

B.L. Wadehra (Dr.) Vs. State (Nct of Delhi) and ors.

B.L. Wadehra (Dr.) Vs. State (Nct of Delhi) and ors.

SooperKanoon Citation : sooperkanoon.com/689407

Court : Delhi

Decided On : Apr-17-2000

Reported in : AIR2000Delhi266; 85(2000)DLT114; 2000(53)DRJ450

Judge : Devinder Gupta, ACJ.,; Cyriac Joseph, J.

Acts : [Constitution of India](#) - 226

Appeal No. : Criminal Writ Petition No. 206/2000

Appellant : B.L. Wadehra (Dr.)

Respondent : State (Nct of Delhi) and ors.

Advocate for Def. : Mr. Harish Salve, ; Solicitor General of India, ; Mr. S.B.

Advocate for Pet/Ap. : Mr. K.C. Mittal and; Mr. P.N. Lekhi, Advs

Judgement :

ORDER

Cyriac Joseph, J.

1. The petitioner Dr. B.L. Wadehra is a practicing advocate. He has filed this petition under Article 226 of the [Constitution of India](#) in public interest. The provocation for filing this petition is the situation arising out of the lawyer's strike which has been going on for more than one month demanding an enquiry by a

Sitting Judge of the Supreme Court into the circumstances leading to the use of force and the 'lathi-charge' by the police on the lawyers during their 'Parliament March' on 24th February, 2000 and also the immediate suspension of the police officials responsible for the lathi charge. The petitioner states that though he is a part of the lawyers' fraternity and is a participant in the strike, he has approached this Court with a disturbed feeling that the continued stalemate can lead to further unhealthy developments. According to him, in order to avoid further complications and to ensure resolution of the disputes in an orderly, civilised and constitutional manner the problem needs to be tackled at this stage, instead of allowing the parties to continue their fight with hardened and inflexible attitudes. The petitioner feels that the best course to be adopted by the disputing parties is to articulate the disputed issues and to leave them for determination by this Court and that in the meanwhile the Government should be directed by this Court to suspend the police officials responsible for the 'lathi-charge' and simultaneously the lawyers also should be directed by this Court to suspend their strike and agitation.

2. The State (NCT of Delhi); the Commissioner of Police, Delhi; the President, Delhi High Court Bar Association; the Secretary, Ministry of Law, Justice and Company Affairs, Govt. of India; the Secretary, Ministry of Home Affairs, Govt. of India and the Chairman, Delhi Bar Council are the respondents in this petition.

3. The first prayer in the petition is to pass appropriate writ, direction or order determining and adjudicating in a final and binding manner all the points in dispute between and amongst the respondents. The petitioner has also prayed that in the meanwhile the Government authorities concerned may be directed to suspend from service the police officials whose suspension has been demanded by the striking lawyers for the alleged excesses committed by police on the lawyers on 24th February, 2000. The petitioner has further prayed that simultaneously the striking lawyers may be directed to suspend their strike and agitation till the disputed matters are decided by this Court.

4. Considering the circumstances which prompted the lawyers to continue the strike and also in view of the grave situation arising out of the continuous strike for a long period and the consequential disruption of work in Courts and the difficulties

caused to the litigants, this Court felt obliged to intervene in public interest and issued notice to the respondents. From the submissions made on behalf of the parties, we found that the main hurdles for solving the problem were (i) the delay in appointing a Commission of Inquiry as promised by the Government, (ii) the demand of the striking lawyers for immediate suspension of the police officers who were responsible for the lathi charge and the alleged assaults on lawyers on 24.2.2000 and (iii) the refusal of the Government to concede the said demand.

5. In a Press Release issued by the Home Department of the Government of NCT of Delhi on 15.3.2000 it was stated that the incident of 24.2.2000 in which a number of lawyers and police officials received injuries had been reviewed as recorded on the various video tapes available and that the exact sequence of events, the disputes and the propriety of use of force and every related issue would be determined by the judicial enquiry announced by the Central Government. According to the said Press Release, it was seen from the video tapes that at the dispersal stage some police officials used force against some individual lawyers, including a lady lawyer, which was unwarranted and should have been avoided. It was also stated that the three erring officials had been identified and were being placed under suspension. It was further stated in the Press Release that the two Assistant Commissioners of Police managing the events were being transferred to facilitate a fair enquiry. However, the lawyers were not satisfied with the suspension of three policemen and the transfer of the two Assistant Commissioners of Police. They wanted the suspension of all the police officers who were responsible for the incident on 24.2.2000. The above mentioned Press Release indicated that the Government itself was satisfied that some police officials had used force which was unwarranted and should have been avoided and that the Government found it necessary to place them under suspension. The senior police officers, including the two Assistant Commissioners of Police, managing the event had allegedly failed to exercise proper control and supervision over the policemen under their charge and to prevent them from using force which admittedly was unwarranted and should have been avoided. But the Government found it necessary only to transfer the two Assistant Commissioners of Police from their respective posts in order to facilitate a fair enquiry. Under such circumstances we asked the learned Solicitor General Mr. Harish Salve whether

the transfer of the two Assistant Commissioners to the Traffic Division and the defense Colony Sub-Division would adequately serve the avowed purpose of facilitating a fair enquiry and whether the Government would consider any further action in respect of the senior police officers to facilitate a fair enquiry. We also asked the learned Solicitor General about the fate of the proposed enquiry since Hon'ble Mr. Justice S. Saghir Ahmad, Judge, Supreme Court had reportedly refused to preside over the proposed Commission of Inquiry. The learned Solicitor General sought time for further consultations with the Government and accordingly the case was adjourned to 27th March, 2000.

6. When the case came up for further consideration on 27.3.2000, the learned Solicitor General informed us that the Government had decided to appoint Mr. Justice N.C. Kochhar, a retired Judge of the Rajasthan High Court, to preside over the proposed Commission of Inquiry and that the notification was being issued. He stated that the leaders of the Bar had no objection to the appointment of Mr. Justice N.C. Kochhar and it was not disputed by respondents 3 and 6. He also stated that even after a further review of the matter the Government was not inclined to suspend any of the police officers at this stage and that the question of such suspension could be left to be decided by the Commission of Inquiry. But respondents 3 and 6 submitted that in view of the serious allegations against the police officers and in order to facilitate a fair enquiry, all the officers who were responsible for the lathi charge should be suspended from service immediately and that the question of their suspension could not be left to the decision of the Commission of Inquiry. In view of the conflicting stand of the respondents with regard to the demand for suspension of the police officers, it appeared that only the intervention of this Court would break the impasse which required to be broken at the earliest in public interest. Mr. P.N. Lekhi claiming to appear not only for respondents 3 and 6 but also for the Co-ordination Committee of the striking lawyers and the learned Solicitor General appearing for the Government submitted that the parties represented by them had full faith in this Court and that they would abide by any decision taken by this Court to end the stalemate. But we felt that the first prayer in the petition could not be entertained by this court since a final determination of the points in dispute (i.e. justifiability of the lathi charge and use of force and the culpability of the police officers) called for adjudication of disputed

questions of fact relating to the incident on 24-2-2000. Moreover we also felt that it was not in fact necessary or proper for this Court to embark on such an adjudication when a Commission of Inquiry was being constituted to enquire into all aspects of the incident as demanded by the lawyers. Hence we made it clear to the parties that we would consider only the prayer for a direction to the Government to suspend the Police Officials from service pending the inquiry by the Commission and the prayer for a direction to the striking lawyers to suspend their strike. On request of the parties, the respondents were given time to file reply/written submissions.

7. Respondent No. 3 filed an affidavit explaining the stand of the striking lawyers. Separate affidavits have been filed on behalf of the Ministry of Home Affairs, the Ministry of Law, Justice and Company Affairs and the Commissioner of Police, Delhi. On 29-3-2000 the learned Additional Solicitor General made available to the Court a copy of the Notification dated 28th March, 2000 issued by the Central Government under Section 3 of the Commissions of Inquiry Act, 1952, appointing a Commission of Inquiry to be presided over by Hon'ble Mr. Justice N.C. Kochhar, a retired Judge of the Rajasthan High Court, with the following terms of reference:-

'(i) to inquire into the facts, circumstances and events leading to the use of force by the police that is lathi charge and use of tear-gas etc. on the lawyers demonstration held at Parliament Street, New Delhi on 24th February, 2000;

(ii) to examine and report whether the force used by the police was excessive and disproportionate and, if so, fix the responsibility on the erring police officials; and

(iii) to recommend and measures that need to be taken to avoid occurrence of such incidents in future.'

As per the Notification, the Commission shall submit its report to the Central Government as soon as may be but not later than three months from the date of its first sitting. It is also provided that the Commission may, if it deems fit, make interim reports to be Central Government before the expiry of the said period on any of the matters specified in the Notification.

8. Since the strike was going on for a long period and since this Court decided to consider the above mentioned prayers in this petition filed in public interest and since the parties proclaimed full faith in this Court and agreed to abide by its decision and since we felt that it would be better to decide the case in a more conducive and congenial atmosphere, we requested Mr. P.N. Lekhi and respondents 3 and 6 to consider whether the strike could be suspended pending final decision in this case. Though they agreed to consider the suggestion of the Court, we were later informed by Mr. P.N. Lekhi that the suggestion was not accepted by the Co-ordination Committee of the striking lawyers and that the strike would continue. However, we were informed that the Delhi High Court Bar Association decided to suspend the strike from 6th April, 2000. But it was clarified by Mr. P.N. Lekhi that such a decision was taken by the Delhi High Court Bar Association on its own and not in response to the suggestion made by the the Court. It is a matter of deep regret that in spite of the repeated proclamation of their faith in this Court, the Co-ordination Committee of the striking lawyers rejected the suggestion of the Court to suspend the strike till final orders are passed in this case. By doing so they failed to show grace and to reciprocate the endeavor of this Court to end the stalemate. They also missed the opportunity to dispel any possible impression that the Court was passing orders under threat and pressure due to the strike by lawyers. However, totally uninfluenced by the strike and unaffected by the lack of grace on the part of the Co-ordination Committee of striking lawyers, we proceeded to hear and decide the case with an anxiety to uphold the rule of law, to protect public interest and to strengthen the system of administration of justice. In addition to hearing arguments made on behalf of the parties we also saw the video films on the incident of 24-2-2000 in the presence of the parties/counsel. The video films were made available by the lawyers and the police. We also perused the Wireless Log Book of the police which was made available to us.

9. It was not disputed that when the leaders of the Bar Council of India and the Bar Council of Delhi met the Prime Minister on 25-2-2000 in the presence of the Minister of Law, Justice and Company Affairs, the Central Government had agreed that the controversial amendments to the Civil Procedure Code would be discussed with the Bar before bringing them into effect and that a sitting Judge of

the Supreme Court would be requested to enquire into the violent incidents on 24-2-2000. However, till 13-3-2000 the Government did not approach the Hon'ble Chief Justice of India for nominating a sitting Judge of the Supreme Court to preside over the proposed Commission. There was no Explanation as to why the Central Government did not approach the Hon'ble Chief Justice of India during the period from 25-2-2000 to 13-3-2000. This costly inaction or omission on the part of the Central Government helped only to further vitiate the atmosphere and complicate the situation resulting in loss of mutual confidence, hardening of the stand and accusations against each other. Precious time was lost and the prospect of an amicable settlement for ending the strike faded. Had the Central Government shown greater urgency and sensitivity to take immediate steps for appointing the Commission of Inquiry, the escalation of the crisis could have been avoided and a better climate for a negotiated settlement would have been created. It should also be mentioned that in an immediate response to the request made by the Central Government on 14-3-2000, the Hon'ble Chief Justice of India informed the Government on 16-3-2000 itself that he was sparing the services of Hon'ble Mr. Justice S. Saghir Ahmad to preside over the Commission. But in the meanwhile, the National Human Rights Commission had initiated suo motu action in an effort to find a just solution. Hence, observing that the National Human Rights Commission was already seized of the matter, Hon'ble Mr. Justice S. Saghir Ahmad declined to accept the assignment. Unfortunately, the National Human Rights Commission also closed the proceedings before it, taking note of the filing of this Writ Petition in the High Court and the Government's decision to appoint a Commission of Inquiry. This confusion was created by the delay in appointing a Commission of Inquiry which was promised by the Central Government as early as on 25-2-2000. Ultimately on 28.3.2000 the Central Government appointed Mr. Justice N.C. Kochhar to preside over the Commission of Inquiry. Hence the demand of the lawyers for appointment of a Commission of Inquiry stood satisfied though belatedly. The remaining demand is for suspension of the police officers concerned. Even though the notification appointing the Commission of Inquiry was issued on 28.3.2000, things were not moving fast and hence this Court had to pass interim order on 7.4.2000 directing the Government to take immediate effective steps to make the Commission functional and to

enable the Commission to hold its first sitting as early as possible but not later than 25.4.2000.

10. It is in the larger public interest and in the interest of administration of justice that this Court decided to examine the prayer regarding suspension of the Police Officers and the prayer for recall or suspension of the strike. But has this Court got power under Article 226 of the Constitution to direct Respondents 3 and 6 and the lawyers to call off or suspend the strike? Similarly, can this Court compel the Government to suspend the police officers from service or to take any other action against them as demanded by the striking lawyers? These questions have to be answered first.

11. In *Dwarka Nath Vs . Income-tax Officer*, : [1965]57ITR349(SC) the Supreme Court explained the nature and scope of the power of the High Court under Article 226 of the Constitution as hereunder :-

'This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved

to direct the article through defined channels.'

Hence the jurisdiction of the High Court under Article 226 of the Constitution is wide enough to enable the Court to reach injustice wherever it is found and to mould the reliefs to meet the particular situation. The prolonged strike by the lawyers has caused injustice to the public and the litigants and has also interfered with the administration of justice. Hence in exercise of the powers under Article 226 of the Constitution this Court can pass appropriate orders to prevent such injustice and can mould the reliefs to meet the situation arising out of the lawyers' strike. The power conferred on the High Court by Article 226 is primarily for the enforcement of fundamental rights. In *Hussainara Khatoon & Others Vs . Home Secretary, State of Bihar*, : 1979 CriLJ1036 the Supreme Court has held that speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. By the prolonged strike of the lawyers, the fundamental right of the litigants for speedy trial has been infringed. This Court has not only the power but also the duty to step in to protect and enforce the said fundamental right.

12. As held by the Supreme Court in *Comptroller & Auditor General of India Vs . K.S. Jagannathan* : [1986]2SCR17 the High Court is competent to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred on it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases, the High Court can compel the Government or the public authority concerned to exercise the discretion in a proper and lawful manner. In a proper case, in order to prevent injustice, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. Hence it is open to this Court to examine whether the Government unjustifiably failed or refused to exercise its discretion to suspend the Police Officers concerned or to take any other action against them and whether the Government exercised the discretion wrongly. If the Government

unjustifiably failed or refused to exercise its discretion or exercised the discretion wrongly, this Court is competent to pass appropriate orders to compel the Government to exercise the said discretion in a proper or lawful manner. If circumstances require, in order to prevent injustice, this Court may pass an order which the Government itself should have passed had it properly and lawfully exercised its discretion.

13. It is settled law that any action or decision of the State or a public authority is judicially reviewable, irrespective of the sphere in which the discretion was exercised by the State or the said authority. The scope of judicial review may vary with reference to the type of matter involved. But there is no such thing as unreviewable administrative discretion. Any act of the repository of power, whether legislative or administrative or quasijudicial, is open to challenge if it is in conflict with the [Constitution of India](#) or the governing Act or the general principles of the law of the land or if it is so arbitrary or unreasonable that no fair minded authority could ever have done it. Whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. If the action or the decision is perverse or if it has been arrived at by the authority misdirecting itself by adopting a wrong approach or if it has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same. The repository of power should act within the bounds of the power delegated and should not abuse his power. He must act reasonably and in good faith. Where there is arbitrariness in State action Article 14 of the Constitution springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. Rule of law contemplates governance by laws and not by humour, whims and caprices of the men to whom the governance is entrusted for the time being. An act uninformed by reason is arbitrary. Arbitrariness is anathema to State action in every sphere and wherever the vice percolates, the Court would not be impeded by technicalities to trace it and would strike it down. However, judicial review as the words imply is not an appeal from a decision but a review of the manner in which the decision was made. The Court is concerned not with the decision but with the decision making process. But it does not mean that the Court

cannot consider the established grounds of review which extend to the substance as well as the manner of the making of administrative decisions and acts. Every State action has to be for a public purpose and must promote public benefit. The discretionary power conferred upon an authority for the public good is coupled with a duty to perform it under relevant circumstances. The fact that the exercise of the power is left to the discretion of the authority does not exonerate him from not discharging his duty. If the authority fails to discharge his duty by refusing to exercise his discretion when facts calling for its exercise exist, the Court will compel him to do so. If the discretionary power is exercised arbitrarily, capriciously or unreasonably or by taking into consideration extraneous and irrelevant considerations, in the eye of law, the authority concerned must be deemed not to have exercised the discretion at all, that is, he has not discharged his duty. In such a situation also the Court will compel the authority to discharge the duty of exercising the discretion honestly and in the spirit of the statute. If the authority exercises his discretion honestly and in the spirit of the statute no mandamus will be issued directing him to exercise his discretion in a particular way. A decision resulting from the exercise of power or discretion on the dictation of some one else is ultra virus and void. We propose to examine the issues involved in this case, in the light of the above mentioned principles and parameters.

14. We shall first deal with the question of suspension of the police officials. The reasons for the demand for suspension of police officers and the circumstances leading to the indefinite strike are explained in paragraphs 4 to 14 of the affidavit of respondent No. 3, President of the Delhi High Court Bar Association, which are extracted hereunder:

'4. That the lawyers have been conscious of the fact that changes proposed in the Civil Procedure Code will harm the litigating public and since they owe a public duty, they went to lodge a protest on 24th February, 2000 by a peaceful march to Parliament. On the said date, the peaceful marchers were met with brutal lathi charge by the Police. More than 200 lawyers were injured, 93 of them gravely. Some have lost their vision; many are still lying with multiple fracture etc. Some of the photographs of the incident including the lawyers who had suffered injuries are annexed hereto and collectively marked as ANNEXURE R-1 COLLY.

5. That the following are the admitted facts of the brutal and unwarranted lathi charge on 24th February, 2000:

(i) 30-40 minutes long naked display of state aggression on unarmed demonstrating lawyers by mercilessly inflicting lathi blows, sparing none whether women or men, aged or young;

(ii) firing of rubber bullets aimed to injure and cause hurt;

(iii) use of tear gas shells;

(iv) use of unwarranted force;

(v) chasing of dispersing lawyers inside the lanes and beating them with lathis, not individually but by a group of lathi wielding police crowding on a single victim wherever found, like many blood-hounds after a singly prey;

(vi) 200 lawyers got injured including some persons of the public out of which 93 were seriously injured;

And to cap it all, as if the abuse of power and authority by the Police was not enough, the Doctors of Ram Manohar Lohia Hospital where hundreds of injured lawyers had been taken for treatment started making nothings on the Medico-Legal Certificate-proceedings that it was an accident and not an assault. A copy of one such Medico-Legal Certificate is annexed hereto as ANNEXURE R-2.

5. That immediately after the savage beatings of the lawyers Deputy Commissioner of Police, Mr. Pranab Nanda, spoke to Reuters News Agency, an International News Agency, which reported DCP Nanda saying that 'lawyers tried to set the vehicles on fire and damage trucks as they tried to go to the Parliament Building in the heart of Delhi' and consequently, 3-35 lawyers were injured and taken to hospital.

6. That Ms. Sheila Dixit, Chief Minister of NCT of Delhi visited the injured in the hospital and on 5th March, 2000 wrote a letter to Lt. Governor of Delhi with a copy to Union Home Minister stating in unequivocal terms that the Police action on the lawyers was unprecedented in the intensity of the force used on the peaceful

march. She confirmed that hundreds of lawyers had received injuries and desired immediate action against the erring police officials. A copy of the letter dated 5th March, 2000 is annexure hereto as ANNEXURE R-3.

7. That on 15th March, 2000, a Press release was issued by the Home Department, Government of NCT of Delhi wherein the Home Department accepted that the Police Officials used force including on a lady lawyer 'which was unwarranted and should have been avoided'. A copy of the Press release dated 15th March, 2000 is annexed hereto and marked as ANNEXURE R-4.

8. That the Lt. Governor again by letter dated 19th March, 2000, addressed to the Attorney General of India, after reviewing all Video tapes came to the conclusion that three Police Officials indulged in the use of force. A copy of his letter dated 19th March, 2000 is annexed hereto and marked as ANNEXURE R-5.

9. That Video recordings of the incident were made by an approved Government agency, ANI on 24th February, 2000 which is annexed hereto and marked as ANNEXURE R-6. A view of the same makes it abundantly clear that :-

(a) the use of force was not by three police officials and many more were involved in the actual brutal attack;

(b) the picture as well as the video tape also shows that there was an attack on a lady photographer from the NDTV. Admittedly, NDTV photographer did not form part of the marchers and is not a lawyer. She could not have provoked any one to be beaten and the incident of beating the photographer is just before the lathi charge. On seeing the photographer being beaten by the Police, some lawyers wanted to reach out to the young lady photographer and save her from the merciless hands of the Police. This created some chaos and the Police immediately reported to lathi charge and horse mounted police was brought into action.

10. That the Police Officers who had ordered the brutal lathi charge or those who were admittedly in the management of the incident having failed to prevent the brutal lathi charge on the peaceful marchers are legally, vicariously and morally

responsible and consequently, the Bar has been demanding suspension of these erring police officials, namely, the Deputy Commissioner of Police, Assistant Commissioner of Police etc. who have been identified as under :

1. Shri Nygoi, Addl. Dy. Commissioner of Police. 2. P. Nanda, Dy. Commissioner of Police. 3. Vijay Mallick, Asstt. Commissioner of Police. 4. T.S. Bhalla, Asstt. Commissioner of Police and 5. Mongia, Station House Officer. These officers admittedly are prima facie liable and/or responsible for the incident of 24th February, 2000 as they were in charge of and managing the incident. On enquiry under the Commission of Inquiry Act, it would be seen and determined who are the others who are responsible for the same and consequently, on the recommendations of the Hon'ble, Enquiry Judge, action shall be proposed against the other erring Police officials.

11. That the MLC Report of the injured persons are with Dr. Ram Manohar Lohia Hospital, Lok Nayak Jai Parkash Narain Hospital etc. some of the discharge summary made available to the respondent Along with the list of 135 injured is being annexed hereto and collectively marked as is annexed hereto and marked as ANNEXURE R-7 COLLY. The respondent craves leave of this Hon'ble Court to file further list in this regard.

12. That on the basis of the admissions made by the Lt. Governor and the Delhi Chief Minister coupled with the visual viewing of the still photographs and the video cassette and the summary discharge report, it is abundantly clear that the lawyers were subjected to grievous injuries by the barbaric act of the Police. The admissions, in law, would normally entitle the Police Officials to dismissal but pending inquiry by the Hon'ble Judge under the Commissions of Inquiry Act, the Bar is only seeking their suspension.

13. That the Indian lawyers firmly believe in the role model of their profession. If the lawyers were to take this brutality by the Police and the insensitivity of the Government as fait accompli beyond the reach of rule of law, they would be endangering the society.

14. That this Hon'ble Court in the facts and circumstances of the case, may command the respondents to put all Police Officials, some of whom are detailed above, under suspension pending inquiry on these Police officials. The lawyers assure this Hon'ble Court that they would suspend their present agitation.'

15. According to the reply affidavit filed on behalf of respondent No. 2, the Commissioner of Police, New Delhi, the issues raised in the writ petition are incapable of resolution by judicially manageable standards. It is stated that in the unfortunate incident of 24.2.2000, Police had to take certain unpalatable steps to contain what was admittedly an unlawful assembly. In the course of discharge of their duty of enforcing prohibitory orders in the vicinity of the Parliament House, the police took steps which they considered appropriate to prevent members of the unlawful assembly from reaching the Parliament House and crossing prohibited areas. Some members of the Bar undoubtedly have been hurt in the action taken by the police and otherwise and some members of the police force also have sustained injuries. It is also stated that in the enquiry conducted by the Divisional Commissioner (Revenue) of the Government of NCT of Delhi, it was found that the two Assistant Commissioners of Police whose suspension is demanded by the lawyers had acted with restraint and done their best in the situation. It is contended that the disciplinary control over the police force is a matter in the discretion of the administration and that where the disciplinary authority bona fide feels that on the facts and materials before it, no case has been made out for initiating the disciplinary proceedings and does not initiate the disciplinary proceedings, it is not a matter amendable to judicial review. The fact that some members of the Bar did get injured is regrettable and has caused concern to the Government. Seeing the gravity of the situation, the Government had requested the Police to take appropriate action in the matter. After a careful evaluation it was found that appropriate action under the disciplinary rules was to take immediate action against the officers who ex-facie were seen using force which was perhaps unwarranted. While admitting that some members of the Bar have suffered injury in the incident on 24-2-2000, it is stated that some members of the Police force also suffered injuries during the incident. It is further stated that responding to the sensitivity of the situation, the matter was given serious consideration and the individuals noticed have immediately been dealt with by taking action against three

such officials. It is further stated that two separate cases have been registered by the Police against the lawyers under the relevant provisions of the IPC and the Prevention Damage of Public Property Act but no precipitated action has been taken thereafter. It is also stated that the two Assistant Commissioners of Police were transferred out of the District to remove any possible suggestion which may be made on a later occasion that the officers have in any manner influenced the inquiry or affected its fairness. In defense of the lathi-charge and use of force by the police, respondent No. 2 has stated that the Government of India has vide its Notification dated 1/7/78 authorised the Commissioner of Police to exercise the powers under Section 70 of the Delhi Police Act 1978, to exercise the powers of an Executive Magistrate and District Magistrate. In exercise of the aforesaid powers, a notification under Section 144 of the Cr. P.C. was issued by the Commissioner of Police which came into force w.e.f. 28/12/99 and remained in force up to 25th February, 2000. The schedule to this order admittedly covers the area in which the Police was endeavouring to prevent the agitators from crossing the cordons and barricades put up by the Police. The order under Section 144 was within the knowledge of the agitators. At no point of time, the legality of the order under Section 144 Cr. P.C. was put in issue. It is also stated that during the continuance of the order under Section 144 Cr. P.C. any assembly of 5 or more persons would constitute unlawful assembly within the meaning of Section 141 of the IPC. Accordingly, under Section 129 of the Cr. P.C., it was perfectly within the power of the officers in charge to take such steps to command the assembly to disperse and if the assembly did to disperse, then take appropriate action to disperse such an assembly. Respondent No. 2 has denied the use of any fire arms to disperse such an assembly. He has also disputed the correctness of the number of injured lawyers and has denied any bullet injuries. It is also contended in the reply affidavit of respondent No. 2 that provisions contained in the Punjab Police Rules relating to the procedure to be followed for dispersal of unlawful assembly (Rule 14.56) have been complied with. It is stated that all the wanings, exhortations etc. which were required to be given were duly given. The senior police officials attempted to persuade the lawyers to reckon and only when the persuasion failed and when the lawyers crossed the last barricade, indulged in violence and showed determination not to disperse by moving towards Parliament

House that the extreme step of cane charge was resorted to. The suggestion that there was 30-40 minutes long naked display of state aggression on unarmed demonstrating lawyers by mercilessly inflicting lathing blows is denied. No rubber bullets were used in the entire incident. Tear gas shells had to be used to disperse the assembly prior to ordering the cane charge. As the assembly became unlawful, broke all cordons, threw stones, attacked policemen with sticks, damaged vehicles and showed determination to march to the Parliament House, the use of force was warranted and the same was only used after the persuasion and the warnings failed. The cane charge was with clear direction to use minimum force. In the briefing which clear direction to use minimum force. In the briefing which is given to the police force deployed, clear instructions are always given and were given in the instant case also that if force is needed to be used, the minimum possible force is used. According to respondent No. 2, in the press release of the Government of NCT of Delhi, no admission has been made which would warrant the suspension of the senior officials as demanded. The allegation that there was an attack on a lady photographer from the NDTV is denied. One NDTV photographer had climbed the police vehicle and she was being persuaded by the lady police officials to remove herself from the top of the bus. No complaint has been filed by the photographer.

16. In the affidavit filed on behalf of respondent No. 4, Ministry of Law, Justice and Company Affairs it is stated that in their meeting with the Hon'ble Prime Minister and the Hon'ble Law Minister on 25.2.2000 the leaders of the Bar put forth three demands: (a) that the proposed amendments to the Civil Procedure Code be notified only after discussions with the Bar; (b) that the entry of foreign lawyers in India be not permitted until a complete and detailed discussion with the Bar; and (c) that the Advocates Act be not amended without consultation with the Bar. Government of India accepted all the three demands and the leaders of the Bar assured the Hon'ble Law Minister that the strike would be called off. It is also stated that on the very same day the Hon'ble Minister of Law made a statement in Parliament and that the said statement had been finalised incorporating certain changes suggested by the leaders of the Bar. The affidavit refers to the rival versions regarding the incident on 24.2.2000 and to the Government's willingness to order an inquiry by a sitting Judge of the Supreme Court. It is further stated that

the demand for suspension of the police officers was only subsequently added to the earlier mentioned three demands of the Bar. The affidavit also mentions the initiative taken by the Hon'ble Law Minister to resolve the crisis and to order an inquiry as agreed upon by the Government. Mr. P.N. Lekhi, disputed the statement of respondent No. 4 that the demand for suspension of the police officers was added subsequently. According to him the demand for suspension of the police officers was raised on 25.2.2000 itself. Mr. Lekhi also denied the statement of Respondent No. 4 that on 25.2.2000 the leaders of the Bar assured the Hon'ble Law Minister that the strike would be called off. He pointed out that in the statement made by the Hon'ble Minister in the Parliament on 25.2.2000 there was no reference to any such assurance and that the Hon'ble Minister had only stated that the representatives of the Bar had met the Hon'ble Prime Minister and that it was decided to start dialogue on the basis of the statement being made by the Hon'ble Minister in the Parliament.

17. According to the affidavit filed on behalf of the Ministry of Home Affairs, after the hearing of this case on 23.3.2000 the Ministry was informed that the learned Solicitor General wanted to obtain further instructions and thereafter the Ministry reviewed the position at the highest level (presided over by the Hon'ble Home Minister) on 25.3.2000 and the matter was re-examined by the Home Ministry. It is stated that the decision to order the lathi charge cannot be considered to be one which would, at this stage, justify initiation of any disciplinary action. For convenience paragraphs 3, 4 and 5 of the affidavit are extracted below :-

'3. Accordingly, a meeting was held at the highest level (presided over by the Hon'ble Home Minister) on 25.3.2000, and the matter has been re-examined by the Home Ministry.

4. It has been represented that while the assertion of the Bar Associations is that there was an unprovoked lathi charge, it is the version of the police (also based, inter alia, upon certain evidence produced by the police by way of photographs and otherwise) that the measures by way of barricades and the water cannons taken to prevent the lawyers from crossing the farthest permissible point, i.e., an area in front of Parliament Street Police Station had failed on account of the steps

taken by the lawyers. It is a version of the police (also supported prima facie by certain photographs as well as other contemporaneous record) that some agitators/demonstrators present in the course of the demonstration had resorted to violent acts and had broken through all the cordons. The result of this was that they could then have marched to Parliament House. The police, therefore, claim that it was only when they had no option left to prevent the lawyers completely breaking of control and reaching Parliament House that they resorted to a lathi charge, with clear standing instructions given from time to time to use the minimum possible force. The police contend that the agitators/demonstrators who were present at that point of time and at that place where the incident occurred were in 'unlawful assembly' and, therefore, even legally, the police was obliged to take appropriate steps to disperse such an assembly. The situation became even more sensitive, and the duty of the police even more commanding, considering the proximity of the agitators/demonstrators to Parliament House, which was then in session, and also compelled by the fact that all cordons to restrain the onward march of the agitators/demonstrators had been broken through.

5. In these circumstances, I respectfully submit at this stage the decision to order the lathi charge cannot be considered to be one which would, at this stage, justify initiation of any disciplinary action. It is for this reason, I respectfully state that it is felt that immediate constitution of a Commission of Inquiry to investigate the conflicting versions is of the utmost importance and I am advised to state that the Government is taking steps to do so at the earliest.'

18. Lawyers all over India were protesting against the Civil Procedure Code Amendment Act, 1999 and certain changes in the Advocates Act suggested by the Law Commission and the apprehended entry of foreign lawyers to practice in Indian Courts. The issues raised by the lawyers were directly connected with the legal profession and the administration of justice. Whatever be the merits and demerits of their objections, the lawyers had a right to protest and they decided to hold a Parliament March on 24.2.2000 to lodge their protest. Thousands of lawyers from different parts of India assembled in Delhi and marched to the Parliament House shouting slogans and holding placards and banners. The programme was pre-arranged and police authorities were informed of it in

advance. However, the lawyers were denied permission to hold the demonstration in the vicinity of the Parliament House. A prohibitory order under Section 144 of the Criminal Procedure Code was already in force in the localities surrounding the Parliament House. In such circumstances the police stopped the demonstrators at Parliament Street and prevented them from proceeding to the Parliament House. The police directed the demonstrators to disperse on the ground that the assembly had been declared an unlawful assembly. When some of the lawyers crossed over the barricades put up by the police and tried to march forward, the police used tear gas, water cannone and ultimately lathi-charge (described as cane charge in the affidavit of respondent No. 2) to disperse the unlawful assembly. In this process about 135 lawyers got injured and many of them sustained grievous injuries. Some of the injured lawyers had to be admitted and treated in the different hospitals. There is not much dispute about the above facts. However, Mr. P.N. Lekhi contended that the lawyers were holding only a peaceable demonstration; that they were unarmed; that they had a right to violate the prohibitory order under Section 144 of Criminal Procedure Code as a mark of protest; that they were only trying to court arrest; that they did not attack the police or indulge in any form of violence; that the police resorted to the use of tear gas, water cannone and lathi-charge without any provocation or justification; that before using force the police did not follow the procedure or observe the mandatory requirements under the law; that excessive force was used by police and the lawyers were brutally attacked and assaulted causing grievous injuries; that the action of the police amounted to criminal offences and misconduct; and that considering seriousness of the offences and the misconduct of the police officials, they should be placed under suspension pending the Inquiry by the Commission. According to the learned Solicitor General, apart from crossing over the barricades and trying to march forward, some lawyers allegedly attacked the police with sticks of the banners and threw stones at policemen and their vehicles and damaged public property. It was also claimed that some police officials were injured while discharging their duty of dispersing the unlawful assembly. But names or details of such injured police officials were not furnished whereas respondent No. 3 had placed on record the list of 135 injured lawyers. It was further contended by the learned Solicitor General that excessive force was not used and no criminal

offence or misconduct was committed by the police officials. According to the learned Solicitor General there is absolutely no justification for taking any action against the police officials or placing them under suspension till the Commission of Inquiry submits its report.

19. As pointed out by the Supreme Court in *LIC of India Vs . Prof. Manubhai D. Shah* : [1992]3SCR595 freedom of speech and expression is a natural right which a human being acquires on birth and therefore it is a basic human right. This basic human right has been recognised by the Universal Declaration of Human Rights (1948). In the Preamble of the [Constitution of India](#), the People of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. This resolve is reflected in Article 19(1)(a) of the Constitution which guarantees to all citizens the fundamental right to freedom of speech and expression. In *Kameshwar Prasad and Ors. Vs . State of Bihar*, : (1962)ILLJ294SC the Supreme Court considered the question whether the right to make a 'demonstration' is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) or 19(1)(b) of the Constitution i.e. the freedom of speech and expression and the right to assemble peaceably and without arms. The Supreme Court has held in the said case that a 'demonstration' is a visible manifestation of the feelings or sentiments of an individual or a group and thus a communication of one's ideas to others to whom it is intended to be conveyed. It has also been held that 'demonstration' is in effect a form of speech or of expression and that it might also take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended, the feelings of the group which assembles. There are forms of demonstration which would fall within the freedoms guaranteed by Article 19(1)(a) and 19. A demonstration may take various forms such as noisy and disorderly or peaceful and orderly. But the Supreme Court has clarified that a violent and disorderly demonstration would not fall within Article 19 or 19. In this context, it is useful to remember that in *Maneka Gandhi Vs . Union of India* : [1978]2SCR621 the Supreme Court has held that even if a right is not specifically named in Article 19, it may still be a fundamental right covered by some clause of that Article if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. According to the Supreme Court, what is

necessary to be seen is whether the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right. Hence the holding of a peaceful and orderly demonstration by way of protest is an exercise of the fundamental rights guaranteed by Article 19(1)(a) and 19(1)(b) of the Constitution. In a democratic society every citizen has a right to protest. The right to protest through civil disobedience also has come to be recognised as a right of the citizen in a democratic polity. therefore, we are of the view that the Parliament March held by lawyers on 24.2.2000, so long as it remained peaceful and non-violent, was a legitimate exercise of their fundamental rights guaranteed by Article 19(1)(a) and 19(1)(b) of the [Constitution of India](#) and their democratic right to protest through civil disobedience.

20. In view of the provisions contained in Article 19(2) and 19(3) of the [Constitution of India](#), in the interest of public order reasonable restrictions can be imposed by law on the exercise of the rights conferred by Article 19(1)(a) and 19. In *Madhulimaye Vs . S.D.M. Monghyr* : 1971 CriLJ1720 the Supreme Court has held that the expression 'in the interests of public order' in the Constitution is very wide and it is capable of taking within itself certain acts which disturb public tranquillity or are breaches of the peace. Section 144 of Cr.P.C. confers power on the District Magistrate, Sub Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf, to issue an order or direction which has the effect of imposing reasonable restrictions on the exercise of rights guaranteed by Article 19(1)(a) and 19. The Constitutional validity of Section 144 of Cr. P.C. was upheld by the Supreme Court in *Madhulimaye v. S.D.M. Monghyr* (Supra). In exercise of the powers conferred upon him by Section 144 of the Cr.P.C. the Commissioner of Police, Delhi had made a written order prohibiting: (i) the holding of any public meeting, (ii) assembly of 5 or more persons, (iii) carrying of fire arms, banners, placards, lathis, spears, swords, sticks, brickbats etc. (iv) shouting of slogans, (v) making of speeches etc., (vi) processions and demonstrations and (vii) picketing or dharna in any public place within the area specified in the Schedule and Site Plan appended to the order, without a written permission. The said order under Section 144 Cr. P.C. came into force with effect from 28.12.1999 and remained in force for a period of 60 days i.e. up to 25.2.1999. Any person contravening the said order was liable to be punished under Section 188 of the Indian Penal Code.

Thus on 24.2.2000 the exercise of the fundamental rights under Article 19(1)(a) and 19(1)(b) of the Constitution in any public place within the area specified in the Schedule and Site Plan appended to the order under Section 144 Cr.P.C. stood curtailed or restricted to the extent stated in the said order. In other words the acts mentioned in the said order could not be done without a written permission. Admittedly the area specified in the Schedule and Site Plan appended to the order covered the Parliament House together with its surrounding localities including the Parliament Street. It was not disputed that the lawyers had been refused permission to hold any procession or demonstration in any public place within the specified area on 24.2.2000. The prohibitory order was not challenged in any proceedings. Hence, prima facie, the Parliament March held by the lawyers on 24.2.2000 was in violation of the prohibitory order issued under Section 144 of the Cr.P.C. The police were authorised and were duty bound to enforce the prohibitory order and to prevent its violation. They were also authorised and empowered to remove or disperse any unlawful assembly in accordance with law. Hence they were justified in putting up barricades on the road and taking any other lawful action to enforce the prohibitory order and to prevent its violation. At the same time, the lawyers had the right even to violate a prohibitory order in a peaceful and non violent manner and to court arrest as a mark of their protest. The police could have used only the minimum degree force required to enforce the prohibitory order and to disperse the unlawful assembly.

21. According to the police, despite the resistance put up by the police the lawyers forcibly crossed over the barricades and tried to march to the Parliament House, ignoring the warnings and appeals to disperse and some of the lawyers even resorted to different forms of violence like stone throwing, attacking the police with sticks and destroying public property and hence the police officials were constrained to use force to disperse the unlawful assembly. It was claimed that only when the use of tear gas and water cannone failed to disperse the unlawful assembly, the police resorted to lathi-charge. It was contended on behalf of the police that under Section 129 of the Cr.P.C. they were entitled to use necessary force to disperse the unlawful assembly and that they used only the minimum degree of force required. The above allegations were denied by Mr. P.N. Lekhi, appearing on behalf of the lawyers. According to him the lawyers were holding a

peaceful demonstration and when they were prevented by police from marching ahead towards the Parliament House, they only wanted to court arrest and register their protest, but, without any provocation or justification the police resorted to the use of force. Water from water cannons was directed against the body of the lawyers to hit them down and a brutal lathi-charge was inflicted on the lawyers. Even while lawyers were dispersing from the scene, some of them were indiscriminately and severely beaten up with lathis by the police without any justification. He also contended that though permission to hold the demonstration had been refused by the police authorities, there was an understanding reached on the previous day between the leaders of the lawyers and the police authorities that the lawyers would be allowed to walk some distance and then would be stopped and allowed to court arrest. The understanding was that the lawyers would be allowed to violate the prohibitory order in a peaceful and non-violent manner and to court arrest. Several buses were kept ready by the police to remove the arrested lawyers. The said understanding was not disputed by the learned Solicitor General, but he submitted that unfortunately things did not go as agreed and because of the conduct of the lawyers the police had to use force to disperse the unlawful assembly. He also submitted that some of the lawyers forcibly tried to march to the Parliament House and allegedly resorted to violence and even attacked the police with stones and sticks and destroyed public property. In the light of the above rival contentions, the basic issues are whether the police used force without sufficient provocation or justification, whether the police used excessive force, whether before the use of force and the lathi-charge the police had observed the mandatory requirements under the law, whether the police committed any illegality or misconduct or criminal offence and whether the conduct of the police officials warrant any legal action or disciplinary proceedings against them. These are matters which would definitely come under the purview of the inquiry by the Commission of Inquiry appointed by the Central Government. Hence it is not for this Court to express any opinion or to make any comment on such matters. We shall confine ourselves to the question whether there is any need or justification for directing the Government to suspend the police officer from service pending the inquiry by the Commission and whether the decision taken by the Government not to suspend the police officers is illegal or arbitrary.

22. On a careful consideration of the materials placed before this Court we are not inclined to hold that the actions and conduct of the police while dispersing the unlawful assembly on 24-2-2000 warrant any legal action or disciplinary proceedings against the police officers at this stage. We do not find any illegality or arbitrariness in the decision of the Government to await the recommendations of the commission of Inquiry in this regard. At the same time we are not at all satisfied with the action taken by the Government against the police officials who, even according to the Government, 'used force against some individual lawyers, including a lady lawyer, which was unwarranted and should have been avoided'. In the Video films those police officials were seen beating the lawyers as if they were mad dogs on the streets. Their action was totally unwarranted, unprovoked and unjustified. They were indicted even in the report submitted by the Divisional Commissioner, Delhi to the Lt. Governor. There were around 8-10 police officials who used such unwarranted force and assaulted individual lawyers in blatant violation of the rules relating to use of force to disperse an unlawful assembly. But only three of the said police officials have been placed under suspension. The reason stated for not taking action against others is that only three of the erring officials had been identified. Having seen the video film which was got recorded by the police itself and also the video film recorded by the ANI TV, we are constrained to observe that if the Government wanted, most of them could have been easily identified with the assistance of the police officers(s) who was/were in immediate charge of those police officials. Looking at the video films, the officer in charge could have easily identified and named the officials concerned. We are surprised that even after admitting that unwarranted force which should have been avoided was used by some police officials against some individual lawyers the Government did not make earnest and possible efforts to identify all the guilty police officials and to place all of them under suspension immediately. This reluctance or hesitation or inaction on the part of the Government should be viewed in the light of the allegation made on behalf of the lawyers that the Government was under tremendous pressure from the top brass of the police force and that the suspension of the three policemen was only a farce and an eye wash to protect the guilty policemen and senior police officers by making the three suspended policemen the scape-goats. It was alleged on behalf of the lawyers that the

suspension of the three policemen was only a hesitant, half hearted, make belief attempt to convey a false impression that the Government was interested and willing to take action against the erring police officials. Whether these allegations are true or not, the conduct of the Government is capable of raising doubts about the sincerity and bonafides of the Government in taking action against the erring police officials. Since the Government unjustifiably failed or refused to take necessary steps for identifying all the erring police officials and to place them under suspension which the Government should have done in the lawful and proper exercise of its power and discretion, the Government is liable to be directed by this Court to take immediate steps for identifying all those police officials who admittedly used unwarranted force against individual lawyers at the dispersal stage and also to place them under suspension immediately, as in the case of the three policemen already suspended by the Government. In fact the learned Solicitor General had submitted that the Government had no objection to continue the efforts to identify the remaining police officials also and to place them under suspension.

23. Though the legality and justifiability of the action taken by the police on 24.2.2000 and the culpability, if any, of the police officers are subject matter of the inquiry by the Commission appointed by the Government, we feel disturbed by the degree of force used, the large number of the lawyers who were injured and admitted in the hospitals, the grievous nature of their injuries and the physical and mental pain and loss suffered by them. The video films made available by the lawyers and the police did not give a clear indication as to when and how the lathi charge was started or how long it continued or what was the intensity of the force used. Though the lathi-charge has been admitted by the police, there is surprisingly no reference to any lathi-charge or cane charge in the entries of 24.2.2000 in the Wireless Log Book maintained by the police and produced for our persual. It looks strange that when minute-by-minute account of the actions in the field was being reported and recorded in the Wireless Log Book there is no mention of the lathi-charge or cane charge. How could the officers in the field fail to report to the Joint Commissioner, who was admittedly monitoring the proceedings, that there was a lathi-charge? In the affidavit filed on behalf of respondent No. 2, it was not even stated which officer had ordered the lathi

charge. It was after reputed probing by this Court that the learned Additional Solicitor General Mr. Jaisinghani was kind enough to disclose on the last date of the hearing that the lathi charge was ordered by Mr. P. Nanda, Deputy Commissioner of Police. In this context it should be remembered that one of the allegations of the lawyers is that before ordering the lathi-charge the mandatory provisions contained in Paragraph 14.56 of the Punjab Police Rules requiring prior warnings, exhortations etc. had not been followed. They have also alleged that excessive force was used by police violating the rule which requires that only minimum degree of force shall be used. If the treatment meted out to some of the lawyers at the dispersal stage as seen from the Video films and the number of the lawyers injured in the lathi-charge and the nature of their injuries are any indication, it is not difficult to assume that the lawyers received a raw deal at the hands of the police on 24-2-2000. In this context, it should be stated that none other than the Chief Minister of Delhi had written a letter dated 5-3-2000 to the Lt. Governor of Delhi demanding immediate and appropriate action against the police officials. For convenience, the relevant portions of the said letter are extracted hereunder :

'I am enclosing a representation received from the Bar Council of India, which is self explanatory. Their plea is that whilst they have been assured of an enquiry into the incident of 24th February, 2000 no action what-so-ever has been taken against the police personnel responsible for the atrocities committed by them on the lawyers and advocates. The police action on the lawyers was unprecedented in the intensity of the force used on a peaceful march.

I am personally aware that hundreds of lawyers received serious injuries at the hands of the police and several had broken bones and eye injuries. One amongst them is likely to loose an eye. I am sure you too are aware of the barbarity of the incident.

I would request that immediate and appropriate action be taken against the police officials as the council has pleaded even more so in the interest of a fair and just enquiry. In fact, it is surprising that no action has been taken against the errant policemen till now.

I am sure this will receive your immediate attention and the fraternity of lawyers will receive justice.'

We are conscious of the fact that when a decision regarding use of force by police has to be taken on the spot, it is not possible to weigh with precision and to determine with accuracy the minimum force required to disperse an unlawful assembly and to ensure the use of only just the minimum force and nothing more. At the same time, considering the facts and circumstances stated earlier, we are of the view that the justifiability of the use of force by police on 24.2.2000 and the culpability, if any, of the police officials require to be seriously inquired into from all the angles. The said inquiry will be conducted by the Commission of Inquiry and not by this Court. But in view of the earlier mentioned peculiar facts and circumstances of this case, pending inquiry by the Commission, all the police officials whose action and conduct are the subject matter of the inquiry should be removed, at least temporarily, from the posts held by them. This is necessary to facilitate a proper and fair inquiry. It is only just and proper that the officer concerned is removed from the sphere of his activity, in as much as it may be necessary to find out facts from people working under him or look into papers or records in his custody and it would be embarrassing for all concerned if the officer is present at the spot. Such removal from the posts is also necessary in the interest of justice, since the continuance of the officers in the same post/place during the inquiry may send a wrong signal regarding the bona fides in ordering the inquiry, the fairness of the inquiry and the usefulness of the inquiry. An officer can be removed from the post by suspension from service or by transfer. If there are sufficient grounds to suspend the officer he may be suspended and if not he should be transferred out and such transfer cannot be avoided. Unfortunately these very relevant aspects were not properly considered by the Government while taking a decision on the demand of the lawyers. The officers liable to be removed from the posts will include Mr. P. Nanda, D.C.P. who ordered the lathicharge and Mr. Vijay Mallick, A.C.P., Mr. T.C. Bhalla, A.C.P. and Mr. Mongia, S.H.O. Parliament Street Police Station who were managing the event on the spot. In this connection we wish to point out that apart from the other allegations against them, the above mentioned officers had allegedly failed to exercise proper and effective supervision and control over the police officials who admittedly used

unwarranted force on individual lawyers at the dispersal stage and the said alleged failure and its implications and consequences also are under scrutiny by the Commission.

24. In the facts and circumstances of this case, we do not find sufficient reason or justification to direct the Government to suspend from service any of the police officials except those who admittedly used unwarranted force against individual lawyers at the dispersal stage. We do not find any legal ground to interfere with the decision of the Government not to suspend the other police officers at this stage. The said decision of the Government cannot be said to be improper or illegal or arbitrary. However, the police officers concerned should have been removed from the posts by transfer. In our view the Government did not properly consider the necessity and desirability of transferring all the Police Officers to facilitate a proper and fair inquiry. By refusing even to transfer the Police Officers the Government failed to exercise its discretion properly and fairly. In our view the decision of the Government not to transfer the police officers is so arbitrary and unreasonable that no fair minded authority could have taken such a decision in the given circumstances. The Government adopted a wrong approach and failed to discharge its obligation to apply its mind to pertinent and proximate matters. From the affidavit filed on behalf of the Ministry of Home Affairs it can be seen that even during the review on 25.3.2000, after coming to the conclusion that there is no justification to initiate disciplinary action against the police officers or to suspend them from service, Government did not seriously and properly consider the need and desirability of transferring all the officers whose actions and conduct are the subject matter of the proposed inquiry. Mr. P.N. Lekhi alleged that the Government did not dare to take any action in the case of these officers, apprehending a revolt by the police force. The allegation was promptly denied by the learned Solicitor General. Assuming that the allegation is baseless, having regard to the facts and circumstances of this case we may observe that whatever by their organized strength or clout with the Government, the police force should not be allowed to dictate to the Government or to pressurise the Government to desist from taking action against the police officers when such action is necessary in the interest of justice or for administrative exigency. A responsible Government should not buckle under pressure from anyone including the police. In our view, had the Government

exercised its discretion properly and fairly, the Government would have transferred the police officers concerned from the present sphere of their activity to some other posts from where they cannot influence or prejudice the inquiry. Since the Government failed or neglected to do so, the decision of the Government in this regard is improper, unjust, illegal and arbitrary. Hence we deem it necessary to direct the Government to immediately transfer the police officers concerned to posts from where they cannot influence or prejudice the inquiry.

25. We have noticed that the two Assistant Commissioners of Police, Shri T.S. Bhalla and Shri Vijay Mallick, have already been transferred to the defense Colony Sub-Division and the Traffic respectively. We have also noted the contention of Mr. P.N. Lekhi that they were transferred to an equally important if not better post and that they were actually rewarded by giving such plum posting. He also alleged that their transfer was only a farce and an eye wash and that it would not serve the avowed purpose of facilitating a fair enquiry. These allegations have been refuted by the learned Solicitor General. We appreciate that the Government found it necessary to transfer the two Assistant Commissioners from the posts they were holding. Their transfer was intended to facilitate a fair and proper inquiry which is possible only when the officers concerned are not in a position to influence or prejudice the inquiry. It was also intended to inspire confidence in the minds of the people about the bona fides in ordering the inquiry and the fairness and usefulness of the inquiry. But in the circumstances of this case, we consider that the transfer already effected in their case will not adequately serve the avowed purpose of facilitating a proper and fair inquiry and of inspiring confidence in the minds of the people concerned. Considering the jurisdiction and importance of the two posts to which they have been transferred it would appear that they are posts from where the officers may be in a position to influence or prejudice the inquiry. Having appointed a Commission of Inquiry, the Government should be anxious to facilitate a proper and fair inquiry and to take conscious steps to build confidence in the minds of the people about the fairness and usefulness of the inquiry and also to avoid all possible hindrances. This vital and relevant aspect was ignored while transferring Mr. T.S. Bhalla and Mr. Vijay Mallick to their present posts. Even though it was not intended by the Government, the said transfers are capable of sending wrong signals and giving an impression that the Government was not

seriously interested to have a proper and fair inquiry. In these circumstances we are of the view that the Government should transfer the said Assistant Commissioners of Police to some other posts from where they may not be in a position to influence or prejudice the inquiry. There are a good number of such posts. We have full confidence that the Government and the Commissioner of Police will be able to identify suitable posts for them in the light of what has been observed above. Hence, we do not consider it necessary to specify the posts to which they should now be transferred. Nor is it our function to suggest the posts. The Government may effect the transfers but bearing in mind the spirit of the observations made by us and the administrative exigencies.

26. We also wish to clarify that our direction to the Government to remove the police officers concerned from the posts held by them will not constitute any stigma in their career and that our observations and directions should not be treated as a reflection of any adverse opinion about their integrity, efficiency or conduct. We may add that our directions are only to ensure a proper and fair inquiry into the incident on 24.2.2000.27. Now we shall deal with the prayer for a direction to call off or suspend the strike by lawyers. The question of legality and propriety of strike by lawyers was raised in a public interest litigation filed in the Supreme Court by Common Cause, a registered Society. In the above case the Supreme Court passed an order on 7th December, 1994 which is reported as Common Cause Vs . Union of India & others : [1996]1SCR89 . The relevant portions of the said order are extracted hereunder:-

'2. xxx xxx xxx xxxx xxxx Pursuant to the discussion that took place at the last hearing on 30th November, 1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to, to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with the following interim measures may be sufficient for the present :-

'(1) In the rare instance where any association of lawyers (including statutory Bar Councils) considers it imperative to call upon and/or advise members of the legal

profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(2) No such member who appears in Court or otherwise practises his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion there from.

(3) The above will not preclude other forms of protest by practicing lawyers in courts such as, for instance, wearing of arm bands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1) and (2) and (3) above.

3. Mr. P.N. Duda, Sr. advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate Clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct & Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of atleast six months by making the said clauses the rule of the Court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in Court notwithstanding strike calls given by the Bar Council or Bar Association. Besides,

members of the legal profession should be alive to the possibility of Judges of different Courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases.

4. The matter will stand adjourned by six months to oversee the working of this interim order. It is hoped that it will work out satisfactorily. Liberty to mention in the event of any difficulty.'

The Supreme Court has not passed any further order in the above case deciding the question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in which they are engaged. However the above order dated 7.12.1994 of the Supreme Court is still in force. It is significant that Supreme Court deferred a decision on the larger question after noting the stand of the Bar Council of India that:-

(a) Bar Council of India is against resorting to strike except in the rarest of rare cases involving the dignity and independence of the judiciary as well as the Bar;

(b) Whenever strikes become inevitable, efforts shall be made to keep it short and peaceful to avoid hardship to the litigant public.

Obviously the ongoing strike by the lawyers is contrary to the declared stand of the Bar Council of India and the spirit of the order of the Supreme Court.

28. The Supreme Court has time and again explained the role of the lawyers in the administration of justice and also their duties and obligations as officers of the Court. In *Lt. Col. S.J. Chaudhary Vs . State (Delhi Administration)*, : 1984 CriLJ340 , the Supreme Court has held that it is the duty of every Advocate who accepts the brief in a criminal case to attend the trial from day-to-day and that, having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend.

In *Indian Council of Legal Aid and Advice & others Vs . Bar Council of India & another*, : [1995]1SCR304 , the Supreme Court observed thus:

'It is generally believed that members of the legal profession have certain social obligations, e.g., to render 'pro bono publico' service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.'

In RE Sanjeev Datta & others : 1995 CriLJ2910 , the Supreme Court has stated thus:

'20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteems and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practiced it with dignity, deference and devotion. If the profession is to survive, the judicial system has to vitalised. No service will be too small in making the system efficient, effective and credible.'

29. Eventhough in the Common Cause case, the Supreme Court deferred the hearing and decision on the larger question whether or not members of the legal

profession can abstain from work, in a later case i.e. U.P. Sales Tax Service Association Vs . Taxation Bar Association Agra & others, : AIR 1996 SC98 , the Supreme Court held that an advocate is an officer of the court and enjoys special status in the society and that his position is different from that of workers who in furtherance of collective bargaining organise strike as per the provisions of the Industrial Disputes Act as a last resort to compel the management to concede their legitimate demands. In this view of the matter, the Court did not even consider it necessary to go into the question whether advocates, like workmen, have any right at all to go on strike or boycott court. The Court referred to the decision of the United States Supreme Court in Federal Trade Commission v. Superior Court Trial Lawyers' Association holding that the decision of the Trial Lawyers' Association not to accept any new cases unless a legislation was passed providing for an increase in their fees constituted 'restraint of trade' and that the lawyers who resorted to boycott of Courts had no protection of the First Amendment (Free Speech). The Court quoted with approval the view that strike is an attempt to interfere with the administration of justice and that it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. The Court endorsed the view that when the lawyers boycott the courts, confidence in the administration of justice is shaken and longer the boycott greater the jeopardy to the system and that boycott amounts to contempt of court and that the advocates participating in the strike keep their clients as hostages and their interest in jeopardy. The Court also approved the opinion that strike amounts to professional misconduct. In K. John Koshy and others Vs . Dr. Tarkeshwar Prasad Shaw : (1998)8SCC624 , the Supreme Court has held that the Court is under an obligation to hear and decide the cases brought before it and cannot shirk that obligation on the ground that the Advocates are on strike. In Mahabir Prasad Singh Vs . M/s. Jacks Aviation Private Ltd., : AIR 1999 SC287 , the Supreme Court has categorically stated that no Court is obliged to adjourn the case because of the strike call given by any association of Advocates or a decision to boycott the Courts in general or any particular court and that it is the solemn duty of every Court to proceed with the judicial business during court hours. It has been emphatically stated that no court should yield to pressure tactics of boycott calls or

any kind of browbeating. The Court also observed that if any counsel did not want to appear in the Court, professional decorum required him to give up his engagement so that the party could engage another counsel. Retaining the brief of his client and at the same time abstaining from appearing in Court is unprofessional as also unbecoming of the status of an advocate. The Court reminded that having accepted the brief, the lawyer would be committing a breach of his professional duty if he failed to attend the Court.

30. In the light of the above mentioned views expressed by the Supreme court, lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold vakalat for the parties, even if it is in response to or in compliance with a decision of any association or body of lawyers. In our views, in exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from the case. But so long as a lawyer holds the vakalat for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body of lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof. There is no fundamental right, either under Article 19 or under Article 21 of the Constitution, which permits or authorises a lawyer to abstain from appearing in Court in a case in which he holds the vakalat for a party in that case. On the other hand a litigant has a fundamental right for speedy trial of his case, because, speedy trial, as held by the Supreme Court in *Hussainara Khatoon & others Vs . Home Secretary, State of Bihar : 1979 CriLJ1036* , is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. Strike by lawyers will infringe the above-mentioned fundamental right of the litigants and such infringement cannot be permitted. Assuming that the lawyers are trying to convey their feelings or sentiments and ideas through the strike in exercise of their fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, we are of the view that the exercise of the right under Article 19(1)(a) will come to an end when such exercise threatens to infringe the fundamental right of another. Such a limitation is inherent in the exercise of the

right under Article 19(1)(a). Hence the lawyers cannot go on strike infringing the fundamental right of the litigants for speedy trial. The right to practice any profession or to carry on any occupation guaranteed by Article 19(1)(g) may include the right to discontinue such profession or occupation but it will not include any right to abstain from appearing in Court while holding a vakalat in the case. Similarly, the exercise of the right to protest by the lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. The lawyer has a duty and obligation to co-operate with the Court in the orderly and pure administration of justice. Members of the legal profession have certain social obligations also and the practice of law has a public utility flavour. According to the Bar Council of India Rules, 1975 'an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or far a member of the Bar in his non-professional capacity, may still be improper for an Advocate'. It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strike. It is unprofessional and unethical to do so. In view of the nobility and tradition of the legal profession, the status of the lawyer as an officer of the Court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trial of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause. Lawyers should adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant. Thereby lawyers can also set an example to other sections of the society in the matter of protest and agitations.

31. Every Court has a solemn duty to proceed with the judicial business during court hours and the Court is not obliged to adjourn a case because of a strike call. The Court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The Court should not become privy to the strike

by adjourning the case on the ground that lawyers are on strike. Even in the Common Cause case the Supreme Court had asked the members of the legal profession to be alive to the possibility of Judges refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with the cases. Strike infringes the litigant's fundamental right for speedy trial and the Court cannot remain a mute spectator or throw up its hands in helplessness on the face of such continued violation of the fundamental right.

32. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in Court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of court and he is liable to be proceeded against on all these counts.

33. In the light of the above discussion we are of the view that the present strike by lawyers is illegal and unethical. Whatever might have been the compelling circumstances earlier, now there is absolutely no justification for the continuance of the strike in view of the appointment of the Commission of Inquiry and the directions being issued in this case.

34. We don't consider it necessary to issue any specific directions to respondents 3 and 6 and the striking lawyers as we hope that at least now good sense will prevail and they will call off the strike forthwith and avoid the unpleasant situations that might arise if they continue to abstain from appearing in courts. In case the strike is not called off, the courts concerned will deal with the situation and proceed with the cases in accordance with law and in the light of the duties and obligations of the Court as explained in this judgment.

35. In view of the facts and the legal position stated above we issue the following declarations and directions :-

(a) Lawyers have no right to strike. Strike by lawyers is illegal and unethical.

(b) If, on the ground of strike, a lawyer abstains from appearing in court in a case in which he holds the vakalat for the client, he is committing a professional

misconduct, a breach of contract, a breach of trust and a breach of professional duty.

(c) If, in the name of strike, anyone obstructs or prevents a lawyer from discharging his professional duty of appearing in court, he is committing a criminal offence and is interfering with the administration of justice and is committing contempt of court.

(d) There is absolutely no justification for the continuance of the ongoing strike by lawyers and we expect them to recall it immediately.

(e) We direct respondents No. 2 and 5 to take appropriate decisions and transfer within a week from today, Mr. P. Nanda, D.C.P. New Delhi, Mr. T.S. Bhalla, A.C.P. defense Colony, Mr. Vijay Mallick, A.C.P. Traffic and Mr. Mongia, S.H.O. Parliament Street Police Station to some other suitable posts in the light of the observations contained in this order.

(f) We also direct respondents No. 2 and 5 to take immediate and necessary steps to identify all the police officials who used unwarranted force against individual lawyers at the dispersal stage of the Parliament March on 24.2.2000 and to place them under suspension within two weeks from today.

(g) We reiterate the interim order passed on 7th April, 2000 directing the Government to take immediate effective steps to make the Commission of Inquiry functional and to enable the Commission to hold its first sitting as early as possible but not later than 25th April, 2000.

36. In view of the suggestion made by both Mr. P.N. Lekhi and the learned Solicitor General we direct that this case be renotified on 26th July, 2000 for further directions, if necessary.