

**KUMARA AND OTHERS**

**Vs.**

**OFFICER—IN—CHARGE, POLICE STATION, KATUNAYAKE AND OTHERS**

SUPREME COURT

ALUWIHARE, J.

JAYAWARDENA, J.

PERERA, J.

SC/FR/265- 274/2011 WITH SC/FR/346- 348/2011

NOVEMBER 1, 2017

**Fundamental rights-Articles 11, 12(1), 13(1) and 14(1)(b) of the Constitution-Protest by  
Free Trade Zone workers against Employees' Pension Benefits Fund Bill-Reasonable  
apprehension of disruption of public order-Use of excessive force to quell protest by  
police-Proportionality**

Around 4, 000 to 5, 000 workers employed in the Katunayake Free Trade Zone (FTZ) participated in a protest within the FTZ premises against the Employees' Pension Benefits Fund Bill that had been tabled in Parliament. Although the protest started peacefully, towards noon the situation had become tense, with the number of protestors increasing and stones being pelted between the police and the protesters. Subsequently the police fired tear gas and live ammunition on the protestors and then charged at them with batons and iron rods. The petitioner in SC FR 265/2011 was one of the protestors and had obtained a gunshot wound while trying to escape the charge of the police, which left him with permanent disabilities of a serious nature. After the charge, the police launched an attack on the factories within the FTZ-Phase 11 where some of the protesters had sought refuge, entering their premises by force, damaging property and indiscriminately attacking those within the respective premises. All the other petitioners had been assaulted by the police with iron rods, batons, iron chains and other blunt weapons during this attack. Some of these petitioners had been taken to the Katunayake Police Station where they were held in crowded cells with other protesters, some of whom were bleeding from injuries sustained from gunshot wounds and tear gas. After several hours, the injured were taken to nearby hospitals and the others were released. The petitioners sought relief for the violation of their fundamental rights guaranteed under Articles 11, 12(1), 13(1) and 14(1)(b) of the Constitution.

**Held:**

1. The freedom of peaceful assembly guaranteed by Article 14(1)(b) of the Constitution extends to a peaceful protest. An assembly of persons can start off as peaceful but later take on an unlawful hue if the general behaviour of the participants leads to a reasonable apprehension that it is likely to cause a disturbance to the public peace. When that happens, it is permissible to impose such restrictions “*as may be prescribed by law*”*inter alia* “*in the interests of . . . public order,*” in terms of Article 15(7) of the Constitution.
2. It is probable that the police harboured a strong apprehension that the protestors would cause a disturbance of, and disruption to, the day to day life of the general public if they exited the FTZ. While these facts and the apprehension renders the protest unlawful, it did not give the police the right to use unbridled force to restore order. Force should only be used as a last resort and be proportionate so as to strike a balance between the right to peaceful assembly and the maintaining of public order.
3. The gunshot injuries of the victims indicated that the police opened fire on persons retreating or fleeing and that the shooting was not below the knee only, in clear violation of Police Departmental Order A 19. The use of live ammunition in such circumstances and attacking the protestors with weapons such as iron rods and nail studded poles were extreme in nature and by no means proportionate. This was an unwarranted move on the part of the police and not a permissible restriction in terms of Article 14(1)(b).
4. The subsequent attack by the police on the factories to which the protestors had fled seeking refuge was intended to punish and intimidate the protestors in order to quell any further protest. The excessive use of force in charging at the protestors, the indiscriminate beatings of men and women in the factories, and preventing those injured in the shooting and the attack from being taken to hospital, all amounted to cruel, inhuman or degrading treatment meted out by the police.
5. The State should ensure that its citizens do not feel that dissent will be dismissed without due attention in a fair and democratic manner or will be suppressed at all costs. The State, as the guardian of fundamental rights, also has a duty to take every precautionary

step in ensuring that a riotous situation is quelled with minimum damage both to human lives and property. The conduct of the senior officers of the law enforcement in this case falls short of the foresight and diligence expected of them.

**Cases referred to:**

1. Christians against Racism and Fascism v. United Kingdom (No. 8440/78, Commission decision of 16 July 1980, Decisions and Reports (DR) 21 at 138
2. Bandara and others v. Jagoda Arachchi, OIC, Police Station Fort, and others [2000] 1 Sri LR 225
3. Ashok Kumar v. Delhi Administration and others 1982 AIR 1143, 1982 SCR (3) 707
4. Nurettin Aldemir v. Turkey (Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007)
5. Senasinghe v. Karunatileke, Senior Superintendent of Police, Nugegoda and others [2003] 1 Sri LR
6. Amal Sudath Silva v. Kodithuwakku [1987] 2 Sri LR 119 at 127
7. Thomas v. Jamaica (Communication No. 321/1988, UN Doc. CCPR/C/49D321/1988 (1993)
8. Somawardena v. Superintendent of Prisons and others (SC/ SPL/494/93, SC Minutes of 22. 03. 1995)
9. Wickremabandu v. Herath (SC/APPLICATION/27/88, SC Minutes of 06. 04. 1990)
10. Mariyadas Raj v. Attorney General and another [1983] 2 Sri LR 461
11. Sanghadasa Silva v. Anuruddha Ratwatte [1998] 1 Sri LR at 25
12. Sanjeewa, Attorney-at-Law on behalf of Gerald Mervyn Perera v. Suraweera [2003] 1 Sri LR 317 SC
13. Saman v. Leeladasa [1989] 1 Sri LR 1

APPLICATION under Article 126 of the Constitution for infringement of fundamental rights.

J. C. Weliamuna with Pulasthi Hewamanna for the Petitioners in 265/11, 267/11, 269/11, 271/11, 273/11, 347/11, 348/11.

Saliya Peiris, P. C., with Anjana Rathnasiri and Harindrini Corea for the Petitioner in 266/11.

Shantha Jayawardena with Chamara Nanayakkarawasam for the Petitioner in 272/11.

Chrishmal Warnasuriya with Jayathu Wickramasuriya for the Petitioner in 346/11.

Uditha Egalahewa, P. C., with Vishva Vimukthi for the Petitioner in 268/11. Eraj de Silva for the Petitioner in 274/11.

N. Anketell for the Petitioner in 270/11.

Parinda Ranasinghe, Senior D. S. G., with Lakmali Karunanayake, S. S. C., for the Respondents.

*cur. adv. vult.*

April 5, 2019

**ALUWIHARE. J,**

The Petitioners, being workers employed in factories situated within the Free Trade Zone, alleged the infringement of their fundamental rights by the police in quelling a protest held by the Free Trade Zone workers against a proposed bill that would affect them. Counsel representing the Petitioners in all the cases referred to in the caption, were agreeable to consider these applications together in view of the fact that the violations alleged had emanated from one and the same incident and were also agreeable to abide by a single judgement. As such all thirteen petitions were considered together.

Leave to proceed was granted in;

Application No. SC FR 265/2011 for the infringements of Articles 11, 12(1) and 14(1)(b) of the Constitution,

Application No. SC FR 266/2011 for the infringements of Articles 11, 12(1), 13(1), and 14(1)(b) of the Constitution,

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Application No. SC FR 271/2011 for the infringements of Articles 11, and 12(1) of the Constitution,

Application No. SC FR 272/2011 for the infringements of Articles 11, 12(1), 13(1) of the Constitution,

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Application No. SC FR 346/2011 for the infringements of Articles 11, 12(1), and 14(1)(b) of the Constitution,

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Application No. SC FR 348/2011 for the infringements of Articles 11, 12(1), and 14(1)(b) of the Constitution,

In 2011 a bill was tabled, titled the 'Employees' Pension Benefits Fund Bill' which proposed to introduce a pension scheme for private sector workers. The workers of the Katunayake Free Trade Zone (FTZ) entertained an apprehension that this bill would affect their savings related to EPF, ETF, gratuity etc. The Joint Trade Union Alliance (JTUA) which opposed the aforesaid bill held a seminar to educate the workers on the adverse consequences of the bill at the Jayawardene Centre in Colombo. On the 24th May 2011 a protest organized by JTUA was held with the participation of about 40, 000 FTZ workers to demonstrate their opposition to the bill. The protest was held outside the FTZ at the 18th Mile Post since the police had prevented the protesters from congregating at the Urban Council Grounds in Katunayake. The protest had obstructed vehicular traffic and trains plying along the railway line nearby. At the conclusion of the protest an altercation had occurred, with the Seeduwa Police and having to baton charge and use tear gas. Around 30 protestors had been arrested in the process, who had been later released.

A few days later on 28th May, an impromptu meeting was held at the BOI Auditorium within the FTZ with the participation of the Minister for Labour and representatives of the FTZ workers. The meeting had been attended by other politicians of the Government as well. At the meeting no agreement could be reached by the parties. Following the meeting,

leaflets urging the workers to support the bill were distributed by an unidentified group of persons purporting to be members of the JTUA. The leaflets carried the name of the JTUA but it carried the address of a political party. The Police, however, had allowed these persons to distribute leaflets within the FTZ premises. In the early hours of the 29th a large number of posters soliciting support for the bill had also sprung up in and around the FTZ.

In such a volatile backdrop, on the 30th May 2011 the day on which the alleged violations took place, around 4000 to 5000 FTZ workers had commenced their protest within the FTZ premises around 10. 15 am. At the time, around 600 protesters had gathered, and scores of police officers had also been present on duty presumably to control the situation had it disturbed the public tranquillity. Coincidentally, around 11 am on that day, the Seeduwa Brandex (sic) Factory had to be closed and the workers were sent home due to a contamination of its water supply which had caused diarrhoea among the workers. On an earlier occasion i. e. on the 24th the demonstrators had come in a procession and attempted to get the employees of the same factory to join the protest on the 24th. (vide page 3 of the Presidential Committee Report on the incident, the 'Mahanama Tilakaratne Report'). Even though the protest had started peacefully, towards noon the situation had become tense with the number of protesters increasing and stones being pelted on both sides. Even though several politicians had intervened and assured that the bill would not be passed without heeding the views of the FTZ workers, they had continued the protest demanding a credible guarantee of such assurance.

Around 10. 30 am pelting of stones had started and stones had been thrown back and forth. The version of the police is that it had been communicated to the protestors through loudspeakers by the senior police officers that the FTZ workers would be taken out of the purview of the bill and that steps were being taken to broadcast that decision over the media as requested by the protesters (per the statement of objections of the Fourth Respondent) and, later that the bill would be withdrawn (per the statement of objections of the Third Respondent). Despite these guarantees the protestors who had congregated near Gate IV of Phase II of the FTZ had not dispersed but kept moving towards the roads. Thereafter, without warning, stones had been pelted towards the Police. Dhanawardene Gurusinghe, Negombo Assistant Superintendent of Police in his affidavit marked as 5R2 with the Statement of Objections

of the 5th Respondent states that a large amount of stones was pelted at the police by a group of persons who were about 25 meters behind the protestors, a position taken up by the Inspector General of Police, the 4th Respondent in his Statement of Objection as well. The president of the CMU Union admitted that the stones thrown at them by the police were thrown back at the police by them (vide page 7, Presidential Committee report). The Respondents allege that when the police officers who were taken by surprise retreated to the Katunayake Police Station to avoid further injuries, the protestors had started attacking the Police Station which was situated about 100m away from Gate IV damaging property within the premises and several police vehicles.

The position taken up by the Respondents is that there was an apprehension that the protesters may barge out of the FTZ causing further damage. The 1st Respondent OIC of the Katunayake Police Station in his statement of Objections had stated that DIG Ravi Wijegunawardena was assaulted by the protesters and had to be hospitalized since he was badly wounded. According to the Respondents tear gas was fired to protect the police officers retreating from the stone attack. The statements recorded in the Presidential Committee Report and the petitions reveal that it had been around 12. 30 pm when the Police had fired tear gas on the protesters and charged them with batons, iron rods etc. Firearms had also been fired.

I shall first detail the case of each Petitioner and the alleged events that they had had to face on the 30th.

Around 10. 15 am the Petitioner in FR application 265/2011, H. M. M. Sampath Kumara too had joined the protest along with the majority of the workers of the factory where he was employed at. Having been in one of the open areas of the FTZ where the protestors had been gathered, he had started to run towards the Crystal Martin factory to escape the charge. While he was running he had been hit by gunfire and had fallen down. He had then been carried into the factory where he worked by several other workers. Due to the critical nature of his injuries the Petitioner had been taken to the Negombo Base Hospital where he had had to undergo surgery and was kept in the Intensive Care Unit. Later he was transferred to the Colombo General Hospital where he remained warded. Due to the gunshot injuries received, the Petitioner who was 19 years old at the time, has sustained permanent disabilities of a serious nature affecting his reproductive and digestive systems.

Another FTZ worker, 22- year-old Roshen Chanaka succumbed to the injuries sustained due to the shooting.

Following the firing of tear gas and live ammunition and the subsequent charge, the facts reveal that, the police had launched an attack on the factories within the FTZ-Phase 11, entering their premises by force, damaging property and indiscriminately attacking those within the respective premises. All the Petitioners except the Petitioner in SC FR 265/2011 had been assaulted by the police with blunt weapons during this attack. After the attack the Petitioners in SC FR 268/2011, 270/2011, 271/2011, 272/2011, 273/2011, 274/2011, 346/2011, 347/2011 and 348/2011 had been detained at the Katunayake Police Station before being sent to receive medical treatment. Their affidavits bear testimony to the attack carried out by the police against the workers.

The Petitioner in FR application 266/2011, Rohitha Amarasinghe, an employee of the Toroid International Factory had joined the protest with his fellow workers. They had congregated near the MAS Active Factory and had gradually moved into the more open spaces of the FTZ. Isolated skirmishes had started to break out between the police and the protestors by this time. He states that around 12. 30 pm the police suddenly made a concerted move to disperse the demonstration by-firing tear gas and engaging in a baton charge resulting in the workers rushing into the nearby factories for safety. Hundreds of police officers had then broken into the factories such as *Toroid International, DSL Global and Noratel*. The Petitioner, having accompanied another protestor who had received an injury during a skirmish into the factory, had been inside the factory at this time. Due to the tense situation outside and having heard gunshots immediately after their return to the factory the Petitioner had remained within the factory.

When the police entered the factory premises by force the Petitioner along with other workers had fled into the locker room of *Toroid International* and locked themselves in. However, the police had broken down the door with iron rods and dragged them out of the lavatories where they were hiding by this time. The police had also dragged along some female workers, forced them to kneel and had started to assault them. When the Petitioner attempted to intervene, he had been assaulted with iron rods and kicked and trampled on. When they were subsequently instructed to leave the factory, the Petitioner finding it difficult to walk, had crawled out and on his way, he had been detained by some police officers who

forced him to stand against a wall and had assaulted him with a rubber hose. The Petitioner was then dragged towards the Human Resource office of the factory where several other injured workers were gathered and were transported to the Negombo Base Hospital in a van belonging to the factory.

Because of the attack detailed above, the Petitioner Amarasinghe had sustained a fracture of his right 3rd finger and contusions to his left upper arm. Having had a known history of Epilepsy for which he had not been on regular treatment for 2 years, the Petitioner had also developed fitting attacks while he was in hospital and continues to suffer from panic attacks.

During the charge following the tear gas attack, the Petitioner in SC FR 267/2011, Buddhika Atapattu who had also joined the protest around 10. 00 am, had run back to his factory Noratel International where he and several others had been assaulted with iron rods, iron chains and transformer parts (manufactured in the factory) by the police who had pursued them there. In shielding himself from a blow to the head by an iron rod his wrist had got fractured. Around 1. 00 pm they had been taken near the FTZ gate where other workers who also had severe injuries had been gathered. There, they had been assaulted by the police again before being taken to the Negombo Base Hospital.

Having finished the night shift at *A. T. G Gloves* around 6. 00 am, Dhanushka Sanjeewa, the Petitioner in 268/2011 had returned to his boarding house nearby. Around 10. 00 am the Petitioner had gone to Phase II to withdraw money from the Automated Teller Machine there. The protest had commenced by then and, there had been around 4000 to 5000 workers gathered. When the Petitioner attempted to exit Phase II the police at the gate had refused to allow him to pass through. Thereafter, not being able to leave Phase II the Petitioner too had joined the protest. When the police charge occurred, he had run inside *A. T. G Gloves*. Around 2. 00 pm a Sectional Head of the factory had locked the entrance to that area of the factory with the help of the Petitioner and some other workers. In the meantime, the police had broken into the factory and 25- 30 police officers had demanded that the locked entrance be opened. When those inside did not comply, they had begun to destroy the wooden and glass fixtures outside. Therefore, the Sectional Head had opened the door and the police had entered and assaulted everyone inside with batons. The Petitioner had received blows to his head, left wrist, right arm and torso.

The blows on his head had made the Petitioner nauseous and he had started to vomit. The workers had then been forced to leave the factory premises and then ordered to kneel down and assaulted again.

Following the assault, they had been taken to the Katunayake Police Station on foot and detained in a cell with 50- 60 other workers including those injured due to live ammunition and due to the use of tear gas. Though many had been screaming in pain and the Petitioner himself was bleeding they had not been given any assistance by the police. After about three hours, his personal details had been recorded. The police had then announced that the injured would be taken to Negombo Base Hospital and had asked them to come out. Though some had gone out, the Petitioner had not joined them due to the uncertainty about what the police would do next. Eventually, he had been released around 5. 00 pm and had returned to his boarding place from where a friend had taken him to the Negombo Base Hospital. Reaching the hospital around 6. 30 pm the Petitioner had been turned away due to overcrowding.

The Petitioner in application 269/2011, Anesh Imalka Fernando had reported to work at *Toroid International* around 1. 30 pm on the 30th and joined the protestors after putting on his uniform. When the Police charged the protestors, he had run into *Toroid International* and escaped through a door at the rear of the building. However, he had been caught by some police officers and had been assaulted while two police officers held him tightly by the arms. He asserts that the assault continued even after he fell down feeling faintish. After some time, a police officer had shaken him and when he opened his eyes he had again been assaulted with iron rods and kicked by that same officer and then ordered to walk to the main gate of the FTZ. By this time he had noticed two wounds on his hands and when he had told the police officer that he is unable to stand up he had been told to crawl there. When the Petitioner tried to stand up he had been assaulted again. However, the Petitioner had managed to walk to the gate with great difficulty and collapsed there. He had seen other workers too being assaulted. Around 3. 00 pm he had been taken to the Negombo Base Hospital by his fellow workers and had to have stitches to his head and ears and had been referred to the Eye Clinic. Even by the date of his application to this court, the Petitioner states that he continues to suffer from bodily pains accompanied by dizziness. (Medico-legal report states that even though the injuries are non-grievous, if the scar on the forehead becomes prominent after healing, it may

disfigure the face and therefore could be categorized as grievous under limb (f) of Section 311 of the Penal Code.)

Being an employee of Naigai Lanka the Petitioner in application 270/2011, N. L. T. Iresha had joined the protest around 12 noon along with the majority of the workers at the factory. She and other Naigai Lanka workers had run back to the factory when the police charged the protestors. However, the police had caught up with them and abused them in contumelious language and had ordered them to kneel on the ground. When they complied, they had been beaten with iron poles repeatedly, resulting in injuries to her upper arms, elbow and torso, several of which resulted in bleeding. After several minutes, the Petitioner and the others had been ordered to leave/run and when they attempted to do so they had been assaulted on their back and buttock areas and were physically apprehended. Afterwards, the female workers had been handed over to three women police constables who had been outside Naigai Lanka. They had escorted the Petitioner and the others on foot to the Katunayake Police Station and had assaulted them on the way as well. They had been repeatedly scolded in abusive language to the effect that they were allowed inside the FTZ to work and not to protest.

At the Katunayake Police Station, when they had attempted to sit on the benches there they had been scolded by a woman police constable and forced to sit on the floor. Then, around 1. 00 pm they had been taken to the Crime Branch of the Police Station and locked inside a room with 8- 10 other female workers. Within a period of about one hour almost 60 female workers had been detained in that room. Due to the crowding the Petitioner and several others had suffered from claustrophobic feelings and breathing difficulties akin to asthma or panic attacks. There had been several workers detained in that room who had bleeding wounds, including those sustained from live ammunition and tear gas. They had not been given any first-aid or medical assistance. In addition to these traumatic events, the Petitioner states that she heard the screams of persons outside the room whom she believes were male workers. Around 4. 30/5. 00 pm those of the detainees who had injuries, including the Petitioner had been forced onto a bus and taken to the Negombo Base Hospital. The Petitioner's name and address had been taken down by the Hospital Police Post, but no statement had been recorded. However, she had been forced to sign a document by the police. Due to the injuries sustained, the Petitioner has been rendered unable to fully extend or flex her left arm, at the time of the application.

An employee of Sterling Lanka, the Petitioner in application 271/2011, Nisshanka Wanigasekera had reported for work around 6.45 in the morning of the 30th. Around 9.15 am he had gone to the Smart Shirt warehouse situated in Phase II by three-wheeler, accompanied by the driver, Jayatissa and another worker named Nilusha, in order to collect and deliver some samples. When they were returning to *Sterling Lanka* around 12 noon the roads had been blocked due to the protest and since they were unable to proceed further by three-wheeler the driver had stopped the vehicle on the side of the road. By this time the police had been behaving in an aggressive manner and minor skirmishes were breaking out between the protestors and the police. When the police made the concerted move to disperse the protesters around 30 police officers had attacked their three-wheeler as well and dragged out the Petitioner and his companions. The Petitioner asserts that he had been brutally assaulted with iron rods until he lost consciousness and became separated from his companions. He had suffered injuries to his jaw, teeth, nose and fingers of the left arm resulting in bleeding. The Petitioner had lost consciousness several times but recalls that he was dragged to the Katunayake Police Station by two police officers and that he regained consciousness inside a police cell in the company of Jayatissa. There had been about 50 persons detained in the cell, some with injuries from live ammunition and the use of tear gas. Even though the Petitioner had been bleeding and vomiting blood and many of the detainees had been screaming in pain, no assistance had been provided by the police. Later, the Petitioner had been dragged out of the cell and a woman police constable had recorded the details on his factory identity card. He had been assaulted again before being dragged onto a bus and taken to the Negombo Base Hospital.

The Petitioner states that he is unable to recall the details of his hospitalization properly due to the trauma he underwent. However, he recalls receiving stitches to the head and being transferred to the National Hospital immediately via ambulance, since he was vomiting blood. As his jaw and several teeth had broken an iron plate had been inserted into his jaw. His nose had been broken and he had been informed that it would require surgery in the near future. A statement had been recorded from him by an officer in civilian clothing. He had not been shown that statement but had been required to sign some document the details of which he cannot recall. Due to the injuries the Petitioner is unable to flex the fingers in his left arm. He has trouble breathing and finds it difficult

to move his jaw which causes difficulties when eating. At the time of the application he was undergoing further treatment and was in severe pain.

The Petitioner in application 272/2011, Jayatissa Rajakaruna drove the three-wheeler in which the Petitioner in 271/2011 (Nisshanka) had been travelling. During the attack on them the police had caused damage to the three-wheeler and assaulted the Petitioner on his arms, left leg, back and head with iron rods while some police officers restrained him. He had received a bleeding wound to the head. He was then taken to the Katunayake Police Station on foot. About an hour later he had observed that Nisshanka who had been separated from him earlier was also put into the same cell and could not even stand unaided and was in severe pain. Around 3. 30/4. 00 pm the injured workers in the cell had been forced onto a private bus and taken to the Negombo Base Hospital. The Petitioner was admitted to Ward 2 which he believes to be the Eye Ward of the hospital and states that during his stay there until the 02nd of June he noticed a heavy police presence at the hospital. The Petitioner states that at the date of the application he still finds it difficult to walk in addition to bouts of dizziness.

The Petitioner in 273/2011, Ranjan Lasantha Perera an employee of the Smart Shirt factory had been within the factory premises when around 12 noon he had witnessed hundreds of protestors fleeing from the police attack and entering the factory premises. He had heard gunfire and had feared for his life. Several dozen police officers had broken open the factory gate and had assaulted the security officers who attempted to prevent them. The factory's security room had been destroyed in the process. Several police officers had opened fire within the factory premises and caused injuries to the fleeing workers and damaged the factory property. He had run to the canteen area of Smart Shirt where he and several other workers had been chased by a group of police officers armed with batons and weapons. They had cornered the Petitioner and the others and had assaulted them with batons and wooden planks. When the Petitioner fell down due to the attack he had been told to stand up and had been assaulted on the head, legs and arms. Due to this he had sustained injuries to his left leg and fractured his right leg. Around 2. 00 pm the Petitioner had been carried to the Katunayake Police Station by four of the police officers who had assaulted him. The Petitioner had been left outside the Police Station building. Later he had been instructed to go to the police cell and since he could not walk he had crawled into the

Police Station. Around 4. 30 pm he had been carried into a bus by police officers and taken to the Negombo Base Hospital.

The Petitioner in FR application 274/2011, Lalinda Herath who was employed at the Global Sports Factory had not joined the protest even though about 50 workers from his factory had joined it. In their attack on the factories the police had forcibly entered the Global Sports Factory by assaulting the Security Personnel and proceeded to assault the Petitioner and his fellow workers. In order to avoid the attack, they had run towards the printing room of the cutting section, during which time the Petitioner had been continuously attacked by a police officer. The police had then broken the glass windows of the room and assaulted the Petitioner and four others who were taking cover there. The Petitioner had been beaten on the ears, head and stomach. After the beating they had been ordered to leave the room two by two holding hands. Then they had been taken to the Katunayake Police Station and detained in a cell for about 45 minutes. They had been checked by police officers and Rs. 2000 which had been in the Petitioner's pocket had been taken away. After this period of detention, the Petitioner along with other injured workers had been forced onto a bus and taken to the Negombo Base Hospital, where he was admitted for treatment. At the time of filing the application the Petitioner asserts that he was still suffering from pain in his ears and his hearing had been impaired. (Medico-Legal Report dated 8th August 2011 by Judicial Medical Officer, Negombo District General Hospital however only records a contusion of 6cm into 3cm on the lower side of the left cheek.)

The Petitioner in application 346/2011, Pradeep Kumara Priyadarshana who was an employee of *Noratel International* had joined the protest around 11. 30 am along with the majority of his fellow workers at the factory. The police had fired tear gas on the protestors gathered near the entrance to Phase II and charged them, throwing stones and other objects at the protestors fleeing them. In paragraph 12 of his petition, the Petitioner states that since several hundred workers converged near *Noratel International* after the charge, they spontaneously decided to engage in a peaceful sit-in/sit-down there, in which the Petitioner too had participated in. The police who had by this time dispersed the protest near Gate IV of Phase II had proceeded into the FTZ continuing to use tear gas as well as iron rods. While some protestors had been severely injured, the Petitioner and others had managed to flee into *Noratel International*.

However, police officers had forced their way into the factory, assaulting the security officers who attempted to prevent them and demolishing the factory security room. Thereafter the police had broken into the factory by breaking doors and windows and had even fired tear gas into the factory causing asthma-like symptoms in some workers. The Petitioner and about 75 others had barricaded themselves inside the Production Office on the upper floor. The police had then surrounded the office and threatened them in abusive and contumelious language threatening to open fire if they did not come out. Due to these threats the workers had come out of the office and had been compelled to walk in between about 100 police officers who continuously assaulted them on their way to the exit of the factory. The police had kept up an angry rhetoric that they were allowed inside the FTZ only to work and not to protest. The Petitioner's right arm was fractured due to the assault and was bleeding profusely. When the workers came out of the factory they had been ordered to sit down on the ground inside the factory premises, where some workers including a pregnant worker were again assaulted.

According to the Petitioner, Priyadarshana around 1. 30 pm these workers had been transported to the Katunayake Police Station by a bus where their personal details were recorded by a woman police constable who verbally abused them for taking part in the protest. An army officer who appeared to be a high ranking official and another person who appeared to be a local politician had informed them that the enactment of the bill was halted and instructed them to return to the FTZ and inform the protestors within, of this development. Accordingly, the workers had been loaded onto a bus and taken to Phase II where several hundred protestors were congregated. Several army officers who had been on the bus had then instructed them to inform the other protestors that the bill would be halted. At this point, the workers on the bus who were in severe pain due to injuries and the tear gas attack pleaded with the driver to take them to a hospital whereby they were taken to the Vijaya Kumaratunga Memorial Hospital. Upon admission there, due to the critical nature of their wounds, the Petitioner and several others were immediately transferred to the Ragama Teaching Hospital.

Around 1. 45 pm on the 30th, the Petitioner in application 347/2011, Nalin Sanjaya Jayatileke had made his way to the First Aid Room of Noratel Lanka as he had been suffering from a headache. On his way he had noticed that the protestors were being chased by the police while

continuously assaulting them with batons. He had also been caught up in this and had been caught by a police officer. When he explained that he had not been engaged in any unlawful activity he had been released by that police officer. However other police officers in the vicinity had ordered that no one should be allowed to leave and then he had been continuously assaulted by several police officers and forcibly taken to the entrance of *Noratel Lanka* where he had been instructed to sit on the ground. Several dozen workers had been forced to sit there and some of them had injuries from live ammunition, iron rods and injuries caused by the firing of tear gas. Around 100 police officers had been present there and several of them had been assaulting the workers seated there. While there the Petitioner had been assaulted several times on the back of his head, left side of the jaw, back and the left side of the cheek below the eye. The Petitioner had fainted due to the severe pain from the assault especially from the blows below the eye which had caused a fracture. The Petitioner had regained consciousness after some time and the police had instructed one of the workers to bring a vehicle belonging to the factory to transport the injured to the factory. Upon a *Noratel Lanka* Nurse who was present there informing the police that their officers were damaging private vehicles and therefore it would not be safe to transport the injured they had agreed to send one of their officers to prevent any such attack. The Petitioner and about 10 other workers who had been seriously injured had been taken by van to the hospital. Several of those workers had been unconscious and some had been drifting in and out of consciousness. Whilst within Phase II the van had been stopped by police and instructed to go to the Katunayake Police Station instead of the hospital. At the Police Station a woman police constable had recorded the personal details of the workers despite the semi-conscious or incoherent state some of them were in. They had been taken to the hospital only afterwards. On the 31st, since the Negombo Base Hospital had been overcrowded with injured workers the Petitioner had been discharged against his will and had not been given any documents regarding his treatment. On the 01st of June, as he was coughing up blood the Petitioner had attempted to admit himself to the Kandy Teaching Hospital but had been turned away since he did not have any medical reports or official discharge papers. Subsequently, he had been admitted to a private hospital in Kandy since he was bleeding from the mouth. X-rays taken there had revealed that the bone below his left eye had been fractured.

The Petitioner in application 348/2011, Sameera Sandaruwan Hettiarachchi had entered Phase 11 to report to work at *Noratel Lanka* around 1. 30 pm. There had been a large number of police officers at the gate and he had been allowed inside only after an extensive security check. He had observed injured workers lying on the ground and some being escorted out of the FTZ by the police. He had heard the gun shots and sounds of altercations. Fearing for his safety the Petitioner had quickly made his way to *Noratel Lanka*. Seeing factory workers injured from live ammunition and tear gas being taken to the First Aid Room of the factory he had gone there to offer assistance. When he proceeded to report to work the protestors who were being pursued by the police had started to run in his direction. He had also run into Noratel International (Pvt) Ltd-New Division for safety and barricaded the building along with some other workers. The police had surrounded the building, partially broken the door and three police officers had entered the building. They had started to assault the workers nearest to the entrance who happened to be predominantly women. Immediately afterwards the main entrance to the building had been broken open and several dozen police officers had entered the building and assaulted those inside. Being assaulted on the back of his head the Petitioner had lost consciousness. Though he cannot recall the incidents that occurred afterwards, he had been informed by his fellow workers that they had been taken to the Katunayake Police Station in a private van accompanied by a nurse from Noratel. The Petitioner had given his details to the police-which he does not recall-and then had been taken to the Negombo Base Hospital where he regained consciousness. Due to the assault he had required stitches to his nose and the back of the head. A tooth on the right side of the jaw had also broken. At the time of the application, the Petitioner states that due to the injuries he has difficulty breathing, opening his mouth completely and has reduced vision in his right eye.

### **Infringement of the Freedom of Peaceful Assembly**

Article 14(1)(b) of the Constitution recognizes the freedom of peaceful assembly, the qualification being the 'peaceful' nature of the assembly. Therefore, even a protest may be protected under Article 14(1)(b) as long as it remains peaceful. The jurisprudence of the European Commission of Human Rights is to the effect that an assembly may be deemed 'peaceful' where the organizers do not intend violence which results in public disorder. It has been recognized that it is the *intention* to hold a

peaceful assembly that is significant in determining whether an assembly is peaceful or not; rather than the likelihood of violence because of the reactions of other groups or other factors. Violence or disorder that is incidental to the holding of a peaceful assembly will not remove it from the protection of freedom of assembly and association. (emphasis added) *Christians against Racism and Fascism v. United Kingdom*<sup>1</sup>)

In *Bandara and Others v. Jagoda Arachchi, Officer-in-Charge, Police Station Fort, and Others*<sup>2</sup> the Supreme Court, setting out a test for recognizing what may be considered a peaceful or an unlawful assembly, held that “An assembly crosses the line of being peaceful when the general behaviour of those assembled leads to a reasonable apprehension that they are likely to cause a disturbance of the public peace”, thereby ceasing to enjoy the protection of Article 14(1)(b).

Thus, an assembly of persons can start off as a peaceful assembly with the organizers intending no violence but later on take an unlawful hue if the general behaviour of the participants leads to a reasonable apprehension that it is likely to cause a disturbance of the public peace. When a peaceful assembly later takes on an unlawful hue in the above manner it no longer enjoys the full entitlement to the freedom of assembly recognized in Article 14(1)(b). In the event of such an assembly, by the operation of Article 15(7) of the Constitution, it is permissible to impose such restrictions “*as may be prescribed by law “imposed inter alia “in the interests of . . . public order”*”.

Since the classification of the assembly in the instant case depends significantly on its impact on public order, it is useful to distinguish what the term denotes, especially as opposed to ‘law and order’. In *Ashok Kumar v. Delhi Administration and Others*<sup>3</sup> it has been observed that “*The true distinction between the areas of “public order” and “law and order” lies not in the nature or quality of the act. but in the degree and extent of its reach upon society . . . Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order.*” (emphasis added) Thus, ‘public order or peace’ envisages a climate in which the public can go about their routine of daily activities without unusual disturbances.

Whether an act constitutes a disturbance of the public order or peace depends on the extent of its ability to disrupt the usual pace of daily activities of the public.

Accordingly, whether the FTZ workers' protest created a reasonable apprehension of acts which have a sufficient potentiality to disturb the usual flow of the daily activities, must be gauged based on the particular circumstances of the case. The FTZ is an Industrial Zone managed by the Board of Investment (BOI) which is well-fortified with all entry points guarded by BOI Security Personnel and the Katunayake Police. Entry into the FTZ is allowed only to persons granted permission by the BOI. A protest taking place within the FTZ could disturb the activities of the factories but not necessarily the public order since the public do not engage in their daily activities within the zone.

On the 30th, the protest had commenced within the confines of the FTZ near the vicinity of the factories, with the protestors gradually moving out into the more open spaces of the FTZ. That in the run up to the charge by the police there were minor skirmishes taking place between the police and the protesters is a point conceded by the Petitioners. This transformation of the protest and the pelting of stones combined with the experience of the protest a few days earlier i. e. the 24th which resulted in the holding up of road and rail traffic culminating in a tear gas attack and a baton charge would have led the police to form a reasonable apprehension that the protestors may exit the FTZ and cause havoc outside. Regarding the alleged attack on the Katunayake Police Station the Presidential Committee has been of the view that a serious attack where the protestors overran the Police Station and caused serious damage to the property is unlikely in the circumstances. The Committee observes (vide page 15) that the Katunayake Police Station is situated too far away for the protesters within the FTZ near Gate IV to cause serious damage by throwing stones especially since the buildings are covered by trees. The Presidential Committee report expresses the view that had the protesters entered the Police Station premises, at least 500 police officers and 16 gazetted officers had been present there to handle the situation. However, it is possible that the police officers entertained a fear that the protesters would storm the Katunayake Police Station when they congregated in large numbers in the vicinity of Gate IV. Even though a police force of a considerable strength were present at the scene it has to be appreciated that the protesters too amounted to at

least 4000 in number and that water cannons which could have been effectively used to keep the protestors at bay and prevent them from spreading out into areas outside the FTZ were not available. In such a context, it is probable that, the police harboured a strong apprehension that the protestors would cause a disturbance of and disruption to the day to day life of the general public if they exited the FTZ. While these facts and the apprehension renders the protest unlawful, the quelling of the protest can only be called extreme due to the use of live ammunition and weapons such as iron rods and nail studded poles. The actions of the police are by no means proportionate to the protest even though resorted to for the purpose of maintaining public order. Therefore, it is an unwarranted move on the part of the police and not a permissible restriction of Article 14(1)(b).

Justice Sharvananda in his treatise 'Fundamental Rights in Sri Lanka' (vide page 267) points out that "Without legislative authority, the Executive cannot impose any restrictions upon any of the Fundamental Rights guaranteed by Article 14. It is only by a law or regulation having statutory force and not by executive or departmental instructions that a valid restriction on Fundamental Rights can be imposed." The legal provisions made under Section 95 of the Code of Criminal Procedure Act become applicable in respect of the extent of force that can be used to disperse an unlawful assembly.

Section 95(1) of the Code of Criminal Procedure Act No. 15 of 1979 empowers a police officer not below the rank of Inspector of Police to command an unlawful assembly which is likely to cause a disturbance of public peace to disperse and places a duty on the members of such an assembly to disperse upon such command.

It however does not allow the police to unleash unbridled power on the assembly in circumstances where the persons constituting the assembly do not abide by such duty. Section 95(2) categorically states that the police may lawfully use only "*such force as is reasonably necessary to disperse the assembly.*" (emphasis added)

While what constitutes reasonable force in dispersing an assembly would depend mostly on the facts of each particular case some general guidelines regarding the use of force have been identified. Force should be used only where absolutely necessary and only as a last resort. The degree of force used must be the minimum required to achieve the lawful objective sought.

Police Departmental Order A19 under 8(4) (marked A4) categorically states that in dispersing a disorderly and riotous crowd “Under no circumstances can fire be opened unless the crowd is committing or attempting to commit any of the offences contained in the Police ‘Firing Orders.’” In the present circumstances where the crowd was not committing or attempting to commit any of those offences there is no justification for the police to open fire on the crowd. Committing or attempting to commit grievous hurt entitles a police officer to open fire on a mob under 8(4)(a) of the Police Departmental Order A19 after considering “*whether immediate action is necessary or whether the mere presence of the armed party will not be sufficient to cause the mob to desist.*” A careful consideration of the facts of the case show that that entitlement does not apply here. The 2nd Respondent states that the protestors had been holding several police officers including a senior officer to the ground and assaulting them and did not leave even after shots were fired in the air, compelling him to shoot at the crowd. However, if the events had transpired in that manner it is not possible that the deceased Roshen Chanaka would fall at a point well within the FTZ near the Crystal Martin Factory, especially in a context where Inspector of Police, R. P. K. L. Ranasinghe, the subordinate officer who fired under the 2nd Respondent’s orders states that he shot at the protestors from about 30 meters away (vide page 43, Presidential Committee Report). It bears evidence that the police opened fire on a retreating crowd, which conclusion is further consolidated by the fact that the Petitioner as well as the deceased Roshen Chanaka had sustained injuries from shots fired from behind. The Police Departmental Order (A19) states in no uncertain terms that “if any members of the mob are shot in the back, the police will be accused of firing longer than necessary.” Thus, the second Respondent and his subordinate Inspector of police who followed his orders to shoot are liable for using excessive force by shooting when it was no longer absolutely necessary to do so.

The Respondents contend that the shooting was in exercise of the right of private defence of police officers and Armed Forces provided for by Article 15(8) of the Constitution in relation to Articles 12(1), 13 and 14. The 2<sup>nd</sup> Respondent does not state that he was compelled to shoot as an immediate action in order to ensure his own safety. Even if the protestors were attacking police officers, firing as undertaken here is disproportionate since it is evident that the crowd had been shot at even after it had started to disperse and that a number of bullets had been

fired above the knee as shown by the injuries above the knee sustained by several persons. The officers ought to have considered that given the density of the crowd firing in such a manner may prove fatal to the protestors.

In order to classify the assembly of the FTZ Workers on the 30th May as unlawful, it has been submitted by the Respondents that the requirement to give notice of processions set out in Section 77 of the Police Ordinance has not been complied with. Section 77 of the Police Ordinance No. 16 of 1865 requires that in case a procession is to be held, at least 6 hours notice should be given to the Officer-in-Charge of the Police Station nearest to where the procession is to commence. Section 77 only requires such notice to be given of 'processions.' Further, the 6 hours notice requirement presumes that the procession is not a spontaneous one. The evidence which surfaces in the instant case does not support a conclusive declaration on whether the protest was spontaneous or was organized earlier.

The Petitioners state that the protest on the 30th was a spontaneous congregation of the workers within the FTZ who were seeking to demonstrate their opposition to the proposed bill. By the 30th the suspicion of the FTZ workers that their views would not be considered regarding the bill if they did not keep up a protest would have grown stronger, after the protest organized by the JTUA on the 24th failing to bear fruit and the meetings with the Minister and several political figures failing to address their concerns about the bill. The leaflet distribution and poster campaign would have given rise to the notion, that the government was determined to pass the bill. Therefore, it is possible that the assembly of the 30th would have taken place with an element of prior preparation, especially as supported by the crowd quickly swelling from around 600 to 4000- 5000 in number, and the displaying of placards as stated by the Petitioners in their petitions. S. R. S. Kumari in her Statement to the Presidential Committee (at page 52 of the report) states that there was influence from outside to participate in the protest. Persons who seemed to be outsiders as indicated from their clothes and manner of speaking had given contradictory information about the bill and appeared to be trying to advance the agendas of some outside force. This position finds backing in the Second Respondent's statement where he observed that the manner of speech and behaviour of some of the protestors indicated that they were not FTZ workers and that while the workers behaved in

**a disciplined manner the outsiders used abusive language and acted violently (page 33, Presidential Committee Report), is not corroborated by the other workers except for the ambiguous statement by K. Wasantha Kumara Silva; "උද්ඝෝෂණවලට සහභාගි නොවීම නිසා ගැටළු ඇතිවුනා" (at page 54 of the report). Senarath Rajapakse recalls that workers from other factories came to their gate and requested them to join the protest and they had joined consequently but does not mention any influence from an external force (at Page 68 of the report).**

In *Nurettin Aldemir v. Turkey*<sup>4</sup> at Paragraph 34 the European Court of Human Rights held that interference in meetings held in opposition to a proposed bill and the force used by the police to disperse the participants, as well as the subsequent prosecution against the applicants, could have had a chilling effect and discouraged the applicants from taking part in similar meetings. Accordingly, it was found to be a violation of Article 11 of the European Charter of Human Rights. In the present case too the circumstances are similar and this' court is of the opinion that it was a violation of Article 14(1)(b) of the constitution. The police has failed to strike an adequate balance between the right to peaceful assembly and maintaining public order thereby violating the rights of the Petitioner under Article 14(1)(b).

This court in *Senasinghe v. Karunatileke, Senior Superintendent of Police, Nugegoda and Others*<sup>5</sup> has set out forcefully that; "The freedom of peaceful assembly, speech and expression are also designed to promote peace and order. It, inter a/ia, assures the freedom to dissent. The process of decision making in public matters is hereby enriched. If dissent is suppressed there is every likelihood of it taking a devious form which may ultimately endanger peace and order." The same has to be reiterated given the trajectory of events marked by the incidents of the 30th where the police and the workers were caught up in an opaque climate of confusion heavy with various elements pushing to further their objectives. The state should ensure that its citizens do not feel that dissent will be dismissed without due attention in a fair and democratic manner or, will be suppressed at all costs. More often than not, a protest will get out of hand if the response of the authorities does not kindle confidence in the protestors and they feel that they would have no other means of making their views heard or considered, thus rendering them obsolete. On the other hand, the protestors and the organizations that give them leadership such as Trade Unions have a duty incumbent on them to follow

the lawful rules and regulations set out in relation to protests, not only for the preservation of public order but for the security of the protestors themselves. Where a satisfactory resolution to a problem seems distant and emotions are running high the organizers of a protest should take measures to ensure that the public tranquility is maintained, and no inconvenience is caused to the public who are outside the theatre of protests and no disruption is caused to the public life. This is of paramount importance if they intend to assemble a crowd over the numbers of which they are unable to exercise sufficient control.

### **Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

It is common ground that around 12 noon on the 30th stones had been thrown and that tear gas had been used by the police. The FTZ workers who had remained within their factories without joining the protest have stated to the Presidential Committee, that they observed stones being thrown on both sides and that gunshots were also heard later, a version common to their statements. This version is plausible when considered together with the 2nd Respondent's statement to the Presidential Committee that he reached the vicinity of Gate IV around 12. 55 or 01. 00 pm. As he arrived he had been told that DIG Ravi Wijegunawardane and some other officers were being assaulted by the protesters.

Subsequently, he had shot in the air upon observing that the protesters were attacking a senior police officer and other police officers. The 2nd Respondent has stated that since the protesters did not leave the police officers whom they were holding onto the ground and attacking, he shot at the crowd without targeting anyone, thereby causing them to disperse. According to the Confidential Report submitted by the Attorney General regarding the incident (filed consequent to the order of the court dated 15th November 2011 prior to leave to proceed being granted) 8 persons had sustained gunshot injuries that day. Inspector of Police R. P. K. L. Ranasinghe, the other police officer who is accused of shooting, has stated that he fired 4 shots into the air and 2 shots below the knee upon the orders of his superior, the 2nd Respondent. He however, does not mention that he witnessed police officers being assaulted by the protesters. In the absence of any affirmation by way of affidavit by DIG Ravi Wijegunawardane or any other senior officer that they were assaulted by the protestors as described by the 2nd Respondent, it is difficult to conclusively pronounce that such assaults had in fact taken place. However, given the climate of confusion and violence that appears to have prevailed and the large

number of protestors, the benefit of the doubt has to be given to the 2nd Respondent. In shooting at the crowd he has been driven by the need to disperse the crowd and prevent any further unlawful activities from taking place.

Be that as it may, the police have exceeded the force that they may have lawfully used, as earlier elaborated in this judgment and also in violation of the Police Departmental Order A19. Due to the shooting the Petitioner in application 265/2011 sustained severe injuries to his reproductive system and his rectum was fully injured. The extent of the injuries is such that he has to pass urine and faeces in disposable bags. The gunshot injuries of the victims such as those of the Petitioner, injuries to the kidneys as sustained by the deceased Roshen Chanaka and other wounds such as a bullet embedded near the eye of a protestor (vide page 17 of the Presidential Committee Report) indicate that the police opened fire on persons retreating or fleeing and that the shooting was indeed not below the knee only. Even if the protesters had been involved in assaulting police officers, the actions of the police are in violation of Departmental Order A 19 under 8(1) which states that “a crowd must not be punished for an offence already committed and that force can only be used while the commission of the offence is in progress.”

In *Amal Sudath Silva v. Kodithuwakku*<sup>6</sup> this court has stated in relation to Article 11 that “*It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. the Police force, being an organ of state, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances. Just as much this right is enjoyed by every member of the Police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents.*” The absolute prohibition in Article 11 that no person whatever their conduct shall be subjected to torture or to cruel inhuman or degrading treatment or punishment has been violated by the Police through their violent conduct following the shooting.

The 3rd Respondent in his statement of objections states that the situation was brought under control by 2. 00 pm. According to the statements of the FTZ workers recorded by the Presidential Committee (vide page 45- 74) following the gunshots there had been an attack by the police on

the factories, which can only be understood as an attack to punish the workers and intimidate them so as to break up the protest and prevent any further opposition. The nature of the wounds on the victims such as injuries to arms, wrists, fingers etc. show that they were sustained in defending themselves from blows dealt with blunt weapons such as nail studded poles, iron rods and wooden poles as described by the workers. The police officers engaged in the attack had worn numberless uniforms, demonstrating an intention to hide the identities of the assailants. It also shows that the attack was a planned one.

**The words of the police officers කොපි වන්ඩිද? කොපි පොලීසියටත් භහන්න තේද ආවේ? පොලීසියේ තරම් දැන්වත් දැනගනිව්! (vide page 11 of the Presidential Committee Report) as recalled by one of the workers who was assaulted by the police clearly indicate the intention of the police officers to punish the workers for their involvement in the protest. The same worker recalls 'an officer with 2 stars' saying "Now it is enough" regardless of which the beating continued. The statements of the victims of the attack contained in the Presidential Committee Report bear evidence to the deplorable conduct of the police officers, including women police constables who had come to the scene later on. Assaulting security officers who attempted to prevent the police from entering the factories, hitting pregnant workers and female workers despite pleas for mercy, use of abusive language, removing belongings of workers such as helmets, three-wheeler keys and gold chains, causing damage to the property of factories and assaulting everyone within the factories regardless of whether they were involved in the protest or not is ample evidence of the cruel, inhuman or degrading treatment that was meted out by the police.**

Per the Presidential Committee Report (vide page 22) 268 civilians received treatment from the Negombo Base Hospital, Ragama Hospital and the Vijaya Kumaratunga Memorial hospital whereas 29 police officers had been admitted to hospitals. The number of injured civilians may have been more, since some did not immediately seek medical assistance for fear of reprisals and others due to overcrowding of the hospitals. The large number of civilians injured in contrast to the number of police officers injured point to a brutal crackdown by the police.

The police had prevented those injured in the shooting and the attack from being taken to the hospital. The area had been cordoned off and the villagers nearby had had to break down parapet walls of factories

in order to take the injured to hospitals. The windscreen and shutters of the vehicle into which Roshen Chanaka was put into had been smashed with iron rods by police officers, thus delaying the vehicle. According to the Medico-Legal Report the Petitioner, H. M. M. Sampath Kumara too had been admitted to the Negombo Hospital at 1. 57 pm, a considerable delay-given the shooting had occurred between 1- 1. 30 pm-in light of his serious injuries. Denying of medical treatment has been held to be cruel treatment in *Thomas v. Jamaica*<sup>7</sup> cited in *Somawardena v. Superintendent of Prisons and Others*.<sup>8</sup> The deliberate prevention of timely medical attention to persons with serious gunshot wounds and other wounded persons is a cruel, inhuman or degrading treatment meted out as punishment.

The mass of evidence corroborated by each of the versions of the Petitioners set out in their respective petitions as well as the statements of their fellow workers reproduced in the Presidential Committee report is overwhelming in their testimony of the reprehensible conduct of the police in their attack on the factories.

### **Arbitrary Arrest**

Article 13(1) guarantees that “No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.” In *Wickremabandu v. Herath*<sup>9</sup> it has been held that Arrest in 13(1) “includes an arrest in connection with an alleged or suspected commission of an offence, as well as any other deprivation of personal liberty.” The Petitioners in applications SC FR 268, 270, 271, 272, 273, 274, 346, 347 and 348 who had been detained in the Katunayake Police Station following the attack of the police on the factories therefore can be considered as arrestees. The Petitioners were not properly informed of the “nature of the charge or allegation” upon which they were arrested as required by Section 23(1) of the Code of Criminal Procedure Act. They were thus not afforded the “opportunity of removing any mistake, misapprehension or misunderstanding” (vide *Mariyadas Raj v Attorney General and Another*<sup>10</sup>) that they had been engaged in any unlawful activity during the protest. Considering these circumstances, the rights of the Petitioners under Article 13(1) have been violated.

The arrests are unlawful in that the police had entered the factory premises by force, in their pursuit of the protestors fleeing from their

charge and then deprived the personal liberty and assaulted workers including the Petitioners and others who had been inside their factories either working or not engaging in the protest.

The detention of the Petitioners in applications SC FR 268, 270, 271, 272, 273, 274, 346, 347 and 348 in the police cell and in a room in the Crime Branch at the Katunayake Police Station amounts to arbitrary detention.

### **Violation of Article 12(1)**

Equality before law and the equal protection of the law guaranteed to all persons by Article 12(1) has been violated by the arbitrary exercise of power by the Police.

In *Sanghadasa Silva v. Anuruddha Ratwatte*<sup>11</sup> it was stated that “*it is now well settled law that powers vested in the state, public officers and public authorities are not absolute and unfettered but are held in trust for the people to be used for the public benefit and not for improper purposes.*” Even though police officers are charged with the duty of maintaining law and order they cannot exercise the power granted for that purpose in a manner that negates the equality provision. Regardless of the fact that the workers may have joined in the protests and engaged in unlawful activity their entitlement to the protection of the law does not diminish.

### **Conduct of the Senior Officers**

When one considers the events that had taken place immediately prior to the incidents that led to police action on this occasion, it is quite evident that the tension among the FTZ workers was simmering over a period of time. Thus, it could be reasonably deduced that the authorities would have entertained the apprehension that the situation could get unruly or lead to violence as it turned out to be, in the instant case. I am of the view that the state, as the guardian of the fundamental rights, has a duty to take every precautionary step in ensuring that a riotous situation is quelled with minimum damage both to human lives and property. It was no secret that the FTZ is populated with a sizeable worker-community and authorities were put on notice that the days immediately prior, they were emotionally disturbed due to the apprehension that their retirement benefits will be adversely affected as a result of the bill that was proposed to be legislated. Correctness or otherwise of that apprehension apart, the law enforcement authorities ought to have foreseen the events that unraveled. Thus, derive the duty on their part to take the adequate steps to

meet the situation. The manner in which the law enforcement authorities have acted in this instance cannot be complimented and the conduct of the senior officers of the law enforcement in the events referred to falls short of foresight and the diligence expected of them. It is needless to stress that using live ammunition to quell a worker protest ought to have been the last resort after exhausting all other practices normally deployed in a situation of this nature. For example, had water cannons been stationed at the site of the protest the police officers would not have had to fear that they would be helpless if the crowd exited the FTZ and caused havoc outside and therefore use fatal measures. The 2nd Respondent in his statement to the Presidential Committee observes that had water cannons and adequate riot squads been available the situation could have been easily brought under control. The second Respondent in his statement to the Presidential Committee (vide page 38) has stated that when he arrived at the Katunayake Police Station and the vicinity of Gate IV and that there were no senior officers to issue orders to them and that he took the decision to fire. The inaction and the failure of the senior officers to issue proper orders has only aggravated the situation. The IGP states that two trained Riot Squads were placed at the two exit gates of the FTZ, a number clearly insufficient, as indicated by the turn of events where officers not specially trained for handling crowds dealt with the protestors, with grave consequences.

A particular 'Notice to all employees' produced in the Presidential Committee Report (vide page 18) refer to the JGP's views on the demonstrations on the 24th - "they were unhappy about the unlawful assembly and violation of law and order due to the actions taken by the workers on the 24th May at 18th Mile Post, Katunayake. Further he expressed that repetition of such unlawful actions will not be tolerated in the future." This view that the protestors' right to demonstrate their opposition to the bill extends only to an arbitrary extent that the police thinks acceptable and not to the full extent guaranteed by the Constitution and, any action in excess can be quelled mercilessly appears to be the general attitude of the police towards the protestors as later manifested in the violence they unleashed against them.

In Sanjeewa, Attorney-at-Law on behalf of Gerald *Mervyn Perera v. Suraweera*<sup>12</sup> 'The duty imposed by Article 4(d) to respect, secure and advance fundamental rights . . . extends to all organs of Government and the Head of the Police (The) Inspector General of Police) can claim no

exemption . . . A prolonged failure to give effective directions designed to prevent violations of Article 11, and to ensure the proper investigation of those which nevertheless take place followed by disciplinary or criminal proceedings, may well justify the inference of acquiescence and condonation if not also of approval and authorization.”

### **State Liability**

Per Amerasinghe J. in *Saman v. Leeladasa*<sup>13</sup>“*The test of liability relates to the performance or purported performance of his official duties and not to his rank or position in the official hierarchy. If the act was done within the scope of the express or implied sense of the authority of the public officer concerned, there is executive or administrative action in the relevant sense . . . Where there is no express or implied, authority, the act of the public officer may nevertheless be regarded as executive or administrative action if it could be inferred from the circumstances-that the act was done with the intention of doing good to the State and not for his own purpose. In such a case of ostensible authority it may be no defence that the officer concerned was acting beyond his power or authority and even in disregard of a prohibition or special direction provided, of course, that the act was incidental to what the officer was employed to do.*” It follows from this view that the state with which the primary duty to safeguard fundamental rights enshrined in the Constitution lies, is liable for the inaction of the Respondents.

Since the identities of the police officers who perpetrated the concerted charge and the subsequent attack on the factories have not been specifically identified, it is not possible to pin individual liability on individual officers.

### **Declarations and Compensation**

Upon consideration of the material placed before the court, I am of the view that the Petitioners have established that their fundamental rights have been violated and each of the Petitioners is entitled to a declaration to that effect;

Accordingly, I declare that the fundamental rights of

a) H. M. M. Sampath Kumara, under Articles 11, 12(1) and 14(1)(b) had been violated (SC FR 265/2011)

b) A. RohithaAmarasinghe, under Articles 11, 12(1), 13(1) and 14(1) (b) had been violated (SC FR 266/2011)

- c) C. A. H. M. O. Buddika Atapattu, under Articles 11, 12(1) and 14(1) (b) had been violated (SC FR 267/2011)
- d) R. R. M. Dhanushka Sanjeeva, under Articles 11, 12(1), 13(1) and 14(1)(b) had been violated (SC FR 268/2011)
- e) Anesh Imalka Fernando, under Articles 11, 12(1) and 14(1)(b) had been violated (SC FR 269/2011)
- f) N. L. T. Iresha, under Articles 11, 12(1), 13(1) and 14(1)(b) had been violated (SC FR 270/2011)
- g) Nissanka Wanigasekera, under Articles 11 and 12(1) had been violated (SC FR 271/2011)
- h) R. A. H. M. Jayatissa Rajakaruna, under Articles 11, 12(1) and 13(1) had been violated (SC FR 272/2011)
- i) S. P. L. Ranjan Lasantha Perera, under Articles 11, 12(1) and 13(1) had been violated (SC FR 273/2011)
- j) H. M. Lalinda Herath, under Articles 11, 12(1) and 13(1) had been violated (SC FR 274/2011)
- k) M. Pradeep Kumara Priyadarshana, under Articles 11, 12(1) and 14(1)(b) had been violated (SC FR 346/2011)
- l) U. G. Nalin Sanjaya Jayatifeke, under Articles 11, 12(1) and 14(1) (b) had been violated (SC FR 347/2011)
- m) M. H. A. Sameera Sandaruwan Hettiarachchi, under Articles 11, 12(1) and 14(1)(b) had been violated (SC FR 348/2011)

I am of the view that this is a fit matter to consider payment of compensation to the Petitioners. In deciding the quantum of compensation to be awarded the court took into consideration the gravity of the injuries sustained by the Petitioners and the court also took in consideration that some of the Petitioners have not taken part in the protest but are victims of circumstances. Accordingly;

- a) In SC FR Application No. 265/2011 the Petitioner H. M. M. Sampath Kumara is awarded a sum of Rs. 250, 000 as compensation.
- b) In SC FR Application No. 266/2011 the Petitioner A. Rohitha Amarasinghe is awarded Rs. 75, 000 as Compensation.

- c) In SC FR Application No. 267/ 2011 the Petitioner C. A. H. M. O. Buddika Atatpattu is awarded Rs. 75, 000 as compensation.
- d) In SC FR Application No. 268/2011 the Petitioner R. R. M. Danushka Sanjeewa is awarded Rs. 50, 000 as compensation.
- e) In SC FR Application No. 269/2011 the Petitioner Anesh Imalka Fernando is awarded Rs. 50, 000 as compensation.
- f) In SC FR Application No. 270/2011 the Petitioner N. L. T. Iresha is awarded Rs. 75, 000 as compensation.
- g) In SC FR Application No. 271/2011 the Petitioner Nisshanka Wanigasekara is awarded Rs. 100, 000 as compensation.
- h) In SC FR Application No. 272/2011 the Petitioner R. A. H. M. Jayatissa Rajakaruna is awarded Rs. 75, 000 as compensation.
- i) In SC FR Application No. 273/2011 the Petitioner S. P. L. Ranjan Lasantha Perera is awarded Rs. 100, 000 as compensation.
- j) In SC FR Application No. 274/2011 the Petitioner H. M. Lalinda Herath is awarded as Rs. 40, 000 as compensation.
- k) In SC FR Application No. 346/2011 the Petitioner M. Pradeep Kumara Priyadarshana is awarded Rs. 75, 000 as compensation.
- l) In SC FR Application No. 347/2011 U. G. Nalin Sanjaya Jayatileke is awarded Rs. 75, 000 as compensation.
- m) In SC FR Application No. 348/2011 the Petitioner M. H. A. Sameera Sandaruwan Hettiarachchi is awarded Rs. 50, 000 as compensation.

The compensation awarded to the Petitioners referred to above is payable by the State.

**PERERA, J.** - *I agree.*

**JAYAWARDENA, J.** - *I agree.*

*Application allowed.*

*Judgment by: Buwaneka Aluwihare, J.*

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