



International Environmental
Law Research Centre

**HIGH COURT OF MADHYA PRADESH
Medha Patkar**

vs.

State of M.P. and Anr.

ORDER OF 25 SEPTEMBER 2007

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Case Note: The petition was filed by the petitioner on the behalf of the people affected by Sardar Sarover Project who were agitating for their demands for rehabilitation. The petitioner alleged that the agitators were forcibly removed from the place of agitation and they were beaten up badly thereby violating there fundamental rights. Court directed the State to pay compensation to the petitioner and agitator.

Equivalent Citation: 2008CriLJ47, 2007(4) MPHT219

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Decided On: 25.09.2007

Medha Patkar

Vs.

State of M.P. and Anr.

Hon'ble Judges:

A.K. Patnaik, C.J. and Ajit Singh, J.

ORDER

A.K. Patnaik, C.J.

1. This is a Public Interest Litigation registered pursuant to a letter dated 26.7.2007 from District Jail, Indore, written by the petitioner on behalf of the people affected by the Sardar Sarovar Project who, while agitating from their demands for rehabilitation were arrested and detained in the Badwani and Indore Jails.

2. The petitioner has alleged that 26 women agitators and 1 child of seven years of age were brought from police custody of Badwani at 4 a.m. early morning on 26.7.2007 and about 200 men agitators and 10 children were also arrested along with them using immense police force. She has further stated that they were all arrested at around 6.00 p.m. on 25.7.2007 from the place of their agitation called Jamin Hak Satyagrah for giving land to adiwasis, farmers, fishermen, labourers as per the Narmada Water Dispute Tribunal (NWDT) award, the policy of the State Government of Madhya Pradesh and the orders passed by the Supreme Court. She has alleged that all the agitators were forcibly removed from the place of agitation and women and children were badly beaten up by the Police and some also received wounds and that the banners, tents and other documents of the agitators were destroyed by the Police. She has stated that the agitation pertains to demands relating to the land, rehabilitation, compensation for loss of boats and thousands of motor pumps due to uninformed releases of water of upstream dams resulting in submergence of the land of the oustees and that the agitation was peaceful. She has stated that more than 2 lakhs people in different villages have suffered submergence in the Jhabua and Badwani districts. Hence, adiwasis from the hills and mountains of Jhabua had to take to agitation for establishing their rights to land for rehabilitation since 13th July, 2007. She has also stated that the adiwasis and other farmers could not see any alternative when not less than 177 villages with 19 to 25 thousand families staying in the villages and two townships having a thick tree cover, temples, mosques, markets, schools, dispensaries, land and houses were to be drowned due to dam water. The petitioner has prayed that the right to agitation of Sardar Sarovar Project affected adiwasis,

fishermen and labourers be protected and the arrested agitators be released and action taken against unjustifiable use of force and destruction of property and direction be issued to the authorities to guarantee the right to full, fair and timely rehabilitation before submergence and destruction of property.

3. The respondents have stated in their reply that on 13.7.2007, about 200 agitators under the leadership of the petitioner organised a vehicle rally in Badwani town without any prior intimation to the District Magistrate, Badwani and without any prior permission from the District Magistrate, Badwani. They have further stated that after crossing Badwani town, the rally proceeded to village Bajatta Khurd situated on Highway No. 26 at about 8 kms away from Badwani and on reaching village Bajatta Khurd, all the agitators provoked by the petitioner occupied 100 acres of farm land belonging to the M.P. Seed and Farm Development Corporation (for short the Corporation) and Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur and by the evening of 13.7.2007, they fixed tents on the Government farm land using iron pipes and wood logs belonging to the Corporation without any permission from the Corporation. The respondents have also stated in the reply that on 14.7.2007, the officials of the district administration along with senior police officials visited village Bajatta Khurd agricultural farm and advised the agitators as well as the petitioner to vacate the farm land and raise their grievance in a lawful manner.

4. The respondents have further stated in their reply that on 15.7.2007, the Sub-Divisional Magistrate, Badwani and other officials met the petitioner and the supporters and requested them to give their demands in writing and the petitioner gave a copy of the letter dated 13.7.2007 signed by 13 agitators on a letter head of Narmada Bachao Andolan and also gave an ultimatum that they would not leave the farm land until and unless their demands are accepted. The respondents have also stated that on 17.7.2007, the Regional Manager of the Corporation informed the Collector, Badwani that the agitators started ploughing the land with tractors and the petitioner was advised by the Collector to stop cultivating the farm land but she refused to do so. The respondents have further stated in their reply that on 19.7.2007, the District Magistrate, Badwani as well as the Superintendent of Police, Badwani visited the place of agitation and had discussion with the petitioner and her supporters relating to their demands pertaining to the Government policy of rehabilitation and assured the petitioner that the demands will be referred to the State Government for consideration and accordingly, the Collector, Badwani sent a communication to the Divisional Commissioner. The respondents have further stated in their reply that on 20.7.2007, the petitioner started addressing agitators that until the officials of Narmada Control Authority and the NHDC come to the place for discussion, the agitation will continue and on 21.7.2007, the Incharge Minister of District Badwani invited the petitioner and her supporters to have a talk on the issues and on such invitation, some of the agitators met the Incharge Minister at Badwani and they were advised by him that some representatives may come to Bhopal where a meeting will be arranged with the Chief Minister to resolve the grievances but the agitators did not respond to the invitation but became violent and suddenly started shouting against the Minister and also abducted him when he proceeded back to Bhopal. The respondents have stated in their reply that for such unlawful action on the part of agitators, cases under Sections 341, 147 and 186 IPC have been registered against Ashish Mandloi and Ors. in the Police Station at Badwani. The respondents have also stated in their reply that on 22.7.2007 the petitioner started collecting individual applications from

surrounding villages and brought 70 children from surrounding villages to the place of agitation assuring them school education and food at the place of agitation.

5. Regarding the circumstances under which the arrests were made, the respondents have alleged that on 25.7.2007 under the provocation of the petitioner, the agitators organised a Chaka Jaam on the state Highway blocking the Highway with 350 people and asked the 70 children to sit on the front line of the agitation and the petitioner warned the district administration that if their demands are not fulfilled in four days, they will resort to violent agitation. Consequently, a criminal case under Sections 341 and 147 IPC against the petitioner, Ashish Mandloi and Ors. was registered by the Police Station, Badwani and by the evening the district administration warned the petitioner and other agitators that if they do not recall the agitation and vacate the agricultural farm land they will be arrested and on such warning the agitators became furious and some of them attempted to manhandle the officials present at the spot and as the law and order situation went out of control because of the agitation by the agitators under the leadership of the petitioner, 26 females including the petitioner and 95 male agitators were arrested under Section 151 Cr.P.C. , for attempting breach of peace and all the arrested persons were brought to Badwani and presented before the SDM, Badwani at 6.50 p.m. on 25.7.2007 and thereafter 30 male agitators, accompanied with their children were released on furnishing personal bonds and the remaining male agitators were sent to the Jail at Badwani and 26 female agitators were sent to the Jail at Indore as there was no arrangement to keep female agitators in the Jail at Badwani.

6. The respondents in their reply have further stated that the banners, tents, utensils and food-grains which were kept on the farm land were removed and seized in accordance with the procedure prescribed under the Cr.P.C. and no other article was found or seized and no personal belonging of the petitioner was seized. They have stated that agitators have destroyed the entire Moong (green gram) sown by the Corporation on the land causing loss of lakhs of rupees to the Corporation. The respondents have denied the allegations that while arresting the agitators any excessive police force was applied and that the female agitators were manhandled. They have stated that the female agitators were arrested by female police officials and no personal injury or loss of property was reported by any of them in the Police Station and all the female agitators were properly and safely handled. They have stated that after entering into the Jail at Indore early in the morning at about 4.00 a.m. on 26.7.2007 all the female agitators were accommodated in the female cell and that they were examined and none of them including the petitioner was found injured.

7. The respondents have further stated in their reply that on 27.7.2007, 26 persons including the petitioner applied for bail along with required security bonds and the SDM, Badwani, after having the securities and bonds verified by the Tahsildar and the concerned Police Station and after receiving the verification report on 28.7.2007 fixed the bail proceedings for hearing on 30.7.2007 and after considering all the bail applications, directed release of the arrested persons on furnishing bail bonds. They have stated that all the persons except the petitioner and Ashish Mandloi were accordingly released on 30.7.2007 and the petitioner and Ashish Mandloi were detained because they were required in Criminal Case Nos. 399 of 2002 and 646 of 2006 pending before the Chief Judicial Magistrate, Badwani. The respondents have stated that the Court of Chief Judicial Magistrate was intimated and requested to issue production warrant on 27.7.2007 and the petitioner was produced before the Chief

Judicial Magistrate, Badwani on 1.8.2007 and since the offences against the petitioner and Ashish Mandloi were found bailable, they were granted bail by order dated 1.8.2007 passed by the Chief Judicial Magistrate, Badwani in Criminal Case No. 646 of 2006. Regarding Criminal Case No. 399 of 2002, the respondents have stated that the petitioner was produced before the Chief Judicial Magistrate on 3.8.2007 and as the trial was pending before the Sessions Judge, Badwani, the case was forwarded to the Sessions Judge, Badwani, who after hearing the bail issue, granted bail to the petitioner on 3.8.2007 and the petitioner was released on bail on 4.8.2007.

8. Regarding the grievance of the agitators relating to rehabilitation of displaced persons under the Sardar Sarovar Project, the respondents have stated in their reply that the matter is subjudice before the Supreme Court in Narmada Bachao Andolan v. Union of India and Ors. and the Supreme Court has taken a view that in case any person affected by the project has any grievance relating to rehabilitation, he may approach the Grievance Redressal Authority. The respondents have stated that all the displaced families required to be rehabilitated at present dam height 121.92 meters have been duly extended rehabilitation benefits as per the NWDT award, R & R policy of the State Government of Madhya Pradesh and various orders passed by the Supreme Court and in case any affected person has any grievance, he is free to approach the Grievance Redressal Authority.

9. In reply to the allegations by the petitioner relating to submergence of pumps and loss of boats due to release of water from the dam, the respondents have stated in their reply that due to sudden rain the catchment area of the dam was flooded with water and the pumps installed by several persons for irrigation got submerged and the boats were flown away or submerged and the applications received for loss of boats were processed and Rs. 72,000/- have been distributed to 14 applicants for the loss of boats and the other applications are being processed. The respondents have further stated that the district administration has arranged divers to search out the pumps and 19 pumps have been recovered and divers are making efforts to recover other pumps. The respondents have stated that in absence of any provision for grant of compensation for such loss, the matter has been referred to the State by the district administration for compensation.

10. The petitioner has filed a rejoinder reiterating that it is a mandatory for the respondents to rehabilitate Sardar Sarovar Dam affected families in accordance with the NWDT award, the Madhya Pradesh R & R Policy and the directions of the Supreme Court in different orders passed in 1991, 2000, 2002 and 2005, Action Plan of Narmada Valley Development Authority (1993), Master Plan of Narmada Control Authority (1995) and ILO Convention 107. The petitioner has denied the allegation in the reply of the respondents that a vehicle rally was organized through Badwani and undertaken on 13.7.2007. The petitioner has also denied the allegation that she provoked the project affected families to occupy the farm land. She has stated that the decision to occupy the farm land was taken collectively by the project affected families. The petitioner has denied the allegation that iron pipes and wood logs were forcibly taken from the Corporation. The petitioner has stated that the SDM and Tahsildar came to the Satyagraha site in Bajatta and held discussions with the petitioner and the project affected families on a memorandum submitted by the Narmada Bachao Andolan on 4.7.2007 regarding submergence of pumps and loss of boats and other implements due to sudden rise in Narmada waters on 30.6.2007. The petitioner has stated in the rejoinder that the Collector visited the site of 'Dharna' for

the first and only time on 19.7.2007 and held discussion on R & R issues and mainly on land for land and other related issues.

11. The petitioner has denied the averment in the reply of the respondents that the Minister extended the invitation for dialogue and has stated that in fact, the Minister refused to meet the people and hear their grievances. The petitioner has stated that a false case has been registered against those activists allegedly for having abducted the Minister and having committed the offence of wrongful restraint under Section 341 of the Indian Penal Code. The petitioner has stated that there was nothing illegal on her part to collect individual applications from the project affected families regarding their grievances in relation to the R & R process. The petitioner has denied the allegation that 70 children were called by her from the surrounding villages and has stated that the children were from the submerged villages Bhitada and Kharya Bhadal.

12. The petitioner has also denied the allegation that the agitators resorted to Chakka Jaam. She has stated that the Police had diverted traffic flow away from that stretch on the State Highway to another way and there was no chance of any Chakka Jaam. The petitioner has pointed out the discrepancies in the report of the Superintendent of Police, Badwani and the communication of the Collector to the Divisional Commissioner in this regard. The petitioner has pointed out that while the Superintendent of Police, Badwani, has stated in his report in Annexure R/14 that Satyagrahis were arrested from the Satyagraha site at Bajatta town late in the evening on 25.7.2007, the Collector in his letter to the Divisional Commissioner has reported that the arrests were carried out when the Satyagrahis were attempting at Chakka Jaam. The petitioner has also denied the allegation in the reply that the agitators manhandled the officials and has relied on the report dated 26.7.2007 of the Superintendent of Police in Annexure R/14 that due to refusal by the petitioner and other Satyagrahis to withdraw the Satyagraha, they were arrested. The petitioner has stated in the rejoinder that the Police was abusive and violent and manhandled the Satyagrahis in the most inhuman fashion. The petitioner has stated that some Satyagrahis were having their evening meals when they were arrested and she herself was isolated, dragged by her hair, beaten and then literally thrown into the police van. She has stated that she and the other women who were arrested, have filed a complaint in Badwani Police Station in this regard, a copy of which has been filed as Annexure P/4.

13. The petitioner has stated in the rejoinder that there were more than 700 project affected families participating in the Satyagraha at the time of arrest and 150 persons were arrested by the Police between 6.00 p.m. and 7.30 p.m. and taken to Badwani Jail by about 8.30 p.m. and from there, children and parents were taken to the Town Hall in Badwani and released and the men were put into Badwani Jail and women were transported to Indore Jail and detained there. The petitioner has reiterated that the Police destroyed the tent, smashed the sound system and broke the poles holding up the tents, all of which were rented, and spilled food grains and burnt papers belonging to the petitioner and resorted to other destructive activities. The petitioner has stated that the seizure memo annexed to the reply of the respondents in Annexure R/8 is incomplete and that a complaint has been filed with the Police and a memorandum has been submitted listing the various items that have been lost during the arrest including the personal belongings of some adivasis and the petitioner.

14. The petitioner has denied the averment in the reply of the respondents that there was loss of lakhs of rupees belonging to the Corporation and that no sowing is possible. The petitioner has stated that the land which was occupied by the agitators had been sown with soyabean by the authorities after the authorities had destroyed the maize crop sown by the Satyagrahis. With regard to Moong crop, the petitioner has stated in the rejoinder that the Satyagrahis were actually weeding out and fully protecting the Moong crop, which is standing even today.

15. The petitioner has stated in the rejoinder that the arrested persons including the petitioner were kept in jail from the night of 25th July to evening of 30th July by resorting to Section 151 of the Cr.P.C., and that no one was produced before the SDM after they were arrested and the 26 women and 65 men who were arrested, were not informed about the bail or personal bonds. The petitioner has stated that in the order of the SDM, he has stated that if strict action was not taken and a high bail amount was not charged along with personal bonds then the Satyagrahis will again cause serious law and order problem in Bajatta and Badwani and this was entirely false since there was no law and order problem that was caused during the entire Zameen Hak Satyagraha. The petitioner has made a submission in the rejoinder that the intention behind the arrest was to ensure that those arrested be kept in jail for as long a time as possible. The petitioner has stated that applications for bail were made on 26th July, but the SDM refused to grant bail stating that the land surety produced was of land from the adjoining district and hence unacceptable and when sureties from the same district were produced the SDM said that only land which was out of the submergence zone would be acceptable and accordingly, the land documents were verified by the Tahsildar and the bail was given by the SDM only on 29.7.2007 after 4.00 p.m. and the arrested men (except Mr. Ashish Mandloi) and arrested the women project affected families (except the petitioner) were released on 30.7.2007.

16. The petitioner has stated in the rejoinder that she was not released since production warrant was issued in Case No. 399/2002 in respect of a matter in which all other accused persons had been acquitted and the petitioner was held to be an absconder. The petitioner has also stated that a production warrant could have been served on her at any time as she was in public life but this was done to target her and to ensure that she stays in jail for as long a time as possible. The petitioner has stated that in the other case (No. 646/2006) for which she was detained, she is alleged to have used loudspeaker past midnight in a programme in which Swami Agnivesh was the Chief Guest and Ors. public figures were also guests. She has stated that the programme ended well before midnight and false cases were registered against her on the basis of complaint filed by a local Senior BJP Office Bearer of Badwani, who has now been made the Chairman of the District Level Rehabilitation Advisory Committee. Other averments made in the rejoinder relate to proper rehabilitation of the project affected families.

17. At the hearing of the PIL, Mr. N.S. Kale, learned senior counsel with Mr. A. Bhaumik, learned advocate, appearing for the petitioner, submitted that under Article 19(1)(b) of the Constitution of India, all citizens shall have a fundamental right to assemble peaceably and without arms. He submitted that in exercise of the fundamental right guaranteed under Article 19(1)(b) of the Constitution of India, the petitioner and other members of the project affected families of the Sardar Sarovar Project had assembled together and were making demands for land for land as per R & R policy of the Government, NWDT award and the judgment of the Surpeme Court

in Narmada Bachao Andolan v. Union of India and Ors., but they were arrested by use of brutal force by the police on 25.7.2007 and were detained in jail for several days in violation of the right guaranteed by Article 21 of the Constitution. He further submitted that thousands of pumps and other properties of the project affected families were submerged by the sudden release of the water from the dam. He submitted that after the arrest of the petitioner and other Satyagrahis on 25.7.2007, all their belongings at the Satyagarh site were taken away by the police. He argued that the constitutional right to property of the petitioner and other agitators guaranteed under Article 300A of the Constitution of India was, thus, affected. He submitted that for violation of fundamental rights guaranteed under the Constitution of India and for loss of properties of the petitioner and other agitators, this Court should award heavy compensation against the respondents. He submitted that the High Court should also direct the respondents to implement the NWDT award in accordance with the judgment of Narmada Bachao Andolan v. Union of India and Ors. and grant to the oustees of the Sardar Sarovar Project of their entitlement including land for land submerged by the Project.

18. Mr. R.N. Singh, the learned Advocate General appearing for the respondents, on the other hand, submitted that Narmada Bachao Andolan has filed an application in Writ Petition (civil) No. 328/2002 before the Supreme Court making a grievance that there are 4262 project affected families, who have not been rehabilitated and lands/houses have not been offered to them and the Supreme Court has passed an order in the application on 23.4.2007 directing the State of Madhya Pradesh to file a comprehensive affidavit within a period of two weeks giving out the details of rehabilitation so far done by the State. He submitted that the issue regarding rehabilitation of the project affected families of the Sardar Sarovar Project is, therefore, sub-judice before the Supreme Court and should not be taken up by the High Court in the present PIL. Regarding the arrests made on 25.7.2007, he submitted that the facts stated in the reply filed on behalf of the respondents would show that the conduct of the petitioner and other agitators was such that they had to be arrested under Section 151 of the Code of Criminal Procedure 1973. He further submitted that this is not a fit case in which the Court should award compensation against the State respondents.

19. The issue with regard to rehabilitation of the project affected families of the Sardar Sarovar Project is before the Supreme Court in an application filed by the Narmada Bachao Andolan in WP (C) No. 328/2002 and, therefore, it will not be proper for the High Court to consider and decide this issue or give any direction to the respondents regarding rehabilitation. It will also not be possible for the High Court to decide in this case whether the petitioner and other members of the project affected families have suffered loss of property on account of destruction of personal belongings of the petitioner and the adiwasis at the time of their arrest. The respondents have in their reply stated that there is not a single report of loss of property. The allegation of loss personal belongings of the petitioner and other agitators at the time of their arrest having been disputed, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot decide this question and direct the respondents to compensate the petitioner and other members of the project affected families for loss of property. Further, the High Court cannot go into the claim of compensation for loss of pumps and boats as the respondents have stated in their reply that pumps and boats have been recovered and given to the respective

owners and have further stated that the claims of other owners have been referred to the State Government. But as the petitioner has alleged that the fundamental rights guaranteed under Articles 19(1) and 21 of the Constitution of the petitioner and other agitators have been violated by the respondents on account of the arrests of the petitioner and other agitators with brutal force by the police on 25.7.2007 and their detention in jail thereafter, the High Court will have to decide this grievance of the petitioner and other agitators. Under Article 226 of the Constitution of India, the High Court has power, through out the territories in relation to which it exercises jurisdiction to issue to any person or authority or the Government within the territories, directions, orders or writs for the enforcement of fundamental rights conferred under Part III of the Constitution of India and when it is brought to the notice of the High Court either by a formal petition or by a letter from a jail that rights of the citizens under Articles 19(1) and 21 of the Constitution of India have been violated, the High Court is under an obligation to consider such a grievance and grant relief to persons whose fundamental rights are affected.

20. The circumstances under which the petitioner and other agitators were arrested on 25.7.2007 have been stated in the letter petition sent from the Jail. The petitioner has stated that when she along with other agitators were agitating for giving land to adiwasis, farmers, fishermen, labourers as per the Narmada Water Dispute Tribunal award, the policy and the plan of the State Government and the orders passed by the Supreme Court, she and the other agitators were forcibly removed from the place of agitation and the women and children were badly beaten up by the Police at 6 p.m. on 25.7.2007. In the reply, the respondents have a different story to say. They have stated that under the provocation of the petitioner, the agitators organized a Chaka Jaam on 25.7.2007 on the State Highway and asked the 70 children to sit on the front line of the agitation and the petitioner warned the district administration that if their demands are not fulfilled in four days, then they will resort to violent agitation and a criminal case under Sections 341 and 147 IPC against the petitioner, Ashish Mandloi and Ors. was registered by the Police Station, Badwani and by the evening the district administration warned the petitioner and other agitators that if they do not recall the agitation and vacate the agricultural farm land they will be arrested, but the agitators became furious and some of them attempted to manhandle the officials present at the spot and as the law and order situation went out of control because of the agitation, 26 females including the petitioner and 95 male agitators were arrested under Section 151 Cr.P.C. and were presented before the SDM, Badwani, at 6.50 p.m. on 25.7.2007 and thereafter 30 male agitators along with their children were released on furnishing personal bonds under Section 107 Cr.P.C. and the remaining male agitators were sent to the Jail at Badwani and 26 female agitators were sent to the Jail at Indore, as there was no arrangement to keep female agitators in the Jail at Badwani. In the rejoinder, the petitioner has stated that the agitators had not organized any Chaka Jaam and they had not manhandled the officials. The petitioner has relied upon the report dated 26.7.2007 of the Superintendent of Police in Annexure R/14 annexed to the reply of the respondents to establish that the petitioner and other agitators were arrested because they refused to withdraw from the Satyagrah. The petitioner has also stated that the Police was violent and manhandled the agitators in the most inhuman fashion while arresting them. The petitioner has stated that she herself was isolated, dragged by her hair, beaten and thrown into the police van.

21. On 16.8.2007, learned Counsel for the petitioner and the respondents requested us to watch the C.D's produced by the petitioner and the respondents in which the scene of agitation and arrest had been recorded. As there were two different stories, one given by the petitioner and the other given by the respondents, with regard to the circumstances under which the petitioner and other agitators were arrested we watched the two C.Ds on 16.8.2007 in the meeting room of the Court at about 4.30 p.m. in presence of the counsel for the petitioner and the respondents and we found that when the petitioner and other agitators were sitting on the road and were shouting slogans demanding land for land and making other demands, some officers of the district administration and some police personnel first discussed with the petitioner and the agitators about the demands made by the petitioner and the agitators in connection with rehabilitation of the project affected families but after some time the petitioner and the other agitators were forcibly dragged, bodily lifted and put inside the police van. Hence, the allegations in the reply of the respondents that the petitioner and other agitators were arrested because they resorted to Chakka Jaam, they manhandled the officials present at the spot and the law and order situation went out of the control, are totally false. On the other hand, the petitioner and other agitators appear to have been arrested because they refused to withdraw their agitation by shouting of slogans for land for land and making other demands.

22. Under Article 19(1)(a) of the Constitution, all citizens shall have the fundamental right to freedom of speech and expression and under Article 19(1)(b) of the Constitution they have the fundamental right to freedom to assemble peaceably and without arms. When a group of citizens, therefore, assemble and shout slogans making some demands they exercise their fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. This will be clear from the decision of the Supreme Court in *Kameshwar Prasad and Ors. v. State of Bihar* 1962 AIR 1166 in which the Constitution Bench held that the right to make a demonstration is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) and 19(1)(b) of the Constitution. Paragraph 13 of the judgment in *Kameshwar Prasad* as reported in the AIR is quoted hereinbelow:

The first question that falls to be considered is whether the right to make a 'demonstration' is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) and 19(1)(b). A 'demonstration' is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession".

In Webster it is defined as a public exhibition by a party, sect or society...as by a parade or mass-meeting". Without going very much into the niceties of language, it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognized that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Article 19(1)(a) or 19(1)(b). A demonstration might 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. It necessarily follows that there

are forms of demonstration, which would fall within the freedoms guaranteed by Article 19(1) (a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1) (a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.

23. The fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, however, is not an absolute right and under Clause (2) of Article 19 of the Constitution, the State can make a law imposing reasonable restrictions on the exercise of this right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Similarly, the fundamental right to freedom to assemble peaceably and without arms guaranteed under Article 19(1)(b) of the Constitution is not an absolute right and under Clause (3) of Article 19 of the Constitution, the State can make a law imposing in the interests of sovereignty and integrity of India or public order, reasonable restrictions on the exercise of this right. Thus, on both the fundamental rights to freedom of speech and expression guaranteed under Article 19(1)(a) and to freedom to assemble peaceably and without arms guaranteed under Article 19(1)(b), the State can make law imposing reasonable restrictions in the interests of public order.

24. One such provision of law made by the State in the interests of public order, on which respondents have relied upon, is Section 151 of the Cr P.C., which is quoted hereinbelow:

Section 151(1): A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under Sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.

The very language of Sub-section (1) of Section 151 Cr.P.C. quoted above makes it clear that before the Police Officer resorts to Section 151 Cr.P.C. to arrest without orders from a Magistrate and without a warrant, it must appear to him that the person, who is sought to be arrested, is designing to commit a cognizable offence and that the commission of offence cannot be prevented except by such arrest. This interpretation of Section 151 Cr.P.C. has been given by the Supreme Court in Ahmed Noormohmed Bhatti v. State of Gujarat and Ors. Paragraph 5 (five) of the judgment in Ahmed Noormohmed Bhatti as reported in the SCC is quoted hereinbelow:

A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant, have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any

cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise, prevented. The section, therefore, expressly lays down the requirements for the exercise of the power to arrest without an order from a Magistrate and without a warrant. If these conditions are not fulfilled and a person is arrested under Section 151 of the Code of Criminal Procedure, the arresting authority may be exposed to proceedings under the law. Sub-section (2) lays down the rule that normally a person so arrested shall be detained in custody not for a period exceeding 24 hours. It, therefore, follows that in the absence of anything else, on expiry of 24 hours, he must be released. The release, however, is not instead upon only when his further detention is required or authorized under any other provision of the Code or of any other law for the time being in force. It, therefore, follows that if before the expiry of 24 hours of detention it is found that the person concerned is required to be detained under any other provision of the Code of Criminal Procedure, or of any other law for the time being in force, he may not be released and his detention may continue under such law or such provision of the Code. The detention thereafter is not under Section 151 of the Code of Criminal Procedure but under the relevant provision of the Code or any other law for the time being in force as the case may be. Section 151, therefore, only provides for arrest of a person to prevent the commission of a cognizable offence by him. The provision by no stretch of imagination can be said to be either arbitrary or unreasonable or infringing upon the fundamental rights of a citizen under Articles 21 and 22 of the Constitution.

25. Another provision of law made by the State in the interest of public order on which reliance is placed by the respondents, is Section 107 Cr.P.C., which is quoted hereinbelow:

Section 107(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

Thus, Section 107 Cr.P.C. provides that when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb public tranquillity and is of the opinion that there is sufficient ground for proceedings, he may, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

26. The object of Section 107 Cr.P.C. was explained by a Constitution Bench of the Supreme Court in *Madhu Limaye and Anr. v. SDM Monghyr and Ors.* AIR 1971 SC

2486. Paragraphs 33 and 34 of the Judgment in *Madhu Limaye and Anr. v. SDM Monghyr and Ors.* (supra) are quoted hereinbelow:

33. The gist of Section 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the Court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

34. The section is aimed at persons, who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an instance of preventive justice which the Courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquillity. For this purpose, Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore, the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but as far as possible, the prevention of offences. It will be clear from the paragraphs of the judgment of the Supreme Court in *Madhu Limaye and Anr. v. SDM Monghyr and Ors.* (supra) quoted above that Section 107 Cr.P.C. is aimed at persons who by their conduct cause a reasonable apprehension in the mind of the Magistrate that there is likelihood of breach of the peace or disturbance of the public tranquillity and the power is to be used by the Magistrate under Section 107 Cr.P.C. for the preservation of public peace and tranquillity and to prevent commission of offence. Paragraph 16 of the judgment in *Madhu Limaye and Anr. v. SDM Monghyr and Ors.* (supra), in which the Supreme Court has explained the terms "public order" and "public tranquillity" is quoted hereinbelow:

We may here observe that the overlap of public order and public tranquillity is only partial. The terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described as public disorder. The words 'public order' and 'public tranquillity' overlap to a certain extent but there are matters which disturb public tranquillity without being a disturbance of public order. A person playing loud music in his own house in the middle of the night may disturb public tranquillity, but he is not causing public disorder. 'Public order' no doubt also requires absence of disturbance of a state of serenity in society but it goes further. It means what the French designate *ordre publique* defined as an absence of insurrection, riot, turbulence, or crimes of violence. The expression 'public order' includes absence of all acts which are a danger to the security of the State and also acts which are

comprehended by the expression 'order publique' explained above but not acts which disturb only the serenity of others.

Therefore, the terms 'public order' and 'public tranquillity' mean absence of insurrection, riot, turbulence or crimes of violence and includes absence of all acts which are a danger to the security of the state and which disturb the serenity of others.

27. The Supreme Court has also held in *Himatlal K. Shah v. Police Commissioner, Ahmedabad*, that the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place though it can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interests of public order. Paragraph 33 of the judgment of Sikri C.J. delivered on behalf of himself and on behalf of A.N. Ray and Jaganmohan Reddy, JJ, in *Himatlal K. Shah* is quoted hereinbelow:

...the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order. This Court in *Babulal Parate v. State of Maharashtra*, rightly observed:

The right of citizens to take out processions or to hold public meetings flows from the right in Article 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India.

28. Bearing in mind the aforesaid law laid down by the Supreme Court in the decisions discussed above, we find that on 25.7.2007 the petitioner and other agitators were exercising their fundamental rights to freedom of speech and expression and to assemble peaceably and without arms guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution, when they had assembled on the road and were shouting slogans demanding land for land and demanding other rehabilitation measures and there was nothing in their conduct to show that they had any design to commit a cognizable offence the commission of which had to be prevented by their arrest by the Police under Section 151 Cr.P.C. , and yet they were forcibly dragged by the Police and put in the van on the evening of 25th July 2007. We also find that although the petitioner and other agitators had done nothing to give rise to even an apprehension that they will disturb the public tranquillity, public peace or public order and yet the SDM, Badwani insisted upon the petitioner and other agitators to execute personal bonds under Section 107 Cr.P.C. and on refusal on the part of some of the male and female agitators to furnish such personal bonds under Section 107 Cr.P.C., the SDM, Badwani, sent the male agitators to the Jail at Badwani and the female agitators to the Jail at Indore. In our considered opinion, since the pre-conditions of Section 151 Cr.P.C. for arrest by the Police without an order of the Magistrate or without any warrant as provided in the section did not exist, the arrest by the police of the petitioner and other agitators from the road where the petitioner and other agitators were squatting and shouting slogans was in gross violation of their fundamental rights under Articles 19(1)(a) and 19(1)(b) of the Constitution. Similarly, since the demand by the SDM, Badwani on the petitioner and other agitators to execute bonds when they had done nothing to give rise to even an apprehension that they will disturb the public tranquillity, public peace or public order and the detention of the petitioner and other agitators in Badwani and Indore Jails on refusal on the part of the petitioner and

other agitators to execute such bond during 25.7.2007 to 30.7.2007 is wholly without the authority of law and was in violation of their fundamental right guaranteed under Article 21 of the Constitution.

29. We may now consider the relief that can be granted to the petitioner and other agitators, who were arrested and detained in Badwani and Indore Jails, when they have already been released from custody on 30.7.2007. In *Rudul Sah v. State of Bihar and Anr.*, the Supreme Court has held that one of the ways in which violation of the fundamental right under Article 21 of the Constitution by the authorities of the State can reasonably be prevented is to direct payment of monetary compensation to the individuals whose rights are affected. Chandrachud, C.J., as his Lordship then was, who delivered the judgment on behalf of the three Judges Bench, in para 10 has held:

...Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

30. In a recent case in *State of Maharashtra v. Christian Community Welfare Council of India and Anr.*, the Supreme Court has observed that the law that the liability to pay to aggrieved party who has suffered because of police excesses cannot be doubted and has further held that whether such compensation paid by the State can be recovered from the officers concerned will depend on the fact whether the alleged misdeeds by the officers concerned are committed in course of discharge of their lawful duties or beyond or in excess of the same and this will have to be determined in a proper inquiry.

31. We, therefore, direct the State of Madhya Pradesh to pay compensation of Rs. 10,000/- (Rupees Ten Thousand) to the petitioner and each of the male and female agitators, who were arrested in the evening of 25.7.2007 and thereafter detained in Badwani and Indore Jails, in violation of their fundamental rights guaranteed under Articles 19 and 21 of the Constitution within a period of two months from today. We further hold that and it will be open for the State to recover the compensation paid from the officers responsible for the unauthorized arrest and detention of the petitioner and other agitators in accordance with law after proper inquiry.

We make it clear that we have not directed the State of Madhya Pradesh to pay any compensation to the agitators who were arrested on 25.7.2007 but were released soon thereafter and were not detained in the jail at Badwani or Indore.

With the aforesaid directions, the writ petition is allowed with costs of Rs. 10,000/- which will also be paid by the State to the petitioner within two months from today.