

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 118 OF 2007

ANITA THAKUR & ORS.

.....APPELLANT(S)

VERSUS

GOVT. OF J & K & ORS.

.....RESPONDENT(S)

JUDGMENT

A.K. SIKRI, J.

In the present writ petition filed by the petitioners under Article 32 of the Constitution of India, the petitioners who are migrants of the State of Jammu & Kashmir (hereinafter referred to as the 'migrants') state that they had planned to take out a peaceful protest march upto Delhi for ventilating their grievances. However, when they reached near Katra in Jammu & Kashmir, the respondent authorities through their police personnel had beaten up and manhandled these migrants in a most brutal and barbaric manner on 07.08.2007. It is the allegation of the

petitioners that this incident has violated their rights guaranteed to them under Articles 14, 19, 21 and 22 of the Constitution of India and prayers are made in the petition for taking criminal action against the erring officials, including respondent Nos. 3 to 9, and also to pay compensation to each of the petitioners and other Jammu migrants who suffered serious injuries, in the sum of Rs. 10 lakhs. Prayer is also made to order the special investigation into the said episode of 07.08.2007.

2. Giving detail background of the grievances of the migrants leading to the said incident, it is mentioned that Ms. Anita Thakur, petitioner No.1, is a General Secretary of the Jammu & Kashmir Panthers Party whereas petitioner No.2 is an Advocate and also the Secretary of the said Party, who have been espousing the cause of the Jammu migrants (about 2200 families) who were forced to leave their homes between 1996-1999 in view of the terrorist attacks on these families. Third petitioner is a senior Journalist who was also assaulted and arrested on 07.08.2007 for giving media coverage of the incident in question.

According to the petitioners, these migrants are living in most miserable conditions and it became difficult for them to

survive. Out of these 2200 migrant families, about 950 families have been residing in broken huts of Talwara camp. For redressal of their grievances, a writ petition in the nature of PIL (PIL No. 534/1999) was filed in the High Court of Jammu & Kashmir wherein order dated 06.09.2002 was passed by the High Court directing that persons from Poonch, Rajouri, Doda, Udhampur and Jammu provinces, who had suffered and been forced to migrate on account of militancy would be entitled to the same treatment as migrants from the Kashmir Valley. This order was challenged by the State of Jammu & Kashmir by filing SLP (C) No. 34/2003 in this Court. In that SLP, the order dated 12.07.2006 was passed to the following effect:

“Pursuant to our direction, the Relief Commissioner (Migrants) filed an affidavit on 03.12.2004 and in the affidavit the details are given regarding the relief measures given to the Kashmir migrants and it is stated that the relief is being provided to various migrants who are Kashmiri migrants and to migrants other than Kashmiri migrants. In view of the averments stated in the affidavit, we do not find any necessity to give further directions. However, counsel for the respondents stated that some of the migrants are not being regularly paid the relief measures and since March 2004 they are not given any benefits. The Relief Commissioner may look into the matter and see whether they have been provided with all relief measures to which they are entitled as per the policy. If there are lapses on the part of the

officials or any arrears to be paid to the migrants, the same shall be made available to them at the earliest. The Relief Commissioner would be at liberty to consider the migrant status of any person and if it is found that if such persons are not real migrants he would be at liberty to deny the relief measures to such persons. With these directions, the appeal is disposed of.”

3. It is averred in the petition that in spite of the aforesaid order directing the Relief Commissioner to look into the complaints by migrants, who claimed that they were not regularly provided relief measures since March 2004 and to provide all benefits to them, including arrears, if any, no positive action was taken by the respondents. This forced the petitioners to submit a memorandum to the Deputy Commissioner, Reasi stating that if the order was not implemented within 15 days, the migrants would resort to their protest march to Delhi and would meet the Prime Minister of India for implementation of this order. This was followed by another representation dated 23.07.2007 to the Chief Minister, Jammu & Kashmir wherein they threatened that on the Government failure to implement the order, the migrants would go on strike.

As nothing happened, on 31.07.2007, the Talwara migrants started their peaceful protest march from Talwara towards Jammu

to head to Delhi. According to the petitioners, the migrants were stopped about 6 kms. short of Katra town, at Ghar Baba Jitto, after they had covered about 20 kms towards Jammu. Police kept them in siege for 5 days. The protest marchers who were about 2000 in number including old persons, women and children were not allowed to proceed and were made to sit at that place till 07.08.2007, the fateful day. On 07.08.2007, following events occurred:

- (i) At about 1 pm on this day, the three petitioners (all members of the Jammu & Kashmir National Panthers Party) arrived at Katra, to speak with the concerned authorities regarding the plight of the migrants.
- (ii) The petitioners conducted a one hour long discussion with the Dy. Commissioner, Reasi, the Tehsildar, Reasi, Superintendent of Police, Reasi and the SHO, Katra regarding the migrants' peaceful march.
- (iii) The migrants resumed their peaceful march, and the petitioners joined the march to ensure that there was no undue harassment by the Police.
- (iv) At about 2 pm, 500 armed policemen, blocked the bridge that the

migrants were about to cross and began attacking the marchers with Lathis and teargas shells.

(v) Petitioner No. 2 attempted to approach the Police which included respondent Nos. 6 to 9 to stop the attack, and was taken into custody after being brutally assaulted and having his leg broken. He stayed in Police custody without medical aid till 9 pm when he was taken first to Katra Government Hospital and then shifted to Government Medical Hospital, Jammu at 11.30 pm. Petitioner No. 1 then attempted to approach the Police to secure medical aid for the injured migrants. As soon as she entered the Police control zone, she was violently attacked by several police women, dragged on the ground for a long distance and put into a Police jeep. Petitioner No. 1 was beaten inside the jeep and also at the Police Station. Petitioner No. 3 was also arrested for trying to cover the incident.

4. Petitioner No. 1 was admitted to the Government Medical College Hospital, Jammu on 08.08.2007. Copies of medical reports of petitioner No. 1 have been filed by the petitioners. The Bar Association of Jammu & Kashmir also started protest against the aforesaid criminal assault on petitioner No. 2 by abstaining from

Courts on 09.08.2007. Petitioner Nos. 2 and 3 were released on interim bail on 10.08.2007 by the Judicial Magistrate, First Class, Katra pursuant to the directions of the High Court and were thereafter granted regular bail on 14.08.2007.

5. The petitioners filed contempt petition No. 155/2007 alleging violation of this Court's order dated 13.07.2006 wherein notice was issued by this Court on 20.08.2007. Thereafter, present petition was filed with the prayers as aforesaid, in which show cause notice was issued on 01.10.2007.
6. The respondents have appeared and denied the version of the petitioners. The official version which has surfaced on record in the form of response to the various averments made in the writ petition is that about 500 migrants on 01.08.2007 blocked the Reasi-Pouni road near Baradari bringing the entire traffic on stand still. Dharna continued the entire day and night and the unruly crowd damaged a police vehicle. Leaders of the Panther's party in discussions with the administration agreed to lift the Dharna. However, they back tracked and the dharna continued. On 02.08.2007, protestors started marching towards Katra. Administration at Sula Park requested them to go back. All

offers of relief were turned down. On 03.08.2007, High Officials of the State reached Serwad and persuaded the crowd to adopt a realistic and pragmatic approach. Suggestions of providing ration and cash relief for three months at par with border migrants were given. Migrants initially agreed to it and it was decided to gather at Aghar Jitto temple where the ration shall be distributed on the same day. However, the migrants later refused the offer and demanded cash relief at par with Kashmiri migrants. High Officials camped at Serwad on 03/04.08.2007 to persuade the migrants. On 05/06.08.2007, negotiations continued. Directions were given to provide facilities of water, medicine, food along with milk packets for infants. Some of the demonstrators accepted the relief of the Government. However, insofar as petitioners are concerned, instead of amicably sorting out the issue, raised a new demand for providing arrears for last 40 months. Police authorities informed the migrants that the competent authority shall be informed and that they should return peacefully and not march ahead to disturb the on going Amarnath and Vishnu Devi Yatris. The agitated protestors, however, took strategic positions alongside the road and started pelting stones on the police personnel who were trying to initiate dialogues. Few of them

even used their Lathis which they were carrying. The crowd marched towards Balni Bridge where the police contingent reorganized. However, the demonstrators had turned violent and wanted to proceed to Katra. Keeping in view the security and in face of no other option, police resorted to mild Lathi charge to control the mob. The injured migrants and the policemen were taken to PHC-Katra. 17 Policemen along with Mr. Ashok Sharma (respondent No. 6) got severely injured and were rushed to the hospital as well. Executive Magistrate Tehsildar, Reasi after taking stock of the situation and attack on the police authorities by the mob and the resulted injuries on police officers and civilians ordered SP Katra for Lathi charge and use of tear smoke to disperse the unruly mob. In the melee some persons from the mob including Mr. Jhalmeria got injured. Respondent No. 6 was injured by the mob and was taken to the hospital. Respondent No. 7 was manhandled by petitioner No.1 who tore and threw away his ranks from his uniform.

7. It becomes clear from the above that both the parties are accusing each other. At the time of hearing, counsel for the parties stuck to their respective stands. In support of their

versions, even the CDs containing Video of the incident have been filed by both the parties. We have seen the CD's filed by both the parties. However, on going through the CD submitted by the respondent State, it becomes clear that the agitated protestors were the persons who were instrumental in triggering the incident inasmuch as it is they who took the first step in disturbing the peace. It is these agitators who started pelting stones on the police personnel and even used lathis while attacking the police officials. No doubt, these demonstrators wanted to go ahead with their march and they were restrained by the police from doing so. At the same time, this step taken by the police was at the instance of higher authorities and they were given orders that these demonstrators be not allowed to proceed with their march.

8. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country

and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The 'right to assemble' is beautifully captured in an eloquent statement that "*an unarmed, peaceful protest procession in the land of 'salt satyagraha', fast-unto-death and 'do or die' is no jural anathema*". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.

9. Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public

order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.

10. On the other hand, there is always a possibility that a public rally may become unruly, which can mean damage to life and property. This is when a public assembly becomes '*unlawful*', which is defined in Section 141 of the Indian Penal Code (IPC). Under these circumstances, the district administration and the police are permitted to disperse the crowd to prevent injuries or damage. This may entail the use of force in a controlled and specified manner. We also have Section 268 of the IPC which defines '*public nuisance*' as any act 'which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right'. Further, Section 143 of the Cr.P.C. empowers an Executive Magistrate to prohibit the repetition or continuation of public nuisances and Section 144 Cr.P.C. permits the issuance of directions to members of the public to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is

likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray. These legal provisions provided a wide array of powers to the police, including the right to use reasonable force to disperse any unlawful assembly and maintain public order.

11. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and Cr.P.C., discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become '*unlawful*'. At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put by the Punjab and Haryana High Court in ***Karam Singh v. Hardayal Singh***¹ wherein the High

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1979 Crl.L.J. 1211

Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd:

First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.

Second, an Executive Magistrate should order the assembly to disperse.

Third, in spite of such orders, the people do not move away.

12. Before advertiring to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas etc take place. It is unfortunate that more often than not, such protestors take to hooliganism, vandalism and even destroy public / private property. In the

process, when police tries to control, the protestors/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have become to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In this scenario, task of the police and law enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful assemblies, police has to accomplish its task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is

absolutely necessary². Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.

13. In those cases where assembly is peaceful, use of police force is

2 These documents, *inter alia*, are:

- (a) Model Rules on the Use of Force by the Police against unlawful Crowds (Adopted by the Inspectors General of Police Conference, 1964).
- (b) Police Manuals: For instance, the Kerala Police Manual, 1970 lays down a step-by-step procedure to deal with unlawful assemblies:
 - The police must invariably secure the presence of a magistrate where it anticipates a breach of peace
 - The decision to use force and the type of force to be used is to be taken by the magistrate
 - Once the order for the use of force is given by the magistrate, the extent of force to be used will be determined by the senior-most police officer
 - The extent of force used must be subject to the principle of minimum use of force
 - Use of force should be progressive – i.e firearms must be used as a last resort if tear smoke and lathi charge fail to disperse the crowd
 - Common tearsmoke which causes no bodily injury and allows recovery of affected persons should be used
 - When the crowd is large and the use of tearsmoke is likely to serve no useful purpose, the police may resort to lathi charge
 - Lathi charge can only begin if the crowd refuses to disperse after suitable warning
 - Clear warning of the intention to carry out a lathi charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flag must be raised. If the police officer in-charge is satisfied it is not practical to give a warning, s/he may order a lathi charge without warning.
 - Lathi blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable
 - The lathi blows must not cease until the crowd is completely dispersed
 - If the crowd fails to disperse through the lathi charge, the magistrate or the competent officer⁸ may order firing
 - The fullest warning in a clear and distinct manner must be given to the crowd to inform them that the firing will be effective
 - If after the warning, the crowd refuses to disperse the order to fire may be given
 - The police are not on any account allowed to fire except on a command given by their officer
 - A warning shot in the air or firing over the heads of the crowd is not permitted
 - An armed force should maintain a safe distance from a dangerous crowd to prevent being overwhelmed, or increasing the chances of inflicting heavy casualties
 - Aim should be kept low and directed at the most threatening part of the crowd
 - Firing should cease the moment the crowd show signs of dispersing
 - All help should be rendered to convey the wounded to the hospital
 - Police officers must not leave the scene of disturbance before satisfying themselves beyond reasonable doubt about the restoration of tranquility
 - An accurate diary of all incidents, orders and action along with the time of occurrence should be maintained by the police. This will include an individual report by all officers involved in the firing.
 - The number of fired cartridges and the balance of unfired cartridges should be verified to ensure ammunition is accounted for
- (c) The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan international non-governmental organisation, mandated to ensure the practical realisation of human rights in Commonwealth countries. CHRI is headquartered in New Delhi and has offices in London and Accra (Ghana).
- (d) Various orders passed by the National Human Rights Commission.

not warranted at all. However, in those situations where crowd or assembly becomes violent it may necessitate and justify using reasonable police force. However, it becomes a more serious problem when taking recourse to such an action, police indulges in excesses and crosses the limit by using excessive force thereby becoming barbaric or by not halting even after controlling the situation and continuing its tirade. This results in violation of human rights and human dignity. That is the reason that human rights activists feel that police frequently abuses its power to use force and that becomes a serious threat to the rule of law.

14. When we examine the present matter in the aforesaid conspectus, we find that initially it was the petitioners/ protestors who took the law into their hands by turning their peaceful agitation into a violent one and in the process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as injuries suffered by these petitioners are

concerned, such a situation could clearly be avoided. It is apparent that to that extent, respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award compensation to the petitioners {See – ***Saheli, A Women's Resources Center, Through Ms. Nalini Bhanot & Ors. v. Commissioner of Police, Delhi Police Headquarters & Ors.***³; ***Joginder Kaur v. The Punjab State & Ors.***⁴; ***The State of Rajasthan v. Mst. Vidhywati & Anr.***⁵; and ***Smt. Nilabati Behera @ Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa & Ors.***⁶}. The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and

3 (1990) 1 SCC 422

4 (1969) ACJ 28

5 (1962) Supp 2 SCR 989

6 (1993) 2 SCC 746

custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence cannot be used as a defence in public law.

15. Keeping in view the totality of the circumstances of the present case and finding that even the petitioners are to be blamed to some extent, as pointed out above, the only relief we grant is to award compensation of ₹2,00,000 (rupees two lakhs only) to petitioner No.1 and ₹1,00,000 (rupees one lakh only) each to petitioner Nos. 2 and 3, which shall be paid to these petitioners within a period of two months.
16. The writ petition stands disposed of in the aforesaid terms.

.....J.
(A.K. SIKRI)

.....J.
(R.K. AGRAWAL)

NEW DELHI;
AUGUST 12, 2016.

ITEM NO.1A
(For judgment)

COURT NO.10

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Criminal) No. 118/2007

ANITA THAKUR & ORS.

Petitioner(s)

VERSUS

GOVT. OF J & K & ORS.

Respondent(s)

Date : 12/08/2016

This petition was called on for pronouncement of judgment today.

For Petitioner(s)

Mr. Dinesh Kumar Garg, Adv.

For Respondent(s)

Mr. Sunil Fernandes, Adv.

Ms. Astha Sharma, Adv.

Mr. Puneeth K.G., Adv.

Hon'ble Mr. Justice A. K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice R. K. Agrawal.

The writ petition stands disposed of in terms of the signed reportable judgment.

In view thereof, pending applications also stand disposed of.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master

[Signed reportable judgment is placed on the file.]