Calcutta High Court (Appellete Side)
Unknown vs The State Of West Bengal & Ors on 10 March, 2015
Author: Dipankar Datta

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present : The Hon'ble Justice Dipankar Datta

W.P. No. 33241(W) of 2013

Ambikesh Mahapatra & ano.
...Petitioners
Vs.

The State of West Bengal & ors.
...Respondents

For the petitioners : Mr. Bikash Ranjan Bhattacharya, Sr. Advocate,
Mr. Shamim Ahammed, Advocate,
Mr. Vishak Bhattacharya, Advocate,
Ms. Ruchira Chatterjee, Advocate,
Mr. Mrinal Ranjan Pramanik, Advocate.

For the respondents : Mr. Bimal Chatterjee, Advocate General
Mr. Abhratosh Mazumder, Government Pleader,
Mr. Soumitro Mukherjee, Advocate

Heard on : February 20 & 27, March 6 & 13, April 24, and July 3, 10, 17 & 24, 2014

Judgment on : March 10, 2015

1. An unsavoury incident of not too distant origin resulting in the personal liberties of two mature and elderly individuals of some standing in society being invaded, has engaged my attention in course of hearing of this petition under Article 226 of the Constitution at the instance of the hapless losers of liberty. What the two petitioners may have conceived of in humour, turned out to be horror for them; they were put behind bars for having rubbed the high and mighty the wrong way. The alacrity with which the petitioners were arrested, which the given circumstances did not call for, took the intellectual fraternity by utter surprise. The incident was sort of a first of its kind in the State, in the aftermath whereof it seemed that anybody not toeing the line of and/or voicing dissent with the Government and/or those belonging to the ruling dispensation

would have his voice stifled. Fortunately for the petitioners, it was not that every authority in the State was in slumber; at least, there was one statutory body that put its foot down and meant business. The present writ petition has been triggered by reason of the said statutory authority and the State Government having disagreed in principle and precept in their respective view of the incident in question.

2. The genesis of the incident is a cartoon featuring the Hon'ble Chief Minister of this State and two Hon'ble Central ministers (one was in charge of the railway ministry at the relevant time and the other was his immediate predecessor-in-office). For forwarding such cartoon via e-mail and circulating its print-out, the petitioners were arrested by the police personnel attached to Purba Jadavpur Police Station (hereafter PJPS) in the dead of night on April 12/13, 2012 (there is some dispute regarding the exact date of arrest, which shall be referred to later). Incidentally, the first petitioner (hereafter P-1) who happens to be in his fifties, is a professor in Chemistry employed by Jadavpur University, whereas the second petitioner (hereafter P-2) is a septuagenarian engineer who, prior to his superannuation, was an employee of the State Government. The incident on being highlighted in the print and the electronic media sparked off serious debates in the minds of the people about the role of the police and the rights of an individual in a democratic society; consequently, the sixth respondent, i.e. the West Bengal Human Rights Commission (hereafter the WBHRC) considered the gravity of the allegations and its fall out and by its order dated April 16, 2012 took suo motu cognizance of the matter. Notice was issued to the Commissioner of Police, Kolkata, the third respondent (hereafter R-3) with direction to cause an enquiry by a senior responsible officer. An Additional Commissioner of Police (hereafter the ACP) was entrusted to conduct enquiry by

R-3. The report of enquiry prepared by the ACP dated May 22, 2012 was forwarded to the WBHRC by R-3 by his forwarding letter of even date, whereupon the WBHRC considered it proper to call upon R-3 and the ACP to attend its office for recording their statements. Their statements were recorded on July 5, 2012; thereafter, the Additional Officer-in-Charge of PJPS, the fifth respondent (hereafter R-5), who registered the First Information Report (hereafter the FIR) against the petitioners was directed to appear on July 17, 2012 and make his statement under section 16 of the Protection of Human Rights Act, 1993 (hereafter the 1993 Act). On consideration of the recorded statement of R-5, the WBHRC considered it proper to direct a Sub-Inspector of Police attached to PJPS, the fourth respondent (hereafter R-4) to appear on July 31, 2012 for examination under section 16 of the 1993 Act. R-4 did appear and place his version. Ultimately, upon consideration of the report(s) that were filed by the police administration and the recorded statements of the concerned police officials, the WBHRC on August 13, 2012 arrived at the finding that the petitioners were deprived of liberty by reason of unlawful arrests and their human rights had indeed been violated; consequently, it recommended (i) initiation of departmental proceedings against R-5 and R-4; and (ii) payment of compensation of Rs.50,000/- to each of the petitioners by the State. The State Government declined to accept the report/recommendation of the WBHRC, vide letter dated May 3, 2013 of the Additional Chief Secretary, Department of Home (hereafter the Addl. C.S.) wherein it was observed that there was no violation of human rights warranting payment of monetary compensation to the petitioners and that departmental action against R-5 and R-4 is also not warranted. The WBHRC, in turn, in its observation dated May 6, 2013 expressed surprise that the State Government was supporting the illegal action of the police on the basis of a so called convention having no legal sanction, and did not accept the

reasons given in the said letter.

3. Feeling aggrieved by the refusal of the State Government to accept the report of inquiry and to implement the recommendations of the WBHRC, the instant writ petition was presented on November 7, 2013 seeking, inter alia, the following relief:

> "a. A writ of declaration declaring that the impugned act of the erring police officer including the action of the top of the administration was in violation of the Article 19 (1)(a) and Article 21 of the Constitution of India and further directing respondent authorities to ensure that such instance do not occur again.
> b. Issue a Writ and/or in the nature of Mandamus by directing the State of West Bengal to forth with implement the said recommendations dated August 13, 2012 of the Human Rights Commission."

4. A coordinate Bench by order dated November 13, 2013 admitted the writ petition and called for affidavits. The State Government and the petitioners exchanged their respective affidavits. The WBHRC chose not to file any affidavit. It was considered necessary to summon the relevant file from the WBHRC for ascertaining the orders passed by it from time to time, the report of the ACP, the recorded statements of the police officials, etc., which were not part of either the writ petition or the affidavits. Upon the original file and a copy file being produced, the latter was directed to be retained with the records and the parties given liberty to inspect the same. The impression recorded at the beginning of this judgment is gathered from the documents and newspaper report cuttings in such file.

5. It would be necessary at this stage to refer to the allegedly offending cartoon, taking centre-stage of the controversy, and what it sought to depict. The cartoon appears at page 22 of the writ petition and the WBHRC has aptly described it in its report. I can do no better than reproducing paragraphs 22 and 23 therefrom, reading as follows:

> "22. In this case, the cartoon is based on the story line in a feature film meant for children called 'Sonar Kella' directed by Late Satyajit Roy. The film was very popular and enjoyed by children and the adults alike.
>
> 23. In the film a part of the story is that one Professor was pushed down the mountain by the villain and when the professor was not visible, the villain told Mukul, the child-hero in the film, that he had vanished. Following that story sequence, here the cartoon depicts that the Hon'ble Chief Minister of West Bengal tells Mr. Mukul Roy, the newly appointed Railway Minister that the previous Railway Minister had 'vanished' and Indian Railway is depicted as Sonar Kella - the golden fort. This cartoon obviously referred to the recent political events in the aftermath of removal of Mr. Dinesh Trivedi, the previous Railway Minister and the appointment of Mr. Mukul Roy, the new Railway Minister in his place."

6. The cartoon was forwarded via e-mail from the account of New Garia Development Co-operative Housing Society Ltd. (hereinafter the NGDC), of which the petitioners are member residents, on March 23, 2012. It reached other members of the NGDC soon thereafter. Sensing the strong reaction amongst some of them, P-1 promptly expressed regret and apology in the first week of April, 2012.

7. The subsequent events that unfurled, as alleged by the petitioners, leading to ultimate taking of suo motu cognizance by the WBHRC are these. On April 12, 2012 at 9.15 p.m., while returning from his workplace to his residence, 10-12 miscreants being supporters or activists of the ruling dispensation surrounded P-1 inside the complex of the NGDC and started beating him up mercilessly because he had forwarded an e-mail containing offensive political caricature to defame the Hon'ble Chief Minister. Thereafter, he was manhandled and dragged inside the office of the NGDC and thrashed again in front of the members of the NGDC, including its Chairman, the Secretary and the Treasurer. Further, he was forced to write that he had made a mistake by forwarding the said e-mail and that he had resigned from the managing committee of the NGDC. It has further been alleged that P-1 was assaulted by the miscreants since he owed

allegiance to a rival political party. The petitioners have also alleged that subsequently, at about 9.45 p.m., police personnel came to the spot, arrested the petitioners from the office of the NGDC without letting them know the offence they had committed and took them to PJPS. According to the petitioners, the police personnel arrested them at the direction of the miscreants from the office of the NGDC without there being any written complaint to the police against them and without preparation of any memo of arrest at or about the time of their arrest, and they were unlawfully detained at PJPS.

8. Differing on the time frame and the perception of the relevant incident, the respondents 1 to 5 have stated in their counter affidavit that an anonymous phone call had been received at PJPS at 10.30 p.m. regarding an incident of a serious problem requiring immediate police intervention at the office of the NGDC; accordingly, R-4 with some force reached the place to ascertain the fact upon orders from R-5. On site, R-4 found a group of 70-80 people shouting and strongly expressing grievances against the petitioners. Thereafter, to diffuse any untoward incident, the petitioners were rescued from the agitating mob by the police authorities and taken in 'safe/protective custody' and finally to PJPS at about 11.00 p.m. That protective custody is nothing but a nomenclature, the purpose is to protect human life from any untoward incident. Thereafter, at 11.35 p.m., one Mr. Amit Sardar, a political worker owing allegiance to the party in power, filed a complaint being General Diary entry no. 758 against inter alia the petitioners, which was treated by the police as the FIR of a cognizable offence reported under section 154 of the Code of Criminal Procedure (hereafter the Cr.P.C.) and registered as PJPS FIR No. 50 of 2012, dated April 12, 2012 under sections 114, 500 and 509 of the Indian Penal Code, 1860 (hereafter the IPC) and section 66A(b) of the Information Technology Act, 2000 (hereafter the

2000 Act). The complaint lodged by the said Amit Sardar revealed that the accused persons therein, which included P-1 and P-2, "had used obscene remarks towards the Chief Minister" and that the complaint contained the words 'Ashlil', 'Charitra - Haran' etc., which prima facie attracted section 509 IPC. Such complaint also revealed that the accused aided and abetted each other, intending to insult the modesty of women by exhibiting some objectionable thing and defaming dignitaries; and also, they had sent an e-mail to the members of the NGDC concerning dignitaries and thereby caused annoyance, insult and injury to them. Since section 154, Cr.P.C. does not provide any scope to verify the genuineness of the information prior to recording of a case, R-5 had no other option but to record the case considering the information as true. P-1 and P-2 were thereafter taken to their respective residences by a police vehicle and in the early hours of April 13, 2012, they were arrested at 00.30 hours and 00.40 hours respectively and the memo of arrest and the inspection memo were drawn up by R-5. They were then brought back to PJPS. Thereafter, they were sent to Baghajatin State General Hospital for medical check-up and kept in the police lock-up till production before the jurisdictional magistrate. It is the specific pleading that "on 12th April, 2012 the arrestees failed (to) furnish the requisite sureties to release themselves, and were enlarged on Bail on the next day", and once they obtained orders from the magistrate for release on bail, they were released. Neither did the petitioners agitate their grievances during the inquiry before the WBHRC, nor at any stage of the proceedings "the State representatives" or "the aggrieved parties" were given opportunity to defend their case. The WBHRC decided the case on merit though proceedings are pending before the learned Judicial Magistrate at Alipore. It has further been disclosed that investigation into the complaint lodged by the said Amit Sardar has culminated in filing of charge-sheet and in addition to the sections

for which the case was registered, also under Section 66A(c) of the 2000 Act. The affidavit also claims that the WBHRC is a recommendatory authority and its recommendations are not binding on the Government.

9. Conspicuously, there appears to be no General Diary entry or FIR registered on April 12, 2012 by the police at the instance of the petitioners or the aggrieved against the miscreants in respect of the incident of wrongful confinement that took place at the premises of the NGDC which, according to the police, compelled holding of the petitioners in 'protective custody' and bringing them to PJPS. The complaint against the miscreants was made by P-1 only after he had been released on bail on April 13, 2014. This complaint was registered as PJPS FIR No. 51 of 2012, dated April 14, 2012 under sections 341, 323, 506, 114 of the IPC. It was a couple of days later that the WBHRC on April 16, 2012 took suo moto cognizance of the manner in which the petitioners had been 'arrested from their residence at the dead of night on certain charges'.

10. As has been noticed above, an enquiry was conducted by the ACP and the report of such enquiry was forwarded to the WBHRC by R-3. The 'conclusions' reached upon such enquiry are reproduced from the report itself, hereunder :

> " ***
> Conclusion:
> After going through the records and the statements made by the individuals and Police Officers the following conclusions could be made:
>
> a) Professor Ambikesh Mahapatra and Shri Subrata Sengupta were initially rescued by the local police station from the agitated mob on 12.04.12 night. They were arrested only after a specific case was recorded against them on the basis of a complaint lodged at the Police Station.
> b) As regards release of the two arrested persons on bail from the Police Station, Shri Ambikesh Mahapatra has stated that he was not aware that bail could be obtained from the Police Station, so he did not seek bail. Shri Subrata Sen Gupta has stated that he was offered bail by the Addl. O.C. Shri ***. However, he did not seek bail since it was late night and he could not go anywhere. The Addl. O.C., however, stated that he

had offered bail to both the arrested persons but they were reluctant to avail the same.

c) As per the statement of Addl. O.C. Shri ***, he was of the view that an offence under sections 500/509/114 of the Indian Penal Code read with Sections 66A(b) of the Information Technology Act was made out from the complaint lodged by Shri Amit Sardar and since the offence punishable under section 509 of the Indian Penal Code was cognizable in nature, he treated the said letter of complaint as a First Information Report, in terms of Section 154 of the Code of Criminal Procedure and on the basis thereof registered Purba Jadavpur Police Station Case No. 50 dated 12.04.12. Since Section 509 of the Indian Penal Code is cognizable in nature as per the schedule of the Code of Criminal Procedure, Shri *** was entitled to initiate investigation as per section 156 of the Code. Such investigation seems to be in conformity with law.

d) The offence punishable under section 500 of the Indian Penal Code is not cognizable and is bailable. An offence under this section requires three essentials:-

(1) Making or publishing any imputation concerning any person;
(2) Such imputation must have been made by-
(a) words, either spoken or intended to be read; or
(b) signs; or
(c) visible representation.
(3) Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

Section 199 of the Cr.P.C stipulates that no court shall take cognizance of the offences punishable for defamation except upon a complaint made by person aggrieved. The words 'person aggrieved' does not mean 'person defamed'. The words 'persons aggrieved' have wider connotations, than the words 'person defamed'. (Pat Sharpe Vs Dwijendra Nath (1964) : CrLJ 367). Keeping this in view, a case, inter-alia, was registered under sections 509 and 500 of the Indian Penal Code in view of the fact that the offence punishable under section 509 is a cognizable offence.

Further, in order to constitute an offence under section 509 of the Indian Penal Code, there must be some individual woman or women whose modesty has been outraged and though it is not necessary that individual woman should herself made a complaint, there must be an allegation that the action complained of, has insulted the modesty of some particular woman or women. (Khair Mohammad Vs. Emperor AIR 1925 Sind 271: 86 IC 968: 26 Cr. LJ 904).

In view of what has been stated above, the action taken by the Police Station on the complaint of one Amit Sardar appears to be in conformity with law.

e) With regard to the allegation in the media that police did not register a case submitted by Shri Ambikesh Mahapatra in time. Shri Mahapatra stated that he submitted a complaint only after he returned back from Court after getting bail and after collecting the personal properties. The police officers of Purba Jadavpur Police Station could not recall that Shri Mahapatra desired to submit a complaint while he was under police custody nor did Shri Mahapatra state the same to me during the course of this enquiry.

During the enquiry Shri Subrata Sen Gupta complained that he did not receive Sorbitrate tablet in time during his need in the Police Court. The Court Constable stated that the Serestha Constable gave him three Sorbitrate tablets while he left the Police Station for Court. However, since he was busy in the court work, he could give the tablets to Shri Sen Gupta only when he was called back from the Court to give it to him.
Both the criminal cases lodged on the incident are under investigation at present and are being monitored by the supervisory officers. All the relevant details would be covered during the investigation of the case."

11. It was upon consideration of the aforesaid report that the WBHRC felt the need to record the statements of the police officers. Such statements are reproduced hereinbelow in the order the same were recorded :

"Statement of Shri *******, IPS, Commissioner of Police, Kolkata

I am now posted as Commissioner of Police, Kolkata. I have sent the report to this Commission.
On 12th April, 2012, Purba Jadavpur Police Station received information about a law & order issue at the New Gariahat (sic Garia) Housing Estate. On receiving the information at about 10:30 p.m. S.I. *** immediately rushed to the spot and found two persons - one Shri Ambikesh Mahapatra and the other Shri Subrata Sengupta, surrounded by several people in an agitated mood. They alleged vociferously that the two persons had sent an offensive e-mail (using the computer of the Society) denigrating the Chief Minister to about 65 other members of the society and also that they had gone on a door to door campaign to circulate this mail. Anticipating the imminent breach of peace, SI *** took Professor Mahapatra and Shri Subrata Sengupta to the Police Station at about 11:00 p.m. The distance between the Police Station and the New Garia Housing Estate is about one & half kilometer. The S.I. of Purba Jadavpur Police Station rushed to the spot immediately without making any GD Entry since there was information of a law & order problem and a GD was already being made by another officer.
I have seen the cartoon. The cartoon shows the Chief Minister in a derogatory manner. I feel that the Addl. O.C. has acted as per the law. Amit Sardar who lodged the FIR is neither the resident of the Housing Co-operative Society nor e-mail was sent to him by Professor Mahapatra or Shri Subrata Sengupta.
As far as I was informed, some bills of the contractor were pending for settlement and they had collected with their family members demanding payment and they had gone to Shri Subrata Sengupta, Secretary of the Society. In the meantime, the people who had collected saw Professor Mahapatra they accosted him and brought him inside the office and also alleged about sending and circulating the e-mail.
(Attention of the witness was drawn to the subject E-mail) (Looking at the E-mail the statement of witness is as follows)
O.C. felt that Section 509 IPC would be attracted and hence he started the case."

"Statement of Shri *******, Addl. Commissioner of Police (I)

I am now posted as Additional Commissioner of Police (I), Kolkata Police. I was directed by the Commissioner of Police to enquire into the matter. Accordingly, I enquired into the matter and submitted the report to the Commissioner of Police. Protective custody is not a legal word but I have used it in the report to show that the persons were rescued under protection and brought to the Police Station.

Normally it takes two to three minutes to lodge a G.D.E. In this case, however, no G.D.E. was made by the concerned officer and he rushed to the New Garia Housing Co-operative Society. On reaching the spot, the Sub-Inspector of Police found a crowd of 70-80 persons. There were two different sections of people. One group was supplier/contractors who were demanding the payment of their dues. Then suddenly the 2nd group of people came in who raised issues of the e-mail in question. About 15 to 20 persons comprised the 2nd group who were raising the issue of e-mail.

I have examined the officers and police personnel who were at the P.S. on the night of the incident and on the next morning. I have also talked with Shri Subrata Sengupta and A. Mahapatra who were arrested. Shri Amit Sardar who lodged the case is neither the resident of the Govt. Housing Society, nor did he receive e-mail. On 23rd March, 2013 Mr. A. Mahapatra sent the e-mail in question to members of the society but later on received some objections from the members of the Housing Society. He sent e-mails on 4th April, 2012 and 6th April, 2012 expressing his regrets and admitted that he should not have sent such e-mail in the matter. I found one gentleman namely Shri Asish Roy Chowdhury one of the residents of the Society and he was present during the incident. I have examined Shri Asish Ranjan Roychowdhury. Shri Roy Chowdhury stated that he was present when the altercation took place in the Society office. Mr. Roy Chowdhury did not receive any e-mail from Shri Ambikesh Mahapatra.

In the FIR of Shri Amit Sardar it is alleged that the two arrested persons sent e-mail & circulated print out copy of the same. It is found that the FIR was lodged by Shri Sardar on 12th April, 2012 at 11-35 p.m. At the time Prof. Mahapatra and Shri Sengupta were taken to the Police Station, no F.I.R. was lodged against them. Shri Amit Sardar lodged FIR against these persons. In the F.I.R. it is alleged these two persons have circulated indecent e-mails against Hon'ble Chief Minister and Hon'ble Railway Minister and used obscene languages during a door to door campaign inside the Housing Society. In view of that, Shri Sardar demanded before the police to take strict action against them.

In the FIR it was not stated that on 4th and 6th April, 2012 Shri Ambikesh Mahapatra has sent e-mails to the members of the Housing Society expressing regrets about the matter. The inmates of Housing Society who were examined told me that they have seen the e-mail and two of the persons whom I examined have received the e-mails.

Of the Sections lodged against the arrestees, only Section 509 IPC is cognizable offence and others are not. The Witness says that he will not give his perception whether e-mail comes within the ambit of Section 509 IPC because the matter is under investigation.

From my enquiry I found out that the Addl. O/C, Purba Jadavpur P.S. informed Shri Sujoy Chanda, IPS, Deputy Commissioner of Police, Jadavpur about the incident. I cannot mention at this time when the

Deputy Commissioner of Police, Jadavpur, was informed."

"Statement of ***, Addl. O. C. Purba Jadavpur, P.S. Kolkata

I am ***, Addl. O.C., Purba Jadavpur P.S. I got the information on 12.04.2012 at about 10.30 P.M.
Normally it takes not more than one minute in recording a G.D. I did not receive any instruction from any one to send S.I. *** who immediately rushed to the spot. *** (the S.I.) is in the police service from 2008.
On 12th April, 2012, Purba Jadavpur Police Station received an information about a disturbance at New Garia Housing Estate. An anonymous phone call came from New Garia Co-operative Society that there was some disturbance. On reaching the spot which is at a distance of about one and half kilometers from the thana, *** found that certain persons assemblied (sic assembled) in the office of the New Garia Co-operative Society where two persons were agitating.
Dr. Ambikesh Mahapatra and Subrata Sengupta were brought to the P.S. at around 11 P.M. by S.I. *** and no FIR was lodged against them on that time.
FIR in this case was lodged by one Amit Sardar resident of Nayabad who is not a member of the New Garia Housing Estate. (witness produces a copy of the FIR).
I am aware that on 23rd March, 2012 Ambika Mahapatra had sent e-mail to the members of the Co-operative Housing Society. I am also aware that on 4th and 6th April Ambika Mahapatra had sent two further e-mails to the members of the Housing Society expressing his regret and apology about the previous e-mail.
I had started the case on the complaint of Amit Sardar who is not connected at all with the New Garia Housing Society. The case was started U/S 500/509/114 IPC read with 66A(b) IT Act. Out of these, Sec 509 IPC is a cognizable offence. I have already gone through the Sec. 509 IPC. (the attention of the witness was drawn to Sec 509 IPC. The witness perused the Section 509 IPC and admit that it is a cognizable offence).
In the subject cartoon there was no slang language. There is no offensive indication in the subject cartoon.
Ambika Mahapatra was detained in the P.S. lock-up along with Subrata Sengupta. Subsequently they were produced before the Court on the following day.
There was every scope to start the case suo-motu when S.I. *** found a violent and agitated mob on the spot at the time of arresting Ambika Mahapatra. We did not start any case as no complaint was received from Ambikesh Mahapatra or Subrata Sengupta on that day.
I informed the D.C., South Suburban Division, Sujoy Chandra, IPS about the entire incident around mid-night on that day."

"Statement of ***

I am *** now posted as Sub-Inspector of Police, Purba Jadavpur Police Station.
I was duty officer on 12-4-2012 for the night. An anonymous telephone call was received in Serestha telephone of our P.S. that some disturbance was going on in New Garia Development Cooperative Housing Society. I reported the matter to Addl. O.C., ***. On his instruction, I immediately

rushed to the place of occurrence.
I did not make any G.D. Entry before rushing to the place of occurrence as the G.D. Book was engaged and another officer was writing something therein. But the manner in which the acting O.C. instructed to rush to the spot, I immediately proceeded without making any G.D. entry.
I left the Police Station for the place of occurrence at 10.30 p.m.
New Garia Housing Society is situated at a distance of about one and half kilometer from our Police Station.

As I reached the Housing Society, I found that two members of Cooperative Society were being surrounded by a group of about 70-80 unarmed persons and they seem to be in a very agitated mood.
I tried to ascertain the actual position and I came to know in general terms that some objectionable message has been sent by those two persons through office E-mail.
I found that tension was mounting and I decided to take those two persons to the Police Station for their protection.
I did not see the messages before I took those two persons to the Police Station.
Therefore, I had taken no action to verify what the messages are reportedly sent by those two persons.
After taking them to the Police Station, I handed over those two persons to the Addl. O.C., Purba Jadavpur Police Station.
Thereafter, 25-30 persons assembled in front of the Police Station and started agitation demanding action against those two persons. Thereafter, they submitted written complaint to the Police Station.
I admit that the manner in which the group of 70-80 unarmed persons kept those two persons confined in the office room of the residential complex amounted to wrongful confinement which is a cognizable offence within the ambit of section 341 I.P.C.
No one out of the assembled people was arrested before taking those two persons who were confined by 70-80 people.
I did not make any enquiry about the status of those two persons who were elderly people and Subrata Sengupta appeared to be more elderly.
Those two persons were also peacefully sitting in the Police Station and did not show any mark of violence.
After taking those two persons to the Police Station, I did not make any G. D. entry as I handed over those two persons to the Addl. O.C. and as there was no instruction from the Addl. O.C. to make such G.D. and also because the Addl. O.C. immediately started a case against those two persons on the complaint of one person."

12. Exactly four months after the incident, on August 13, 2012 to be precise, the WBHRC prepared its report of inquiry and made its recommendation taking into consideration the enquiry report of the ACP as well as the statements of R-3, R-5, R-4 and the ACP, and required the State Government to intimate the WBHRC of the action taken or proposed to be taken within a period of two months from the date of communication of such report. Excerpts from such

report read as follows :

"******

10. The report which was submitted to this Commission by the Commissioner of Police had a forwarding report by the Commissioner of Police himself. In the said forwarding report the Commissioner has referred to expressions like 'superimposed' 'decomposed' and 'criminal intent' with reference to the subject cartoon but in his deposition before the Commission he could not explain what it meant by 'decomposed' cartoon or cartoon with 'criminal intent'.

11. In the main report submitted by Shri ***, IPS, Addl. Commissioner of Police (1), Kolkata he stated that Professor Mahapatra and Shri Subrata Sengupta were taken in 'protective custody' by police but in his deposition before this Commission he failed to explain what is meant by 'protective custody'. It is not disputed that those two persons were taken to the police station by S.I. Sanjoy Biswas in a police van at 11 p.m. In his report Shri *** stated that both Professor Mahapatra and Sri Sengupta were offered bail but they were not willing to get released on bail. He has however, added in his report immediately that the fact of offering bail to the arrested persons is not recorded in the General Diary of the police station. In his deposition before the Commission he did not refer to the fact that the police offered bail to the arrested persons. In his report he said that both Professor Mahapatra and Sri Sengupta were arrested at 00.30 hrs and 00.40 hrs on 13.04.2012 and Memo of Arrest and the Inspection Memo were drawn by Inspector ***. Then they were sent to the Baghajatin State General Hospital for check up. In the report, Shri *** disclosed the statement of Professor Mahapatra wherefrom it appeared that after they were examined in the Baghajatin State General Hospital they were taken back to the Police Station and shifted to the lock up of the PS and again on the next morning they were taken to Baghajatin State General hospital and from there to Alipore Court compound where they were granted bail.

13. It is clear from the manner in which both Professor Mahapatra and Shri Sengupta were taken from the office of the society in a police van to the police station at 11 p.m. on 12. 04.2012 that they were arrested by the police. Supreme Court in Directorate of Enforcement Versus Deepak Mahajan explained that the word arrest is derived from the French word 'arrester' and signifies a restraint of the person. The Court further elaborated the concept by holding 'the essential elements to constitute an arrest .....are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner taken to law, which is understood by the person arrested' (page 459 para - 46). Even though the Code of Criminal Procedure Code does not define what is meant by arrest, but in Section 41 thereof enumerates the situations when Police may arrest without an order of a Magistrate or without a Warrant. None of the situations contemplated in Section 41(1) is present in this case. Shri *** and other police officers tried to justify by saying that those two persons were taken in 'protective custody' by the police but admitted that there is nothing known as 'protective custody' in law.

14. Protective custody by the police can be only resorted to in case of a minor or a lady who is trafficked or a person who is insane. The concept of protective custody is wholly misplaced in respect of two adult men. On the other hand Shri *** (the S.I.) who was present on the spot admitted before the Commission that there was a case of wrongful confinement of the

arrestees against the agitated mob and a case under Section 341 IPC, which is a cognizable offence, was made out. Police did not arrest any one from those agitated persons who forcibly confined the arrestees and even though the Police Station one and half kilometer away. On the other hand police arrested those two elderly persons who were peacefully sitting confined in the office of the Society.

15. At the time police arrested those two persons no FIR was lodged against them and the subject cartoon, allegedly circulated which was filed with the FIR was not even seen by the police. At the time of their arrest only allegation against those persons were that they circulated by e-mail a cartoon which was derogatory to Hon'ble Chief Minister and they carried a door to door derogatory campaign within the said Society.

16. India is a Sovereign socialist, secular, democratic republic. Our Constitution protects every citizen's fundamental right of free speech and expression under Article 19(1)(a). This freedom is of course not unfettered and is only subject to reasonable restrictions to be imposed by law on certain specified heads under Article 19(2). No law in our country prevents criticism against Ministers or Chief Minister however popular they may be or even a door to door critical campaign against Ministers unless the campaign offends any prohibition in law. At the time of their arrest from the office of the Society the police did not even know the nature of the campaign or contents of the e-mail. Police did not arrest any one from the group of people who were forcibly confining those two arrestees in the office of the Society even though Shri ***, S.I. of Police admitted that a cognizable case under Section 341 IPC was made out.

26. Thus those two persons were arrested by the police a fortnight after the subject cartoon was circulated and that too on the complaint of a person who did not even receive the e-mail and police arrested those persons, without even seeing the cartoon, from their residential complex when they were peaceful and that too at the dead of night.

31. The way the police officers of Purba Jadavpur Police Station arrested Professor Ambikesh Mahapatra and Shri Subrata Sengupta on 12.04.2012 at 11 p.m. for circulation, a fortnight ago, the subject cartoon by e-mail and for which twice regret was expressed by them and did not arrest any one of the agitating mob who wrongfully confined those two persons in the presence of the police in office of their residential complex makes out a case of police excess and highhandedness especially when those two persons are otherwise respectable citizen and without any criminal record.

32. Citizens who are expressing or airing a critical opinion about the ruling party cannot be picked up from their residence by the police at the instance of an agitated mob whose members are unhappy with the critical views of those two persons. If this is allowed to continue then not only the human rights of the dissenters will perish, free speech which is the life blood of our democracy will be gagged. Constitutional provisions will be reduced to parchment promises and we will be heading towards a totalitarian regime in complete negation of democratic values in the largest democracy of the world. This Commission cannot be a mute spectator to such a sordid situation in the name of maintaining the rule of law.

33. For the reasons discussed above, the Commission recommends:

(i) State Government shall initiate departmental proceedings against Shri ***, Addl. O.C., Purba Jadavpur Police Station and against Shri ***, S.I. of Police, Purba Jadavpur Police Station within a period of six weeks from the date.

(ii) The State Government must compensate both Professor Ambikesh Mahpatra and Sri Subrata Sengupta, the two arrestees for the manner in which they were arrested from their residential complex and detained in the thana in a case which is about non-cognizable offence. Their compensation is assessed at fifty thousand to be paid to each of them by the State Government within a period of six weeks from the date.
The Commission makes it very clear that nothing said in this order will affect police investigation in the connected cases."

13. The report having reached the State Government, it was supposed to respond and let the WBHRC know the action it proposed to take considering the contents thereof including the recommendation. Evidently, after seeking several adjournments, the State Government responded through a letter of the Addl. C.S. dated May 3, 2013 addressed to the Secretary and CEO, WBHRC. The response of the Addl. C.S., in its entirety, is reproduced hereinbelow :

"Sir,
With reference to the above, I am directed to say that the matter has been carefully considered by the Government and it has been decided to bring it to the kind notice of the Commission that as per the prevalent practice, a person rescued from an agitated mob is brought to the police station for three purposes. First, it ensures his safety and security. Secondly, it gives the police sufficient time and opportunity to assess whether allowing him to return immediately to his place of work or residence, without making any suitable arrangements, would be detrimental to his safety and security. Finally, it provides the person an opportunity to regain a level of mental composure to enable him to lodge a complaint, if any, against the alleged perpetrators. As such, although there is no provision of any sort of 'protective custody' in the laws, the concept should not remain limited only to a minor or a lady who is trafficked or a person who is insane but should also extend to a person who is rescued from an agitated mob.
2. Under the above circumstances, the view of the State Government is that taking a rescued person to the Police Station at a point of time even when there was no FIR against him does not violate his human rights.
3. It may kindly be noted here that neither Prof. Ambikesh Mahapatra nor Shri Subrata Sengupta availed of the immediate opportunity which was available to them to lodge an FIR against any person or persons once they were rescued by the police and taken to the Police Station. It may be further noteworthy that they were not put to any restraint at the Police Station. Resultantly, they could make telephone calls to their families and informed them that they were at the Police Station and would be returning home late.
4. It was during their presence in the police station that an FIR was lodged against them. A criminal case was therefore registered and both of them were eventually arrested. As such, a conclusion should not be construed that they were subjected to any illegality when they were taken to the Police Station and that they were arrested even before registering a

criminal case.

5. The aforesaid criminal case was registered under section 500, 509, 114 IPC read with section 66A(b) of the Information Technology Act. Apart from section 509 IPC, section 66A(b) of the Information Technology Act is also a cognizable offence, as laid down under section 77B of the said Act. As such, arrest by the police in this case did not amount to violation of law. The question as to whether section 66A(b) of the Information Technology Act was or is applicable in the case is now under the realm of the judicial scrutiny as a chargesheet has since been laid in the court of law.

6. The accused were legally entitled to be released on bail from the Police Station itself since the offences under which the aforesaid two persons were arrested are bailable in nature. In this connection, kind attention is drawn to the statement of Shri Subrata Sengupta made before the Additional Commissioner of Police, Kolkata wherein he admitted that the Addl. OC, Purba Jadavpur has offered him bail from the Police Station. But, as admitted by Shri Sengupta he did not avail the same in the late hours of the night for his own inconvenience.

7. Prof. Ambikesh Mahapatra on being asked by the Additional Commissioner of Police, Kolkata as to whether he had sought for bail from the Police Station, replied that he was not aware that bail could be sought from the Police Station. He further stated that he did not know any lawyer and so he did not contact a lawyer.

8. The above statement of Prof. Mahapatra appears to be at variance with the statement of his learned lawyer Shri Sanjib Ganguly. The latter stated during the enquiry by the Additional Commissioner of Police that on 12/04/2012 at around on 23.30 hrs., he had sent his junior lawyer to the police station but he was asked to come later since no case had been recorded till then.

9. On an overall analysis, it appears improbable that when the bail was admittedly offered to one of the accused namely Shri Subrata Sengupta, it would not have been offered to the co-accused Prof. Ambikesh Mahapatra. Therefore, the conclusion drawn up by the Additional Commissioner of Police, Kolkata that the accused were indeed offered bail but they were reluctant to avail of the same appears to be credible and is accepted by the State Government.

10. After a careful consideration of the recommendations of the Commission as well as the facts on record, the Government is of the considered opinion that under the circumstances narrated above, there does not appear to be violation of human rights warranting payment of monetary compensation to the arrestees. Similarly, departmental action is also not warranted for any alleged police excess and highhandedness by the police officers concerned.

11. The above comments of the State Government may kindly be brought to the notice of the Commission."

14. On May 6, 2013, the WBHRC put on record that it found it difficult to accept the reasons given in the letter from the State Government for non-acceptance of its report. Excerpts from its observations read as follows :

"******

The Commission is constrained to put it on record that it finds it difficult to accept the reasons given in the letter of the Additional Chief Secretary for non-acceptance of the Commission's recommendations.

****

The State Government however, conveniently chooses not to deal with the illegality committed by the police officials in paragraph 14 of the recommendation. The concept of the police resorting to protective custody which has no sanction in law only on the ground of a so called convention is intriguing. Clearly the police failed to act in accordance with law by not arresting anyone from the agitated mob who wrongfully confined Professor Ambikesh Mahapatra and Shri Subrata Sengupta from their own residential complex and thus acted in gross violation of human rights of those two persons.

The Commission is surprised to find that the State Government is supporting the illegal actions of the police on the basis of a so called convention which has no legal sanction. To say the least, this is contrary to Rule of Law.

The Commission, as noted above, does not accept the reasons given in the letter of Additional Chief Secretary, dated 03.05.13.

The Secretary, W.B.H.R.C. is directed to bring these observations of the Commission to the notice of the State Government and to upload the letter of the Addl. Chief Secretary, Home Department and the aforesaid observations of the Commission in the website immediately."

15. Mr. B.R. Bhattacharya, learned senior advocate representing the petitioners scathingly attacked the excesses committed by the police and the active support lent to it by the State Government. According to him, there has been brazen violation of the human rights of the petitioners and the WBHRC was justified in its recommendation. He contended that the State being accused of violation of human rights, cannot be a judge of its own cause and say that there has been no violation. He lamented that incidents of human rights violations in the State are increasingly on the rise and the State Government has been a passive onlooker; instead of bringing to book the culprits, the victims of human rights violations have been at the receiving end all the time. Although the recommendations of the Commissions functioning under the 1993 Act are not binding on the appropriate Government, he submitted that the findings returned by the WBHRC in the given case admit of no exception and no valid justification having been set up for not implementing the relevant recommendation, the State Government is bound to carry out the recommendation of the WBHRC. Relying on several authorities, viz. (2009) 3 ALL ER 14 : Raissi v. Metropolitan Police Commissioner, (2014) 2 SCC 1 : Lalita Kumari v. State of U.P., (1997) 1 SCC 416 : D.K. Basu v. State of West Bengal, (1999) ILR 2 Cal 27 : Champak Mukherjee v. State of West Bengal, (1996) 1 SCC 742 : National Human Rights Commission v. State of Arunachal Pradesh, (1999) 2 SCC 131 : Paramjit Kaur v. State of Punjab, (2012) 8 SCC 1 : Mehmood Nayyar Azam v. State of Chhatisgarh, (2010) 3 SCC 571 : State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal and

Ors., (2010) 11 SCC 208 : Jaywant P. Sankpal v. Suman Gholap, (2013) 8 SCC 664 : N. Sengodan v. State of Tamil Nadu, (1985) 4 SCC 677 : Bhim Singh, MLA v. State of J & K, (1987) 1 SCC 265 : People's Union for Democratic Rights v. State of Bihar, and (1994) 6 SCC 565 : Arvinder Singh Bagga v. State of Uttar Pradesh, he urged that the writ Court being the protector of fundamental rights of citizens ought to grant relief in terms of prayer (a) of the writ petition to sanitize the system, which has become murky, and uphold the people's freedom of speech and expression which is so very essential for a democratic country like ours to prosper, and enforce the recommendation of the WBHRC by issuing Mandamus. Alternatively, he submitted that the writ Court may itself determine whether the human rights of the petitioners have been violated by the concerned police officers or not and if the answer be in the affirmative, command the State to pay compensation to the petitioners and to initiate departmental proceedings against R-4 and R-5.

16. The writ petition was initially opposed by Mr. Bimal Chatterjee, learned Advocate General for the State of West Bengal. According to him, the petitioners themselves never complained of violation of human rights and the incident in which they were involved was blown out of proportion by the WBHRC. The petitioners, he continued, not having alleged that their freedoms were in jeopardy or that their liberties were curtailed and there were police excesses resulting in harassment, there could be no case of the petitioners' rights under Article 21 of the Constitution being abrogated and the WBHRC committed serious error in failing to notice this perspective. Referring to the complaint of P-1 giving rise to registration of PJPS FIR No. 51 dated April 14, 2012, Mr. Chatterjee sought to emphasize that P-1 himself did not allege any overt act on the part of any police officer; additionally, P-1 did not allege any sense of insecurity at the police station. Referring to the decision of the Supreme Court in D.K. Basu (supra), Mr. Chatterjee sought to contend that not only the guidelines laid down in paragraph 35 thereof were followed, there had been no departure from the statutory provisions in relation to effecting arrest of the petitioners and the police had taken care to arrest the petitioners after maintaining all formalities; therefore, there was no case for assumption of jurisdiction by the WBHRC suo motu.

17. Because of indifferent health, Mr. Chatterjee could not resume his argument the next day and Mr. Mazumder, learned Government Pleader took over the burden of defending the respondents 1 to 5. Referring to the aforesaid complaint of P-1 dated April 14, 2012, Mr. Mazumder also contended that the same did not in any manner indicate that the petitioners were illegally arrested and subjected to police excess/atrocity; in fact, the petitioners never registered any complaint before any authority at any stage in relation to police action against them. The police officers involved in the investigation of the complaint giving rise to PJPS FIR No. 50 dated April 12, 2012, he argued, duly prepared the memo of arrest, which were not only signed by the family members of the petitioners but they themselves signed the same. After arrest, the petitioners were taken to a local hospital and on return they were offered bail which they declined.

18. Inviting my attention to the contents of paragraph 4 of the writ petition and paragraph 7 of the affidavit-in-reply, Mr. Mazumder sought to highlight that the petitioners have raised inconsistent/incorrect claims regarding the factum of issuance of memo of arrest; and compensation being an equitable relief, he submitted that they are not entitled to seek equitable relief of compensation in view of their blameworthy conduct.

19. Insofar as the observation of the WBHRC that reference to section 66A(b) of the 2000 Act was made as and by way of an afterthought, Mr. Mazumder took strong exception and submitted that the FIR was registered on April 12, 2012, inter alia, under such provision and, thus, non-application of mind of the WBHRC seems to be apparent.

20. Next, Mr. Mazumder contended that R-4 and R-5 were not provided opportunity of hearing under section 16 of the 1993 Act, although the WBHRC proceeded to make remarks against their conduct. Relying on the decision of the Supreme Court reported in (1989) 1 SCC 494 : Kiran Bedi v. Committee of Inquiry, where section 8B of the Commissions of Inquiry Act, 1952 (which is pari materia section 16 of the 1993 Act) fell for consideration, he submitted that it was a sine qua non for the WBHRC to comply with principles of natural justice by offering opportunity of hearing to R-4 and R-5 since they were prejudicially affected by reason of the recommendation of the WBHRC. According to him, that part of the recommendation for initiation of departmental proceedings against R-4 and R-5 cannot be sustained having regard to the adverse civil consequences that are likely to ensue upon such proceedings being instituted. Reliance in this connection was also placed on the decisions of the Supreme Court reported in (2003) 8 SCC 361 : State of Bihar v. Lal Krishna Advani, (2003) 7 SCC 492 : Sohan Lal Gupta v. Asha Devi Gupta, (2012) 13 SCC 14 : Manohar v. State of Maharashtra, and a decision of the Madhya Pradesh High Court reported in AIR 2002 Madhya Pradesh 239 : M.P. Human Rights Commission v. State of M.P. and others. In course of hearing, it was also suggested that by not offering opportunity of hearing to R-4 and R-5 and not even examining the petitioners during the course of inquiry, the WBHRC prejudged the criminal trial that the petitioners have been facing and thereby exceeded its jurisdiction.

21. The decisions of the Supreme Court reported in (2004) 2 SCC 579 : N.C.

Dhoundial v. Union of India and the one in Paramjit Kaur (supra) were cited to trace the parameters for exercise of power by the Human Rights Commissions created by/under the 1993 Act.

22. Finally, Mr. Mazumder contended that even if it is assumed (though not admitted) that the findings of the WBHRC are substantially correct but having regard to the ratio of the decisions of the Supreme Court reported in (2006) 3 SCC 178 : Sube Singh v. State of Haryana and (2011) 13 SCC 329 : Rajender Singh Pathania v. State (NCT of Delhi), the power to award compensation should not be lightly exercised and that compensation may not be awarded for every violation of Article 21. According to him, no Court ought to act on the basis of mere ipse dixit of an inquiring authority. Relying on the decision reported in (2012) 9 SCC 729 : Subhoshree Das v. State of Orissa, it was submitted that since the factum of illegal detention is seriously disputed, the Court under Article 226 ought to be slow to draw any adverse inference against the police authorities.

23. Resting his case on the aforesaid submissions and also emphasizing that the recommendation of the WBHRC is not binding on the State Government, Mr. Mazumder contended that no case for interference had been set up and that the writ petition deserved dismissal.

24. Bearing in mind the factual narrative and the elaborate erudite arguments advanced by learned advocates for the parties, three major points emerge for decision, that is,

(i) whether a recommendation of a Human Rights Commission based on its finding of human rights violation, can be enforced by issuing a writ of or in the nature of Mandamus? If not, is any course open to a writ Court to provide relief to the victims of human rights violation?

(ii) assuming the answer to the first point to be favourable to the petitioners, whether the WBHRC was justified in returning a finding that the petitioners' human rights were violated and that the State Government ought to compensate them, and whether the State Government could seek not to implement the recommendation of the WBHRC under cover of what it termed as 'protective custody'?

(iii) whether the recommendation for initiation of departmental proceedings against R-5 and R-4 stands vitiated for any reason whatsoever?

25. I begin with a caveat. The aspect as to whether the cartoon in question and circulation thereof did amount to commission of any offence need not detain me for a second since the petitioners are accused of having breached the law and their conduct is under scrutiny of the concerned magistrate on the anvil of the penal laws. I, thus, owe a duty to guard against expressing any opinion that could remotely influence the mind of such magistrate when he deals with the matter before him. It is thus cautioned that neither any observation nor any finding contained in this judgment shall have an influencing effect on the magistrate, who shall endeavour to decide the matter before him on his own understanding of the facts and the applicable law.

26. To answer the first point, section 18 of the 1993 Act has to be read carefully. Section 18 empowers the Human Rights Commissions to take various steps during and after completion of inquiries. Should an inquiry disclose commission of violation of human rights or negligence in the prevention of human rights by a public servant, the Commission has the authority in terms of clause (a) to recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action the Commission may deem fit against the concerned person or persons. However, clause (e) leaves it to the discretion of the concerned Government or authority the action to be taken on the inquiry report, once it is forwarded to it. The recommendation contemplated under clause (a) of section 18 is thus in the nature of an advice of the Commission and has no binding effect. This has been the main defence of the respondents. To my mind, not too frequently has this question emerged before the Courts for decision. I presume, by and large, the recommendations of the Commissions are accepted by the concerned Government or authority and instances are scarce where the writ Court had to be approached for reaping the fruits of a recommendation of the Commission. To an extent, a hitherto unexplored question has arisen for decision.

27. It has to be remembered that although the 1993 Act strives to protect human rights, the Human Rights Commissions have no power to enforce its own recommendations. However, having regard to the scheme of the 1993 Act, any recommendation that a Commission makes after conducting a fact finding inquiry and satisfying itself of violation of human rights of an individual by a public servant has to be seriously considered and given the respect it deserves, coming as it does from a statutory body comprising of experts in the field, and not simply ignored for no better reason than that it has

no binding effect. Save and except for very cogent reasons, the recommendation ought to be gracefully accepted by the concerned Government or authority. In a case of the present nature where the recommendation has not been accepted, it is not the end of the road for the victim. My understanding of the relevant law is that a writ petition would indeed be maintainable seeking relief for compensation and direction for initiation of departmental proceedings against the delinquent public servant found responsible for violation of human rights, either based on the inquiry report of the Commission or the materials collected by it in course of inquiry/investigation. The writ Court may in such a case entertain the claim and examine for itself as to whether the Commission after maintaining the procedural safeguards and upon proper and reasonable appreciation of the evidence before it, was justified in holding the concerned public servant guilty of human rights violation, and whether and to what extent compensatory relief is called for. If required, for satisfaction of its conscience, there is no legal bar precluding the writ Court to even take recourse to re-appreciation of evidence. After all, such re-appreciation would be necessitated because of the refusal of the concerned Government or authority in agreeing to implement the recommendation. Should re-appreciation of the evidence require returning of findings somewhat inconsistent with or even contrary to what have been found by the Commission, there is no reason as to why the writ Court should not feel free to return the same. If the defence of the concerned Government or authority appears to be sound and worthy of being accepted, enforcement of such recommendation may not be insisted upon resulting in dismissal of the writ petition. On the contrary, the writ Court must not be slow to react if the reasons for not accepting the recommendation are found to be frivolous and disagreement is not only an arbitrary exercise but also a ruse to avoid an uncomfortable situation. The frivolity of the reasons for disagreement cannot be allowed to override well-considered, well-written and well-meaning reports/recommendations of the Commission. If indeed the concerned Government or authority is conceded to have a final say in the matter and the report/recommendation is to remain only on paper and shelved only for gathering dust, much of the exercise undertaken by the Commission would be an act of futility rather than of utility for the victims of human rights violation. It requires no reiteration that the lofty ideals of providing succour to victims of human rights violation ought to be steadfastly pursued and any hole providing an escape route must be immediately plugged, or else the statute is likely to be reduced to a mere dead letter. The concerned Government or authority cannot be allowed a free run despite proved violation of human rights by a delinquent public servant because of absence of teeth in the concerned legislation. If someone has been wronged, his grievance must be redressed.

28. The first point is, therefore, answered as follows : A petition under Article 226 of the Constitution for a writ of or in the nature of Mandamus, on the premise that a recommendation of the Human Rights Commission against a public servant for proved violation of human rights at his instance is binding on the concerned Government or authority, may not be maintainable for enforcing such recommendation, but that would not detract from the writ Court's power to entertain a writ petition, examine the Commission's report and if it is found free from any legal infirmity and the recommendation based thereon is found to be justified, and the response of the concerned Government or authority if found to be frivolous and unsound, to pass such order as the interest of justice in the given circumstances would demand to ameliorate the suffering of the victim of human rights violation. The writ Court may also pass similar such order on the basis of its own appreciation of the materials before the Commission and/or before it.

29. Moving on to answer the second issue, it is clear that the report of the WBHRC has been made the bedrock of the petitioners' claims. The respondents have not gone so far as to challenge the report of the WBHRC on merits by lodging any counter-claim; instead, they have rested their case on the response of the Addl. C.S. as well as the two sets of affidavits that have been filed. Nevertheless, since it is trite that no Mandamus would issue to compel performance of an act contrary to law, it becomes absolutely necessary to examine the report of the WBHRC threadbare; and should the same commend to be entirely in accordance with law and reasonably justified, the petitioners would undoubtedly deserve a serious consideration of the relief claimed by them, in a modified form.

30. I deem it proper, at this stage, to deal with Mr. Chatterjee's initial contention that there was no case for suo motu assumption of jurisdiction by the WBHRC or that the incident has been blown out of proportion by it, although Mr. Mazumder did not take such contention forward. I am afraid, the contention is thoroughly without merit. The Human Rights Commissions created by/under the 1993 Act are unique expert bodies entrusted with important functions of protecting human rights. True it is that the Commissions do not have unlimited jurisdiction nor do they exercise plenary powers in derogation of the statutory limitations. The Commissions being creatures of the statute are bound by its provisions. Its duties and functions are defined and circumscribed by the 1993 Act. Like any other statutory functionary, it does have incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commissions are necessarily required to act within the parameters prescribed by the 1993 Act creating it and the confines of jurisdiction vested in it by such Act [see : N.C. Dhoundial (supra)]. Section 12 of the 1993 Act is the repository of power exercisable by the Commissions. Exercise of suo motu power to inquire into any incident of human rights violation is statutorily recognized and no exception could have lawfully been taken citing that the petitioners did not approach the WBHRC with a complaint of violation of their human rights. Insofar as the procedure that was followed by the WBHRC is concerned, no infringement of statutory provisions could be brought to my notice during the short tenure of Mr. Chatterjee's address.

31. Since a decision on this issue would essentially hinge on when exactly P-1 and P-2 were arrested [late hours of April 12, 2012 as found by the WBHRC or early hours of April 13, 2012, as pleaded by the respondents 1 to 5] and further as to whether the arrests were effected in accordance with law or not, I consider it necessary to first look into the provisions regarding arrest.

32. Chapter V of the Cr.P.C. bears the title 'Arrest of Persons'. Section 41 contained therein authorizes the police to arrest without warrant. Since the petitioners are standing trial for alleged commission of offences which carry a sentence of not more than 7 years' imprisonment, to the extent relevant for the present case, section 41 reads as follows:

"41. When police may arrest without warrant.--(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person--

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:--

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police office is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

**********"

33. That an arrest can be made by a competent authority on well-founded information of commission of cognizable offence and in the manner stipulated by law admits of no doubt, resulting in curtailing of the liberty of the person arrested. The Supreme Court has time and again given the expression "personal liberty" its full significance and asserted how valuable, cherished, sacrosanct and important the right of liberty given to an individual by the Constitution is. Without burdening this judgment by referring to the authorities separately, it can safely be concluded that personal liberty of an individual is a precious freedom envisaged in the Constitution, perhaps more important than the other freedoms that the Constitution guarantees, and is one of the most cherished objects in our Republic, of which an individual may be deprived only in strict conformity with law and upon proper application of mind to the relevant provision, as ordained by Article 21. However, the drastic power to invade an individual's personal liberty for maintenance of public order or otherwise has to be exercised only in such exceptional cases and in strict adherence to the procedural formalities as mandated by the relevant statute, where the interest of the individual must yield to societal interest,

since interest of the society is no less important than the individual's interest.

34. Bearing the aforesaid principles in mind, one has to consider whether the arrests were made lawfully or not. Here, clause (a) of section 41(1), Cr.P.C. is not applicable since no offence was committed in the presence of the police. Bare perusal of section 41(1)(b), Cr.P.C. would, however, lead one to the unmistakable conclusion that an arrest of any person is not to be mechanically effected without an order from the magistrate or a warrant soon after the police receive reasonable complaint or credible information of commission of offence by him or even if the police reasonably suspects that such person has committed an offence warranting invocation of the power to arrest. The power to arrest, which is undoubtedly a wide and drastic power, has to be exercised with caution, circumspection and prudence upon the police reaching the required satisfaction of the existence of any of the objective parameters [sub-clauses (a) to (e)] engrafted in section 41(1)(b), by recording reasons in writing. When such onerous responsibility has been thrust upon an arresting officer, the purpose is obvious : the provision is intended to check arbitrary exercise of power of arrest by the police. Once the reasons are recorded in writing, what is achieved is that the reasonableness of the grounds for arrest surface and the same could be tested by the competent Court, while it considers a prayer for release on bail/remand. Although not directly arising for decision on this writ petition, I am inclined to the view that the duty to record reasons for the arrest carries with it a corresponding obligation to communicate to the arrestee the reason(s) for such arrest, whenever possible depending on the circumstances. Communication of such reason(s) would, apart from anything else, facilitate an informed decision being taken by the arrestee for pursuing the remedy that the law provides to him.

35. Mr. Bhattacharya laid emphasis on the mandate that a police officer shall record the reasons in writing, while making an arrest. According to him, neither R-5 nor R-4 recorded reasons for arresting the petitioners. I have tried to find out from the available records, which include the affidavit-in-opposition of the respondents 1 to 5 and the further affidavit of R-5 as well as the annexures thereto [forming part of the case diary giving rise to the charge-sheet which forms part of the records of A.C.G.R. 4572 of 2012 pending before the Judicial Magistrate, 5th Court, Alipore] the reasons for the arrest, but in vain. Assuming that the respondents 1 to 5 are correct in their assertion that P-1 and P-2 were arrested in connection with investigation of PJPS FIR No. 50 dated April 12, 2012 in the early hours of April 13, 2012, the arrests were not in accordance with law inasmuch as the provisions contained in clause (b) of sub-section (1) of section 41, Cr.P.C. appear to have been observed in the breach. It is axiomatic that laws are enacted to govern a society, and such laws are as much binding on the law-enforcing agency as the governed; the laws are meant to be obeyed, and not flouted. That is exactly what the WBHRC has attributed to R-4 and R- 5, and rightly so.

36. That the power to arrest has been the chief source of corruption in the police was noticed by the Supreme Court in its decision reported in (1994) 4 SCC 260 : Joginder Kumar v. State of U.P. It was held there that a person is not liable to arrest merely on the suspicion of complicity in an offence but that there must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified.

37. In the decision reported in AIR 2011 SC 312 : Siddharam Satlingappa Mhetre v. State of Maharashtra, the Supreme Court while considering the law relating to grant of anticipatory bail under section 438, Cr.P.C. had the occasion to rule, under the sub-heading "Irrational and indiscriminate arrests are gross violation of human rights", as follows:

> "127. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.
>
> 128. In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive.
>
> 1) Direct the accused to join investigation and only when the accused does not co-operate with the investigating agency, then only the accused be arrested.
>
> 2) Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused.
>
> 3) Direct the accused to execute bonds;
>
> 4) The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.
>
> 5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.
>
> 6) Bank accounts be frozen for small duration during investigation.
>
> 129. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer."

38. It would also be relevant at this stage to quote from a recent decision of the Supreme Court reported in (2014) 8 SCC 273 : Arnesh Kumar v. State of Bihar, condemning arbitrary exercise of power by the police to arrest. The passage reads:

> "5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and

it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short ****), in the present form came to be enacted."

39. It seems to me to be incontrovertibly comprehensible that the police officers [read : R-4 and R-5] who had the occasion to subject the petitioners to an unnecessary ordeal had acted in brazen violation of law, being either oblivious of the statutory requirements or had deliberately chosen to turn a blind eye to the statutory mandate. I am also pained to observe that the senior-most officer of the police force [read : R-3] who perforce dealt with the matter on the prodding of the WBHRC cared less to unearth the reasons for the arrests. I am conscious that the ACP is not a respondent before me and hence no observation is made against him. The facts are, however, clear and indisputable, and thus there could be no iota of doubt that the petitioners were subjected to reckless arrests and their precious human rights were trampled over. This affords sufficient ground to award relief to the petitioners by way of compensation for their illegal detention, and I hold that the WBHRC rightly recommended the same.

40. Regarding the date of arrest of the petitioners, much has been said on behalf of the police officers but R-4 and R-5 appear to have been trapped in the net they had weaved. Paragraph 3(e) of the affidavit-in-opposition of the respondents 1 to 5 reads thus:

> "It is admitted position of fact on 12th April, 2012 the arrestees failed to furnish the requisite sureties to release themselves. The accused were enlarged on Bail on the next day."

What emerges from the aforesaid extract is that the petitioners were arrested on April 12, 2012, as asseverated by the petitioners, or else they being perceived as arrestees who failed to furnish the requisite sureties to release themselves on "12th April, 2012" would not have arisen. That the petitioners were arrested on April 12, 2012 itself finds further support from the next sentence, i.e. they were enlarged on bail the next day. The next day would mean April 13, 2012, on which date the magistrate released the petitioners on bail declining the prayer of the investigating officer for their remand in judicial custody till April 27, 2012. Although the police officers attached to PJPS intended to avoid liability and escape the scrutiny of their actions by the WBHRC as well as the competent Court of law by projecting that the petitioners were arrested in the early hours of April 13, 2012 following compliance with statutory requirements, unwittingly there appears to be an admission of fact in the affidavit-in- opposition that the petitioners were arrested on April 12, 2012, which position has also been categorically admitted by R-5 in course of recording of his statement before the WBHRC under section 16 of the 1993 Act. No wonder, the response of the Addl. C.S. and the affidavit are completely silent in regard to this statement of R-5 before the WBHRC that R-4 had arrested the petitioners at the office of the NGDC.

41. I am of the firm view that the statement of R-5 before the WBHRC and the contents of paragraph 3(e) being wholly consistent, the same ought to put a quietus to the so-called dispute regarding the date of arrest of the petitioners. They were indeed arrested on April 12, 2012 and not April 13, 2012, as the respondents would like the Court to believe. Hence, the alleged inconsistency in the contents of paragraphs 4 of the writ petition and 7 of the affidavit-in-reply pales into insignificance in view of the above finding.

42. Although in view of the aforesaid findings the plea of holding the petitioners in protective custody falls flat, the ineffectiveness thereof is proposed to be considered hereafter.

43. The police action of taking the petitioners to PJPS from the office of the NGDC has been sought to be supported by the Addl. C.S. by referring to a practice of holding one in 'protective custody' at times in prudent exercise of discretion.

44. 'Protective custody' has been explained in Black's Law Dictionary as the condition of one who is held under authority of law for his own protection as in the case of a material witness whose safety is in jeopardy, or one who is drunk in public though public drunkenness may not be a criminal offence, or of a person who because of mental illness or drug addiction may harm himself or others.

45. Observations of the WBHRC regarding 'protective custody' have been noted from the excerpts of its report. There appears to be no reason to take exception to what the WBHRC observed in relation thereto. It is in sync with the decisions of the Supreme Court reported in (2007) 15 SCC 337 : R.D. Upadhyay v. State of A.P., (1986) 2 SCC 401 : Suk Das v. UT of Arunachal Pradesh, and (1980) 1 SCC 93 : Hussainara Khatoon (3) v. Home Secretary, State of Bihar. It, therefore, follows that holding

one in protective custody would not be permissible except when the law authorizes the same. There can be little doubt that recourse to a theoretical debate by raising the bogey of 'protective custody' was intended to wriggle out of the obvious wide and far reaching ramifications of the illegal arrests of the petitioners and to obfuscate implementation of the relevant recommendation.

46. The State Government while refusing to accept the recommendation of the WBHRC referred to 'protective custody' as a 'prevalent practice' and that such concept should not remain limited to a minor or a lady who is trafficked or a person who is insane. Apart from the fact that 'protective custody' of people other than a minor or a lady or an insane person may not be permissible, the Addl. C.S. did not cite any precedent in support of the contention that it has been a 'prevalent practice' of taking elderly and mature men like the petitioners in 'protective custody'. Besides, whether or not the concept of 'protective custody' should remain limited or be enlarged is merely an opinion of the Addl. C.S. and in the absence of any law sanctioning 'protective custody' of elderly and mature men, the WBHRC very rightly found it difficult to accept the version of the State Government.

47. To the credit of Mr. Mazumder, I must place on record that he kept in mind that the Court's time is precious and did not unnecessarily endeavour to convince me that holding the petitioners in 'protective custody' was either justified or such recourse is recognized by law in the case of two elderly and mature men. In my considered view, raising of the bogey of protective custody was a clear attempt to save the State Government from embarrassment owing to overzealousness of R-4 and R-5, acting in tandem for reasons best known to them to unnecessarily secure the arrests of the petitioners although none of the parameters was reasonably attracted, and, despite there being no written complaint against them at the relevant time, despite R-4 not knowing at all the nature of allegation levelled against the petitioners warranting immediate arrest, and despite R-5 being aware that the cartoon did not contain slang language and offensive indication and that P-1 had expressed regret and apology for forwarding/circulating such cartoon. The WBHRC in its recommendation rightly applied the ratio of the decision of the Supreme Court reported in (1994) 3 SCC 440 : Directorate of Enforcement v. Deepak Mahajan, to hold that R-4 had arrested the petitioners in the premises of the NGDC and had taken them to PJPS in a police van, thereby encroaching upon their personal liberty in most undesirable and unwanted circumstances. It is alarming that in a society governed by the rule of law, police officers like R-4 and R-5 have the licence to act in the manner they did and, yet, still have the liberty to move scot-free, possibly, with the blessings of none other than the all powerful police administration of the State.

48. Contrary to the impression of the respondents that the petitioners themselves had never espoused their grievance before the WBHRC at any stage of the inquiry, it is found from the relevant file that on June 14, 2012, P-1 had written to the Chairperson of the WBHRC expressing gratefulness for the intervention of the WBHRC to inquire into the incident and to seek report from R-3. Although the WBHRC was fully justified in taking suo motu cognizance of the incident, the letter dated June 14, 2012 of P-1 demolishes whatever defence was left of the respondents.

49. A side argument of Mr. Mazumder too requires to be dealt with here. He has taken exception to the WBHRC's observation that section 66A(b) of the 2000 Act has been included by way of an

afterthought. Although it appears that PJPS FIR No. 50 dated April 12, 2012 was registered, inter alia, under section 66A(b) of the 2000 Act, which is also a cognizable offence, the ACP in course of recording of his statement before the WBHRC on April 5, 2012 commented that "of the Sections lodged against the arrestees", only section 509 IPC was a cognizable offence and the others were not. It is difficult to imagine that the ACP had made such a statement without ascertaining whether section 66A(b) of the 2000 Act was cognizable or not. However, the statement of the ACP gives an impression that section 66A(b) may not have been there at the relevant time or else he would have noticed it. This could be one possible reason for the WBHRC observing that section 66A(b) of the 2000 Act was incorporated by way of an afterthought. In any event, nothing substantial turns on it. I hold this to be nothing but a desperate attempt of Mr. Mazumder to pick holes in the inquiry report of the WBHRC, not having found any other substantial point to defend the respondents.

50. In consideration of the above, I find absolutely no reason not to be ad idem with the WBHRC that the petitioners' human rights were grossly violated and taking shelter under cover of 'protective custody' was most inappropriate. The second point is also answered in favour of the petitioners and against the respondents.

51. Now, the third point. Since sufficient argument has been advanced by Mr. Mazumder touching the point of non-affording of reasonable opportunity by the WBHRC to R-4 and R-5 before adverse recommendation was made against them, I propose to examine the versions of R-4 and R-5 regarding their role on April 12/13, 2012 for deciding whether a limited remand ought to be ordered or not.

52. By an order dated February 20, 2014, I had directed the General Diary pertaining to the period April 12 - 13, 2012 to be produced by Mr. Mazumder. The further affidavit of R-5 dated April 2, 2014 although reveals the perception of R-5 that the entries in the General Diary pertaining to the period April 12 - 13, 2012 were produced on February 27, 2014 before the Court, the order passed on February 27, 2014 is to the contrary; it is specifically recorded therein that "the entries in the General Diary pertaining to the period 12th April - 13th April, 2012 have not been produced today" and that the same are required to be produced on March 6, 2014. I record that only the General Diary entries starting from entry no. 757 entered at 23:15 hours of April 12, 2012 till entry no. 773 entered at 05:59 hours of April 13, 2012 and some entries starting from entry no. 784 dated April 13, 2012 were produced. In the absence of all the entries that were recorded on April 12, 2012, the veracity of the statement of R-4 before the WBHRC that he left the police station for the office of the NGDC at about 22.30 hours without making any entry in the General Diary since some other officer was making entries therein, could not be ascertained. While the judgment on the writ petition was being prepared, a few weeks back I had called upon Mr. Mazumder to produce the General Diary. Unfortunately, despite assurance in this behalf, the General Diary was not produced. In the absence of the General Diary, an inference has to be drawn that had the General Diary been produced, the same would not have suited the case set up by R-4 and as such has been deliberately withheld.

53. Assuming that R-4 was justified in holding the petitioners in protective custody to save them from the agitating mob and had taken them to PJPS considering the safety and security angle, there is no explanation worth the name as to why the fact of holding the petitioners in protective custody

and bringing them to PJPS was not entered in the General Diary.

54. In terms of Regulation 154, under Chapter V of the Police Regulations of Calcutta (hereafter the 'PRC') dealing with police stations, a General Diary in West Bengal Form No. 4350 is required to be maintained in a book in all police stations wherein all entries of a routine or unimportant nature shall be made by the duty officer under the supervision of the officer-in-charge. Important matters are required to be recorded by the senior sub-inspector present at the police station. Clause (c) of Regulation 154 carries a marginal note 'Information to be entered' and relevant portion thereof reads as follows:

> "(c) Information to be entered.- The main purpose of maintaining a General Diary is to furnish a chronological account of all events which occur at police-stations and out-posts. It shall contain a brief note, entered at the time at which it is communicated to the police-station or out-posts, of every occurrence other than petty cases reported. It shall also contain all information relating to accidents, fires, the receipt and disbursement or transmission of cash, taking and making over charge, daily disposition of the staff, the holding of parades, kit inspection, barrack inspection, departure and arrival of officers and men on duty, visits of superior officers, assistance rendered to police officers and officers of other departments, round reports, and information of any apprehended disturbance within the jurisdiction of the police-station or out-post and of movements of wandering gangs.
>
> The writing of lengthy reports in the General Diary shall be avoided specially in connection with cognizable cases, such as, disputes between the employees of the Tramways and the public, disturbances in public places, inquest reports, accidents, enquiries arising from medical certificates sent from hospitals when an offence has been disclosed. When such incidents are reported or brought to notice only the gist of the information and reports received shall find entry in the General Diary together with the time and place of occurrence and the names of witnesses who can testify to it; the statements of witnesses must not be entered in the General Diary. If an information is of sufficient importance to necessitate an enquiry, the Officer recording the information in the General Diary shall put up the Diary before the Officer-in-charge who shall order an officer to take up the enquiry. The order of the Officer-in-charge shall be noted in the Diary; the enquiring officer shall submit a separate report incorporating the details of the enquiries and the result thereof. All such enquiry reports shall be filed together in a special file."
>
> (underlining by me for emphasis)

55. Considering the version of the respondents, the conclusion is inescapable that R-

4 proceeded to the office of the NGDC with force without entering such departure in the General Diary; assuming that the General Diary book was engaged at the time of his departure, R-5 also did not take any step with regard to recording of the

departure of R-4 in the General Diary; R-4 arrested the petitioners and brought them to PJPS whilst trying to project that they were held in protective custody; even if the petitioners were held in protective custody, no entry was made in the General Diary on their arrival at PJPS either by R-4 or by R-5. If indeed it were a case of holding the petitioners in protective custody, entering of necessary information in relation thereto in the General Diary ought to have been made which, however, is conspicuous by its absence. As usual, the respondents could proffer any explanation why and how there could be such glaring omission in entering these important incidents in the General Diary.

56. Over and above this, it is most surprising that R-4 turned a blind eye to what, according to him, was a wrongful confinement of the petitioners by the agitating mob. If he were dutifully discharging his duty, he ought to have ensured protection of the petitioners by sending them to their respective residences, which were nearby, and at the same time by arresting members of the agitating mob for having committed cognizable offence punishable under section 341, IPC. Remissness of R-4 is, thus, writ large.

57. R-5 fares no better in his actions. Overzealousness to take action against the petitioners and inertia to take action against the oppressors of the petitioners are clear from his conduct. Despite the petitioners being wrongfully confined by the agitating mob, R-5 stated before the WBHRC that "we did not start any case as no complaint was received" from the petitioners on that day. Holding an important office such as the Additional Officer-in-Charge of a police station, R-5 ought to know that in case of commission of a cognizable offence on a victim in the presence of the police, it does not require a complaint to be lodged by the victim for the police to swing into action but that the police personnel in whose presence the offence is committed may himself start a case after arresting the person(s) involved in the crime. The deeper the scrutiny, the chinks in the armoury of the respondents' defence seem to trickle out.

58. At this juncture, it would be proper to take up for consideration the aspect as to whether the petitioners were offered bail by R-5 for commission of bailable offences. According to R-5, upon the written complaint of the said Amit Sardar being registered as First Information Report, the petitioners were taken to the NGDC and were arrested thereat in the early hours of April 13, 2012. The Addl. C.S. appears to have referred to the report of the ACP to buttress his contention that upon arrest, the petitioners' human rights were not violated by referring to the fact of offering of bail to the petitioners by R-5. Interestingly, the ACP's report is based on what he heard from R-5 and not from the petitioners themselves. If R-5 had really offered bail to the petitioners, it is difficult to imagine why such fact was also not entered in the General Diary. The ACP in his report noted such fact but does not appear to have enquired from R-5 the reason for not entering the offer for bail in the General Diary. It would not be unreasonable to draw an inference that bail was not offered and that indeed was the precise reason for not entering the same in the General Diary.

59. One would find from the Special Diary maintained by R-5 in terms of the provisions contained in section 172, Cr.P.C. and Regulation 71 of the PRC that a reference to offering of bail to the

petitioners has been made after they returned from the hospital. There are certain queer things that one notices in such Special Diary. Apart from a minor error that the case diary does not start with Form No.4572 in terms of the requirement of the PRC (it starts with Form No. 4260 and continues thereafter on Form No.4260), one of the pages that has been used is numbered in print 974217 (page 109 of the further affidavit of R-5) and it contains 4 (four) entries. Page 109 of the affidavit records the incidents between 00.05 hours and 01.30 hours of April 13, 2012, in continuation of the last recorded event of April 12, 2012 that the petitioners were taken to the NGDC after "they had arrived at PS with police". Surprisingly, 2 (two) entries in relation to incidents recorded at 01.40 hours and 02.50 hours are also recorded on a page numbered 974217 (page 110 of the further affidavit of R-5). The similarity of the page numbers has not been explained together with the facts as to how entries could once again be made bearing the date April 12, 2012 at the top left hand corner as well as the signature of R-5 with the date April 12, 2012. There is room to suspect that as a 'damage control' device, entries perceived to be relevant were made haphazardly at a subsequent stage, without taking the necessary care to comply with all the requirements.

60. However, I make it clear that the discrepancies noted in the preceding paragraph are not made the foundation for grant of compensatory relief to the petitioners because of the reasons preceding but a prima facie ground for suspecting delinquency is visible for which the WBHRC seems to be right in recommending initiation of departmental proceedings against the concerned police officers.

61. The dicta of the Supreme Court that "(r)ules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits" [see (2004) 4 SCC 281 : Escorts Farms Ltd. v. Commr., Kumaon Division] and "(i)t is well settled that if upon admitted or indisputable facts only one conclusion is possible then in such a case the principle that breach of natural justice was in itself a prejudice would not apply" [see (2014) 13 SCC 385 : Ramavatar Pareek v. Rajasthan Public Service Commission], cannot be overlooked. If indeed certain versions of R-4 and R-5 were not heard by the WBHRC, they were at liberty to place the same before me for my consideration. That has not even been attempted. I am of the clear view that a ritualistic remand for putting up a show of compliance with natural justice should always be avoided. That apart, R-4 and R-5 were heard by the WBHRC following the mandate of section 16 of the 1993 Act. The notices issued to them by the WBHRC bear testimony to such fact. There could be no genuine reason for R-4 and R-5 to feel aggrieved. In fact, despite the recommendation of the WBHRC staring at their face, R-5 and R-4 could afford the luxury of not even assailing the same. Unless the police administration was by their side, they would not have been so audacious. The contention urged on their behalf by Mr. Mazumder is thus rejected and I hold that proceedings against R-4 and R-5 were not at all vitiated for any reason whatsoever.

62. Before I conclude the discussion on this point, I am tempted to refer to one related vital fact. The WBHRC in its recommendation found the State Government attempting to save R-4 and R-5. That the WBHRC was absolutely right in its perception is evident from the fact that although R-4 and R-5 have been arrayed as respondents in this writ petition eo nomine, the Joint Secretary to the Government of West Bengal, Home Department has affirmed the affidavit-in-opposition, inter alia, on behalf of R-4 and R-5 and R-4 and R-5 have also been represented in this proceeding initially by the learned Advocate General and subsequently by the leaned Government Pleader. The State

Government would do well to abjure from involving itself in acts, which do not before it to say the least.

63. It is now time to consider the decisions cited by Mr. Mazumder.

64. In Sube Singh (supra), the Supreme Court did rule that every violation of Article 21 does not attract relief by way of compensation. At the same time, the Court laid down certain tests on the fulfilment whereof award of compensation could be justified. The relevant passage is extracted below:

> "46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. ***"

The circumstances compelling the petitioners to approach the writ Court are singularly singular. The WBHRC did not commit any error, jurisdictional or in respect of determination of the issue of human rights violation. There is no justifiable reason to take a different view on facts. The violation is patent and incontrovertible, as well as shocking the conscience of the Court. Award of compensation to the petitioners would only be just and proper. I am left to wonder how Sube Singh (supra) can at all advance the cause of the respondents.

65. The question involved in the civil appeal in Rajender Singh Pathania (supra) was whether on the facts and circumstances, the petitioner and his family members were entitled to compensation as a public law remedy for violation of their fundamental rights under Article 21 of the Constitution. Sube Singh (supra) was considered by the Supreme Court. In paragraph 20 of the report, the Supreme Court emphasized that before any compensation could be awarded by the High Courts and the Supreme Court in exercise of their respective jurisdictions under Articles 226 and 32, there must be a proper inquiry on the question of facts alleged in the complaint, whereafter awarding of compensation is permissible in case the Court reaches the same conclusion on re-appreciation of the evidence adduced at the inquiry. It was further observed that award of monetary compensation in such an eventuality is permissible when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers. Here, at the risk of repetition, the WBHRC suo motu inquired into the incident of alleged human rights violation of the petitioners and returned definite findings of such violation in its report. Since the State Government has declined to accept the report and to act on the recommendation on grounds which have not been considered tenable, the only option is what I propose to direct in the operative part to make good the humiliation, the agony and the trauma that the petitioners suffered for their illegal detention, while affirming the award of monetary compensation and direction for initiation of departmental proceedings against the erring public servants. The cited decision, instead of assisting

the respondents, in effect lends support to the cause espoused by the petitioners.

66. The decision in Subhashree Das (supra) also does not come to the rescue of the State Government. In that case, the Supreme Court concurred with the finding of the High Court that arrest of the appellant was not unauthorized and that her detention did not substantially exceed 24 hours of arrest before she was produced at the jurisdictional magistrate's court. All that the said decision lays down is that disputed questions of fact relating to detention should not ordinarily be investigated by the High Court under Article 226 of the Constitution. It would appear from paragraph 7 of the report that personal verification of the factual position from the case diary by the High Court and its scrutiny in arriving at the conclusions found support from the Supreme Court. Much the same exercise has been carried out in this case by the WBHRC and on perusal of its report and recommendation, there appears to be no infirmity that would warrant relegation of the petitioners to some other forum on the specious ground that the factual position asserted by the petitioners is not acknowledged by the respondents. Violation of the petitioners' human rights stands established and there is no room for controversy on this score. Reliance placed on the decision in Subhashree Das (supra) is inapt.

67. The ratio of the decisions in Kiran Bedi (supra), Sohan Lal Gupta (supra), and Lal Krishna Advani (supra) are not in dispute but having regard to the facts and circumstances of the present case, the same have no application here. As noticed earlier, R-4 and R-5 were heard by the WBHRC as part of the procedure required to be followed in terms of section 16 of the 1993 Act and, therefore, any further opportunity of hearing, on facts and in the circumstances, would have been of little use.

68. The decision in Manohar (supra) was cited for the proposition that directing disciplinary action in the form of recommendation is an order, which has far reaching civil consequences. The said observation was made by the Supreme Court while considering the provisions of section 20(2) of the Right to Information Act, 2005, and it was held that right of being heard has to be read into such provision since recommendation for disciplinary action might result in penal consequences. It is not true that R-4 and R-5 were not heard by the WBHRC. I have thus failed to find the materiality of the cited decision to the facts under consideration. It is trite that a charge-sheet issued in connection with a disciplinary proceeding against an employee does not ordinarily give rise to any cause of action for moving the Court. It does not amount to an adverse order affecting the right of any party, unless the jurisdiction of the authority issuing it is under a cloud. A charge-sheet does not infringe the right of a party and it is only when a final order imposing a punishment is passed or action taken otherwise adversely affecting a party, one may feel aggrieved and approach the Court [see (2012) 11 SCC 565 : Ministry of Defence v. Prabhash Chandra Mirdha]. Therefore, there is no force in the submission of Mr. Mazumder that the recommendation for initiation of departmental proceedings against R-4 and R-5 by the WBHRC affects their right adversely. It is needless to emphasize that as and when disciplinary proceedings are drawn up against R-4 and R-5 by the competent authority, there can be no doubt that they would be afforded reasonable and adequate opportunity to raise effective defence in consonance with rules of natural justice.

69. In M. P. Human Rights Commission (supra) the learned Judge found as a matter of fact that adequate opportunity for defence as envisaged in section 16 of the 1993 Act was not afforded,

resulting in setting aside of the inquiry conducted by the concerned Commission and the matter was remanded for fresh inquiry upon affording adequate opportunity. For the reasons assigned while dealing with the other decisions cited by Mr. Mazumder, I hold that this decision also does not help the respondents.

70. For all the reasons aforesaid, I have no hesitation in holding that the WBHRC by recommending initiation of departmental proceedings against R-4 and R-5, apart from compensation to be paid to the petitioners by the State for violation of their valuable human rights, in the given circumstances did not commit any error and at the same time was justified in negating the claim of the State that the petitioners had been held in protective custody. I am also convinced to hold that it was not the WBHRC but the police administration that was squarely responsible for blowing the incident out of proportion. Officers of the police administration ought to realize that the time is not too far away when they may have to pay a heavy price for unwarranted, uncalled for and unjustified invasion of human rights of the people at large.

71. In the result, the writ petition succeeds in part. Relief claimed is moulded by declaring that the petitioners' human rights were indeed violated by public servants; consequently, the State Government shall adequately compensate the petitioners. They shall be entitled to Rs. 50,000/- each as compensatory relief, to be released within a month from date of service of a certified copy of this judgment and order. Within the aforesaid period, disciplinary proceedings shall be initiated against R-4 and R-5 and the same shall be taken to its logical conclusion strictly in accordance with law and without being influenced by any observation made or finding arrived at in this judgment against R-5 and R-4.

72. The petitioners shall be entitled to costs of this proceeding assessed at Rs. 50,000/- to be paid to them by the State Government within the aforesaid period of one month.

73. The records of A.C.G.R. 4572 of 2012 shall be returned to the concerned magistrate's Court at once.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefor.

(DIPANKAR DATTA, J.)