore, the action of the Police cannot be termed as arbitrary, *mala fide* or violative of the basic rule of law.

107. Lastly, Mr. Harish Salve, learned senior counsel appearing for respondent No.3, contended that there are certain issues which this Court need not dwell upon and decide as they do not directly arise for determination in the facts and circumstances of the present case:

(a) Whether it was necessary for MCD to direct and for organizers to take permission from Delhi Police?

(b) Cancellation of permission for holding of *Dharna*/ agitation at Jantar Mantar.

(c) Validity of the orders passed by the State including the order passed under Section 144 Cr.P.C.

108. I have noticed, in some detail, the version of each of the parties before the Court in response to the *suo moto* notice. Before analyzing the respective versions put before the Court by the parties and recording the possible true version of what happened which made the unfortunate incident occur, I would like to notice that I am not prepared to fully accept the last contention raised by Mr. Harish Salve, in its entirety. Of course, it may not be necessary for this Court to examine the effect of the cancellation of permission for Jantar Mantar and validity of

the orders passed by the Government, but this Court is certainly called upon to deal with the question whether it was obligatory for the organizers, respondent No.4, to seek the permission of the Police for holding such a large public demonstration. Therefore, I would be touching the various aspects of this issue and would deal with the orders of the State to the extent it is necessary to examine the main issue in regard to the excessive use of force and brutality and absolute organizational default by the Police, if any.

Findings on Incident of Midnight of 4th/5th June, 2011 and the Role of Police and Members/followers of Respondent No.4

109. All National and Delhi Edition newspapers dated 5th June, 2011 as well as the media reports had reported the unfortunate incident that occurred on the midnight of 4th/5th June, 2011 at Ramlila Maidan in Delhi. On the night of 4th June, 2011, all the men and women, belonging to different age groups, who had come to Ramlila Maidan to participate in the Yoga Training Camp called as '*Nishulk Yoga Vigyan Shivir*', were comfortably sleeping at the Ramlila Maidan, when suddenly at about midnight, the people were woken up. The Joint Commissioner of Police sought to serve the order revoking the permission granted to hold the said yoga camp and imposing Section 144 Cr.P.C., purportedly to curb any agitation at the Ramlila Maidan. There was commotion at the Ramlila Maidan. Persons who had suddenly woken up from sleep could not know where and how to go. It appears that Baba Ramdev did not receive the orders. However, some of the officials of the Bharat Swabhiman Trust were made aware of the orders. Thereafter, the Police made an attempt to disperse the gathering at about and after 1.00 a.m. on 4th/5th June, 2011.

110. They are stated to have resorted to use of teargas and *lathi* charge in order to disperse the crowd as they were unable to do so in the normal course. Since there was protest by the people and some violence could result, the Police used

teargas and *lathi* charge to ensure dispersement of the assembly which had, by that time, been declared unlawful. As a result of this action by the Police, a number of men and women were injured, some seriously. This also finally resulted into the death of one Smt. Rajbala.

111. This action of the Police was termed as brutal and uncalled for by the Press. Headlines in the various newspapers termed this unfortunate incident as follows:

Times of India dated 6th June, 2011 :

'*Why Centre went from licking to kicking',*

'Ramleela Ground never saw so much drama',

'She may be paralyzed for life'.

'Women not spared, we were blinded by smoke'

'Cops claim terror alert to justify midnight raid'

'Swoop Not Sudden, cops trailed Ramdev for 3 days'

'After eviction they chant and squat on road'

'Protestors Armed with bricks, baseball bats Cops'

Indian Express dated 6th June, 2011 :

'Baba Gives UPA a Sleepless Summer'

'Week Ago, Home, Delhi Police told Govt : look at plan the show'

'Getting Ramdev Out'

'Yielding and bungling – Cong (Weak) Core Group'

112. This event was described with great details in these news items and articles, along with photographs. Besides the fact that large number of persons were injured and some of

them seriously, there was also damage to the property. The question raised before this Court, *inter alia*, included the loss and damage to the person and property that resulted from such unreasonable restriction imposed, its execution and invasion of fundamental right to speech and expression and the right to assembly, as protected under Articles 19(1)(a) and 19(1)(b). It is contended that the order was unreasonable, restriction imposed was contrary to law and the entire exercise by the Police and the authorities was an indirect infringement of the rights and protections available to the persons present there, including Article 21 of the Constitution.

113. These events and the *prima facie* facts stated above, persuaded this Court to issue a *suo moto* notice vide its order dated 6th June, 2011. This notice was issued to the Home Secretary, Union of India, the Chief Secretary, Delhi Administration and the Police Commissioner of Delhi to show cause and file their personal affidavits explaining the conduct of the Police authorities and the circumstances which led to the use of such brutal force and atrocities against the large number of people gathered at Ramlila Maidan. In reply to the above notice, different affidavits have been filed on behalf of these authorities justifying their action. A notice was issued to Bharat Swabhiman Trust vide order dated 20th June, 2011. The application for intervention on behalf of Rajbala (now deceased) was allowed vide order dated 29th August, 2011. They filed their own affidavit. In order to ensure proper independent assistance to the Court, the Court also appointed an *amicus curiae* and Dr. Dhavan accepted the request of the Court to perform this onerous job.

114. Having taken into consideration the version of each party before this Court, I would now proceed to limn the facts and circumstances emerging from the record before the Court that led to the unfortunate incident of the midnight of 4/5th June, 2011. Without any reservation, I must notice that in my considered view, this unfortunate incident could have been

avoided by proper patience and with mutual deliberations, taken objectively in the interest of the large gathering present at Ramlila Maidan. Since this unfortunate incident has occurred, I have to state with clarity what emerges from the record and the consequences thereof.

115. As already noticed, the *yoga* camp at the Ramlila Maidan had begun with effect from 1st June, 2011 and was continuing its normal functioning with permission from the Police as well as with due grant of licence by the MCD. Undoubtedly, respondent No.4 had the permission to also hold a *dharna* at Jantar Mantar on 4th June, 2011 to raise a protest in relation to various issues that had been raised by Baba Ramdev in his letters to the Government and in his address to his followers. These permissions had been granted much in advance. As a response to the pamphlets issued and the inputs of the intelligence agencies, the DCP (Central District) Delhi had expressed certain doubts vide his letter dated 27th May, 2011 asking for clarification as to the actual number of persons and the real purpose for which Ramlila Maidan would be used from 1st June, 2011. To this, respondent No.4 had promptly replied stating that there will be no other event except the residential yoga camp. However, keeping in view the information received, the Deputy Commissioner of Police, Central District, vide his letter dated 1st June, 2011 had issued further directions for being implemented by respondent No.4 and reiterated his earlier requirements, including that number of the gathering should remain within the limits conveyed. In this letter, it was also indicated that the authorities may review the position, if necessary. However, on 3rd June, 2011, it had been noticed that a huge gathering was expected in the programme and also that the inputs had been received that Baba Ramdev would sit on an indefinite hunger strike with effect from 4th June, 2011 in relation to the issues already raised publically by him. After noticing various aspects, including that various terrorist groups may try to do something spectacular to hog publicity, respondent no.3 made a very objective assessment of the entire situation

and issued a detailed plan of action to ensure smooth functioning of the agitation/yoga camp at Ramlila Maidan without any public disturbance. The objectives stated in this planned programme have duly been noticed by me above.

116. All this shows that the authorities had applied their mind to all aspects of the matter on 2nd June, 2011 and had decided to permit Baba Ramdev to go on with his activities. In furtherance to it, the Deputy Commissioner of Police, Central District had also issued a restricted circular as contingency plan. It is obvious from various letters exchanged between the parties that as on 3rd June, 2011, there had been a clear indication on behalf of the authorities concerned that Baba Ramdev could go on with his plans and, in fact, proper plans had been made to ensure security and regulation of traffic and emergency measures were also put in place. As I have already indicated, there is nothing on record to show, if any information of some untoward incident or any other intelligence input was received by the authorities which compelled them to invoke the provisions of Section 144 Cr.P.C., that too, as an emergency case without any intimation to the organizers and without providing them an opportunity of hearing. The expression 'emergency' even if understood in its common parlance would mean an exigent situation (See Black's Law Dictionary – Twentieth Edn.); A serious, unexpected and potential dangerous situation requiring immediate action (See Concise Oxford English Dictionary – Eleventh Edn.). Such an emergent case must exist for the purpose of passing a protective or preventive order. This may be termed as an 'emergency protective order' or an 'emergency preventive order'. In either of these cases, the emergency must exist and that emergent situation must be reflected from the records which were before the authority concerned which passed the order under Section 144 Cr.P.C. There are hardly any factual averments in the affidavit of the Commissioner of Police which would show any such emergent event happening between 3rd and 4th June, 2011.

117. Similarly, nothing appears to have happened on 4th June, 2011 except that the permission to hold a *dharna* at Jantar Mantar granted to respondent no.4 was withdrawn and the Police had requested Baba Ramdev not to proceed to Jantar Mantar with the large number of supporters, which request was acceded to by Baba Ramdev. He, in fact, did not proceed to Jantar Mantar at all and stayed at Ramlila Maidan.

118. It is also noteworthy that after his arrival on 1st June, 2011 at the Airport, Baba Ramdev met few senior ministers of the Government in power. He also had a meeting with some ministers at Hotel Claridges on 3rd June, 2011. The issues raised by Baba Ramdev were considered and efforts were admittedly made to dissuade Baba Ramdev from holding *Satyagraha* at Jantar Mantar or an indefinite fast at Ramlila Maidan. However, these negotiations failed. According to the reports, the Government failed to keep its commitments, while according to the Government, Baba Ramdev failed to keep up his promise and acted contrary even to the letter that was given by him to the ministers with whom he had negotiated at Hotel Claridges. Thus, there was a deadlock of negotiations for an amicable resolution of the problems.

119. This is the only event that appears to have happened on 3rd and 4th June, 2011. On the morning of 4th June, 2011, the *yoga* camp was held at the Ramlila Maidan peacefully and without disturbing public order or public tranquility. After the day's proceedings, the large number of people who were staying at the Ramlila Maidan, went to sleep in the *Shamiana* itself where due arrangements had already been made for their stay. Beds were supplied to them, temporary toilets were provided and water tanks and arrangements of food had also been made. The footages of the CCTV cameras, videos and the photographs, collectively annexed as Annexure-9 to the affidavit of respondent No.4, establish this fact beyond any doubt that all persons, at the relevant time, were peacefully sleeping.

120. According to the Police, on 4th June, 2011, Baba Ramdev had delivered a speech requesting people from various parts of the country to come in large number and join him for the *Satyagrah*. The order withdrawing the permission for holding a *yoga shivir* at the Ramlila Maidan was passed at 9.30 p.m. The Police reached the Ramlila Maidan in order to inform the representatives of respondent No.4 about the passing of the said order, after 10.30 p.m. At about 11.30 p.m., on the same date, the executive authority passed an order under Section 144 Cr.P.C. The Police officers came to serve this order upon the representatives of respondent No.4 much thereafter. The footages of the CCTV Camera Nos. 2, 3, 4, 7, 8, 9, 12, 15, 17, 18 and 32 show that even at about 1.00 a.m. in the night of 4th/5th June, 2011, people were sleeping peacefully. The Police arrived there and tried to serve the said order upon the representatives of respondent No.4 as well as asked for Baba Ramdev, who was stated to be taking rest in his rest room. However, the action of the Police officers of going on the stage and of some of them moving where people were sleeping obviously caused worry, fear and threat in the minds of the large number of persons sleeping in the tent. It is the conceded position before this Court that nearly 15,000 to 20,000 persons were present in the tent at the relevant time.

121. The CCTV footages clearly show the Police officers talking to Baba Ramdev and probably they wanted to serve the said orders upon him. However, Baba Ramdev withdrew from the deliberations and jumped from the stage amidst the crowd. By this time, a large number of persons had gathered around the stage. After climbing on to the shoulders of one of his followers, Baba Ramdev addressed his followers. He exhorted them to form a cordon around him in the manner that the women forming the first circle, followed by youth and lastly by rest of his supporters. This circle is visible in the evidence placed before the Court. I do not consider it necessary to refer to the speech of Baba Ramdev to the crowd in any greater detail. Suffice it to note that while addressing the gathering, Baba

Ramdev referred to his conversations with the Government, urged the crowd to chant *Gayatri Mantra*, maintain *Shanti* and not to take any confrontation with the Police. He further stated that he would not advise the path of *hinsa*, but at the same time, he also stated about his talks with the Government and reiterated that he will not leave, unless the people so desired and it was the wish of God. He also chanted the *Gayatri Mantra*, and wished all the people around him. At the same time, it is also clear from the evidence of CCTV Camera's footage and the photographs, that Baba Ramdev had referred to the failure of his talks with the Government and his desire to continue his *Anshan*. He also, in no uncertain terms, stated 'Babaji will go only if people wanted and the God desires it.' Another significant part of Baba Ramdev's speech at that crucial time was that he urged the people not to have any confrontation with the Police and that he had no intention/mind to follow the path of *hinsa* or to instigate quarrel with the authorities. By this time, all persons present in the tent had already woken up and were listening to Baba Ramdev interacting with the Police. Some people left while a large number of people were still present in the *shamiana.* According to the Police, brick batting started from one corner of the stage and it was only in response thereto, they had fired the teargas shells on and around the stage. In all, eight teargas shells were fired. According to the Police, they did not resort to any *lathi* charge and, in fact, they had first used water cannons. According to respondent No.4, the Police had first fired teargas shells, then *lathi* charged the persons present and never used water cannons. According to them, the Police even threw bricks from behind the stage at the people and the control room and it was in response thereto that some people might have thrown bricks upon the Police.

122. What is undisputable before this Court is that the Police as well as the followers of Baba Ramdev indulged into brick batting. Teargas shells were fired at the crowd by the Police and, to a limited extent, the Police resorted to *lathi*

charge. After a large number of Police personnel, who are stated to be more than a thousand, had entered the Ramlila Maidan and woken up the persons sleeping, there was commotion, confusion and fear amongst the people. Besides that, it had been reported in the Press that there was *lathi* charge. Men and women of different age groups were present at the Ramlila Maidan. The photographs also show that a large number of Police personnel were carrying *lathis* and had actually beaten the persons, including those sitting on the ground or hiding behind the tin shed, with the same. CCTV Camera No. 5 shows that the Police personnel were also throwing bricks. The same camera also shows that even the followers of Baba Ramdev had used the fire extinguishing gas to create a curtain in front, when they were throwing bricks at the Police and towards the stage. The CCTV cameras also show the Police pushing the persons and compelling them to go out. The Police personnel can also be seen breaking the barriers between the stage and the ground where the people were sitting during the yoga sessions. The photographs also show some Police personnel lifting a participant from his legs and hands and trying to throw him out. The photographs also show an elderly sick person being attended to and carried by the volunteers and not by the Police.

123. The documents on record show that some of the Police personnel certainly abused their authority, were unduly harsh and violent towards the people present at the Ramlila Maidan, whereas some others were, in fact, talking to the members of the gathering as well as had adopted a helpful attitude. The brick batting resorted to by both sides cannot be justified in any circumstances whatsoever. Even if the followers of respondent No.4 acted in retaliation to the firing of teargas, still they had no cause or right in law to throw bricks towards the stage, in particular, towards the Police and it is a hard fact that some Police personnel were injured in the process. Similarly, the use of teargas shells and use of *lathi* charge by the Police, though limited, can hardly be justified. In no case,

brick batting by the Police can be condoned. They are the protectors of the society and, therefore, cannot take recourse to such illegal methods of controlling the crowd. There is also no doubt that large number of persons were injured in the action of the Police and had to be hospitalized. Element of indiscipline on behalf of the Police can be seen in the footage of the CCTV cameras as well as in the log book entries of the Police.

124. At this stage, it will be useful to examine the Police records in this respect. Police arrangements had been made in furtherance to the arrangements planned by the Central District of Police, Delhi dated 2nd June, 2011. Copies of the Police log book have been placed on the file. As on 5th June, 2011 at about 1.28 a.m., a message was flashed that the whole staff of the concerned Police stations shall report to Police Station Kamla Market immediately. Then, an attempt was made to arrest Baba Ramdev and an apprehension was expressed that there could be some deaths. I may reproduce here the relevant messages from the Police log book to avoid any ambiguity :

"District Net

Date	Start Time	Duration	Call Detail
05.06.11	03:22:53	00:00:33	R.L. Ground Kamla market police men are beating the peoples Ph.971147860 W/Ct. Sheetal No.8174/PCR

TRANSCRIPTION OF DM Net Dated 04.06.2011 from 200 hrs. to 000 hrs.
INFORM C-28, C-31, C-35, C-32 & C-4 AND C-5 THAT THEY WOULD MEET ME AFTER 30 MIN AND THE 4 SHOs WILL BRING ABOUT 20 PERSONNEL EACH FROM THEIR PS.

Transcript of DM Net

Extract of Tetra DM Net of Central District. Dated 05/06/11 from 0100 Hrs. to 0500 Hrs. (Taken from the Tetra Recording)

218	C 50	C 2	The force which is standing outside at Turkman gate and Gurunanak Chowk having gas gun will come inside through VIP gate instantly
225	12D C 50 C 50	C 50 12D C2	 Understood The operator of gas gun which is send has not reported yet only driver is sitting operator is to be send quickly.
225	C Q	C 50	The officer who has send the gas gun will send the operator, is driver to operate it.
226	12D	C 50	Operator of gas gun is to be send only driver has reached there with gas gun.
227	C 50	12 D C 50	I don't have gas gun. SHOs has already reached inside with staff.
227	C 50	C 2	How many water canons are there.
227	C 2	C 50	Madam water canon is outside at VIP gate where i have informed earlier.
305	C 50	C 24	This is informed that the force guard 88 Bn. CRPF is neither obeying any instruction and nor ready to come at any cost.

WIRELESS LOG & DIARY Dt.5-6-2011 (Shift Duty 9 AM to 9 PM T - 52

Time			Call Detail
2:25 AM	01-T-52		One injured namely Jagat Muni s/o Unknown R/o VIII-Pllana (Rohtak) Haryana. Age about 55-60 yrs admitted in JPN Hospital in unconscious condition.

WIRELESS LOG & DIARY Dt.4/5-6-2011

Time			Call Detail
2:20 AM	L-100	0-1	PCR Call:- that some casualities happened at RL Ground. Direct the ambulance.
	0-1	L-100	Noted position at RL Ground
2:28 AM	0-1	L-100	Injured not Traceable. Cats ambulance also searching injured person.

WIRELESS LOG & DIARY Dt.4/5-6-2011 L-100

Time			Call Detail
8 AM			Charge of O-33 taken by ASI Ved Prakash 5150/PCR
	0-33	0-1	Note down that in RL Ground Police is beating the public persons.
	0-1	0-33	Road is blocked through barricades at Ajmeri Gate. We can't leave the vehicle without staff.

WIRELESS LOG & DIARY Dt.4/5-6-2011 (Shift Night Duty 8 PM to 8 AM) 0 - 60

Time			Call Detail
1:58	0-60	0-1	Police is misbehaving with Baba Ramdev.

WIRELESS LOG & DIARY Dt./4/5-6-2011 (Shift Night Duty 8 PM to 8 AM) 0 – 10

Time			Call Detail
8 PM			Shift Change and charge taken by HC Umed Singh No.899/ PCR
2 am	0-1	0-10	From 0-10 SI Jaspal PS Mangol Puri & Ct. Tarun 3036/ DAP sustained injury and we are taking them to JPN Hospital.
2.10	0-1	0-10	0-10 told that both SI Jaspal and Ct Tarun admitted in JPN Hospital through Duty Ct. Ajay 1195/C.

WIRELESS LOG & DIARY Dt.4/5-6-2011 (Shift Night Duty 8 PM to 8AM) B - 11

Time			Call Detail
2.30 AM			Two injured persons taken to JPN Hospital namely Raj Bala w/o Jalbeer R/o Gurgaon, Age-54, Jagdish s/o Asha Nand, Age-54 yrs.

207	C50	C12D	Both of vehicles is to be send, water canon is only one
207	C12D	C50	Right now only one is asked about so send only one.
207	C12D	C50	Send one. Send one instantly. If other will be required it will be informed.

125. The above entries of the Police log book clearly show that a number of persons were injured, including Police personnel, and some of them even seriously. The water cannons were not available inside the tent and the same were asked to come towards the VIP gate. They were only two in number and were asked to be positioned at the VIP entrance. In fact, as recorded in one of the above entries, there was only one water cannon available which was positioned at the VIP entry gate and the version of the Police that it had first used water cannons for dispersing the crowd before resorting to the use of teargas, does not appear to be correct. The teargas shells were fired at about 2.20 a.m. as per the footages of the CCTV cameras and around the same time, the bricks were thrown by the followers of respondent No.4 upon the Police. This aggravated the situation beyond control and, thereafter, the Police acted with greater force and fired more teargas shells and even used *lathis* to disperse the crowd.

126. Another aspect reflecting the lacuna in planning of the Police authorities for executing such an order at such odd hour is also shown in the log book of the Police where at about 2.39 a.m., a conversation between two police officers has been recorded. As per this conversation, it was informed "You call at cellphone and inform 24B that he will also talk and that gate towards JLN Marg which was to be opened is not open yet". Another conversation recorded at the same time was "Then public will go at its own".

127. When the Police had decided to carry out such a big operation of evicting such a large gathering suddenly, it was expected of it to make better arrangements, to cogitate over the matter more seriously and provide better arrangements.

128. From the entries made in the Police log book, certain acts come to surface. Firstly, that there were inadequate number of water cannons, as admittedly, there were more than 15,000 persons present at the Ramlila Maidan and secondly,

that the Police had started beating the people. Even the 88th Bn. of CRPF was not carrying out the orders and there was chaos at the premises. Even if all the documents filed by the Police, the Police log book and the affidavits on behalf of the Police are taken into consideration, it reflects lack of readiness on the part of the Police and also that it had not prepared any action plan for enforcing the order of the executive authority passed under Section 144 Cr.P.C. It was expected of the Police to make elaborate, adequate and precise arrangements to ensure safe eviction of such large number of persons, that too, at midnight.

129. Having dealt with this aspect, now I would proceed to discuss the injuries suffered and the medical evidence placed before the Court. As per the affidavit of the Police dated 17th June, 2011, total 38 Policemen were injured, some of them because of brick batting by the supporters of Baba Ramdev. 48 persons from public were also injured, 41 of them were discharged on the same date and 5 on the next day. Only 2 persons, including 1 woman, required hospitalization for medical treatment and surgery. On the other hand, according to respondent no.4, hundreds of persons were injured. However, they have placed on record a list of the injured persons as Annexure R -13 wherein names of 55 persons have been given. Most of the injured persons were taken to Lok Nayak Hospital, New Delhi. Copies of their medico legal enquiry register/reports have been placed on record. Some of these injured persons were taken to the hospital by the Police while some of them went on their own. In the medico legal enquiry register relating to Rajbala, it has been stated that she suffered cervical vertebral fracture and associated spinal cord damage. She was unable to move both limbs, upper and lower, and complained of pain in the neck. She was treated in that hospital and subsequently shifted to the ICU where she ultimately died. As per the postmortem report, the cause of death as opined by the doctor was stated as "Death in this case occurred as a Septicemia, following cervical vertebral fracture and associated spinal cord

damage". In some of the reports, it is stated that the patient had informed of having suffered injury due to stampede at Ramlila Maidan. The person who claims to have brought Rajbala to the hospital, Joginder Singh Bandral, has also filed an affidavit stating that the Police had suddenly attacked from the stage side and she had suffered injuries and fell unconscious.

130. It is undisputed that Rajbala suffered injuries in this incident. The injuries as described in the medical records are as follows:-

"Local Examination:

1. Reddish bluish discolouration below and behind

   Left ear & another reddish blue discolouration

   In Lateral middle of neck on (L) Side present.

2. Reddish Bluish Colouration seen below & behind (R) ear C

3. Large bluish discolouration present over Left buttock

4. Abrasion over Medical aspects of Left ankle.

5. Reddish discolouration over the flexor aspect of middle of Left forearm"

131. In addition, the medico legal case sheet of one Deepak recorded, "alleged c/o assault while on hunger strike at Ramlila Maidan". He was vomiting, bleeding and had suffered injuries and was complaining of pain at cervical region and right thigh. Similar was the noting with regard to one Ajay. Both of them had gone to Dr. Ram Manohar Lohia Hospital and were not accompanied by the Police. A number of such medico legal case sheets have been placed on record with similar notings. I do not consider it necessary to discuss each and

every medico legal enquiry sheet or medico legal report. It is clear from the bare reading of these reports that most of the persons who were taken to the hospital had suffered injuries on their hands, back, thighs etc. and were complaining of pain and tenderness which was duly noticed by the doctors in these reports.

132. Constable Satpal had also gone to the hospital. According to him, he had suffered injury 'a contusion' as a result of stone pelting at the Ramlila Maidan. Copies of medico legal enquiry register in relation to other Police officers have also been placed on record. Some Police personnel had also reported to Aruna Asif Ali Government Hospital, Rajpura, Civil Lines, Delhi and had given the history of being beaten by the crowd at Ramlila Maidan.

133. From these evidence placed on record, it is clear that both, the members of the public as well as the Police personnel, had suffered injuries. It is obvious from various affidavits, that a large number of followers of Baba Ramdev got injured. The number of these persons was much higher in comparison to that of the Police. I may also notice that in the affidavit filed by the Commissioner of Police, it has been stated that the Police officers suffered injuries because of brick batting by some members of the gathering at Ramlila Maidan. However, the affidavit of the Commissioner of Police is totally silent as to how such a large number of persons suffered injuries, including plain injuries, cuts, open injuries and serious cases like those of Rajbala and Jagat Muni. According to respondent No.4, at least five persons had suffered serious injuries including head injury, fracture of hand, leg and backbone. This included Dharamveer, Madanlal Arya, Jagdish, Behen Rajbala, Swami Agnivesh and Jagat Muni, etc.

134. If this medico legal evidence is examined in light of the photographs placed on record and the CCTV camera footages, it becomes clear that these injuries could have been

caused by *lathi* charge and throwing of stone by the Police as well as the members of the gathering. It cannot be doubted that some members of the Police force had taken recourse to *lathi* charge and in the normal course, a blow from such *lathi*s could cause the injuries, which the members of the public had suffered.

135. I have no hesitation in rejecting the submission on behalf of the Police that none of the police personnel *lathi* charged the people present at Ramlila Maidan. The factum of *lathi* charge by some of the police personnel is demonstrated in the photographs, footages of CCTV cameras as well as from the medical evidence on record. One Dr. Jasbir has filed an affidavit stating that he had made a call from his Cell Phone No. 9818765641 to No. 100 informing them of Police assaulting the persons present and the fact that he suffered injury as a result of *lathi* blows on his body. He had gone to Lok Nayak Hospital where he was medically examined. This medical record shows that he was assaulted by the Police in Baba Ramdev's rally where he sustained injuries. The injuries were described as contusion injuries, one of which, on the lumber region and was advised x-ray. Even in some of the other medical records produced before this Court, it has been recorded that injuries were caused by blunt objects. This will go to show that they were not the injuries caused merely by fall or simply stampede. The veracity of this affidavit was challenged on the ground that it has been filed belatedly and it was not supported by any other record. Both these aspects lose their significance because in the Police log book filed on record, call from this number has been shown, secondly, the medical record of Dr. Jasbir has been placed on record. Also, the injuries received by the members of the Police force are of the kind which could be caused by brick batting. It is further possible that because of commotion, confusion and fear that prevailed at the stage during midnight and particularly when people were sleeping, the injuries could also have been suffered due to stampede. According to the Police, Rajbala probably had

suffered the fracture of the cervical as she fell from the stage and fell unconscious. This version does not find support from the CCTV footages inasmuch as that no elderly lady at all is seen on the stage during the entire episode shown to the Court. But, the fact of the matter is that she suffered serious injuries which ultimately resulted in her death. It could be that she received injury during use of *lathi*s by the Police or when the crowd rushed as a result of firing of teargas shells, etc.

136. The Police do not appear to have carried her on the stretcher or helped her in providing transportation to the hospital. Precisely who is to be blamed entirely and what compensation, if any, she is entitled to receive and from whom, will have to be examined by the court of competent jurisdiction before whom the proceedings, if any, are taken by the persons entitled to do so and in accordance with law. Certain disputed questions of fact arise in this regard and they cannot be decided by the court finally without granting opportunity to the appropriate parties to lead oral and documentary evidence, as the case may be. For the purposes of the present petition, it is sufficient for me to note that, *prima facie*, it was the negligence and a limited abuse of power by the police that resulted in injuries and subsequent death of Smt. Rajbala. Thus, in my considered view, at least some ad hoc compensation should be awarded to the heirs of the deceased and other injured persons as well.

137. At this juncture, I would take note of the affidavits filed by the parties. In the affidavit dated 6th July, 2011 filed on behalf of Respondent No. 4, it has been specifically stated in paragraph 17:

> "It must be noted that as per the directions of the Police, only one entry/exit gate was being kept open and this gate was manned by the police themselves, who were screening each and every person who entered the premises. There was no disturbance or altercation

whatsoever and followers of Baba Ramdevji were peacefully waiting in queues that stretched for over two kilometers. If the Police wanted to limit the number of participants to 5000 or to any other number, they could easily have done so at the gate itself. However, they made no attempt to either curtail the entry of persons or to prevent the fast from proceeding."

138. Though an affidavit subsequent to this date has been filed on behalf of the Police, there is no specific denial or any counter version stated therein in this regard. This averment made in the affidavit of the Respondent No.4 appears to be correct inasmuch as vide its letter dated 2nd June, 2011, while granting the permission for holding the rally at Ramlila Maidan, a condition had been imposed that all persons entering the Ramlila Maidan should be subjected to frisking and personal search. Furthermore, map of layout of the Ramlila Maidan filed by the learned *amicus* clearly shows that there was one public entry gate/public check-in, in addition to the two gates for the VIP check-in, which were towards the stage. The public entry was towards the Sharbia Road. From this, it is clear and goes in line with the situation at the site, exhibited by the photographs or the CCTV Cameras at least partially, that there was only one main entry for the public which was being managed by the Police.

139. Even according to the Police, it was a huge enclosure of nearly 2.5 lakh sq. feet and it had various exits which, of course, were kept closed and there was a ceiling all over. A tent of this size with the ceiling thereon, was an enclosure, where such large number of persons had gathered to participate in the yoga camp and thereafter, in the *Anshan*.

140. It is the version of the Police that they had issued prior warning, then used water cannons and only thereafter, used the teargas shells in response to the brick-batting by the members of the gathering present behind the stage. This stand of the Police does not inspire confidence. Firstly, it has nowhere been

recorded in the CCTV footages that they made any public announcement of the revocation of the permissions and the passing of order under Section 144 Cr.P.C. and requested the people present to leave the Ramlila Maidan. Of course, it is clear from the record before this Court that effort was made by the Police officers, who had a talk with the representatives of respondent no. 4 as well, for service of order on Baba Ramdev, who did not accept the order and jumped into the crowd in order to avoid the service of order as well as his exit from the Ramlila Maidan. The stand taken by the Police in para 24 of its affidavit is that they apprehended a backlash if they made the announcements themselves and, therefore, they approached the organizers to inform the public over the PA system. This itself is not in accordance with the Guidelines framed by the Police for execution of such orders. The Standing Order 309 contemplates that there should be display of banner indicating promulgation of Section 144 Cr.P.C., repeated use of Public Address system by a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum, their deputation etc. or court arrest peacefully and requires such announcement to be videographed. It further contemplates that if the crowd does not follow the appeal and turns violent, then the assembly should be declared as unlawful on the PA System and the same should be videographed. Warning on PA system prior to use of any kind of force is to be ensured and also videographed. I find that there is hardly any compliance to these terms of this Standing Order.

141. Use of water cannons by the Police is again a myth. As I have already noticed from the Police logbook there was only one water cannon available which was positioned at the VIP entrance. Furthermore, even the CCTV camera footages or the photographs do not show any use of water cannons. I see no reason for the Police for not making preferential use of water cannons to disperse the crowd even if they had come to the conclusion that it was an unlawful assembly and it was not

possible to disperse the crowd without use of permissible force in the prescribed manner.

142. There is a serious dispute as to whether the teargas shells were fired in response to the brick-batting by the members of the assembly from behind the stage or was it in the reverse order. The photographs show that there was a temporary structure behind the stage where bricks were lying and the same were collected and thrown from there. The CCTV Camera No. 5 clearly shows that some members of the assembly (followers of Baba Ramdev) collected the bricks and then threw the bricks at the Police towards the stage. The first teargas shell was fired at about 2.20 a.m. The first brick probably was thrown from behind the stage by Baba Ramdev's followers approximately at 2.12 a.m. The teargas shells were also fired during this time. Before that, some members of the Police force had used sticks or *lathi* charged on the people to move them out of the Ramlila Maidan. Some photographs clearly show the Police personnel hitting the members of the assembly with sticks. The exact time of these incidents is not available on the photographs. The firing of teargas shells created greater commotion and fear in the minds of the members of the gathering. The violence on the part of the Police increased with the passage of time and the Police retaliated to the bricks hurled at them by the members of the assembly with greater anger and force. This resulted in injuries to both sides and serious injuries to some of the people and resultant death of one of the members of the public.

143. The persons at the realm of affairs of the Police force have to take a decision backed by their wisdom and experience whether to use force or exercise greater control and restraint while dispersing an assembly. They are expected and should have some freedom of objectively assessing the situation at the site. But in all events, this would be a crucial decision by the concerned authorities. In the present case, the temptation to use force has prevailed over the decision to

exercise restraint. Rule 14.56 of the Punjab Police Rules (which are applicable to Delhi) provides that the main principle to be observed is that the degree of force employed shall be regulated according to the circumstances of each case. The object of the use of force should be to quell the disturbance of peace or to disperse the assembly which threatens such disturbance and has either refused to disperse or shows a determination not to disperse. Standing Order 152 deals particularly with the use of tear smoke in dispersal of unlawful assemblies and processions. This Standing Order concerns with various aspects prior as well as steps which are required to be taken at the time of use of tear smoke. It requires that before tear smoke action is commenced, a suitable position should be selected for the squad, if circumstances permit, forty yards away from the crowd. A regular warning by the officer should be issued while firing the tear smoke shells, the speed of wind, area occupied by the crowd and the temper of the crowd, amongst others, should be taken into consideration. It states that apparently the object of use of force should be to prevent disturbance of peace or to disperse an unlawful assembly which threatens such disturbance.

144. Normally, it is not advisable to use tear smoke shells in an enclosure. They should be fired away from the crowd rather than into the crowd. Unfortunately, the guidelines and even matters of common prudence have not been taken into consideration while firing the teargas shells. The Police Force and, at least, some members of the Police Force, have failed to execute the orders in accordance with the standing orders and have failed to take various steps that were required to be taken including use of minimum force, videography of the event, display of banner, announcement into the PA system etc. Similarly, some members of the Force when incited by provocation or injury, used excessive force, including use of teargas. It is also clear from the photographs and the CCTV Cameras that some members of the Force inflicted injuries by indulging in uncalled for *lathi* charge and by throwing stones

on the public. It is evident that *lathi* charge against those persons was not called for. For example, in one of the CCTV Cameras, one individual is surrounded by four-five members of the Force and then a Police personnel used canning against that individual.

145. I will proceed on the basis that teargas shells were fired in retaliation to the brick-batting by the crowd. Even in that event, the Police should have made proper announcements. The Police had sufficient preparedness to protect itself against such attack and they should have fired the teargas shells to the site from where the bricks were coming rather than in front and on the stage. Once the teargas shells were fired into the tent where large number of people were present, it was bound to result in injuries and harm to the public at large. If the authorities had taken the decision to disperse the crowd by use of teargas, then they should have implemented that decision with due care and precautions that they are required to take under the relevant guidelines and Rules. It was primarily the firing of the teargas shells and use of cane sticks against the crowd that resulted in stampede and injuries to a large number of people.

146. Admittedly, when the Police had entered the tent, the entire assembly was sleeping. It is not reflected in the affidavit of the Police as to what conditions existed at that time compelling the authorities to use force. This, in the opinion of the Court, was a crucial juncture and the possibility of requiring the members of the assembly to disperse peacefully in the morning hours was available with the authorities.

147. This certainly does not mean that throwing of bricks upon the Police by the members of the assembly can be justified on any ground. The few persons who were behind the stage and threw the bricks, either from the corner of the stage or from behind the stage, are guilty of the offence that they have committed. Nothing absolves them of the criminal liability that entails their actions. Even if tear smoke shells were fired by the Police first, still the crowd had no justification to throw bricks

at the Police and cause hurt to some of the Policemen. The Police had a duty to keep a watch on the people from the point of view of maintaining the law and order. It appears that firing of teargas shells in the direction of the crowd was contrary to the guidelines and it led to some people getting breathless and two of them falling unconscious. This also prevented the people present there from reaching the exit gates. Similarly, some of the followers of respondent no.4 became unruly and used smoke to create a curtain in front of themselves, before they started throwing bricks at the Police. In the process, they injured their fellow participants as well as the Police personnel. The teargas shells also caused fire on the stage, as is demonstrated in CCTV camera No. 31 at about 2.22 a.m., and confirmed by various news report footages. It shows that there was lack of fire extinguishing systems. The teargas shells also caused fire in an enclosure with cloth material which could have caught fire that might have spread widely causing serious bodily injuries to the people present. Undoubtedly, large Police force was present on the site and even if it had become necessary, it could have dispersed the crowd with exercise of greater restraint and patience.

148. The Police Force has failed to act in accordance with the Rules and Standing Orders. Primarily, negligence is attributable to some members of the force. The Police, in breach of their duty, acted with uncontrolled force. The orders were passed arbitrarily by the concerned authorities and, thus, they are to be held responsible for the consequences in law. As discussed in this judgment, respondent No. 4, its members and Baba Ramdev committed breach of their legal and moral duty and acted with negligence contributing to the unfortunate incident rendering themselves liable for legal consequences resulting therefrom.

149. I may further notice that the conduct of the representatives of Respondent No.4, as well as of Baba Ramdev in jumping from the stage into the crowd, while

declining to accept the orders and implement them, is contrary to the basic rule of law as well as the legal and moral duty that they were expected to adhere to. Thus, they have to be held guilty of breach of these legal and moral duties as *Injuria non excusat injuriam.*

150. Now, I may have a look at the genuineness/validity of the 'threat perception' which formed the basis for passing of the said orders by the State/Police. I have referred to this aspect in some detail above and suffice it to note here that till 3rd June, 2011, none of the authorities had considered it appropriate to revoke the permission and pass an order under Section 144 Cr.P.C. On the contrary, the authorities had required the organizers to take more stringent measures for proper security. They had also drawn a proper deployment plan. It appears that failure of negotiations between the Government and Baba Ramdev at Hotel Claridges on 3rd June, 2011, left its shadow on the decision-making power of the Police. This proved to be the turning point of the entire episode. If the Police had apprehended that large number of persons may assemble at the Ramlila Maidan, this could have been foreseen as a security threat. Therefore, the proper method for the authorities would have been to withdraw the permissions well in time and enforce them peacefully. It has been left to the imagination of the Court as to what were the circumstances that led to passing of orders revoking permission and particularly when even the MCD had not cancelled or revoked its permission in favour of Respondent No.4 to continue with its activity till 20th June, 2011. Great emphasis was placed, on behalf of the Police, upon the fact that the representatives of Respondent No.4 had not given the correct information to the Police. This again does not describe the correct state of affairs. The Intelligence Agencies had given all requisite information to Delhi Police and after taking the same into consideration, Delhi Police had passed orders on 2nd and 3rd June, 2011 requiring the organizers to take certain precautionary steps. Another interesting fact, that I must notice, is that as early as on 20th

May, 2011, representatives of Respondent No. 4 had written to the Additional Commissioner of Police vide Annexure R3 informing them that Baba Ramdev is going on a hunger strike till death from 4th June, 2011 against the issue of corruption and other related serious issues. Hundreds of *satyagrahis* were providing their support to him in this hunger-strike and consent for that was asked. The letter written by Baba Ramdev to the Prime Minister of the country had also been attached along with this letter. The Police was aware of the number of persons who might assemble and the activity that was likely to be carried on at Ramlila Maidan as well as Jantar Mantar. Still, after the receipt of the letter, the Police took no steps to cancel the permission specifically and the permissions granted continued to be in force. It was for the police authorities or the administration to place on record the material to show that there was a genuine threat or reasonable bias of communal disharmony, social disorder and public tranquility or harmony on the night of 4th June, 2011. However, no such material has been placed before this Court. Right from *Babulal Parate* (supra), this Court has taken a consistent view that the provisions of Section 144 Cr.P.C. cannot be resorted to merely on imaginary or likely possibility or likelihood or tendency of a threat. It has not to be a mere tentative perception of threat but a definite and substantiated one. I have already recorded that none of the concerned authorities, in their wisdom, had stated that they anticipated such disturbance to public tranquility and social order that there was any need for cancellation of the permissions or imposition of a restriction under Section 144 Cr.P.C. as late as till 10.40 p.m. on 4th June, 2011, which then was sought to be executed forthwith.

151. There is a direct as well as implied responsibility upon the Government to function openly and in public interest. Each citizen of India is entitled to enforce his fundamental rights against the Government, of course, subject to any reasonable restrictions as may be imposed under law. The Government can, in larger public interest, take a decision to restrict the

enforcement of freedom, however, only for a valid, proper and justifiable reason. Such a decision cannot be arbitrary or capricious.

152. Another important facet of exercise of such power is that such restriction has to be enforced with least invasion. I am unable to understand and, in fact, there is nothing on record which explains the extra-ordinary emergency that existed on midnight of 4th/5th June, 2011 which led the police to resort to waking up sleeping persons, throwing them out of the tents and forcing them to disperse using force, cane sticks, teargas shells and brick-batting. I am also unable to understand as to why this enforcement could not even wait till early next morning i.e. 5th June, 2011. This is a very crucial factor and the onus to justify this was upon the State and the Police and I have no hesitation in noticing that they have failed to discharge this onus. This decision, whether taken by the Police itself or, as suggested by the learned *amicus*, taken at the behest of the people in power and the Ministry of Home Affairs, was certainly amiss and a decision which is arbitrary and unsustainable, would remain so, irrespective of the number of persons or the hierarchy of the persons in the Government who have passed the said decision. I find no error with the Police, to working in tandem or cooperation with the Ministry of Home Affairs, which itself is responsible for maintaining the law and order in the country. I also have to notice that as per the stand taken by all the parties before this Court, it remains a fact that no announcement was made on the midnight of 4th/5th June, 2011 to the huge gathering sleeping to disperse peacefully from the Ramlila Maidan. It was an obligation of the Police to make repeated announcements and help the people to disperse. The Police, admittedly, did not make any such announcements because it anticipated a backlash. Baba Ramdev and other representatives of Respondent No. 4 also did not make such an announcement, but Baba Ramdev asserted that he would leave only if the people and the followers wanted him to leave. I am unable to appreciate this kind of attitude from both sides.

It was primarily an error of performance of duty by both sides and the ultimate sufferer was the public at large.

153. It is true and, without hesitation, I notice that the CCTV cameras and other documents do show that some of the Police personnel had behaved with courtesy and kindness with the members of the gathering and had even helped them to disperse and leave the Ramlila Maidan. At the same time, some others had misbehaved, beaten the people with brutality and caused injuries to the public present at the Ramlila Maidan. Thus, I cannot blame the entire Police Force in this regard.

154. The learned *amicus* raised another issue that the Home Secretary, Union of India and the Chief Secretary, Delhi had not filed proper affidavits in relation to the incident. In fact, the Home Secretary did not file any affidavit till this was raised as an issue by the learned counsel appearing for Respondent No.4. Factually, it is correct. The affidavits filed by the Chief Secretary, Delhi as well as the Home Secretary are not proper in their form and content. The Home Secretary, on the one hand stated that he had taken charge of the post with effect from 21st July, 2011, while, on the other, admitted that he had received the report from the Special Commissioner of Police. He further stated that it is not the practice of the Ministry to confirm the grant of such permission. His affidavit is at variance with the affidavit of the Police Commissioner. According to him, the entry of large number of persons posed a threat to the gathering, such as, likely stampede and entry of unruly elements into the crowd. Both these circumstances, as noticed above, do not stand even remotely to reason. Further, I am somewhat surprised at the insensitivity reflected in the following lines stated in the affidavit of the Home Secretary, 'I state and submit that the facts suggest that the injuries to a few (out of thousands gathered as per report) are said to have been caused due to minor stampede and that there was no manhandling of women, elderly persons or children. There were 03 women Police officers of the rank of Deputy Commissioner of Police on duty'.

I have no hesitation in observing that it is the duty of the State to ensure that each and every citizen of the country is protected. Safety of his person and property is the obligation of the State and his right. In view of the affidavit filed by the Police Commissioner, where he has owned the entire responsibility for the entire Police hierarchy, I do not propose to attach much significance to this contention. According to the Commissioner, he informed the Additional Secretary in the Ministry of Home Affairs of the developments and the latter might have informed the higher authorities in the said Ministry. I also find no need to enter into this controversy because there is no legal impediment or infirmity in Delhi Police working in coordination and consultation with the Ministry of Home Affairs as none of them can absolve themselves of the liability of maintaining social order, public tranquility and harmony.

155. Mr. P.H. Parekh, learned senior advocate appearing for the Government of NCT Delhi, submitted that the power to issue an order under Section 144 Cr.P.C. is vested in the Assistant Commissioner of Police in terms of notification dated 9th September, 2010 issued by the Ministry of Home Affairs, Government of India under sub-section(1)(a) of Section 17 of the DP Act. It is further submitted that in terms of Article 239AA(3)(a), the Legislative Assembly of the NCT Delhi has legislative competence to enact laws on any matter as applicable to the Union Territory except in relation to fields stated at Entries 1, 2 and 18 of List II of the Seventh Schedule to the Constitution of India. Thus, the matters relating to Police, land and public order do not fall within the legislative and administrative power of the Government of NCT Delhi. The Home Secretary, in his affidavit, on the other hand, has stated that the Ministry of Home Affairs neither directed nor is consulted by Delhi Police in such Police measures which are to be taken with a view to keep the law and order situation under control. He also stated that it is not the practice of the Ministry to confirm the matters of grant of such permissions. I am unable to see any merit in these submissions or for that matter even

the purpose of such submissions. The Ministry of Home Affairs, Delhi Government and the Police are not at cross purposes in relation to the questions of social order and law and order. It is their cumulative responsibility. The lists in the Seventh Schedule to the Constitution are fields of legislation. They are unconnected with the executive action of the present kind. The Ministry of Home Affairs, Union of India is not only responsible for maintaining the law and order but is also the supervisory and controlling authority of the entire Indian Police Services. It is the duty of the Union to keep its citizens secure and protected. Thus, I consider it unnecessary to express any view on this argument advanced by Mr. P.H. Parekh.

The scope of an order made under Section 144 Cr.P.C., its implications and infirmities with reference to the facts of the case in hand

156. By reference to various judgments of this Court at the very outset of this judgment, I have noticed that an order passed in anticipation by the Magistrate empowered under Section 144 Cr.P.C. is not an encroachment of the freedom granted under Articles 19(1)(a) and 19(1)(b) of the Constitution and it is not regarded as an unreasonable restriction. It is an executive order, open to judicial review. In exercise of its executive power the executive authority, by a written order and upon giving material facts, may pass an order issuing a direction requiring a person to abstain from doing certain acts or take certain actions/orders with respect to certain properties in his possession, if the officer considers that such an order is likely to prevent or tends to prevent obstruction, annoyance or injury to any other person. On the bare reading of the language of Section 144 Cr.P.C., it is clear that the entire basis of an action under this Section is the 'urgency of the situation' and the power therein is intended to be availed for preventing 'disorder, obstruction and annoyance', with a view to secure the public weal by maintaining public peace and tranquility. In the case of *Gulam Abbas* v. *State of Uttar Pradesh* [AIR 1981 SC 2198],

the Court clearly stated that preservation of public peace and tranquility is the primary function of the Government and the aforesaid power is conferred on the executive. In a given situation, a private right must give in to public interest.

157. The Constitution mandates and every Government is constitutionally committed to the idea of socialism, secularism and public tranquility. The regulatory mechanism contemplated under different laws is intended to further the cause of this constitutional obligation. An order under Section 144 Cr.P.C., though primarily empowers the executive authorities to pass prohibitory orders vis-à-vis a particular facet, but is intended to serve larger public interest. Restricted dimensions of the provisions are to serve the larger interest, which at the relevant time, has an imminent threat of being disturbed. The order can be passed when immediate prevention or speedy remedy is desirable. The legislative intention to preserve public peace and tranquility without lapse of time, acting urgently, if warranted, giving thereby paramount importance to the social needs by even overriding temporarily, private rights, keeping in view the public interest, is patently inbuilt in the provisions under Section 144 Cr.P.C.

158. Primarily, the MCD owns the Ramlila Maidan and, therefore, is holding this property as a public trustee. The MCD had given permission to use the Ramlila Maidan for holding *yoga shivir* and allied activities with effect from 1st June, 2011 to 20th June, 2011. The Police had also granted permission to organize the *yoga* training session at Ramlila Maidan for the same period vide its letter dated 25th April, 2011. The permission was granted subject to the conditions that there should not be any obstruction to the normal flow of traffic, sufficient number of volunteers should be deployed at the venue of the training camp, permission should be sought from the land owning agency and all other instructions that may be given by the Police from time to time should be implemented**.** Lastly, that such permission could be revoked at any time.

159. Vide letter dated 27th May, 2011, the Deputy Commissioner of Police, Central District, had sought clarification from the President of respondent No. 4 that the permission had been granted only for holding a *yoga* training camp for 4000 to 5000 persons, but the posters and pamphlets circulated by the said respondent indicated that they intended to mobilize 25,000 persons to support Baba Ram Dev's indefinite fast at Ramlila Maidan, which was contrary to the permission sought for. Respondent No. 4, vide letter dated 28th May, 2011, reiterated and re-affirmed its earlier letter dated 20th April, 2011 and stated that there would be no programme at all, except the residential *yoga* camp. Keeping in view the facts and the attendant circumstances, the Deputy Commissioner of Police (Central District) vide his letter dated 1st June, 2011, informed the office bearers of respondent No. 4 that in view of the current scenario and the law and order situation prevailing, they were required to make adequate arrangements for screening of people visiting the Ramlila Maidan for *yoga* shivir and directed further arrangements to be made as per the instructions contained in that letter. It was noticed in the letter of the DCP that a specialized tent of an area of 2,50,000 sq. ft. was to be erected, a dais was to be constructed and structures erected were to be duly certified from the authorized agency**.** It was also, i*nter alia,* stated that no provocative speech or shouting of slogan should be allowed and no fire arms, *lathis* or swords should be allowed in the function and CCTV cameras should also be installed. It was further stated that the Trust was to abide by all the directions issued by the SHO. Again, on 2nd June, 2011, a letter was written by the Deputy Commissioner of Police noticing certain drawbacks in the arrangements made by the Trust and reiterating the directions passed vide letter dated 1st June, 2011. It was required that the Trust should keep the gathering within the permissible limits and make necessary arrangements for checking/frisking of participants and placing of volunteers in requisite areas. It was also indicated that if the compliance is not made, permission shall be subject to review. Certain

inputs given by the Special Branch of Delhi Police on 30th May, 2011 stated that Baba Ramdev planned to hold indefinite hunger strike along with 30,000 to 35,000 supporters with effect from 4th June, 2011, the birth anniversary of Maharana Pratap, at the Ramlila Maidan. As per that report, the protest was on the following issues:

"1. To bring the black money worth Rs. for 400 lakhs crores, which is national property.

2. To demand the legislation of strong Lokpal Bill to remove corruption completely.

3. Removal of foreign governing system in independent India so that everyone can get social and economic justice."

160. It was further stated that the gathering may exceed 1 lakh. The letter also indicated that some of the workers would straightaway reach Jantar Mantar on 4th June, 2011 and would submit memorandum to the President and the Prime Minister of India. Expressing the apprehensions on these outputs, it was indicated in the Report as under:-

"The volunteers of the said organizations are well dedicated, tech savvy and using Laptops in their routine working, with sound financial status of the organization, the possibility of the gathering of about 1 lakh, as claimed by the organizers, cannot be ruled out.

Any minor incident at the venue not only may affect law and order situation but also may affect peace in the city creating serious law and order problems. Local Police, therefore, will have to be extra vigilant. The possibility of some agent provocation or subversive elements attempting to cause disturbance/sabotage by merging with the crowds would also need to be kept in mind. It should also be noted that as per reliable inputs, large congregations continue to

remain the top targets of terrorists."

161. The Special Branch, thus, suggested taking of some precautions like making of adequate security arrangements by the local Police, deployment of quick response teams, ambulances, fire tenders, etc. and to deploy sufficient number of traffic Police personnel to ensure smooth flow of traffic around Raj Ghat Red Light, Ramlila Maidan etc. and concluded as under:-

"Therefore, a sharp vigil, adequate arrangements by local police, PCR, Traffic Police are suggested at and near Ramlila Ground, R.S. Fly-over, enroute, Jantar Mantar to avoid any untoward incident. Further, Delhi-UP/Haryana Borders need to be sensitized."

162. As is obvious from the above letters and the reports, nobody had suggested cancellation of the permission granted by the land owning authority or the Police for continuation of the activity by respondent No. 4, though they were aware of all the facts. The Central District of Delhi Police, on 2nd June, 2011 itself, noticed all the factors and made a report with regard to the Police arrangements at the Ramlila Maidan. Amongst others, it stated the following objectives:-

"1.All the persons will gain entry through DFMDs.

2. Every person will be searched/frisked thoroughly to ensure the security of VIPs/high dignitaries, Govt. property and general public etc.

3. To ensure clear passage to VIPs and their vehicles with the assistance of traffic police.

4. To ensure that the function is held without interruption.

5. To keep an eye on persons moving in suspicious circumstances.

6. Brief-cases, lighters, matches, bags, umbrellas, tiffin-

boxes etc. be prohibited to be taken by the audience inside the ground. Special attention will be paid on minor crackers, inside the ground.

7. The area of responsibility will be thoroughly checked by the Zonal/Sector officers.

8. To maintain law and order during the function."

163. In this report itself, it had worked out the details of deployment, patrolling, timing of duties, supervision and assembly points etc. In other words, on 2nd June, 2011, the Police, after assessing the entire situation, had neither considered it appropriate to cancel the permissions nor to pass an order under Section 144 Cr.P.C. On the basis of the input reports, the Joint Deputy Director, Criminare, had asked for proper security arrangements to be made for Baba Ramdev in furtherance to which the security of Baba Ramdev was upgraded.

164. In furtherance to the permission granted, the *yoga shivir* was held and a large number of persons participated therein. All went well till 3rd June, 2011 and it is nobody's case before the Court that any conditions were violated or there was any threat, much less imminent threat, to public peace and tranquility. The *yoga* camp carried its activities for those days.

165. As already noticed, Baba Ramdev had also been granted permission to hold a hunger strike/*Satyagrah* at the Jantar Mantar on 4th June, 2011. The restriction placed was that it should be with a very limited gathering. Further, vide letter dated 26th May, 2011, the Police had reiterated that the number of persons accompanying Baba Ramdev should not exceed 200. However, vide letter dated 4th June, 2011, the permission granted in relation to holding of *dharna* at Jantar Mantar was revoked, in view of the security, law and order reasons and due to the large gathering exceeding the number mentioned in the permission given. Later, on 4th June, 2011,

the permission to organize *yoga* training camp at the Ramlila Maidan was also cancelled.

166. It was stated that the activity being in variation to the permission granted and in view of the security scenario of the capital city, it may be difficult for the Police to maintain public order and safety. The organisers were further directed that no follower/participant should assemble at the venue or should hold hoardings etc., on that very date, an order under Section 144 Cr.P.C. was passed. The order recited that an information had been received that some people, groups of people may indulge in unlawful activities to disturb the peace and tranquility in the area of Sub-Division Kamla Market, Delhi and it was necessary to take speedy measures in this regard to save human life, public order safety and tranquility. This order was to remain in force for a period of 60 days from the date of its passing.

167. During the course of hearing, it was pointed out before this Court that the order withdrawing the permission was passed at 9.30 p.m. At 10.30 p.m., the Police went to inform the representatives of respondent No. 4 about the withdrawal of permission and subsequently an order under Section 144 Cr.P.C. was passed at about 11.30 p.m. The Police force arrived at the site at about 1.00 a.m. and the operation to disperse the crowd started at 1.10 a.m. on the midnight of 4th/5th June, 2011.

168. It was contended by Mr. Harish Salve, learned senior counsel, that the decision to withdraw permission is an administrative decision taken with political influence. The Police is to work in co-ordination with the Government, including the concerned Ministry and the Union. The order, being an executive order, has been passed *bona fide* and keeping in view the larger public interest and it is open to respondent No. 4 or the affected parties to challenge the said order in accordance with law. It was also urged that this Court may not deal with the merits of the said order, as there is no challenge to these orders. There is no specific challenge raised by

respondent No. 4 and for that matter by any affected party to the orders of withdrawal of permission and imposition of restrictions under Section 144 Cr.P.C. In this view of the matter, it may not be necessary for this Court to examine these orders from that point of view. But the circumstances leading to passing of these orders and the necessity of passing such orders with reference to the facts of the present case is a matter which has to be examined in order to arrive at a final conclusion, as it is the imposition of these orders that has led to the unfortunate occurrence of 4th June, 2011. Therefore, while leaving the parties to challenge these orders in accordance with law, if they so desire, I would primarily concentrate on the facts leading to these orders and their relevancy for the purposes of passing necessary orders and directions.

169. Though the MCD is the owner of the property in question, but still it has no role to play as far as maintenance of law and order is concerned. The constitutional protection available to the citizens of India for exercising their fundamental rights has a great significance in our Constitution. Article 13 is indicative of the significance that the framers of the Constitution intended to attach to the fundamental rights of the citizens. Even a law in derogation of the fundamental rights, to that extent, has been declared to be void, subject to the provisions of the Constitution. Thus, wherever the State proposes to impose a restriction on the exercise of the fundamental rights, such restriction has to be reasonable and free from arbitrariness. It is for the Court to examine whether circumstances existed at the relevant time were of such imminent and urgent nature that it required passing of a preventive order within the scope of Section 144 Cr.P.C., on the one hand, and on the other, of imposing a restriction on exercise of a fundamental right by respondent No.4 and persons present therein by withdrawing the permissions granted and enforcing dispersal of the gathering at the Ramlila Maidan at such odd hour. At this stage, it will be useful for me to notice another aspect of this case. Baba Ramdev is stated to have arrived in Delhi on 1st June,

2011 and four senior ministers of the UPA Government met him at the Airport and attempted to persuade him to give up his *Anshan* in view of the Government's initiative on the issue that he had raised. Efforts were made to dissuade him from going ahead with his hunger strike on the ground that the Government was trying to find pragmatic and practical solution to tackle the agitated issue. Thereafter, as already noticed, a meeting of the ministers and Baba Ramdev was held at Hotel Claridges. However, this meeting was not successful and certain differences remained unresolved between the representatives of the Government and Baba Ramdev. Consequently, Baba Ramdev decided to continue with his public meeting and hunger strike. Emphasis has been laid on a Press Release from the Ministry of Home Affairs stating that a decision was taken that Baba Ramdev should not be allowed to organize any protest and, if persisted, he should be directed to be removed from Delhi.

170. These circumstances have to be examined in conjunction with the stages of passing of the orders under Section 144 Cr.P.C. in relation to the withdrawal of permission. Without commenting upon the Intelligence reports relied upon by the Police, the Court cannot lose sight of the fact that even the intelligence agency, the appropriate quarters in the Government, as well as the Police itself, had neither recommended nor taken any decision to withdraw the permission granted or to pass an order under Section 144 Cr.P.C., even till 3rd June, 2011. On the contrary, after taking into consideration various factors, it had upgraded the security of Baba Ramdev and had required the organizers, respondent No.4, to take various other measures to ensure proper security and public order at Ramlila Maidan.

171. It is nobody's case that the directions issued by the appropriate authority as well as the Police had not been carried out by the organisers. It is also nobody's case that the

conditions imposed in the letters granting permission were breached by the organisers at any relevant point of time. Even on 3rd June, 2011, the Deputy Commissioner of Police, Central District, who was the officer directly concerned with the area in question, had issued a restricted circular containing details of the arrangements, the objectives and the requirements which the deployed forces should take for smooth organization of the camp at Ramlila Maidan. The threat of going on a hunger strike extended by Baba Ramdev to personify his stand on the issues raised, cannot be termed as unconstitutional or barred under any law. It is a form of protest which has been accepted, both historically and legally in our constitutional jurisprudence. The order passed under Section 144 Cr.P.C. does not give any material facts or such compelling circumstances that would justify the passing of such an order at 11.30 p.m. on 4th June, 2011. There should have existed some exceptional circumstances which reflected a clear and prominent threat to public order and public tranquility for the authorities to pass orders of withdrawal of permission at 9.30 p.m. on 4th June, 2011. What weighed so heavily with the authorities so as to compel them to exercise such drastic powers in the late hours of the night and disperse the sleeping persons with the use of force, remains a matter of guess. Whatever circumstances have been detailed in the affidavit are, what had already been considered by the authorities concerned right from 25th May, 2011 to 3rd June, 2011 and directions in that behalf had been issued. Exercise of such power, declining the permission has to be in rare and exceptional circumstances, as in the normal course, the State would aid the exercise of fundamental rights rather than frustrating them.

172. Another argument advanced on behalf of respondent No. 4 by Mr. Ram Jethmalani is that the Order under Section 144, Cr.P.C. is a fraud upon law as it is nothing but abdication of its authority by Police at the command of the Home Minister, Mr. P. Chidambaram, as is evident from his above-referred statements. According to him, the Order under Section 144

Cr.P.C., on the one hand, does not contain material facts while on the other, issues no directions as contemplated under that provision. Further it is contended that the Intelligence inputs as communicated to the Police authorities vide letter dated 3rd June, 2011 had not even been received by the ACP.

173. There is some substance in this submission of Mr. Ram Jethmalani. It is clear from Annexure 'J' annexed to the affidavit of the Police Commissioner that the letter of the Joint Deputy Director dated 3rd June, 2011 referring to threat on Baba Ramdev and asking the police to review and strengthen the security arrangements, was actually received on 6th June, 2011 in the Office of the Commissioner of Police and on 7th June, 2011 in the Office of the Joint Commissioner of Police.

174. Thus, it could be reasonably inferred that this input was not within the knowledge of the officer concerned. I do not rule out the possibility of the Intelligence sources having communicated this input to the Police authorities otherwise than in writing as well. But that would not make much of a difference for the reason that as already held, the Order under Section 144 Cr.PC does not contain material facts and it is also evident from the bare reading of the Order that it did not direct Baba Ramdev or respondent No. 4 to take certain actions or not take certain actions which is not only the purpose but is also the object of passing an Order under Section 144, Cr.P.C.

175. Mr. Harish Salve, learned senior counsel, also contended that the police had neither abdicated its functions nor acted *mala fide*. The Police had taken its decisions on proper assessment of the situation and *bona fide*. Two further affidavits dated 9th January, 2012 and 10th January, 2012 were filed on behalf of the Police. They were filed by the Additional Deputy Commissioner of Police, Central District and Special Commissioner of Police, Law and Order, Delhi. These affidavits were filed primarily with an effort to clarify the details of the log book, the position of water cannons, entries and exit of the tent and number of PCR vans, ambulances arranged for

evacuation of the gathering. For example, in the log book dated 5th June, 2011 at 2.14 am, details have been mentioned, 'Police is arresting to Baba Ramdev in which death can be caused'. It is stated that this was not the conversation between two Police officers as such but one Vipen Batra, who possessed the telephone 8130868526 had rung up. The PCR of the Police informed them of the above fact. This, in turn, was communicated by Constable No.8276 of the PCR to the Police Station. Similarly, on 5th June, 2011 at 3:22:53, another call was received by Constable Sheetal No.8174 PCR from the phone of one Shri Chander Mohan stating that policemen were beating people in Ramlila Ground. These explanations may show that it were the messages received by the PCR vans from private people who had left Ramlila Ground but there is nothing on record to show that these messages or reports to the PCRs were false. In fact, such calls go to substantiate what has been urged by the learned *amicus*. The affidavits do not improve the case of the Police any further. As far as the question of *mala fides* is concerned, I have held that this action or order was not *mala fide*.

176. Another important aspect which had been pointed out during the course of hearing is that even the map annexed to this affidavit of the Police supports what has been stated on behalf of respondent No.4 that there was only one main entry and exit for the public. The VIP entrance and VVIP entrance cannot be construed as entrance for the common man. The other exits were not operational owing to commotion, goods lying, fire of tear gas shells and standing of vehicles outside which were not permitted to move. This itself is a factor that goes to show that preparedness on the part of the Police was not complete in all respects and also that it was not the appropriate time to evict people from the Ramlila Ground.

177. In the affidavit filed by the Police, it has been stated that as a large number of persons were expected to gather on the morning of 5th June, 2011, it was inevitable for the

authorities of the State to enforce the execution of the order under Section 144 Cr.P.C. and the withdrawal of permission at the midnight itself. It is also averred that respondent No. 4 had made certain misrepresentations to the authorities. Despite query from the authority, they had incorrectly informed that only a *yoga* camp will be held at the premises of Ramlila Maidan, though Baba Ramdev had planned to commence his hunger strike from 4th June, 2011 at that place in presence of large gathering.

178. This argument, in my view, does not advance the case of the Police any further as Baba Ramdev had already started his fast and he, as well as all his followers, were peacefully sleeping when these orders were passed and were sought to be enforced against them. The Trust might not have given the exact and correct information to the Police but the Police already had inputs from the Intelligence Agencies as well as knowledge on its own that a hunger strike, in presence of large number of people, was to start from 4th June, 2011, which, in fact, did start.

179. From the record before this Court, it is not clear as to why the State did not expect obedience and cooperation from Baba Ramdev in regard to execution of its lawful orders, particularly when after withdrawal of the permission for holding *dharna* at Jantar Mantar, Baba Ramdev had accepted the request of the Police not to go to Jantar Mantar with his followers. The attendant circumstances appearing on record as on 3rd June, 2011 did not show any intention on their part to flout the orders of the authorities or to cause any social disorder or show threat to public tranquility by their action. The doubts reflected in the affidavits were matters which could have been resolved or clarified by mutual deliberations, as it was done in the past. The directions issued to respondent No.4 on 1st June, 2011 were to ensure proper security of all concerned. Material facts, imminent threat and requirement for immediate preventive steps should exist simultaneously for passing any

order under Section 144 Cr.P.C. The mere change in the purpose or in the number of persons to be gathered at the Ramlila Maidan simplicitor could hardly be the cause of such a grave concern for the authorities to pass the orders late in the night. In the Standing Order issued by the Police itself, it has been clarified that wherever the gathering is more than 50,000, the same may not be permitted at the Ramlila Maidan, but they should be offered Burari ground as an alternative. This itself shows that the attempt on the part of the authorities concerned should be to permit such public gathering by allotting them alternative site and not to cancel such meetings. This, however, does not seem to further the case of the State at all inasmuch as, admittedly, when the order was passed and the Police came to the Ramlila Maidan to serve the said order, not even 15,000 to 20,000 people were stated to be present in the *shamiana*/tent. In these circumstances, it appears to me that it was not necessary for the executive authorities and the Police to pass orders under Section 144 Cr.P.C. and withdraw the permissions. The matter could be resolved by mutual deliberation and intervention by the appropriate authorities.

180. In view of the affidavits having been filed on behalf of Respondent No.3, a person of the rank of Commissioner of Police, Delhi, wherein he has owned the responsibility for the events that have occurred from 1st June, 2011 to 4th/5th June, 2011, there is no reason for this Court to attribute any motive to the said officer that he had worked and carried out the will of the people in power.

181. At the very commencement of hearing of the case, I had made it clear to the learned counsel appearing for the parties that the scope of the present petition is a very limited one. This Court would only examine the circumstances that led to the unfortunate incident on 4th June, 2011, its consequences as well as the directions that this Court is called upon to pass in the peculiar facts and circumstances of the case. Therefore, it is not necessary for this Court to examine certain contentions

raised or sought to be raised by the parties as the same may more appropriately be raised in an independent challenge to such orders or claim such other reliefs as they may like to claim by initiating appropriate legal proceedings.

182. This takes me to an ancillary but pertinent question in context of the said 'discretion', that is exercisable with regard to the 'threat perception', for the purposes of passing an order under Section 144 of the Cr.P.C. The activities which, though unintended have a tendency to create disorder or disturbance of public peace by resorting to violence, should invite the appropriate authority to pass orders taking preventive measures. The intent or the expected threat should be imminent. Some element of certainty, therefore, should be traceable in the material facts recorded and the necessity for taking such preventive measures. There has to be an objective application of mind to ensure that the constitutional rights are not defeated by subjective and arbitrary exercise of power. Threat perception is one of the most relevant considerations and may differ as per the perspective of different parties. In the facts of the present case, the Police have its own threat perception while the Trust has its own point of view in that behalf. As already noticed, according to the Police, Baba Ramev wanted to do *Anshan,* after the negotiations with the Government had failed, which was not the purpose for which the permission had been granted. There was a possibility of the number of persons swelling upto 50,000 or more. There could also be possibility of communal tension as well as a threat to Baba Ramdev's life. These apprehensions are sought to be dispelled by learned *Amicus curiae* stating that this protest/*dharna*/*anshan* is a right covered under the freedom of speech. The Ramlila Maidan has the capacity of 50,000, which number, admittedly, was never reached and the doubts in the minds of the authority were merely speculative. The security measures had been baffed up. Baba Ramdev had been given Z+ security and, therefore, all the apprehensions of the authorities were misplaced, much less that they were real threats to an individual or to the public

at large. The perception of the Trust was that they were carrying on their *anshan* and *yoga shivir* peacefully, as law abiding citizens of the country. No complaint had ever been received of any disturbance or breach of public trust. The events, right from January 2011, showed that all the camps and protests organized by the Trust, under the leadership of Baba Ramdev had been completed peacefully, without any damage to person or property and without any disturbance to anyone. The action of the Police in revoking the permissions as well as that of the executive authorities in passing the order under Section 144 Cr.P.C. was a colourable exercise of power and was not called for in the facts and circumstances of the case.

183. It is also not understandable that if the general 'threat perception' and likelihood of communal disharmony were the grounds for revoking the permission and passing the order under Section 144 Cr.P.C., then why the order passed under Section 144 Cr.P.C. permitted all other rallies, processions which had obtained the Police permission to go on in the area of the same Police Division. The decision, therefore, appears to be contradictory in terms.

184. There is some merit in the submissions of learned *Amicus curiae*. Existence of sufficient ground is the *sine qua non* for invoking the power vested in the executive under Section 144 Cr.P.C. It is a very onerous duty that is cast upon the empowered officer by the legislature. The perception of threat should be real and not imaginary or a mere likely possibility. The test laid down in this Section is not that of 'merely likelihood or tendency'. The legislature, in its wisdom, has empowered an officer of the executive to discharge this duty with great caution, as the power extends to placing a restriction and in certain situations, even a prohibition, on the exercise of the fundamental right to freedom of speech and expression. Thus, in case of a mere apprehension, without any material facts to indicate that the apprehension is imminent and genuine, it may not be proper for the authorities to place such a restriction upon the rights of the citizen. At the cost of

repetition, I may notice that all the grounds stated were considered at various levels of the Government and the Police and they had considered it appropriate not to withdraw the permissions or impose the restriction of Section 144 Cr.P.C. even till 3rd June, 2011. Thus, it was expected of the authorities to show before the Court that some very material information, fact or event had occurred between 3rd and 4th June, 2011, which could be described as the determinative factor for the authorities to change their mind and pass these orders. I am unable to accept the contention of the Police that a situation had arisen in which there was imminent need to intervene instantly having regard to the sensitivity and perniciously perilous consequences that may result, if not prevented forthwith.

185. The administration, upon taking into consideration the intelligence inputs, threat perception, likelihood of disturbance to public order and other relevant considerations, had not only prepared its planned course of action but also declared the same. In furtherance thereto, the Police also issued directions for compliance to the organizers. The authorities, thus, had full opportunity to exercise their power to make a choice permitting continuation and/or cancellation of the programme and thereby prohibit the activity on the Ramlila Maidan. However, in their wisdom, they opted to permit the continuation of the agitation and holding of the *yoga shivir*, thereby impliedly permitting the same, even in the changed circumstances, as alleged. *Quinon prohibit qua prohibere protest asentire videthir* (He who does not prohibit when he is able to prohibit assents to it).

186. The authorities are expected to seriously cogitate over the matter in its entirety keeping the common welfare in mind. In my view, the Police have not placed on record any document or even affidavits to show such sudden change of circumstances, compelling the authorities to take the action that they took. Denial of a right to hold such meeting has to be under exceptional circumstances and strictly with the object of

preventing public tranquility and public order from being disturbed.

Reasonable notice is a requirement of Section 144 Cr.P.C.

187. The language of Section 144 Cr.P.C. does not contemplate grant of any time for implementation of the directions relating to the prevention or prohibition of certain acts for which the order is passed against the person(s). It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be done within a reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case. There may also be cases where the order passed by an Executive Magistrate under Section 144 Cr.P.C. requires to be executed forthwith, as delay in its execution may frustrate the very purpose of such an order and may cause disastrous results like rioting, disturbance of public order and public tranquility, while there may be other cases where it is possible, on the principles of common prudence, that some time could be granted for enforcement and complete implementation of the order passed by the Executive Authority under Section 144 Cr.P.C. If one reads the entire provision of Section 144 Cr.P.C., then the legislature itself has drawn a distinction between cases of urgency, where the circumstances do not admit to serving of a notice in due time upon the person against whom such an order is directed and the cases where the order could be passed after giving a notice to the affected party. Thus, it is not possible to lay down any straight jacket formula or an absolute proposition of law with exactitude that shall be applicable uniformly to all the cases/situations. In fact, it may not be judicially proper to state such a proposition. It must be left to the discretion of the executive authority, vested with such powers to examine each case on its own merits.

188. Needless to repeat that an order under Section 144

Cr.P.C. affects the right vested in a person and it will not be unreasonable to expect the authorities to grant adequate time to implement such orders, wherever the circumstances so permit. Enforcement of the order in undue haste may sometimes cause a greater damage than the good that it expected to achieve.

189. If for the sake of arguments, I would accept the contention of the Police that the order withdrawing the permission as well as the order under Section 144 Cr.P.C. are valid and had been passed for good reasons, still the question remains as to whether the authorities could have given some reasonable time for implementation/enforcement of the directions contained in the order dated 4th June, 2011. It is undisputable and, in fact, is disputed by none that all the persons who had gathered in the tent at the Ramlila Maidan were sleeping when the Police went there to serve the order passed under Section 144 Cr.P.C. upon the representatives of the Trust; the order itself having been passed at 11.30 p.m. on 4th June, 2011. There are serious disputes raised as to the manner in which the order was sought to be executed by the Police. According to respondent No. 4 and the learned *amicus*, it was not executed as per the legal framework provided under the Police Rules and the guidelines issued, whereas according to the Police, it adhered to its prescribed procedure. This issue I shall discuss separately. But at this stage, I may notice that nothing prevented the authorities from making proper announcements peacefully requiring the persons gathered at the Ramlila Maidan to leave for their respective homes early in the morning and before the *yoga* camp could resume. Simultaneously, they could also have prohibited entry into the Ramlila Maidan, as the same was being controlled by the Police itself. No facts or circumstances have been stated which could explain as to why it was absolutely necessary for the Police to wake up the people from their sleep and force their eviction, in a manner in which it has been done at the late hours of night. In absence of any explanation and special

circumstances placed on record, I have no hesitation in coming to the conclusion that, in the facts of the present case, it was quite possible and even desirable for the authorities concerned to grant a reasonable time for eviction from the ground and enforcement of the orders passed under Section 144 Cr.P.C. Except in cases of emergency or the situation unexceptionally demanding so, reasonable notice/time for execution of the order or compliance of the directions issued in the order itself or in furtherance thereto is the pre-requisite.

190. Non-grant of reasonable time and undue haste on the part of the Police authorities to enforce the orders under Section 144 Cr.P.C. instantaneously had resulted in the unfortunate incident of human irony which could have been avoided with little more patience and control. It was expected of the Police authorities to bastion the rights of the citizens of the country. However, undue haste on the part of the Police created angst and disarray amongst the gathering at the Ramlila Maidan, which finally resulted in this sad cataclysm.

Requirement of Police permission and its effect on the right conferred in terms of Articles 19(1)(a) and 19(1)(b) respectively with reference to the facts of the present case

191. The contention on behalf of respondent No.4 is that no law requires permission of the Police to go on fast and/or for the purposes of holding an agitation or *yoga* camp. The Police, therefore, had no power to cancel such permission. The law is clear that it is the fundamental right of the people to hold such agitation or *morchas* in the streets and on public land and the Police have been vested with no power to place any restriction, much less an unreasonable restriction, upon the exercise of such right. There is no statutory form provided for seeking permission of the Police before holding any such public meeting. While relying on the Constitution Bench judgment of this Court in the case of *Himat Lal* (supra), the

contention is that the Police cannot be vested with unrestricted and unlimited power for grant or refusal of permission for holding such public functions. In fact, it is stated to be no requirement of law. In the alternative, the contention is that there was no condition imposed by the Police for grant of permission, which had been violated. Thus, there was no occasion or justification, not even a reasonable apprehension, for revoking that permission. The imposition of restriction must be preceded by some act or threatening behavior which would disturb the public order or public tranquility.

192. The Ramlila Maidan belongs to MCD and they granted the permission/licence to use the said property from 1st June, 2011 to 20th June, 2011. They having granted the permission/license to use the said property, never revoked the same. Thus, the Police had no jurisdiction to indirectly revoke the permission which they could not directly revoke and evict the persons from *Ramlila Maidan* forcibly, by brutal assaults and causing damage to the person and property of the individuals. The permission had been revoked in violation of the principles of natural justice. The submission was sought to be buttressed by referring to Rule 10 of the MCD Rules which requires grant of personal hearing before revocation of a permission granted by the MCD.

193. To contra, the contention raised on behalf of respondent No.3, the Commissioner of Police, Delhi, is that there are specific powers vested in the Police in terms of the DP Act, the Punjab Police Rules, as applicable to Delhi and the Standing Orders, according to which the Police is obliged to maintain public order and public tranquility. They are expected to keep a watch on public meetings. There is no act attributable to the Police which has impinged upon any democratic rights of the said respondents or the public. The orders passed and the action taken by the Police, including withdrawal of permission, was in public interest as weighed against private interest. Since the Police, as an important organ of the State

Administration, is responsible to maintain public order and peace, it will be obligatory upon the persons desirous of holding such public meetings as well as the concerned authorities to associate Police and seek their permission for holding such public *satyagraha,* camp etc. as safety of a large number of people may be at stake. According to learned *Amicus curiae*, the withdrawal of permission was for political and *mala fide* reasons. There existed no circumstances which could justify the withdrawal of permission. In fact, the contention is that possibility of Government and Police working in liaison to prevent Baba Ramdev from holding *Satyagrah/Anshan* cannot be ruled out particularly, when there was no threat, much less an imminent threat, to disturb public order or tranquility justifying the withdrawal of permission.

194. I have already discussed that the term 'social order' has a very wide ambit which includes 'law and order', 'public order' as well as 'security of the State'. In other words, 'social order' is an expression of wide amplitude. It has a direct nexus to the Preamble of the Constitution which secures justice – social, economic and political – to the people of India. An activity which could affect 'law and order' may not necessarily affect public order and an activity which might be prejudicial to public order, may not necessarily affect the security of the State. Absence of public order is an aggravated form of disturbance of public peace which affects the general course of public life, as any act which merely affects the security of others may not constitute a breach of public order. The 'security of the State', 'law and order' and 'public order' are not expressions of common meaning and connotation. To maintain and preserve public peace, public safety and the public order is unequivocal duty of the State and its organs. To ensure social security to the citizens of India is not merely a legal duty of the State but a constitutional mandate also. There can be no social order or proper state governance without the State performing this function and duty in all its spheres.

195. Even for ensuring the exercise of the right to freedom of speech and assembly, the State would be duty bound to ensure exercise of such rights by the persons desirous of exercising such rights as well as to ensure the protection and security of the people i.e. members of the assembly as well as that of the public at large. This tri-duty has to be discharged by the State as a requirement of law for which it has to be allowed to apply the principle of reasonable restriction, which is constitutionally permissible.

196. Articles 19(1)(a) and 19(1)(b) are subject to the reasonable restrictions which may be imposed on exercise of such right and which are in the interest of sovereignty and integrity of India, security of the State, public order, decency or morality and friendly relations with foreign states. Besides this, such restriction could also relate to contempt of court, defamation or incitement to an offence. Thus, sphere of such restrictions is very wide. While some may be exercising their fundamental rights under Articles 19(1)(a) and 19(1)(b) of the Constitution, others may be entitled to the protection of social safety and security in terms of Article 21 of the Constitution and the State may be called upon to perform these functions in the discharge of its duties under the constitutional mandate and the requirements of Directive Principles of State Policy.

197. I have also noticed that in terms of Article 51A of the Constitution, it is the constitutional duty of every citizen to perform the duties as stated under that Article.

198. The security of India is the prime concern of the Union of India. 'Public order' or 'law and order' falls in the domain of the State. Union also has the power to enact laws of preventive detention for reasons connected with the security of the State, maintenance of the public order, etc. I am not entering upon the field of legislative competence but am only indicating Entries in the respective Lists to show that these aspects are the primary concern, either of the Union or the State Governments,

as the case may be and they hold jurisdiction to enact laws in that regard. The Union or the State is expected to exercise its legislative power in aid of civil power, with regard to the security of the State and/or public order, as the case may be, with reference to Entry 9 of List I, Entry 1 of List II and Entries 3 and 4 of List III of the Seventh Schedule of the Constitution of India.

199. These are primarily the fields of legislation, but once they are read with the constitutional duties of the State under Directive Principles with reference to Article 38 where the State is to secure a social order for promotion of welfare of the people, the clear result is that the State is not only expected but is mandatorily required to maintain social order and due protection of fundamental rights in the State.

200. Freedom of speech, right to assemble and demonstrate by holding *dharnas* and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquility, as it may disturb the social order. This delegate power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.

201. The 'law and order' or 'public order' are primarily and certainly the concerns of the State. Police, being one of the

most important organs of the State, is largely responsible for ensuring maintenance of public security and social order. To urge that the Police have no concern with the holding of public meetings would be a misnomer and misunderstanding of law. To discharge its duty, the Police organization of a State is a significant player within the framework of law. In this view of the matter, I may now refer to certain statutory provisions under the relevant Acts or the Rules. Chapter V of the DP Act requires special measures for maintenance of public order and security of State, to be taken by the Police. Sections 28 and 29 of the DP Act give power to the Police to make regulations for regulating traffic and for preservation of order in public places and to give directions to the public, respectively. Under Section 31 of the DP Act, the Police is under a duty to prevent disorder at places of public amusement or public assembly or meetings. Section 36 contemplates that the Police is to ensure and reserve streets or other public places for public purposes and empowers it to authorize erecting of barriers in streets. It also is vested with the power to make regulations regulating the conduct or behaviour of persons constituting assemblies or processions on or along with the streets and specifying, in the case of processions, the rules by which and the time and order in which the same may pass.

202. The power to make regulations relates to regulating various activities including holding of *melas* and public amusements, in the interest of public order, the general public or morality. Delhi Police has also issued a Standing Order 309 in relation to 'Regulation of processions and rallies' laying down the procedure for making application for grant of permission, its acceptance or rejection and the consequences thereof. This Standing Order also provides as to how the proceedings in furtherance to an order passed under Section 144 Cr.P.C. should be carried out. It further indicates that the entire tilt of the regulation is to grant permission for holding processions or rallies and they need to be accommodated at the appropriate places depending upon the number of persons

proposing to attend the said rally or meeting and the nature of the activity that they are expected to carry on. For instance, under clause (h), as the Parliament Street and Jantar Mantar cannot accommodate more than 5000 persons, if there is a larger crowd, they should be shifted to the Ramlila Ground and if the crowd is expected to be more than 50,000 and the number of vehicles would accordingly swell up, then it should be shifted to a park or another premises, which can safely accommodate the gathering.

203. The learned Solicitor General appearing for the Union of India argued that the Ministry of Home Affairs had never told the Police to take any action. The Police only kept the senior officers in the Ministry of Home Affairs informed. What transpired at the site is correctly stated by the Police in its affidavit and the extent of judicial review of such action/order is a very narrow one. According to him, the scope of the *suo moto* petition itself is a very limited one, as is evident from the order of the Court dated 6th June, 2011. The statement of the Home Minister relied upon by respondent No. 2 as well as referred to by the learned *Amicus* in his submissions has to be read in conjunction with the explanation given by the Minister of Home Affairs soon after the incident. Thus, no fault or error is attributable to the Ministry of Home Affairs, Government of India in relying upon the judgment of this Court in *Babulal Parate* (supra), *Madhu Limaye* (supra), *Amitabh Bachchan Corpn. Ltd. v. Mahila Jagran Manch & Ors.* [(1997) 7 SCC 91], *R.K. Garg v. Superintendent, District Jail, Saharanpur & Ors.* [(1970) 3 SCC 227] and *Dr. Praveen Bhai Thogadia* (supra) to contend that the authorities have to be given some leverage to take decisions in such situations. There are sufficient inbuilt safeguards and that the judicial intervention in such executive orders has to be very limited. It is his contention that the present case does not fall in that category.

204. There cannot be any dispute that the executive authorities have to be given some leverage while taking such

decisions and the scope of judicial review of such orders is very limited. These propositions of law are to be understood and applied with reference to the facts of a given case. It is not necessary for me to reiterate those facts. Suffice it to note that the action of the Police was arbitrary. The Seven Judges Bench of this Court in *Madhu Limaye* (supra) reiterated with approval the law enunciated in *Babulal Parate* (supra) and further held that "These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquility, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented……." The fundamental emphasis is on prevention of situation which would lead to disturbance of public tranquility, however, action proposed to be taken should be one which itself is not likely to generate public disorder and disturb the public tranquility. It should be preventive and not provocative. The Police action in the present case led to a terror in the minds of members of the assembly and finally the untoward incident.

205. It is also true that a man on the spot and responsible for maintenance of public peace is the appropriate person to form an opinion as contemplated in law. But, here the onus was on the Police Authorities to show existence of such circumstances at the spot when, admittedly, all persons were sleeping peacefully. The courts have to realize that the rights of the organizers and other members of the Society had to be protected if a law and order situation was created as a result of a given situation.

206. The learned Solicitor General is correct in his submissions that the scope of the present *suo moto* petition is a limited one. But certainly it is not so limited that the Court would neither examine facts nor the law applicable but would accept the government affidavits as a gospel truth. The order dated 6th June, 2011 has two distinct requirements. Firstly,

relating to the take of the police authorities. Secondly, circumstances in which such power with brutality and atrocities was asserted against large people who had gathered at the Ramlila ground.

207. While keeping the principles of law in mind, the Court essentially has to deliberate upon these two aspects. I am examining the circumstances which generated or resulted into the unfortunate situation at the Ramlila Ground on the midnight of 4th/5th June, 2011. The statement made by the Home Minister on 8th June, 2011 has already been referred by me above. This statement clearly demonstrated the stand of the Government that in the event Baba Ramdev persisted in his efforts to go on with the fast, he would be removed. The Police had been issued appropriate directions under Section 65 of the DP Act to enforce the same. The decision so had also been taken by the Delhi Police. The Minister had requested the general public to appreciate the constraints and difficult circumstances under which the Delhi Police had to discharge its functions. This statement was even clarified with more reasons and elaborately in the exclusive interview of the Minister with DD News on the same date on the television. He is stated to have said that ultimately when the talks failed or Baba Ramdev went back on his words, the Police was told to enforce the decision.

208. There are circumstances and reasons given by the Home Minister in his statement for making the statement that he made. The decision of the Delhi Police in the normal course of events would have a connection with the declaration made by the Ministry. Police might have acted independently or in consultation with the Ministry. Either way, there is no material before me to hold that the decision of the Ministry or the Police was *mala fide* in law or in fact. Upon taking into consideration the cumulative effect of the affidavits filed on record and other documentary evidence, I am unable to dispel the argument that the decision of Ministry of Home Affairs, Union of India reflected

its shadow on the decision making process and decision of the Police authorities.

209. I shall make it clear even at the cost of repetition that neither am I adjudicating upon the validity of the order passed by the Government qua respondent No. 4, nor adjudicating any disputes between Baba Ramdev, on the one hand, and the Government, on the other. Within the scope of this Court's order dated 6th June, 2011, I would examine all the relevant facts and the principles of law applicable for returning the findings in relation to the interest of the large public present at the Ramlila Maidan in the midnight of 4th/5th June, 2011.

210. The learned *Amicus* also contended that the doctrine of limited judicial review would not *stricto sensu* apply to the present case. The case is not limited to the passing of an order under Section 144, Cr.PC, but involves the larger issue of fundamental freedom and restrictions in terms of Article 19(1)(a) of the Constitution, as well as the interest of number of injured persons and Rajbala, the deceased. It is also his contention that there is a clear abdication of powers by the Police to the Ministry of Home Affairs. The order and action of the Police are patently unjustifiable. If the trajectories of two views, one of the Ministry and other of the Police point out towards the action being *mala fide*, be it so, the Court then should decide the action to be mala fide. *Mala fides* is a finding which the Court can return only upon proper allegations supported by documentary or other evidence. It is true that if the factual matrix of the case makes the two trajectories (case of both the respondents) point towards an incorrect decision, the Court would be reluctant to return a finding of *mala fides* or abdication of power. The decision was taken by the competent authority and on the basis of inputs and the situation existing at the site. It may be an incorrect decision taken in somewhat arbitrary manner and its enforcement may be totally contrary to the rule of law and common sense. In such an event, the action may be liable to be interfered with but cannot be termed as *mala fide.*

211. Furthermore, the constitutional mandate, the statutory provisions and the regulations made thereunder, in exercise of power of delegated legislation, cast a dual duty upon the State. It must ensure public order and public tranquility with due regard to social order, on the one hand, while on the other, it must exercise the authority vested in it to facilitate the exercise of fundamental freedoms available to the citizens of India. A right can be regulated for the purposes stated in that Article itself.

212. In *Himat Lal K. Shah* (supra), this Court observed that even in pre-independence days the public meetings have been held in open spaces and public streets and the people have come to regard it as a part of their privileges and amenities. The streets and public parks existed primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public streets must yield to the social interest which the prohibition and regulation of speech are designed to protect. There is a constitutional difference between reasonable regulation and arbitrary exclusion. The power of the appropriate authority to impose reasonable regulation, in order to ensure the safety and convenience of the people in the use of public highways, has never been regarded as inconsistent with the fundamental right to assembly. A system of licensing as regards the time and manner of holding public meeting on public streets has not been regarded as an infringement of a fundamental right of public assembly or free speech. This Court, while declaring Rule 7 of the Bombay Police Rules *ultra vires*, stated the principle that it gave an unguided discretion, practically dependent upon the subjective whims of the authority, to grant or refuse permission to hold public meeting on a public street. Unguided and unfettered power is alien to proper legislation and even good governance. The principles of healthy democracy will not permit such restriction on the exercise of a fundamental right.

213. The contention made by Mr. Ram Jethmalani, learned Senior Advocate, is that this judgment should be construed to

mean that it is not obligatory or even a directory requirement to take permission of the Police authorities for holding such public meetings at public places. According to him the Police have no such power in law. I am not quite impressed by this submission. This argument, if accepted, can lead to drastic and impracticable consequences. If the Department of Police will have no say in such matters, then it will not only be difficult but may also be improbable for the Police to maintain law and order and public tranquility, safeguarding the interest of the organizers, the persons participating in such public meetings as well as that of the public at large.

214. I am bound and, in fact, I would follow the view expressed by a Constitution Bench of this Court in the case of *Himat Lal* (supra) in paragraph 31 of the judgment :

> "It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are *ultra vires* Section 33(1) of the Bombay Police Act insofar as they require prior permission for holding meetings."

215. The provisions of DP Act read in conjunction with the Regulations framed and the Standing Orders issued, do provide sufficient guidelines for exercise of power by the appropriate authority in granting and/or refusing the permission sought for. I hasten to add here itself that an application to the Police has to be examined with greatest regard and objectivity in order to ensure exercise of a fundamental right rather than it being throttled or frustrated by non-granting of such permission.

216. A three-Judge Bench of this Court in the case of *Destruction of Public and Private Properties, In Re* (supra) primarily laid down the guidelines to effectuate the modalities

for preventive action and adding teeth to the enquiry/ investigation in cases of damage to public and private properties resulting from public rioting. The Court indicated the need for participation and for taking the Police into the organizational activity for such purposes. The Court, while following the principles stated in the case of *Union of India* v. *Association of Democratic Reforms* [(2002) 3 SCC 696], gave directions and guidelines, wherever the Act or the Rules were silent on a particular subject, for the proper enforcement of the provisions. In paragraph 12 of the judgment, the Court clearly stated that as soon as there is a demonstration organized, the organizers shall meet the Police to review and revise the route to be taken and lay down the conditions for peaceful march and protest.

217. Admittedly, the Court in that case was not determining an issue whether Police permission is a pre-requisite for holding such public meetings or not, but still, the Court mandated that the view of the Police is a requirement for organization of such meetings or for taking out public processions. Seeking of such permission can be justified on the basis that the said right is subject to reasonable restrictions.

218. Further, exercise of such rights cannot be claimed at the cost of impinging upon the rights of others. This is how the restriction imposed is to be regulated. Restriction to a right has to come by enactment of law and enforcement of such restriction has to come by a regulatory mechanism, which obviously would take within its ambit the role of Police. The Police have to perform their functions in the administration of criminal justice system in accordance with the provisions of the Cr.P.C. and the other penal statutes. It has also to ensure that it takes appropriate preventive steps as well as maintains public order or law and order, as the case may be. In the event of any untoward incident resulting into injury to a person or property of an individual or violation of his rights, it is the Police alone that shall be held answerable and responsible for the

consequences as may follow in law. The Police is to maintain and give precedence to the safety of the people as *salus populi supremo lex* (the safety of the people is the supreme law) and *salus republicae supremo lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. Besides, one fact that cannot be ignored is that respondent no.4, in furtherance to the understanding of law, had itself applied to the Deputy Commissioner of Police, Central District, Darya Ganj, seeking sanction for holding of *yoga shivir* at the Ramlila Maidan.

219. It is difficult for the Court to even imagine a situation where the Police would be called upon to discharge such heavy responsibility without having any say in the matter. The persons who are organizing the public meeting would obviously have their purpose and agenda in mind but the Police also have to ensure that they are able to exercise their right to freedom of speech and assembly and, at the same time, there is no obstruction, injury or danger to the public at large.

220. Thus, in my considered opinion, associating Police as a pre-requirement to hold such meetings, *dharnas* and protests, on such large scale, would not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution as this would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of the others, as contemplated under Article 21 of the Constitution of India. That would be the correct approach of law, as is supported by various judgments and reasoning, that I have detailed in the initial part of this judgment.

221. A solution to such an issue has to be provided with reference to exercise of a right, imposition of reasonable restrictions, without disturbing the social order, respecting the rights of others with due recognition of the constitutional duties

that all citizens are expected to discharge.

222. Coming to the facts of the present case, it is nobody's case that the permissions were declined. The permissions, whether for holding of the *yoga shivir* at the Ramlila Maidan or the protest at Jantar Mantar, were granted subject to certain terms and conditions. The argument that no permission of the Police is called for in absolute terms, as a pre-requirement for holding of such meetings, needs no further deliberation.

Responsibility of the Trust, Members of the Assembly, their status and duty

223. Once an order under Section 144 Cr.P.C. is passed by the competent authority and such order directs certain acts to be done or abstains from doing certain acts and such order is in force, any assembly, which initially might have been a lawful assembly, would become an unlawful assembly and the people so assembled would be required to disperse in furtherance to such order. A person can not only be held responsible for his own act, but, in light of Section 149 IPC, if the offence is committed by any member of the unlawful assembly in prosecution of a common object of that assembly, every member of such assembly would become member of the unlawful assembly.

224. Obedience of lawful orders is the duty of every citizen. Every action is to follow its prescribed course in law *Actio quaelibet it sua via*. The course prescribed in law has to culminate to its final stage in accordance with law. In that process there might be either a clear disobedience or a contributory disobedience. In either way, it may tantamount to being negligent. Thus, the principle of contributory negligence can be applied against parties to an action or even a non-party. The rule of identification would be applied in cases where a situation of the present kind arises. Before this Court, it is the stand of the Police authorities that Baba Ramdev, members of the Trust and their followers refused to obey the order and,

in fact, they created a situation which resulted in inflictment of injuries not only to the members of the public, but even to Police personnel. In fact, they placed the entire burden upon respondent No. 4.

225. The members of the public as well as Respondent No.4 claimed that there was damage to their person and property as a result of the action of the Police. Thus, this Court will have to see the fault of the party and the effective cause of the ensuing injury. Also it has to be seen that in the 'agony of the moment', would the situation have been different and safe, had the people concerned acted differently and as to who was majorly responsible for creation of such a dilemma. Under the English law, it has been accepted that once a statute has enjoined a pattern of behavior as a duty, no individual can absolve another from having to obey it. Thus, as a matter of public policy, *volenti* cannot erase the duty or breach of it (*Ref. Clerk & Lindsell on Torts, Twentieth Edition, pg. 246*).

226. There is no statutory definition of contributory negligence. The concerns of contributory negligence are now too firmly established to be disregarded, but it has to be understood and applied properly. 'Negligence' materially contributes to injury or is regarded as expressing something which is a direct cause of the accident.

227. The difference in the meaning of "negligence," when applied to a claimant, on the one hand, and to a defendant on the other, was pointed out by Lord Simon in *Nance v. British Columbia Electric Ry.* [(1951) A.C. 601 at 611] :

> "When contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove … that the injured party did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury. For when contributory negligence is set up as a

shield against the obligation to satisfy the whole of the claimant's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full"

228. The individual guilty of contributory negligence may be the employee or agent of the claimant, so as to render the claimant vicariously responsible for what he did. There could be cases of negligence between spectators and participants in sporting activities. However, in such matters, negligence itself has to be established. In cases of 'contributory negligence', it may not always be necessary to show that the claimant is in breach of some duty, but the duty to act carefully, usually arises and the liability in an action could arise *(Ref. Charlesworth & Percy on Negligence, Eleventh Edition, Pages 195, 206).* These are some of the principles relating to the award of compensation in cases of contributory negligence and in determining the liability and identifying the defaulter. Even if these principles are not applicable *stricto sensu* to the cases of the present kind, the applied principles of contributory negligence akin to these principles can be applied more effectively on the strength of the provisions of Section 149 IPC.

229. A negligence could be composite or contributory. 'Negligence' does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. 'Negligence' is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Normally, the crucial question on which such a liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Though, this is the principle stated by this Court in a case relating to Motor Vehicles Act, in the case of *Municipal Corporation of Greater Bombay v. Shri Laxman Iyer & Anr.* [AIR 2003 SC 4182], it is stated that the principle stated therein would be

applicable to a large extent to the cases involving the principles of contributory negligence as well. This Court in the case of *Municipal Corporation of Delhi, Delhi v. Association of Victims of Uphaar Tragedy and others* (C.A. Nos. 7114-7115 of 2003 with C.A. No. 7116 of 2003 and C.A. No. 6748 of 2004, pronounced on 13th October, 2011) while considering awarding of compensation to the victims who died as a result of Uphaar tragedy and the liability of the persons responsible, held that even on the principle of contributory negligence the DVB to whom negligence was attributable in relation to installing a transformer was liable to pay damages along with licensee. Whenever an order is passed which remains unchallenged before the Court of competent jurisdiction, then its execution is the obvious consequence in law. For its execution, all concerned are expected to permit implementation of such orders and, in fact, are under a legal obligation to fully cooperate in enforcement of lawful orders. Article 19(1)(a) gives the freedom of speech and expression and the right to assembly. Article 21 mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. However, Article 51A imposes certain fundamental duties on the citizens of India. Article 38(1) provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice – social, economic and political – shall inform all the institutions of national life.

230. Article 51A requires the citizens of India to abide by the Constitution and to uphold the sovereignty and integrity of India. Article 51A(i) requires a citizen to safeguard public property and to abjure violence. An order passed under Section 144 Cr.P.C. is a restriction on enjoyment of fundamental rights. It has been held to be a reasonable restriction. Once an order is passed under Section 144 Cr.P.C. within the framework and in accordance with the requirements of the said Section, then it is a valid order which has to be respected by all concerned. Its enforcement is the natural consequence. In the present case,

the order was passed under Section 144 Cr.P.C. at about 11.30 p.m. whereafter the Police had come to Ramlila Maidan to serve the said order on the representatives of respondent No. 4. The video and the footage of CCTV cameras played before this Court show that the officers of the Police along with the limited force had come to inform Baba Ramdev and/or the representatives of respondent No. 4 about the passing of the said order, but they did not receive the requisite cooperation from that end. On the contrary, it is clear from the various documents before this Court that Baba Ramdev did not receive the order though obviously he had come to know about the said order. At the time of the incident, Baba Ramdev was sleeping in the rest room. Thereafter he came to the stage and when approached by the Police officers, who were also present on the stage, he jumped into the crowd, got onto the shoulders of one of his followers and delivered speeches. Of course, there does not appear to be use of any language which was, in any way, provocative or was a command to his followers to get involved in clash with the Police. On the contrary, in his speeches, he asked the people to chant the *Gayatri Mantra*, maintain *Shanti* and not to take any confrontation with the Police. He exhorted that he would not advise the path of *hinsa*, but at the same time, he also stated about failure of his talks with the Government and the attitude of the Government on the issues that he had raised and also stated that *'Babaji will go only if people wanted and the God desires it."*

231. After some time, Baba Ramdev climbed onto the stage and thereafter, disappeared. In the CCTV cameras, Baba Ramdev is not seen thereafter. He did not disclose to his followers that he was leaving and what path they should follow. This suspense and commotion on the stage added fuel to the fire. Thereafter, the scenes of violent protest and clash between the Police and the followers occurred at the site.

232. The legality and correctness of the order passed under Section 144 Cr.P.C. was not challenged by respondent

No. 4 and, in fact, it remains unchallenged till date. Of course, the attempt on the part of the authorities to enforce the order forthwith, practically frustrated the right available to respondent No. 4 under law i.e. preferring of an appeal or a revision under the provisions of Cr.P.C.

233. Be that as it may, the fact that when an order was passed by the authorities competent to pass such an order, it was expected of all concerned to respect the order lawfully passed and to ensure that the situation at the site was not converted into a tragedy. All were expected to cooperate in the larger interest of the public. The Police was concerned with the problem of law and order while respondent No. 4 and Baba Ramdev certainly should have been concerned about the welfare of their followers and the large gathering present at the Ramlila Maidan. Thus, to that extent, the Police and respondent No. 4 ought to have acted in tandem and ensured that no damage to the person or property should take place, which unfortunately did not happen. Keeping in view the stature and respect that Baba Ramdev enjoyed with his followers, he ought to have exercised the moral authority of his office in the welfare of the people present. There exists a clear constitutional duty, legal liability and moral responsibility to ensure due implementation of lawful orders and to maintain the basic rule of law. It would have served the greater public purpose and even the purpose of the protests for which the rally was being held, if Baba Ramdev had requested his followers to instantaneously leave Ramlila Maidan peacefully or had assured the Authorities that the morning *yoga* programme or protest programme would be cancelled and the people would be requested to leave for their respective places. Absence of performance of this duty and the gesture of Baba Ramdev led to an avoidable lacerating episode. Even if the Court takes the view that there was undue haste, adamancy and negligence on the part of the Police authorities, then also it cannot escape to mention that to this negligence, there is a contribution by respondent No. 4 as well. The role of Baba Ramdev at that

crucial juncture could have turned the tide and probably brought a peaceful end rather than the heart rending end of injuries and unfortunate deaths. Even if it is assumed that the action of the Police was wrong in law, it gave no right to others to commit any offence *Injuria non excusat injuriam*.

234. Every law abiding citizen should respect the law and must stand in conformity with the rule, be as high an individual may be. Violation of orders has been made punitive under the provisions of Section 188 IPC, but still in other allied proceedings, it would result in fastening the liability on all contributory partners, may be vicariously, but the liability certainly would extend to all the defaulting parties. For these reasons, I have to take a view that in the circumstances of the case, Baba Ramdev and the office bearers of respondent No. 4 have contributed to the negligence leading to the occurrence in question and are vicariously liable for such action**.**

FINDINGS AND DIRECTIONS :

(1) In discharge of its judicial functions, the courts do not strike down the law or quash the State action with the aim of obstructing democracy in the name of preserving democratic process, but as a contribution to the governmental system, to make it fair, judicious and transparent. The courts take care of interests which are not sufficiently defended elsewhere and/or of the victims of State action, in exercise of its power of judicial review.

In my considered view, in the facts of the present case, the State and the Police could have avoided this tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping at the Ramlila

grounds in the midnight of 4th/5th June, 2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the liberties and exercise of fundamental freedoms. The members of the assembly had legal protections available to them even under the provisions of the Cr.P.C. Thus, the restriction was unreasonable and unwarrantedly executed. The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in our Constitution. Except in cases of emergency or the situation unexceptionably demanding so, reasonable notice/time for execution of the order or compliance with the directions issued in the order itself or in furtherance thereto is the pre-requisite. It was primarily an error of performance of duty both by the police and respondent No.4 but the ultimate sufferer was the public at large.

(2) From the facts and circumstances that emerge from the record before this Court, it is evident that it was not a case of emergency. The police have failed to establish that a situation had arisen where there was imminent need to intervene, having regard to the sensitivity and perniciously perilous consequences that could have resulted, if such harsh measures had not been taken forthwith.

(3) The State has a duty to ensure fulfillment of the freedom enshrined in our Constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would

ensure such protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. While placing the two, the rule of justice and fair play requires that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder.

(4) It is neither correct nor judicially permissible to say that taking of police permission for holding of *dharnas*, processions and rallies of the present kind is irrelevant or not required in law. Thus, in my considered opinion, the requirement of associating police, which is an important organ of the State for ensuring implementation of the rule of law, while holding such large scale meetings, *dharnas* and protests, would not infringe the fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution. This would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to maintain the social order and public tranquility, should have a say in the organizational matters relating to holding of *dharnas*, processions, agitations and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle the constitutional right. Refusal and/or withdrawal of permission should be for valid and exceptional

reasons. The executive power, to cause a restriction on a constitutional right within the scope of Section 144 Cr.P.C., has to be used sparingly and very cautiously. The authority of the police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an exercise of power by the Police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

(5) I have held that the respondent no.4 is guilty of contributory negligence. The Trust and its representatives ought to have discharged their legal and moral duty and should have fully cooperated in the effective implementation of a lawful order passed by the competitive authority under Section 144 Cr.P.C. Due to the stature that Baba Ramdev enjoyed with his followers, it was expected of him to request the gathering to disperse peacefully and leave the Ramlila Maidan. He ought not have insisted on continuing with his activity at the place of occurrence. Respondent no.4 and all its representatives were bound by the constitutional and fundamental duty to safeguard public property and to abjure violence. Thus, there was legal and moral duty cast upon the members of the Trust to request and persuade people to leave the Ramlila Maidan which could have obviously avoided the confrontation between the police and the members of the gathering at the Ramlila Maidan.

(6) As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine existence of a right not coupled with a duty. The duty may be a direct or an indirect consequence of a fair

assertion of the right. Part III of the Constitution, although confers rights, duties, regulations and restrictions are inherent thereunder.

It can be stated with certainty that the freedom of speech is the bulwark of democratic Government. This freedom is essential for the appropriate functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty in the hierarchy of liberties granted under our constitutional mandate.

(7) It is undisputable that the provisions of Section 144 Cr.P.C. are attracted in emergent situations. Emergent power has to be exercised for the purposes of maintaining public order. The material facts, therefore, should demonstrate that the action is being taken for maintenance of public order, public tranquility and harmony.

(8) Even if an order under Section 144 Cr.P.C. had to be given effect to, still Respondent no.4 had a right to stay at the Ramlila Maidan with permissible number of people as the land owning authority-MCD had not revoked its permission and the same was valid till 20th June, 2011. The chain of events reveals that it was a case of police excesses and, to a limited extent, even abuse of power.

(9) From the material placed before the Court, I am unable to hold that the order passed by the competent authority and execution thereof are *mala fide* in law or in fact or is an abdication of power and functions by the Police. The action, of course, partially suffers from the vice of arbitrariness but every arbitrary action necessarily need not be *mala fide*. Similarly every incorrect decision in law or on facts of a given case may also not be *mala fide* but

every *mala fide* decision would be an incorrect and impermissible decision and would be vitiated in law. Upon taking into consideration the cumulative effect of the affidavits filed on record and other documentary evidence, I am unable to dispel the argument that the decision of the Ministry of Home Affairs, Union of India reflected its shadow on the decision making process and decision of the Police authorities.

(10) I also find that there would be no illegality if the police authorities had acted in consultation with the Union Ministry as it is the collective responsibility of various departments of the State to ensure maintenance of law and order and public safety in the State.

(11) Every person/body to whom such permission is granted, shall give an undertaking to the authorities concerned that he/it will cooperate in carrying out their duty and any lawful orders passed by any competent court/authority/forum at any stage of the commencement of an agitation/*dharna*/ procession and/or period during which the permission granted is enforced. This, of course, shall be subject to such orders as may be passed by the court of competent jurisdiction.

(12) Even on the touchstone of the principle of '*in terrorem*', I am of the view that the police have not acted with restraint or adhered to the principle of 'least invasion' with the constitutional and legal rights available to respondent no.4 and the members of the gathering at the Ramlila Maidan.

(13) The present case is a glaring example of trust deficit between the people governing and the people to be governed. Greater confidence needs

to be built between the authorities in power and the public at large. Thus, I hold and direct that while considering the 'threat perception' as a ground for revoking such permissions or passing an order under Section 144 Cr.P.C., 'care perception' has to be treated as an integral part thereof. 'Care perception' is an obligation of the State while performing its constitutional duty and maintaining social order.

(14) It is unavoidable for this Court to direct that the police authorities should take such actions properly and strictly in accordance with the Guidelines, Standing Orders and the Rules applicable thereto. It is not only desirable but also a mandatory requirement of the present day that the State and the police authorities should have a complete and effective dispersement plan in place, before evicting the gathering by use of force from a particular place, in furtherance to an order passed by an executive authority under Section 144 of the Cr.P.C.

(15) This is not a case where the Court can come to the conclusion that the entire police force has acted in violation to the Rules, Standing orders and have fallen stray in their uncontrolled zeal of forcibly evicting innocent public from the Ramlila Maidan. There has to be a clear distinction between the cases of responsibility of the force collectively and the responsibility of individual members of the forces. I find from the evidence on record that some of the police officers/personnel were very cooperative with the members of the assembly and helped them to vacate the Ramlila Maidan while others were violent, inflicted cane injuries, threw bricks and even used tear-gas shells, causing fire

on the stage and total commotion and confusion amongst the large gathering at the Ramlila Maidan. Therefore, these two classes of Police Force have to be treated differently.

(16) Thus, while directing the State Government and the Commissioner of Police to register and investigate cases of criminal acts and offences, destruction of private and public property against the police officers/personnel along with those members of the assembly, who threw bricks at the police force causing injuries to the members of the force as well as damage to the property, I issue the following directions:

a. Take disciplinary action against all the erring police officers/personnel who have indulged in brick-batting, have resorted to *lathi* charge and excessive use of tear gas shells upon the crowd, have exceeded their authority or have acted in a manner not permissible under the prescribed procedures, rules or the standing orders and their actions have an element of criminality. This action shall be taken against the officer/personnel irrespective of what ranks they hold in the hierarchy of police.

b. The police personnel who were present in the *pandal* and still did not help the evacuation of the large gathering and in transportation of sick and injured people to the hospitals have, in my opinion, also rendered themselves liable for appropriate disciplinary action.

c. The police shall also register criminal cases against the police personnel and members of the gathering at the Ramlila ground

(whether they were followers of Baba Ramdev or otherwise) who indulged in damage to the property, brick-batting etc. All these cases have already been reported to the Police Station Kamla Market. The police shall complete the investigation and file a report under section 173 of the Cr.P.C. within three months from today.

(17) I also direct that the persons who died or were injured in this unfortunate incident should be awarded ad hoc compensation. Smt. Rajbala, who got spinal injury in the incident and subsequently died, would be entitled to the ad-hoc compensation of Rs.5 lacs while persons who suffered grievous injuries and were admitted to the hospital would be entitled to compensation of Rs.50,000/- each and persons who suffered simple injuries and were taken to the hospital but discharged after a short while would be entitled to a compensation of Rs.25,000/- each.

For breach of the legal and moral duty and for its contributory negligence, the consequences of financial liability would also pass, though to a limited extent, upon the respondent no.4-Trust as well. Thus, I direct that in cases of death and grievous hurt, 25% of the awarded compensation shall be paid by the Trust. The said amount shall be paid to the Commissioner of Police, who in turn, shall issue a cheque for the entire amount in favour of the injured or the person claiming for the deceased.

235. The compensation awarded by this Court shall be treated as ad-hoc compensation and in the event, the deceased or the injured persons or the persons claiming through them institute any legal proceedings for that purpose,

the compensation awarded in this judgment shall be adjusted in those proceedings.

236. The view expressed by me in this judgment is *prima facie* and is without prejudice to the rights and contentions of the parties that may be available to them in accordance with law.

237. The *suo moto* Petition is disposed of with above directions while leaving the parties to bear their own costs.

238. This Court would be failing in its duty if appreciation is not placed on record for the proficient contribution made and adroit assistance rendered by Dr. Rajeev Dhavan, learned *amicus curiae,* Mr. R.F. Nariman, learned Solicitor General of India, Mr. P.P. Malhotra, learned Additional Solicitor General, Mr. Harish N. Salve, Mr. P.H. Parekh, Mr. Ram Jethmalani, learned senior advocates, other learned counsel assisting them and all other counsel appearing in their own right.

DR. B.S. CHAUHAN, J. 1. Having had the advantage of going through the lucid and elaborately discussed judgment of my esteemed brother Justice Swatanter Kumar, I feel encouraged to contribute to this pronouncement in my own humble way on the precious issues of liberty and freedom, guaranteed to our citizens as fundamental rights under the Constitution and the possible lawful restrictions that can be imposed for curtailing such rights. The legality of the order passed under Section 144 Cr.P.C. by the Assistant Commissioner of Police, Kamla Market, Central District, Delhi is also subject to legal scrutiny by me in these proceedings to find out as to whether the said order is in conformity with the provisions of Section 144 Cr.P.C. read with Section 134 thereof and the Delhi Police Standing Order 309.

2. I respectfully agree with all the observations and the findings recorded by my colleague and I also concur with the observation that the findings recorded on the sufficiency of

reasons in the order dated 4.6.2011 are tentative which could have been challenged if they so desired before the appropriate forum in proper proceedings. Nonetheless, the reservations that I have about State Police action vis-a-vis the incident in question and my opinion on the curtailment of the right of privacy of sleeping individuals has to be expressed as it directly involves the tampering of inviolate rights, that are protected under the Constitution. Proceedings under Section 144, even if resorted to on sufficient grounds, the order could not be implemented in such unruly manner. Such a power is invoked to prevent the breach of peace and not to breach the peace itself.

3. Baba Ram Dev alongwith his large number of followers and supporters performed a Shanti Paath at about 10 p.m. on 4th June, 2011, whereafter, all those who had assembled and stayed back, went to sleep under tents and canopies to again get up in the morning the next day at about 4 p.m. to attend the schedule of Ashtang Yoga training to be conducted by Baba Ramdev.

4. Just after midnight, at about 12.30 a.m. on the 5th of June, 2011, a huge contingent of about more than a thousand policemen surrounded the encampments while everybody was fast asleep inside. There was a sizeable crowd of about 20,000 persons who were sleeping. They were forcibly woken up by the Police, assaulted physically and were virtually thrown out of their tents. This was done in the purported exercise of the police powers conferred under Section 144 Cr. P.C. on the strength of a prohibitory order dated 4.6.2011 passed by the Assistant Commissioner of Police as mentioned hereinabove.

5. The manner in which the said order came to be implemented, raised a deep concern about the tyrannical approach of the administration and this Court took cognizance of the incident calling upon the Delhi Police Administration to answer this cause. The incident had ushered a huge uproar and an enormous tirade of criticism was flooded, bringing to our

notice the said unwarranted police action, that too, even without following the procedure prescribed in law.

6. The question is as to whether such an order stands protected under the restriction clause of Article 19 of the Constitution of India or does it violate the rights of a peaceful sleeping crowd, invading and intruding their privacy during sleep hours. The incident also raises serious questions about the credibility of the police act, the procedure followed for implementation of a prohibitory order and the justification thereof in the given circumstances.

7. The right to peacefully and lawfully assemble together and to freely express oneself coupled with the right to know about such expression is guaranteed under Article 19 of the Constitution of India. Such a right is inherent and is also coupled with the right to freedom and liberty which have been conferred under Article 21 of the Constitution of India.

8. The background in which the said assembly has gathered has already been explained in the judgment delivered by my learned brother and, therefore, it is not necessary to enter into any further details thereof.

The fact remains that implementation of promulgated prohibitory orders was taken when the crowd was asleep. The said assembly per-se, at that moment, did not prima facie reflect any apprehension of eminent threat or danger to public peace and tranquillity nor any active demonstration was being performed at that dead hour of night. The Police, however, promulgated the order on the basis of an alleged information received that peace and tranquillity of that area would be disturbed and people might indulge in unlawful activities. The prohibitory order also recites that conditions exist that unrestricted holding of a public meeting in the area is likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity and in order to ensure speedy

action for preventing any such danger to human life and safety, the order was being promulgated.

9. The order further recites that since the notice for the promulgation cannot be served individually as such it shall be published for information through the Press and by affixing the copies on the Notice Board of the Office of the Police Officials, Administration and Police Stations, including the Municipal Corporation Offices.

10. No doubt, the law of social control is preserved in the hands of the State, but at the same time, protection against unwarranted governmental invasion and intrusive action is also protected under the laws of the country. Liberty is definitely no licence and the right of such freedom is not absolute but can be regulated by appropriate laws. The freedom from official interference is, therefore, regulated by law but law cannot be enforced for crippling the freedom merely under the garb of such regulation. The police or the Administration without any lawful cause cannot make a calculated interference in the enjoyment of the fundamental rights guaranteed to the citizens of this country. As to what was material to precipitate such a prohibitory action is one aspect of the matter, but what is more important is the implementation of such an order. This is what troubles me in the background that a prohibitory order was sought to be enforced on a sleeping crowd and not a violent one. My concern is about the enforcement of the order without any announcement as prescribed for being published or by its affixation in terms of the Delhi Police Standing Order 309 read with Section 134 Cr.P.C.

11. It is believed that a person who is sleeping, is half dead. His mental faculties are in an inactive state. Sleep is an unconscious state or condition regularly and naturally assumed by man and other living beings during which the activity of the nervous system is almost or entirely suspended. It is the state of slumber and repose. It is a necessity and not a luxury. It is essential for optimal health and happiness as it directly affects

the quality of the life of an individual when awake inducing his mental sharpness, emotional balance, creativity and vitality. Sleep is, therefore, a biological and essential ingredient of the basic necessities of life. If this sleep is disturbed, the mind gets disoriented and it disrupts the health cycle. If this disruption is brought about in odd hours preventing an individual from getting normal sleep, it also causes energy disbalance, indigestion and also affects cardiovascular health. These symptoms, therefore, make sleep so essential that its deprivation would result in mental and physical torture both. It has a wide range of negative effects. ?It also impairs the normal functioning and performance of an individual which is compulsory in day-to-day life of a human being. Sleep, therefore, is a self rejuvenating element of our life cycle and is, therefore, part and partial of human life. The disruption of sleep is to deprive a person of a basic priority, resulting in adverse metabolic effects. It is a medicine for weariness which if impeded would lead to disastrous results.

12. Deprivation of sleep has tumultuous adverse effects. It causes a stir and disturbs the quiet and peace of an individual's physical state. A natural process which is inherent in a human being if disturbed obviously affects basic life. It is for this reason that if a person is deprived of sleep, the effect thereof, is treated to be torturous. To take away the right of natural rest is also therefore violation of a human right. It becomes a violation of a fundamental right when it is disturbed intentionally, unlawfully and for no justification. To arouse a person suddenly, brings about a feeling of shock and benumbness. The pressure of a sudden awakening results in almost a void of sensation. Such an action, therefore, does affect the basic life of an individual. The state of sleeping is assumed by an individual when he is in a safe atmosphere. It is for this reason that this natural system has been inbuilt by our creator to provide relaxation to a human being. The muscles are relaxed and this cycle has a normal recurrence every night and lasts for several hours. This necessity is so essential that even all our transport systems provide for facilities of sleep

while travelling. Sleep is therefore, both, life and inherent liberty which cannot be taken away by any unscrupulous action. An Irish Proverb goes on to say that the beginning of health is sleep. The state of sleep has been described by Homer in the famous epic Iliad as "sleep is the twin of death". A person, therefore, cannot be presumed to be engaged in a criminal activity or an activity to disturb peace of mind when asleep. ?Aristotle, the great Greek philosopher has said that all men are alike when asleep. To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person.

13. I am bewildered to find out as to how such declaration of the intention to impose the prohibition was affected on a sleeping crowd. There may be a reason available to impose prohibitory orders calling upon an assembly to disperse, but to me, there does not appear to be any plausible reason for the police to resort to blows on a sleeping crowd and to throw them out of their encampments abruptly. The affidavits and explanation given do not disclose as to why the police could not wait till morning and provide a reasonable time to this crowd to disperse peacefully. The undue haste caused a huge disarray and resulted in a catastrophe that was witnessed on Media and Television throughout the country. I fail to find any explanation for the gravity or the urgent situation requiring such an emergent action at this dark hour of midnight. I, therefore, in the absence of any such justification have no option but to deprecate such action and it also casts a serious doubt about the existence of the sufficiency of reasons for such action. The incident in this litigation is an example of a weird expression of the desire of a tyrannical mind to threaten peaceful life suddenly for no justification. This coupled with what is understood of sleep hereinbefore, makes it clear that the precipitate action was nothing but a clear violation of human rights and a definite violation of procedure for achieving the end of dispersing a crowd.

14. Article 355 of the Constitution provides that the Government of every State would act in accordance with the provisions of the Constitution. The primary task of the State is to provide security to all citizens without violating human dignity. ?Powers conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalist is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution. (Vide: *GVK Industries Ltd. &. Anr. v. Income Tax Officer &. Anr.,* (2011) 4 SCC 36; and *Nandini Sundar & Ors. v. State of Chhatisgarh,* AIR 2011 SC 2839).

15. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. v. Union of India,* AIR 1971 SC 530, this Court held that even in civil commotion or even in war or peace, the State cannot act catastrophically outside the ordinary law and there is legal remedy for its wrongful acts against its own subjects or even a friendly alien within the State.

16. In *M/S Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. &. Ors.,* AIR 1979 SC 621, this Court held that rule of law means, no one, however, high or low is above the law. Everyone is subject to the law fully and completely as any other and the Government is no exception. Therefore, the State authorities are under a legal obligation to act in a manner that is fair and just. It has to act honestly and in good faith. The purpose of the Government is always to serve the country and ensure the public good. (See also: *D.K. Basu v. State of West Bengal,* AIR 1997 SC 610).

17. Privacy and dignity of human life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech. Therefore, every act which offends or impairs human dignity tantamounts to deprivation pro tanto of his right to live and the State action must be in accordance with reasonable, fair and just procedure established by law which

stands the test of other fundamental rights. (Vide: *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi &. Ors.,* AIR 1981 SC 746).

18. The Constitution does not merely speaks for human right protection. It is evident from the catena of judgments of this Court that it also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand.

19. In *Kharak Singh v. State of U.P. & Ors.,* AIR 1963 SC 1295; and *Govind v. State of Madhya Pradesh & Anr.,* AIR 1975 SC 1378, this Court held that right to privacy is a part of life under Article 21 of the Constitution which has specifically been re-iterated in *People's Union for Civil Liberties v. Union of India &. Anr.,* AIR 1997 SC 568, wherein this Court held:

> "We do not entertain any doubt that the word 'life' in Article 21 bears the same signification. Is then the word 'personal liberty' to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to 'assure the dignity of the individual' and therefore of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as 'personal liberty' having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square

> with any preconceived notions or doctrinaire constitutional theories". (Emphasis added).

20. The citizens/persons have a right to leisure; to sleep; not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen. (See: *Wolf v. Colorado,* (1948) 338 US 25).

21. Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India by this Court. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right. (Vide: *Malak Singh etc. v. State of Punjab & Haryana & Ors.,* AIR 1981 SC 760; *State of Maharashtra & Anr. v. Madhukar Narayan Mardikar,* AIR 1991 SC 207; *R. Rajagopal @ R.R. Gopal & Anr. v. State of Tamil Nadu & Ors.,* AIR 1995 SC 264; *PUCL v. Union of India & Anr., AIR 1997 SC 568; Mr. 'X' v. Hospital 'Z',* (1998) 8 SCC 296; *Sharda v. Dharmpal,* (2003) 4 SCC 493 ; *People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr.,* AIR 2003 SC 2363 ; *District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Ors.,* (2005) 1 SCC 496 ; *Bhavesh Jayanti Lakhani v. State of Maharashtra & Ors.,* (2009) 9 SCC 551; and *Smt. Selvi & Ors. v. State of Karnataka,* AIR 2010 SC 1974).

22. In *Ram Jethmalani & Ors. v. Union of India & Ors.,* (2011) 8 SCC 1, this Court dealt with the right of privacy elaborately and held as under:

> **"**Right to privacy is an integral part of right to life. This is

a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner……. The solution for the problem of abrogation of one zone of constitutional values cannot be the creation of another zone of abrogation of constitutional values….. The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others".

23. The courts have always imposed the penalty on disturbing peace of others by using the amplifiers or beating the drums even in religious ceremonies. (Vide: *Rabin Mukherjee &. Ors. v. State of West Bengal &. Ors.,* AIR 1985 Cal. 222; *Burrabazar Fireworks Dealers Association v. Commissioner of Police, Calcutta,* AIR 1998 Cal 121; *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Assn. &. Ors.,* AIR 2000 SC 2773; and *Forum, Prevention of Environment and Sound Pollution v. Union of India &. Ors.,* AIR 2006 SC 348). In the later judgment, this court issued several directions including banning of using the fireworks or fire crackers except between 6.00 a.m. and 10.00 p.m. There shall no use of fire crackers in silence zone i.e. within the area less than 100 meters around hospitals, educational institutions, courts, religious places.

24. It is in view of this fact that, in many countries there are complete night curfews (at the airport i.e. banning of landing and taking off between the night hours), for the reason that the concept of sound sleep has been associated with sound health which is inseparable facet of Article 21 of the Constitution.

25. It may also be pertinent to mention here that various statutory provisions prohibit arrest of a judgment debtor in the

night, a woman wanted in a criminal case after sunset and before sunrise and restrain to enter in the night into a constructed area suspected to have been raised in violation of the sanctioned plan, master plan or Zonal Plan for the purpose of survey or demolition.

(See: S.55 of Code of Civil Procedure; S.46(4) Cr.P.C.; and Sections 25 and 42 of the U.P. Urban Planning and Development Act, 1973).

26. While determining such matters the crucial issue in fact is not whether such rights exist, but whether the State has a compelling interest in the regulation of a subject which is within the police power of the State. Undoubtedly, reasonable regulation of time, place and manner of the act of sleeping would not violate any constitutional guarantee, for the reason that a person may not claim that sleeping is his fundamental right, and therefore, he has a right to sleep in the premises of the Supreme Court itself or within the precincts of the Parliament.

27. More so, I am definitely not dealing herein with the rights of homeless persons who may claim right to sleep on footpath or public premises but restrict the case only to the extent as under what circumstances a sleeping person may be disturbed and I am of the view that the State authorities cannot deprive a person of that right anywhere and at all times.

28. While dealing with the violation of Human Rights by Police Officials, this Court in *Prithipal Singh & Ors. v. State of Punjab & Anr.* (2012) 1 SCC 10, held as under:

"The right to life has rightly been characterized as "supreme" and 'basic'; it includes both so-called negative and positive obligations for the State". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect

the right to life of every person within its territorial jurisdiction."

29. Thus, it is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc.

30. Section 144 Cr.P.C. deals with immediate prevention and speedy remedy. Therefore, before invoking such a provision, the statutory authority must be satisfied regarding the existence of the circumstances showing the necessity of an immediate action. The *sine qua non* for an order under Section 144 Cr.P.C. is urgency requiring an immediate and speedy intervention by passing of an order. The ?order must set out the material facts of the situation. Such a provision can be used only in grave circumstances for maintenance of public peace. The efficacy of the provision is to prevent some harmful occurrence immediately. Therefore, the emergency must be sudden and the consequences sufficiently grave.

31. The disobedience of the propitiatory order becomes punishable under Section 188 I.P.C. only "if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed" or "if such disobedience causes or tends to cause damage to human life, health or safety or causes or tends to cause riot or affray". Disobedience of an order by public servant lawfully empowered will not be an offence unless such disobedience leads to enumerated consequences stated under the provision of Section 188 IPC. More so, a violation of the propitiatory order cannot be taken cognizance of by the Magistrate who passed it. He has to prefer a complaint about it as provided under Section 195 (l)(a) IPC. A complaint is not maintainable in the absence of allegation of danger to life, health or safety or of riot or affray.

32. Section 144 Cr.P.C. itself provides the mode of service of the order in the manner provided by Section 134 Cr.P.C:

Section 134 Cr.P.C. reads as under:

"Service or notification of order. -

(1) The order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner, as the State Government may, by rules, direct, and a copy thereof shall be stuck up at such place or places as may be fittest for ?conveying the information to such persons.

33. Delhi Police Standing Order 309 - Regulation of Processions and Rules prescribe the mode of service of the order passed under Section 144 Cr.P.C., *inter-alia*:

xx xx xx

(5) Arrangement at the place of demonstration should include the following:

a) Display of banner indicating promulgation of Section 144 Cr.P.C.

b) At least 2 videographers be available on either side of the demonstration to capture both demonstrators as well as police response/action.

c) Location of Ambulance/PCR vans for shifting injured persons.

d) Loud hailers should be available.

(6) Repeated use of PA system a responsible officer-appealing/advising the leaders and demonstrators to remain peaceful and come forward for memorandum/ deputation etc. or court arrest peacefully. Announcements

should be videographed.

(7) If they do not follow appeal and turn violent declare the assembly unlawful on PA system & videograph.

(8) Warning on PA system prior to use of any kind of force must be ensured and also videographed.

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(13) Special attention be paid while dealing with women's demonstrations - only women police to tackle them.

34. The order dated 4.6.2011 passed under Section 144 Cr.P.C. reads as under:

"(i) whereas information has been received that some people/groups of people indulge in unlawful activities to disturb the peace and tranquillity in the area of Sub Div. Kamla Market, Delhi.

(ii) And whereas reports have been received indicating that such conditions now exist that unrestricted holding of public meeting, processions/demonstration etc. in the area is likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity.

(iii) And whereas it is necessary to take speedy measures in this regard to prevent danger to human life, safety and disturbance of public tranquillity.

(iv) Now, therefore, in exercise of the powers conferred upon me by virtue of Section 144 Criminal Procedure Code 1973 read with Govt. of India, Ministry of Home Affairs and New Delhi's Notification No. U.11036/1/2010, (i) UTI, dated 09.09.2010. I Manohar Singh, Assistant Commissioner of Police, Sub-Division Kamla Market, Central District, Delhi do hereby make this written order prohibiting.

xx xx xx

(vi) Any person contravening this order shall be liable to be punished in accordance with the provisions of section 188 of the Indian Penal Code; and

(vii) As the notice cannot be served individually on all concerned, the order is hereby passed ex-parte. It shall be published for the information of the public through the press and by affixing copies on the notice boards of the office of all DCPs, Addl. DCPs, ACPs, Tehsil officers, all police stations concerned and the offices of the NDMC and MCD.

(viii) Religious functions/public meeting etc. can be held with prior permission, in writing, of Deputy Commissioner of Police, Central District, Delhi and this order shall not apply to processions which have the requisite permission of the Police."

35. It is evident from the order passed under Section 144 Cr.P.C. itself that the people at large, sleeping in tents, had not been informed about such promulgation and were not asked to leave the place. There had been a dispute regarding the service of the orders on the organizers only. Therefore, there was utter confusion and the gathering could not even understand what the ?real dispute was and had reason to believe that police was trying to evict Baba Ramdev forcibly. At no point of time, the assembly was declared to be unlawful. In such a fact-situation, the police administration is to be blamed for not implementing the order, by strict adherence to the procedural requirements. People at large have a legitimate expectation that Executive Authority would ensure strict compliance to the procedural requirements and would certainly not act in derogation of applicable regulations. Thus, the present is a clear cut case of Human Rights violation.

36. There was no gossip or discussion of something untrue that was going on. To the contrary, it was admittedly an

assembly of followers, under a peaceful banner of Yogic training, fast asleep. The assembly was at least, purportedly, a conglomeration of individuals gathered together, expressive of a determination to improve the material condition of the human race. The aim of the assembly was prima facie unobjectionable and was not to inflame passions. It was to ward off something harmful. What was suspicious or conspiratory about the assembly, may require an investigation by the appropriate forum, but to my mind the implementation appears to have been done in an unlawful and derogatory manner that did violate the basic human rights of the crowd to have a sound sleep which is also a constitutional freedom, acknowledged under Article 21 of the Constitution of India.

37. Such an assembly is necessarily illegal cannot be presumed, and even if it was, the individuals were all asleep who were taken by surprise altogether for a simultaneous implementation and action under Section 144 Cr.P.C. without being preceded by an announcement or even otherwise, giving no time in a reasonable way to the assembly to disperse from the Ramlila Ground. To the contrary, the sleep of this huge crowd was immodestly and brutally outraged and it was dispersed by force making them flee hither and thither, which by such precipitate action, caused a mayhem that was reflected in the media.

38. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of

war and those involved in espionage are subjected to treatments depriving them of normal sleep.

39. Can such an attempt be permitted or justified in the given circumstances of the present case? Judicially and on the strength of impartial logic, the answer has to be in the negative as a sleeping crowd cannot be included within the bracket of an unlawful category unless there is sufficient material to brand it as such. The facts as uncovered and the procedural mandate having been blatantly violated, is malice in law and also the part played by the police and administration shows the outrageous behaviour which cannot be justified by law in any civilized society. For the reasons aforesaid, I concur with the directions issued by my learned colleague with a forewarning to the respondents to prevent any repetition of such hasty and unwarranted act affecting the safe living conditions of the citizens/persons in this country.

B.B.B. Suo Motu Writ Petition disposed of.

RASHMI AJAY KR. KESHARWANI & ANR.
v.
AJAY KR. KESHARWANI AND ORS.
(Criminal Appeal No. 518 of 2012)

MARCH 12, 2012

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Constitution of India, 1950 - Article 226 - Writ of Habeas Corpus - Maintainability - Matrimonial dispute between wife and husband - Both of them living separately - The son born out of the wedlock living with the mother - In one petition filed by the husband before the High Court address of the wife shown to be of Maharashtra - Husband also filing writ of Habeas Corpus, for producing the child before the Court wherein address of the wife was shown to be of Uttar Pradesh - High Court issued non-bailable warrant against the wife - On appeal, held: No case was made out to entertain a writ of Habeaus Corpus - The case was filed by the husband with wrong address to mislead the High Court - The allegation by the husband that the son has been illegally detained by his mother is wrong as the son has been residing with his mother since his birth - A writ of Habeas Corpus is not to be issued in the matter of course, specially when the writ is sought against a parent for the custody of a child - Writs.

Capt. Dushyant Somal vs. Smt. Sushma Somal and Ors. **(1981) 2 SCC 277 - relied on.**

Case Law Reference:

(1981) 2 SCC 277	**Relied on**	**Para 16**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 518 of 2012.

From the Judgment and Order dated 09.11.2011 of the High Court of Judicature at Allahabad in Habeas Corpus Writ Petition No. 36326 of 2011.

Shomila Bakshi for the Appellant.

R.K. Gupta, Suraj Singh, Pradeep Misra for the Respondent.

The Order of the Court was delivered

O R D E R

1. Leave granted.

2. Ist appellant-Rashmi is the wife and 2nd appellant- Aryan is the son of the Ist respondent-Ajay Kumar. The Ist appellant and the Ist respondent were married on 20th April, 2001 as per Hindu rites and out of their wedlock the 2nd appellant-Aryan was born on 4th November, 2003.

In the present case the appellants have challenged the order dated 9th November, 2011 passed by the Allahabad High Court in the Habeas Corpus Writ Petition No.36326 of 2011, whereby the High Court issued a non-bailable warrant against the Ist appellant to ensure her presence and the production of the 2nd appellant.

3. According to the Ist appellant, since her marriage, she was constantly subjected to mental and physical torture by the Ist respondent and her in-laws for bringing insufficient dowry. After one and a half years since the birth of their son, both the appellants (wife and the son) were driven out of the matrimonial house by the Ist respondent and her in-laws. The welfare and plight of the minor son was not thought of by them. Faced with such a situation, the Ist appellant-Rashmi along with her son took shelter at her parent's home at Biwandi, District Thane, Maharashtra.

4. The Ist respondent-Ajay Kumar filed a petition under Section 13(1)(a) of the Hindu Marriage Act, 1955 on 18th April, 2006 being Marriage Petition No. 253/2006 before the Principal Judge, Family Court, Allahabad for dissolution of marriage. In the said case by an ex parte order dated 6th February, 2007 the Family Court, Allahabad granted a decree of judicial separation between the parties.

5. The Ist respondent-husband being dissatisfied with the abovesaid order of Family Court, Allahabad has preferred a First Appeal being No.292/2007 before the Allahabad High Court to ensure the dissolution of marriage, which is pending.

6. The Ist appellant filed a Special Civil Suit being No.591 of 2007 under Hindu Marriage Act on 4th September, 2007 in the Court at Bhiwandi for return of Stridhan and for maintenance. In the petition under Section 24 of the Hindu Marriage Act, the Civil Court allowed a maintenance of Rs.5,000/- each in favour of the Ist appellant-wife and the son(2nd respondent). Subsequently, having noticed that the maintenance amount has been paid in favour of the appellants, the Court at Bhiwandi by order dated 18th April, 2011directed the Ist respondent-husband to pay arrears of Rs.4,90,000/- towards maintenance. According to the Ist appellant-wife, the Ist respondent-husband has not yet paid any amount towards maintenance and is in default of the Court's order.

7. A Miscellaneous Application No.743/2010 has been filed by the Ist appellant-wife in the Court of the Judicial Magistrate First Class, Bhiwandi under Section 13(1) of the Protection of Women from Domestic Violence Act, 2005. A criminal complaint under Section 498A of Indian Penal Code has also been lodged by her against the Ist respondent-husband and others. The Court of the Judicial Magistrate First Class, Bhiwandi in Criminal Case No.1013/2010 has noticed that the Ist respondent has already appeared before the Court at Bhiwandi.

8. On 27th April, 2011 the Ist respondent along with two others (the father and mother of the husband) preferred an application under Section 482 of Criminal Procedure Code in the Bombay High Court in Criminal Application No.397/2011 to set aside the order dated 20th November, 2010 passed in Regular Criminal Case No.1013/2010 by the 4th Judicial Magistrate First Class, Bhiwandi. In the said case, the Ist respondent-husband has shown the address of Ist appellant-wife as follows:

> "Smt. Rashmi Ajaykumar Kesarwani
> Age:34 years, Occ-Teacher
> Residing at M.H.No.31, Vishnu Compound,
> Above Monika W Sizining AasBibi,
> Kalyan Road, Bhiwandi,
> Dist. - Thane."

Though on 27th April, 2011 the Ist respondent along with his parents filed a petition under Section 482 of Criminal Procedure Code before the Bombay High Court in Criminal Application No.397/2011 showing the Maharashtra address, after about one and half months he filed the writ of habeas corpus under Section 226 of the Constitution of India showing the Ist appellant-wife as residing at Allahabad with the following address:

> "Smt. Rashmi Ajay Kumar Kesherwani Wife of Ajay Kumar Kesherwani daughter of Sri Purshottam Kesherwani Resident of House No.849, Mutthiganj, Kanya Chowraha Road, Police Station Mutthiganj, District Allahabad."

9. On 7th July, 2011, the learned Single Judge of the Allahabad High Court while issuing a notice to the first appellant-wife (respondent No.4 in the Habeas Corpus Writ Petition) making it returnable within four weeks, called upon her to produce Aryan(petitioner No.1) on 10th August, 2011. The Ist appellant having come to know of the case engaged a lawyer, who failed to appear. On 9th November, 2011, the learned Single Judge issued a non-bailable warrant against the Ist

appellant-wife (respondent No.4) through C.J.M., Allahabad ensuring her presence before the Court. The said order is under challenge in the present appeal.

10. On 29th November, 2011 this Court issued a notice to the Ist respondent and stayed the operation of the impugned non-bailable warrant. Notice was duly served on the Ist respondent but he refused to accept the dasti notice. Notice on other respondents Nos.2 to 4 was also served.

11. The learned counsel for the appellants submitted that no case was made out to entertain a writ of habeas corpus. The High Court ought not to have issued any notice to the wife rather it should have dismissed the writ in limine. Reference was made to the addresses shown by the Ist respondent in the different writ petition and applications and also to the pleading made by the Ist respondent (second writ petitioner) in the writ of habeas corpus.

12. We have heard the learned counsel for the appellants and perused the documents filed along with the appeal.

13. A combined reading of the habeas corpus writ petition filed by the Ist respondent before the Allahabad High Court simultaneously with the criminal application filed by him, before the Bombay High Court will show that no case is made out for issuance of a writ of habeas corpus and that the said case was filed with a wrong address to mislead the Allahabad High Court. The relevant portion of the Habeas Corpus Writ Petition No.36326 of 2011 reads as follows:

> "6. That after the aforesaid marriage respondent No.4 lived with petitioner No.2 in her matrimonial home for about a week and thereafter she went to her parents at Mumbai (Thane) and subsequently she came back to Allahabad at petitioner NO.2's house and her behaviour became worse with petitioner No.2 and his family members and thereafter on 02.0.2004 she left her matrimonial home along with

> Master Aryan petitioner No.1 and went away to her parents home and since then she did not return back.
>
> 7. That the petitioner No.2 repeatedly visited and tried to persuade respondent No.4 to return back to her matrimonial home but she refused to return back and thereafter petitioner No.2 filed a divorce petition vide No.253 of 2006 Ajay Kumar Kesherwani Vs. Smt. Rashmi Kesherwani U/s 13(1)(A) B of Hindu Marriage Act on 18/04/2006 before the Court of Judge Family Court, Allahabad.
>
> 8. That the above noted divorce petition was decreed vide order dated 6.02.2007 and a decree for judicial separation was ordered by the Court of Principal Judge Family Court, Allahabad which was never challenged by respondent No.3.
>
> 9. That the petitioner No.2 used to regularly visit to meet his son petitioner No.1 and fulfilled his needs and tried his best to take care of his as he has all love and affection for him.
>
> 10. That the respondent No.4 is a lady of modern life style and does not take care of her son master Aryan (Petitioner No.1) and she leaves him all alone at home as she leaves home early morning and returns back home late night due to which petitioner No.1 is under deep mental agony and pressure.
>
> 11. That the respondent No.4 has got master Aryan (Petitioner No.1) admitted in a very low standard school and his education is being hampered as a result of which his future will be darkened.
>
> 12. That the respondent No.4 is unable to provide proper resources to petitioner No.1 for his proper physical, mental and educational development which will darken the future of petitioner No.1.

13. That it is further very important to mention here tht on 20/04/2011 master Aryan (Petitioner No.1) made a Telephone call to Petitioner No.2 and informed that a person regularly visits the home of respondent No.4 and spends time with respondent No.4 and he has heard them talking about their marriage which they are going to perform soon, due to which he is under great mental tension and therefore he wants to live with petitioner No.2 and he is being illegally detained.

14. That the petitioner No.1 has also informed petitioner No.2 that his mother (Respondent No.4) does not look after him as she never cares about him, she never takes interest in his studies and his needs and the behaviour of respondent No.4 is become cruel to him day by day.

15. That upon receiving the aforesaid Telephonic call PetitionerNo.2 visited the house of Respondent No.4 but Respondent No.4 did not allow Petitioner No.2 to meet Petitioner No.1.

16. That the petitioner No.2 again visited respondent No.4 to meet his son Aryan (Petitioner No.1) in the month of May, 2011 but respondent No.4 did not allow petitioner No.2 to meet petitioner No.1 upon which petitioner No.2 requested respondent No.4 either to send petitioner No.1 with him or allow him to meet petitioner No.1 then respondent No.4 became angry and called her associates who misbehaved with the petitioner No.2 and threatened him with dire consequences."

14. Other relevant statements made in the criminal application filed by the Ist respondent before the Bombay High Court reads as follows:

"2. The Applicants state that the marriage of the Applicant no.1 was solemnized on 20.04.2011 with the Opponent no.1 at Allahabad as per the Hindu rites and customs. The

Applicant no.1 states that out of the said wedlock there is a son named Aryan aged 7 years. The Applicants state that the said marriage was an arranged marriage. The Applicants state that the Opponent no.1 wife resided at the matrimonial house from the date of the marriage, however in a strange full and lonely manner with the Applicant no.1 in absence of the marital obligations and responsibilities. The Applications state that the Opponent no.1 failed to perform her marital relations prudently. The Opponent no.1 on her own left the matrimonial house at Allahabad on 02.02.2004 along with the son Aryan and proceeded to stay with her parents at Bhiwandi, Dist-Thane.

3. The Applicants state that since then i.e. 02.02.2004 there was no physical relation between the Applicant no.1 and Opponent no.1 resulting the same in cruelty towards the present Applicant no.1. The Applicants state that along with the cruelty to Applicant no.1 the behaviour of the Opponent no.1 was coupled with absolute disregard and disrespect to the other family members of the Applicant no.1. The Opponent no.1 used to daily dig out quarrels with the family members of Applicant no.1 and always gave an insulting treatment to them.

4. It would be appropriate to mention that prior to leaving the matrimonial house on her own on 02.02.2004, the Opponent no.1 disclosed to the present Applicant no.1 that the said marriage of herself was forcefully performed against her wishes. The Applicant no.1 went under tremendous shock and depression on the Opponent no.1 leaving the house on such grounds after about 3 years of the marriage. However, on frequent visits by the Applicant no.1 to the parental home of Opponent no.1 at Bhiwandi with a view to bring back the Opponent wife to the matrimonial house at Allahabad, the Opponent no.1 on every occasion flatly denied to resume back along with the Applicant no.1 at Allahabad."

Though the son is residing with his mother since his birth, in the petition for habeas corpus, the son has been shown as the Ist petitioner along with the Ist respondent (husband), while the Ist appellant-wife has been shown as the respondent No.4 with Allahabad address, as quoted hereunder:

"1. Aryan(Minor) through his father Ajay Kumar Kesherwani resident of House No.249 Chak Zero Road, Police Station Kotwali, District Allahabad. Presently Resident of House No.849, Mutthiganj, Arya Kanya Chowraha Road, Police Station Mutthiganj, District Allahabad.

2. Ajay Kumar Kesherwani son of Shri Santosh Kumar Kesherwani Resident of House No.249, Chak Zero Road, Police Station Kotwali, District Allahabad.

... Petitioners

Versus

1. State of U.P. Through Principal Secretary Ministry of Homes Government of U.P. Lucknow.

2. D.I.G./S.S.P. Allahabad..

3. Station House Officer, Police Station Mutthiganj, District Allahabad.

4. Smt. Rashmi Ajay Kumar Kesherwani Wife of Ajay Kumar Keshwarni daughter of Sri Purshottam Kesherwani Resident of House No. 849, Mutthiganj, Arya Kanya Chowraha Road, Police Station Mutthiganj, District Allahabad.

... Respondents"

15. The Ist respondent misled the Court with a view to obtaining an ex parte order will be evident from two different addresses of the Ist appellant(wife) shown in the two different

petitions which were filed simultaneously in the month of April and June 2011. Though the son is residing with the mother, at Bhiwandi, Thane, Maharashtra, as is evident from the statement made by the 1st Respondent, an allegation has been made that the son has been illegally detained by his mother.

16. In the case of *Capt.Dushyant Somal vs. Smt. Sushma Somal and others* reported in (1981) 2 SCC 277 this Court held that a writ of habeas corpus is not to be issued in the matter of course, particularly when the writ is sought against a parent for the custody of a child. For the reason aforesaid, we hold that the impugned order of issuance of the non-bailable warrant dated 9th November, 2011 passed by the Allahabad High Court was uncalled for and illegal and in the absence of any merit, the Habeas Corpus Writ Petition No.36326 of 2011 is withdrawn from the Allahabad High Court to this Court and is dismissed. The appeal is allowed.

K.K.T. Appeal allowed.