

GAHC010024212018



2026:GAU-AS:12436

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/652/2018

RICHARD SANGYUNG
S/O- SRI RABINDRA SANGYUNG, SAMBUDHANPUR, P.O./P.S.- MAIBANG,
MAIBANG, DIST- DIMA HASAO, ASSAM, PIN-788831

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, SACHIVALAYA,
DISPUR, GHY-6

2:THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
SACHIVALAYA
DISPUR
GHY-6

3:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
ASSAM POLICE (H.Q)
ULUBARI
GHY-7

4:THE DEPUTY COMMISSIONER
DIMA HASAO DISTRICT
HALFLONG
DIMA HASAO
ASSAM
PIN-788831

5:THE SUPERINTENDENT OF POLICE
DIMA HASAO DISTRICT

HALFLONG
DIMA HASAO
ASSAM
PIN-78883

Advocate for the Petitioner : MR. S BORTHAKUR, MR. V RAJKHOWA, MR. D GOGOI

Advocate for the Respondent : GA, ASSAM, MS. D D BARMAN, ADDL. SR. GOVT. ADV. ,SC,
DIMA HASAO, MR. K GOSWAMI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (CAV)

Date : 26-08-2026

(N. Unni Krishnan Nair, J)

Heard Mr. V. Rajkhowa, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Sr. Govt. Advocate, Assam appearing for the respondents.

2. The petitioner by way of instituting the present writ petition has prayed for the following reliefs:-

“(i) setting aside and quashing the Order dated 30/01/2018 bearing Memo No. DH/CON/L&O/2018/758-62 issued by the District Magistrate-cum-Deputy Commissioner, Dima Hasao district, ordering for a Magisterial Enquiry into the firing incident at Maibang on 25/01/2018, and/or

(ii) setting aside and quashing the Notice dated 31/01/2018 bearing No. NCH/MENQ/RK/2018/03 issued by Sri. Ranjit Kr. Laskar, ACS, Addl. District Magistrate, Camp - Maibang, Dima Hasao, who is entrusted with the Magisterial Enquiry for the instant firing incident at Maibang on 25/01/2018, calling individual(s), organization(s), official(s) to give evidence, and/or

(iii) to conduct an independent enquiry and/or Independent enquiry by a retired Judge of Gauhati High Court into the incident of Police firing at Maibang railway station on 25/01/2018 leading to the death of two persons and gunshot injury to a dozen others, and/or

(iv) show-cause as to why an appropriate writ, order or direction should not

be issued so as to give full relief in the matter and/or

(v) call for the records and on perusal thereof and after hearing the parties may be pleased to make the Rule absolute and/or may be pleased to pass such further or other order/orders as to this Hon'ble Court may seem fit and proper."

3. The facts requisite for adjudication of the issues arising in the present writ petition is noticed as under:

3.1. The petitioner in the present writ petition has projected that his brother Sunujit Sangyung, had suffered grievous injuries along with others, on account of indiscriminate firing, resorted to by police upon the peaceful protesters at Maibang Railway Station area in Dima Hasao district, on 25-01-2018. The petitioner has projected that basing on a news item published in National, as well as the local newspapers with regard to creation of a "Greater Nagalim", and inclusion, therein, areas of Dima Hasao district, a grievance arose amongst the 'Dimasa' people. Further, it is projected by the petitioner, that the National News Portal, viz. "The Wire", on 19-01-2018, had carried news item of a draft plan of the Nagaland accord being so prepared by a national organization and therein, it being proposed to include areas within the Dima Hasao district, within the proposed "Greater Nagalim", an apprehension arose within the 'Dimasa' community of a deprivation being caused to them and accordingly, community organizations, like the Jadikhe Nalso Hosom (JNH), the Dimasa Apex Body; Dimasa Students Union (DSA); All Dimasa Students Union (ADSU); Dimasa Women Society (DWS); Dimasa Mothers Association (DMA), started protest programmes, against the inclusion of Dima Hasao areas within "Greater Nagalim".

3.2. It is projected by the petitioner that on 25-01-2018, i.e. on the eve of the Republic

Day celebration, protesters had gathered at the various locations across the Dima Hasao district and participated in dharna programmes. Such conglomeration of people had also occasioned in the railway track near Maibang Railway Station. It is further projected by the petitioner that the dharna programme had gone on peacefully, until around 02:30 p.m., at which time the Deputy Commissioner, Dima Hasao, had arrived at the spot, with a strong police force and without declaring the assembly to be unlawful and/ or taking steps for dispersing the group, the police started 'lathi' charge on the peaceful protesters, injuring many women and minors. The said action is projected to have agitated the protesters. It is further contended by the petitioner that the Deputy Commissioner, Dima Hasao district, thereafter, without any warning had ordered for firing on unarmed protesters. Accordingly, it is alleged that the police started indiscriminate firing on the unarmed protesters at the Maibong Railway Station with modern weapons. The petitioner contends that on account of the indiscriminate firing resorted to by the police, death of 02 (two) protesters occasioned, in addition to causing injuries of varying degrees to many protesters, including the petitioner's brother. It is further projected that amongst the injured, 03 (three) were minors. The petitioner has further projected that 03 (three) enquiries were conducted and reports submitted, with regard to the firing incident. The 03 (three) enquires so conducted were conducted by the Superintendent of Police, Dima Hasao, a Magisterial Enquiry by the Addl. District Magistrate, Dima Hasao and by a One Man Enquiry Commission constituted by the Government. It is projected that none of the reports submitted, can be construed to be submitted in pursuance to an independent enquiry carried out and further that a perusal of the reports would go to reveal that the

same were so prepared and submitted so as to protect the police as well as the Government officials, involved in the incident.

3.3. It is further projected by the petitioner that two police cases were registered pertaining to the said incident, *viz.*, Maibang P.S. Case No. 02/2018 registered on the basis of information given by Mayank Kumar, IPS, the then SDPO, Maibang. The other police case being Maibang P.S. Case No. 06/2018, was so registered basing on a FIR lodged by one Kailen Daulagapu, President, JNH Central Committee. It is further projected by the petitioner that the investigation in the said police cases, were being so conducted with the objective to protect the interest of the police and other Government officials, involved in the said incident. The petitioner has further projected that the deceased as well as the injured persons were granted compensation by the State. However, the amount of compensation, so granted, was not commensurating to the injuries sustained and the violation of their rights under Article 21 of the Constitution of India, occasioning in the matter.

3.4. In the above premises, the petitioner had instituted the present writ petition praying for the reliefs noticed, hereinabove, and also for grant of exemplary compensation to the deceased person as well as to the 03 (three) seriously injured persons, including the brother of the petitioner.

4. The learned counsel for the petitioner, at the outset, by drawing our attention to the order sheets, maintained in the present writ petition, has submitted that this Court while monitoring the investigation in the matter, in connection with 02 (two) police cases, registered, had clearly noticed the anomaly existing in the investigation, so carried out by

the Investigating Officer, along with the undue delay occasioning, in conclusion of the investigation. The learned counsel for the petitioner has further submitted that perusal of the enquiry reports brought on record, including the reports submitted by the One Man Enquiry Commission, constituted by the Government, to enquire into the firing incident occasioning on 25-01-2018, would reveal that the same were so submitted without a proper enquiry being conducted. He submits that basing on the said enquiry reports the factual background leading to the firing incident is not permissible to be so discerned. The learned counsel for the petitioner, further submits that from the injuries sustained by the deceased as well as the other persons, it would be clear that the minimum requisite precaution required to be taken in the matter by the police officials, while resorting to firing, purportedly to disburse an unlawful assembly, was not adhered to. He submits that the injuries sustained by the victims and also bullet injuries found above their waist, would go to suggest that the police had resorted to excessive force in the matter and had carried out indiscriminate firing.

4.1. The learned counsel for the petitioner by highlighting the irregularities committed in the investigation of the police cases involved, has submitted that the said irregularities goes to the root of the matter and has the effect of vitiating the investigation. Accordingly, he submits that this Court would be pleased to direct for an enquiry into the matter by an independent body/ authority, for ascertaining the actual cause leading to the firing incident.

4.2. Having made the above submission, learned counsel for the petitioner has submitted that the State had proceeded to sanction compensation to the deceased as well

as the injured protesters. However, he submits that the amounts so sanctioned were exceptionally low and inadequate and was not even sufficient to meet the medical expenses incurred, not to mention the lifelong scars and deformity suffered by the injured victims in pursuance to the injuries sustained by them during the police firing incident. The learned counsel for the petitioner has further submitted that the indiscriminate firing incident had resulted in violation of the Fundamental Rights under Article 21 of the Constitution of India in respect of the deceased victims as well as the injured victims and the said aspect of the matter was not reckoned while determining the quantum of compensation sanctioned to the victims.

4.3. The learned counsel for the petitioner in support of his submissions has placed reliance on the following decisions of the Hon'ble Supreme Court:-

- (a) ***Nilabati Behera Vs. State of Orissa & Ors.*** reported in **(1993) 2 SCC 746.**
- (b) ***D.K. Basu Vs. State of W.B.*** reported in **(1997) 3 SCC 433.**

5. Per contra, the learned Senior Government Advocate, Assam, appearing for the respondents, has submitted that a 'Bandh' call was given by certain community organization on 25-01-2018 for 12 hours, i.e. 05:00 a.m. to 05:00 p.m. He submits that it is not disputed by the petitioner that a section of the people had also sat on the railway track of the Maibang Railway Station. He submits that at around 09:30 a.m., on 25-01-2018 Mayank Kumar, IPS, the then SDPO, Maibang, had reported to the Superintendent of Police, Dima Hasao, over phone, that around 400 protesters had blocked a Silchar bound passenger train at Maibang Railway Station. Accordingly, the Addl. Superintendent of Police (HQ) and Addl. Superintendent of Police (S), Maibang, were directed to proceed

immediately to the Maibang Railway Station, with available additional force fully equipped with riot gear. At around 10:30 am of 25-01-2018, the concerned authorities had learnt from the SDPO, Maibang, that the protesters had damaged the railway track by removing fish plates of the track.

5.1. The learned counsel for the respondents has submitted that when the SDPO, Maibang, tried to approach the protesters to dissuade them from causing damage to the railway property, the protesters started stone pelting on the police party. It is projected that the SDO(C), Maibang, having refused to declare the assembly as unlawful, the police party had not taken any further action in the matter and used civil force to disperse the crowd, as the safety of the on-board passengers of the train could not be ensured, if the mob turned violent, in the event force was used. The learned counsel for the respondents further submits that at around 01:30 p.m., both the Superintendent of Police and the Deputy Commissioner, Dima Hasao, reached Maibang Police Station and as soon as they had alighted from their vehicles and proceeded towards the protesters, the protesters started pelting stones on Deputy Commissioner and the Superintendent of Police and other accompanying Govt. officials, without any provocation.

5.2. The learned counsel for the respondents submits that on account of the said stone pelting several police and civil personnel came to be grievously injured. By referring to the reports submitted by the Superintendent of Police, Dima Hasao, the learned counsel for the respondents, has submitted that the protesters had damaged the Railway Station building and equipment and attacked GRP establishment, therein. The mob further damaged the fuel tank of the stranded train and had put tyres below it, with the intention

to set it on fire. He submits that it was at this stage, that the SDO(C), Maibang declared the assembly as unlawful and ordered use of proportionate force to disperse the unlawful assembly from the Railway Station.

5.3. The learned counsel for the respondents, submits that, thereafter, the police used gas grenade, stun grenade, dye markers, rubber bullets and blank rounds, to disperse the crowd, but as the crowd continued with the stone pelting and damaged public and railway property, the police resorted to blank firing in the air, but when the situation got worse and the stone pelting started from all sides, left with no other option, the police party resorted to controlled single shot firing, below the knee, to disperse the crowd.

5.4. The learned counsel for the respondents, submit that at around 03:30 p.m., the crowd was successfully dispersed and the police force had taken control of Maibang Railway Station. The learned counsel, by referring to the enquiry reports submitted in the matter including the one submitted by the One Man Enquiry Commission, constituted by the Government, submits that, the reports highlights the fact that there was sufficient provocation from the protesters, which compelled the district administration to resort to firing upon the protesters, to control the unruly mob, after other measures taken, had not resulted in dispersing the protesters. The learned counsel, further submits that the One Man Enquiry Commission, in its report, had also recorded a finding to the effect that bullet injuries, found to be sustained by the protesters on the upper part of the body, was on account of the fact that the police forces had fired from a height, i.e. the Railway platform. It is reiterated by the learned counsel that the firing being necessitated, as the other measures taken for controlling the mob had failed, the police had resorted to only a

controlled firing for dispersal of the mob. He submits that given the number of the protesters present in the place, i.e. the Maibang Railway Station, on the fateful day, had the police authorities resorted to indiscriminate firing, the death/ injuries would have been much more. It is further submitted by the learned counsel for the respondents, that only limited number of persons having sustained injuries, would go to establish that the police personnel had resorted to controlled firing in the matter, after taking all requisite precautions. He submits that the injuries sustained by the victims on the upper part of the body can also be explained on account of continuous stone pelting occasioning in the matter, which may have distracted the police personnel firing at the relevant point of time.

5.5. With regard to the two police cases involved in the matter, the learned counsel for the respondents has submitted that in connection with the Maibang P.S. Case No. 02/2018, the investigation being concluded, a charge-sheet being Maibang P.S. Charge-sheet No. 19/2025, dated 13-10-2025, has already been laid against 06 (six) accused persons, under Section 120B/ 143/ 144/ 145/ 147/ 148/ 332/ 333/ 353/ 435/ 307/ 188/ 34 IPC read with Section 3/ 4 of PDPP Act. With regard to the investigation in connection with Maibang P.S. Case No. 06/2018, registered in connection with a FIR filed by the President of JNH Central Committee, the learned counsel submits that, on conclusion of the investigation, a Final Report bearing No. 04/2025 dated 16-09-2025, has been submitted before the court of the learned District and Sessions Judge, Dima Hasao. It is accordingly submitted that the investigation, in the above noted matters, having been concluded and the charge-sheet/ final report having been submitted, in the event, the petitioner and/ or any other person has any grievance with regard to the manner of

investigation and/ or any other aspects of the matter, it would be open for the petitioner and other interested persons to take appropriate steps, thereon, in accordance with the procedure, as set out, in this connection in the provisions of the Cr.P.C./ BNSS, 2023 and this Court would be pleased, at this stage, not to express any opinion, thereon. The learned counsel for the respondents, with regard to the claim made by the petitioner, for grant of compensation to the deceased as well as the 03 (three) seriously injured protesters, has submitted that the Government has already, basing on the enquiry reports available in the matter, sanctioned adequate compensation to the victims and in the event, any further compensation is claimed by the petitioner, they would be required to approach the competent court of civil jurisdiction for claiming damages, in accordance with law.

6. We have heard the learned counsel for the parties and have also perused the materials available on record.

7. The facts noticed, hereinabove, are not in dispute. The petitioner in the present writ petition, has projected that the police in the matter had resorted to use of excessive force and indiscriminate firing in the name of dealing with a purported unruly mob at Maibang Railway Station. The respondents, on the other hand, have projected that the situation as had developed in the matter on the fateful day, i.e. on 25-01-2018, all civil measures taken to disperse the unruly mob having failed, the assembly was declared to be an unlawful assembly and the police were required to use proportionate force for the purpose of dispersing the crowd. Consequently, the provocation from the protesters having increased, along with the pelting of stones from all sides, the police had to resort

to controlled firing. The petitioner in the present writ petition has prayed for interference with the Magisterial Enquiry Report submitted by the Addl. District Magistrate, Dima Hasao and for conduct of an independent enquiry by a retired Judge of this Court into the incident of police firing occasioning at Maibang Railway Station, on 25-01-2018. As noticed, hereinabove, in respect of the said firing incident, 02 (two) FIRs, came to be lodged in the matter, one of the FIRs was lodged by the Mayank Kumar, IPS, the then SDPO of the area at the relevant point of time. The said FIR lodged by Mayank Kumar was registered as Maibang P.S. Case No. 02/2018 dated 26-01-2018 under Section 120B/ 143/ 144/ 145/ 147/ 148/ 332/ 333/ 353/ 435/ 307/ 188/ 34 IPC read with Section 3/ 4 of PDPP Act. The second FIR was lodged by one Kailen Daulagapu, which was registered as Maibang P.S. Case No. 06/2018, on 26-01-2018, under Section 325/ 302/ 34 IPC. The respondents have brought on record, the enquiry reports submitted by the jurisdictional Superintendent of Police, a Magisterial Enquiry conducted by the Addl. Deputy Commissioner, Dima Hasao and the Enquiry Report submitted by a One Man Enquiry Commission constituted in the matter by the Government vide notification dated 29-01-2018. The said One Man Enquiry Commission, was headed by an Addl. Chief Secretary to the Govt. of Assam, Finance etc. department. A perusal of the terms of the reference of the One Man Enquiry Committee, reveals that the Committee, was to ascertain the facts and circumstances leading to the violence that had erupted at Maibang Railway Station on 25-01-2018, causing injury to personnel of police and civil administration and damage to public and railway property and subsequent use of force by the police personnel resulting in injury to several persons, out of which two persons subsequently succumbed to their

injuries. The Enquiry Committee was to ascertain, as to whether there was any lapse on the part of the civil administration/ police in resolving the situation peacefully and, if so, fix the responsibility.

8. The One Man Enquiry Commission, thereafter, conducted its enquiry in the matter and after examining witnesses including the members of the public, proceeded to submit its report in the matter on 04-03-2018. The findings and conclusions recorded by the One Man Enquiry Commission being relevant, is extracted, here-in-below:-

“FINDINGS: During the hearing none of the members of the public refuted the fact that the agitators went out of control and public property was damaged. The complaint of the people was that the police resorted to firing without giving any announcement or tear gas firing. Secondly, the youth were fired at their head and chest instead of the lower part of the body. According to public, this shows that the intention of the police force was to kill the boys rather than to control the crowd.

I have gone through all the above arguments and found the following:-

1) There was sufficient provocation from the protesters which compelled the district administration to use force by firing, use of tear gas, etc. to control the unruly mob who were indulging in damaging public property and also endangering the lives of officials, common people and railway passengers. If use of force including firing was not resorted to, casualty in terms death and injury would have been much higher.

2) It is not a fact that the police did not try other methods like tear gas to control the mob. Police, in fact used tear gas and stun grenade, etc. to disperse the mob.

3) The boys were hit by bullet on the upper part of the body since the police forces fired from a height, the platform.

In conclusion, the decision on the part of the civil and police forces to use force was timely and unavoidable. Due to the use of force, including firing, further loss of lives and damage to public property were avoided. In short, it was found that there was no lapse on the part of the civil and police administration.”

9. With regard to the police cases registered in the matter, referred here-in-above,

this Court during the pendency of the present proceeding had required the investigating agencies to take the investigation involved to its logical conclusion. Accordingly, the investigation in the above noted 02 (two) police cases have been concluded. The police on conclusion of the investigation in Maibang P.S. Case No. 06/2018, had submitted a final report, thereon, on 16-09-2025, before the jurisdictional court. With regard to the investigation in connection with Maibang P.S. Case No. 02/2018, on conclusion of the investigation, thereon, a charge-sheet being Maibang P.S. Charge-Sheet No. 19/2025 dated 13-10-2025, was laid under Section 120B/ 143/ 144/ 145/ 147/ 148/ 332/ 333/ 353/ 435/ 307/ 188/ 34 IPC read with Section 3/ 4 of PDPP Act against 06 (six) accused persons, viz. (i) Sri Bishal Hojai; (ii) Smti. Surodi Thousen (iii) Smti. Alpana Langthasa; (iv) Sri Sunujit Sengyung; (v) Sri Thangsen Langthasa and (vi) Sri Thaisring Hojai.

10. The incident had occasioned on 25-01-2018. Considering the long lapse of time occasioning in the matter, as well as the submission of Enquiry Reports including the one submitted by the "One Man Enquiry Commission", and the conclusion of the investigation in the police cases, registered with regard to the said incident, we are of the considered view that at this stage, a direction for a further enquiry in the matter by an independent authority, would not be relevant. The Charge-Sheet/ final report having been submitted in the police cases, instituted with regard to the said incident, the petitioner and/ or other persons, interested in the matter, having a grievance with regard to the manner in which the investigation was carried out, would be at liberty to initiate appropriate proceeding, in accordance with law. Accordingly, a further consideration of the said prayer in the present writ petition would not be called for.

11. Having drawn the said conclusions, this Court would now consider the prayer made by the learned counsel for the petitioner, during his submission with regard to grant of adequate compensation by way of exemplary damages to 02 (two) deceased persons, viz. Praben Hakmus and Mithun Dibragede and also in respect of 03 (three) persons receiving serious injuries, viz. Alpana Langthasa, Thaisring Hojai and Sunujit Sengyung. However, from the materials brought on record, we are not in a position to categorically hold that the same had so occasioned on account of firing being resorted to by the police personnel, without any provocation from the protesters. While the learned counsel for the petitioner had disputed the Enquiry Report, submitted in the matter including the Enquiry Report submitted by the One Man Enquiry Commission, as constituted in the matter by the Government, the factual matrix as incorporated in the said Enquiry Report including the damage caused to the railway property, as well as the damages caused to the civil and police vehicles and also the setting up of fire to police TATA Sumo, by persons who were a part of the violent mob, has not been disputed by the learned counsel for the petitioner. Accordingly, the said firing incident cannot be held by this Court, from the materials available on record, to be one so resorted to by the police without there being any provocation from the protesters.

12. Having drawn the said conclusions, this Court would now consider the decision relied upon by the learned counsel for the petitioner, in this connection. The learned counsel for the petitioner had relied upon the decision of the Hon'ble Supreme Court in the case of ***Nilabati Behera (Supra)***. The Hon'ble Supreme Court in the said case, considering the issue with regard to direction for payment of compensation, under public

law remedy, had drawn the following conclusions:-

“17. It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Article 32 and 226 of the Constitution, for contravention of fundamental rights.

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24. Accordingly, we direct the respondent State of Orissa to pay the sum of Rs.1,50,000 to the petitioner and a further sum of Rs.10,000 as to be paid to the Supreme Court Legal Aid Committee. The mode of payment of Rs.1,50,000 to the petitioner would be, by making a term deposit of that amount in a scheduled bank in the petitioner's name for a period of three years, during which she would receive only the interest payable thereon, the principal amount being payable to her on expiry of the term. The Collector of the District will take the necessary steps in this behalf, and report compliance to. the Registrar (Judicial) of this Court within three months.

25. We clarify that the award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the custodial death of petitioner's son Suman Behera. We also expect that the State of Orissa would take the necessary further action in this behalf, to ascertain and fix the responsibility of the individuals responsible for the custodial death of Suman Behera, and also take all available appropriate actions against each of them, including their prosecution

for the offence committed thereby."

13. Dr. Justice Anand in his concurring opinion, had drawn the following conclusions:

"35. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and persecute the offender under the penal law.

36. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Article 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course,

relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudal Sah Vs. State of Bihar granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

14. The Hon'ble Supreme Court by noticing its decision in the case of **Nilabati Behra (Supra)**, in the case of **D.K. Basu (Supra)**, had drawn the following conclusions:-

"Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in

which the offender is prosecuted, which the State, in law, is duty-bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

15. The Hon'ble Supreme Court in the case of **Anita Thakur & Ors. Vs. Govt. of J&K & Ors.** reported in **(2016) 15 SCC 525**, had drawn the following conclusions:-

"14. 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.

15. 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 Vs. Hardayal Singh wherein the High 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.

16. Before adverting 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 necessary. 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 subsidised.

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

18. 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 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.”

16. Applying the decisions of the Hon'ble Supreme Court noticed, hereinabove, to the facts of the present case, we are of the considered view that initially it was the protesters who had taken the law into their hands by turning their peaceful agitation to a violent one and in the process becoming unruly and pelting stones at the police. The police, thereafter, had resorted to firing. The police personnel had resorted to such firing from

the railway platform, while the protestors were in the railway track, at the relevant point of time. The nature of injuries, projected to have been suffered by the victims, would go to reveal that either on account of the lack of understanding of the situation and/ or being so distracted by the stone pelting incident occasioning in the matter, the firing incident had also resulted in the victims suffering bullet injuries, above their waist also. Accordingly, in view of the injuries sustained by the petitioners, a case of violation of their fundamental rights is found to have been made out.

17. It has been settled by the decisions of the Hon'ble Supreme Court, noticed, hereinabove, that this Court can direct for payment of compensations to the victims. Such compensations awarded by this Court would be borne by the State and not the individual police personnel involved in the matter. Further, doctrine of sovereign immunity does not apply to the cases of Fundamental Rights violation and cannot be used as a defense in public law. Accordingly, considering the matter in its proper perspective, we direct the State to pay compensation of Rs. 3,00,000/- (Rupees Three Lakhs only) to the family of each of the deceased victims, i.e. Praben Hakmus and Mithun Dibragede. We also direct that the payment of compensation of Rs. 2,00,000/- (Rupees Two Lakhs only) each to the 03 (three) seriously injured victims, viz. Alpana Langthasa, Thaisring Hojai and Sunujit Sengyung.

18. The payment of compensation as is being ordered by us, is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order making monetary amends under the public law for the wrong done due to breach of public duty of not protecting the Fundamental

Rights of the citizen. The compensation is only in the nature of exemplary damages, awarded against the wrong doer for the breach of its public duty.

19. The compensation awarded by us, hereinabove, is independent of the rights available to the aggrieved parties to claim compensation under the private law in an action based on tort, through a suit instituted before a civil court of competent jurisdiction.

20. The compensation as awarded by us would be in addition to any compensation so sanctioned to the said victim by the Government in the matter. The amount of compensation as awarded, hereinabove, be released to the families of the victims, named, hereinabove, within a period of 03 (three) months from the date of receipt of a certified copy of this order.

21. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant